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**CERTIFICATION OF APPROVAL OF HILLER HIGHLANDS I ASSOCIATION  
SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

WHEREAS, Hiller Highlands I Association is a membership organization comprised of all the Owners of the Condominiums and/or Residence Lots located in the City of Oakland, County of Alameda, California, described as

Tract 2783, Oakland, Alameda County, California, as shown on the subdivision map so named, recorded April 14, 1966 in Map Book 52 at Page 103, Alameda County Records,

Excepting Therefrom all of Recreation Area Parcel 1, as shown on said map, and

Further Excepting Therefrom the following parcel: beginning at a point at the intersection of the easterly tract limit of Tract 2783, and the southerly right-of-way line of Hiller Drive, being further described as the northerly tract limit of Tract 2783; thence from said point of beginning, along said easterly tract limit, South 64 degrees 15 minutes 36 seconds West, 90.80 feet; thence leaving said easterly tract limit, North 13 degrees 30 minutes East, 105.18 feet; thence North 72 degrees 43 minutes 47 seconds East, 36.00 feet, to the southerly right-of-way line of Hiller Drive; thence along said southerly right-of-way line, South 17 degrees 16 minutes 13 seconds East, 77.00 feet to the point of beginning,

which property is a Development within the meaning of California Civil Code Section 1351 and is subject to the provisions of the Davis-Stirling Common Interest Development Act; and

NOW THEREFORE, we, PATRICIA SWIFT and STEVEN L. CORBIEDICK hereby certify:

1. That we are the duly elected President and Secretary, respectively, of Hiller Highlands I Association, a California nonprofit mutual benefit corporation ("Association");
2. That a duly noticed written secret ballot was provided to all Members of the Association to consider a resolution to adopt the Hiller Highlands I Association Second Amended And Restated Declaration of Covenants, Conditions, and Restrictions ("Amended Declaration") attached hereto and incorporated herein by reference;
3. That the attached Amended Declaration was approved by the affirmative vote of Members representing at least fifty-one percent (51%) of the total voting power of the Association, that is eighteen (18) Members, as required by Section 10.1.1 (Amendment) of the Hiller Highlands I Association First Amended And Restated Declaration of Covenants, Conditions, and Restrictions recorded on November 8, 2001, as Series No.

2001439199, in the Official Records of the County of Alameda, State of California ("Original Declaration").

4. Upon recordation, the Amended Declaration shall supersede and replace in its entirety the Original Declaration.

IN WITNESS WHEREOF, the undersigned have executed this Certification of the Adoption of the Amended Declaration on this 30<sup>th</sup> day of September, 2009.

**HILLER HIGHLANDS ONE ASSOCIATION, INC.**

Patricia I. Swift  
Patricia I. Swift, President

Steven L. Cobbledick  
Steven L. Cobbledick, Secretary

**NOTARY ACKNOWLEDGMENT**

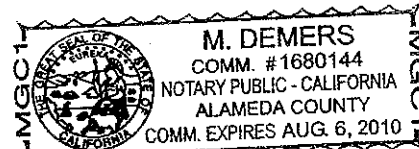
State of California County of Alameda

On 9/30/09 before me, M. Demers, notary public (insert name and title of the officer) personally appeared Patricia I. Swift & Steven L. Cobbledick, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature M. Demers



(Seal)

State of California County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (insert name and title of the officer) personally appeared \_\_\_\_\_, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**WHEN RECORDED RETURN TO:**

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

**SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
REGARDING A PLAN OF OWNERSHIP**

**HILLER HIGHLANDS I ASSOCIATION**

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
ORIGINAL DECLARATION RECORDED ON MAY 26, 1966 AT  
REEL 1776, IMAGE 217, SERIES NO. AY/66136  
OFFICIAL RECORDS OF ALAMEDA COUNTY, CALIFORNIA**

**First Amendment to Original Declaration: Recorded 9/27/66, Series AY-112378**

**Second Amendment to Original Declaration: Repealed**

**Third Amendment to Original Declaration: Recorded 3/17/86, No. 86-062369**

**First Amended and Restated Declaration: Recorded 11/08/2001, No. 2001-1439199**

**October 1, 2009**

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**HILLER HIGHLANDS I ASSOCIATION**  
**SECOND AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**ARTICLE 1. PREAMBLE**

Hiller Highlands I Association, a California Non-Profit Mutual Benefit Corporation (hereinafter referred to as "**Association**"), hereby adopts, pursuant to Section 1355 of the Civil Code, the following Second Amended and Restated Covenants, Conditions and Restrictions relating to the Project known as Hiller Highlands Phase One.

This Article does not apply to the Declaration of Covenants, Conditions and Restrictions Series No. AY/66136 which has been repealed.

WITNESSETH:

WHEREAS, Hiller Highlands I Association is a membership organization comprised of all the Owners of the Condominiums and/or Residence Lots located in the City of Oakland, County of Alameda, California, described as:

Tract 2783, Oakland, Alameda County, California, as shown on the subdivision map so named, recorded April 14, 1966 in Map Book 52 at Page 103, Alameda County Records,

Excepting Therefrom all of Recreation Area Parcel 1, as shown on said map, and

Further Excepting Therefrom the following parcel: beginning at a point at the intersection of the easterly tract limit of Tract 2783, and the southerly right-of-way line of Hiller Drive, being further described as the northerly tract limit of Tract 2783; thence from said point of beginning, along said easterly tract limit, South 64 degrees 15 minutes 36 seconds West, 90.80 feet; thence leaving said easterly tract limit, North 13 degrees 30 minutes East, 105.18 feet; thence North 72 degrees 43 minutes 47 seconds East, 36.00 feet, to the southerly right-of-way line of Hiller Drive; thence along said southerly right-of-way line, South 17 degrees 16 minutes 13 seconds East, 77.00 feet to the point of beginning,

which property is a condominium project and planned development within the meaning of California Civil Code Section 1351 and is subject to the provisions of the Davis-Stirling Common Interest Development Act; and

WHEREAS, the project is divided into Condominiums and into Residence Lots by means of deeds.

WHEREAS, each Owner of a Condominium Unit or Residence Lot owns an equal undivided interest in the same Common Area designated Parcels 2, 3, 4, 5, 6, and 7 on the aforesaid final subdivision map; and



WHEREAS, the Project must comply with the conditions imposed by the City Council of the City of Oakland, County of Alameda, by ETU 65-356, granted August 3, 1965;

WHEREAS, Members of the Association desire to amend and restate the restrictions heretofore adopted under a general plan of improvement for the benefit of all of said Condominiums and/or Residence Lots and Improvements and the Owners thereof;

NOW, THEREFORE, Association hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of providing a means of managing the Project and of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof:

## **ARTICLE 2. DEFINITIONS**

Unless the context otherwise specifies or requires, the terms defined in this Article 2 shall, for all purposes of this Declaration, have the meanings herein specified.

**Architectural Rules** shall mean rules adopted by the Board of Directors pursuant to Article 7.

**Articles** shall mean the Amended Articles of Incorporation of Hiller Highlands I Association which are filed in the Office of the Secretary of State of the State of California.

**Assigned Parking Space** shall mean an assigned place to park an automobile on a cement slab with or without a roof and with fencing on zero or more sides. These include carports, open garages, parking spaces on the street.

**Association** shall mean Hiller Highlands I Association, the California Non-profit Mutual Benefit Corporation described in Article 5, including its successors and assigns. The Governing Board of the Association shall be a Board of Directors (the "Board"). The Association shall be governed by these Covenants, Conditions and Restrictions (the "Declaration") and by the Association's Bylaws (the "Bylaws").

**Association Assets** shall mean all property and assets owned by the Association or the Owners as tenants in common.

**Beneficiary** shall mean a mortgagee under a mortgage as well as a beneficiary under a deed of trust.

**Board** shall mean the Board of Directors of the Association.

**Bylaws** shall mean the Bylaws of the Association, which are or shall be adopted by the Association.

**Carport** shall mean a place to park an auto under a roof supported by columns. All carports are located on the downhill side of Spyglass Hill.

**Condominium** shall mean the entire property conveyed by deed to a condominium grantee.

**Common Area** shall mean the property covered by this Declaration excepting all Condominiums and/or Residence Lots granted or reserved. Specifically, the Common Area includes Parcels 2, 3, 4, 5, 6, and 7 as shown on the subdivision map referred to above. The Common Area also includes the roofs, foundations, pipes, ducts, flues, chutes, conduits, wires, and other utility installations to the outlets, bearing walls, columns, and girders, to the unfinished surfaces thereof regardless of location, within any structure containing Condominium Units.

**Common Area Personal Property** shall mean all personal property and equipment purchased by the Association with respect to the operation and maintenance of Common Areas.

**Declaration** shall mean the within Declaration of Covenants, Conditions, and Restrictions of Hiller Highlands I Association, and as said Declaration may from time to time be amended.

**Declarant** shall mean Hiller Highlands I Association, and its successors and assigns.

**Duplex** shall mean a building which contains two Condominium Units as noted on Exhibit "B" attached hereto.

**Exclusive Use Common Area** shall mean a portion of the Common Area designated by the Declaration for the exclusive use of one or more, but fewer than all, of the Owners of the separate interests and which is appurtenant to the separate interest or interests.

**Governing Documents** shall mean collectively this Declaration, the Articles of Incorporation, the Bylaws, and the Association Rules and Regulations.

**Guest** shall mean a person who has possession of the separate interest for a term of one month or less. A Guest who remains in possession of the separate interest more than one month shall be deemed a Resident.

**Hiller Highlands, Phase One and Hiller Highlands I Association** refer to one and the same Association.

**Insurance Committee** shall mean the committee which may be created by the Board pursuant to Section 8.6, and unless otherwise identified, the Board serves as a standing Insurance Committee.

**Landscape Committee** shall mean the committee which may be created by the Board pursuant to Section 5.6.9, and unless otherwise identified, the Board serves as a

standing Landscape Committee.

**Landscape Rules** shall mean rules adopted by the Board regarding landscaping or planting in the Common Area or Patio Gardens.

**Lot** shall mean and refer to any single plot of land shown upon any recorded subdivision map of the property described in Exhibit "A" hereto, with the exception of the Common Area and the Exclusive Use Common Area within the Lot. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other improvements constructed on a Lot.

**Manager** shall mean the person or corporation who may be appointed as such pursuant to Section 5.7.4.

**Member** shall mean every person or entity who holds a membership in the Association, pursuant to Section 5.2, and whose rights as a Member are not suspended pursuant to Section 5.10.1 below.

**Nuisance** shall mean anything which is injurious to health, including but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any public street.

**Occupant** shall mean an owner, resident, guest, invitee, tenant, lessee, sublessee, or other person in possession of the separate interest.

**Open Garage** shall mean a place to park an auto under one or two Condominium Units.

**Owner** shall mean the record Owner, whether one or more persons or entities, of the fee simple title to any Condominium or Residence Lot situated in the Project, and any related interest in the Common Area, excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall also include the Vendee under a contract of sale (Real Property Sales Contract).

**Parking Area** shall mean any portion of the Common Area which has been established and designated for the uses as set forth in Section 4.2.1.2.

**Parking Rules** shall mean rules adopted by the Board, pursuant to Section 3.1.15.

**Party Wall** shall mean any wall of a Residence, located on a property line dividing any Residence, which wall is commonly used by any such Residence and the adjoining Residence.

**Patio Gardens** shall mean those areas outside the foundations of the Residences that are explicitly specified in the deeds of the Owners.

**Project** shall mean all of the real property described in the Subdivision Map, together with all improvements made thereon.

**Quorum** shall mean a majority (51%) of the voting power of the Association unless otherwise provided in the Articles of Incorporation, this Declaration or the Bylaws.

**Residence** shall mean a Condominium and/or Residence Lot.

**Residence Lot** shall mean any improved parcel consisting of a Lot and single family residence conveyed to an Owner or Owners in separate fee simple ownership.

**Resident** shall mean any person residing in a Condominium or Residence Lot, whether he be an Owner, long-term Guest, tenant, live-in domestic employee or residing family member or a resident of any of the above.

**Rules** shall mean the rules adopted by the Board, as they may from time to time be in effect pursuant to the provisions of Section 5.9.

**Street** shall mean the sole Street in the Project, known as Spy Glass Hill, which is privately owned by the Association and is part of the Common Area of the Project.

**Subdivision Map** shall mean that certain Subdivision map entitled Tract 2783, Oakland, recorded in the Office of the County Recorder of Alameda County, California, on the 14th day of April, 1966, in Book 52 of Maps at Page 103, et seq.

**Subject Property** shall include all of the real property referred to on the Subdivision Map.

**Unit** shall mean the portion of a Condominium as to which an Owner is entitled to exclusive occupancy.

### **ARTICLE 3. RIGHTS, EASEMENTS & RESTRICTIONS: RESIDENTIAL AREA**

#### **3.1 Residential Area: Permitted Uses and Limitations**

Residences within the Residential Area shall be for the exclusive use and benefit of the Owners thereof, subject, however, to all of the following limitations and restrictions.

##### **3.1.1 Residential Use.**

Each Condominium or Residence Lot shall be used as a Residence for a single family and for no other purpose. No commercial activity or business shall be operated or maintained in the Project, except for "home offices" that do not generate traffic, clients or noise in excess of that generated by reasonable domestic use. Nothing herein contained shall preclude the use of a Residence for a family daycare center or for other uses allowed by California Health and Safety Code Sections 1597.30 and 1597.40. Moreover, the term "family" as used herein shall not be interpreted to require any blood relationship among the Occupants.

### **3.1.2 Rental of Residence.**

An Owner shall be entitled to rent the Residence situated on his Condominium or Residence Lot subject to the restrictions contained in Section 3.1.1, above, provided, however, that the term of said rental shall not be for a term less than sixty (60) days. Any rental or lease of a Residence shall be subject to the Governing Documents, including the Rules. The Owner shall provide each tenant or lessee with a copy of this Declaration and a copy of the Articles of Incorporation, Bylaws and all pertinent Association Rules and Regulations. The Owner shall at all times be responsible for his tenant's or lessee's compliance with all of the provisions of this Declaration, the Bylaws, and the Rules with respect to the use and occupancy of the Residence and the use of the Common Area.

### **3.1.3 Non-Resident Owners.**

Non-resident Owners shall at all times provide to the Association's Board of Directors their current mailing address and phone number.

### **3.1.4 Animals.**

No animals of any kind shall be maintained, bred or kept on any Residence or in the Common Area except that dogs, cats or other customary household pets in a reasonable number and size may be kept, provided, however, that they are not kept, bred, or maintained for any commercial purposes. All dogs belonging to Residents or their Guests must be attended, leashed, and controlled when having access to the Common Areas or contiguous unenclosed areas of individual Residences. Owners are responsible for clean up and removal of animal waste products deposited by animals under their control or the control of their Guests. Any pet causing an unreasonable disturbance shall be removed within three (3) days of written notice from the Board, after notice and an opportunity for a hearing. The keeping of pets shall be in compliance with Civil Code 1360.5.

### **3.1.5 Antennas Installed in Exclusive Use Common Areas.**

Installation of a radio, video, or television antenna, including a satellite dish, designed to receive television signals that is or will be located on property within the exclusive use or control of the antenna user, and that is not otherwise prohibited by law, must be within applicable requirements of the California Civil Code Section 1376 and the Code of Federal Regulations, 47 CFR Section 1.4000, or comparable superseding statute or regulation. As allowed by applicable law, the Board may request notification prior to installation of such radio, video, or television antenna, including a satellite dish. The Board may disallow installation of antennas or satellite dishes with a diameter or diagonal measurement exceeding one meter, or with a height more than 12 feet above the roof line and/or require that installation be to a height that the antenna, if it topples, will be wholly contained within the Owner's property. As allowed by applicable law, the Board may prohibit installations of individual antennas or satellite dishes when the Association has installed a central system. As allowed by applicable law, the Board may disallow installation of antennas or other devices that are not designed to receive television signals. As allowed by applicable law, the Board may enforce reasonable painting or other camouflage requirements provided such requirements do not impair

reception. As allowed by applicable law, the Board may establish and enforce collection powers that allow the Association to recover for any resulting Association property damage and other costs arising from harm caused by an Owner's installation of such installed antennas or satellite dishes. Such powers of the Board to levy a Reimbursement Assessment are pursuant to Section 6.4 below. As allowed by applicable law, the Board may establish and impose penalties on Owners who violate this Section and applicable Rules. The Board has the authority to require that any contractor installing any antenna or satellite dish provide appropriate proof of liability and workers' compensation insurance prior to commencing work, and to require that such contractor agree in writing to indemnify and defend the Association from any claims arising out of or in connection with his work.

#### **3.1.6 Utility Service.**

No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be constructed, placed or maintained anywhere in or upon any Residence unless the same shall be contained in conduits or cables constructed, placed and maintained underground or concealed in, under or on buildings or other approved structures unless approved by the Board.

#### **3.1.7 Prohibitions Regarding Certain Conveyances and Structures.**

No boat, van, mobile home, recreational motor home, trailer of any kind, truck, camper larger than a half (1/2) ton pick-up truck, dilapidated motor vehicle or permanent tent, shed other than the CORE box located on the Street adjacent to #48 or similar structure shall be parked, kept, placed, maintained, constructed, reconstructed or repaired upon any Residence, assigned Parking Space, Carport, Garage, or elsewhere on the Common Area within the Project in such a manner as will be visible from neighboring property or adjacent streets; provided, however, that the provision of this Section 3.1.7 shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with the construction or any work of improvement approved by the Board. No commercial vehicles of any nature shall be parked or stored on the exterior of any Residence or Street, except for commercial vehicles providing services to the Owners of Residences or the Association, and in that event only for the duration necessary to provide such services.

#### **3.1.8 Nuisances.**

No rubbish, debris or pet droppings of any kind shall be placed or permitted to accumulate on a Residence or on the Common Area, and no odors shall be permitted to arise therefrom, so as to render any Residence or the Common Area unsanitary, unsightly, harmful or detrimental to any of the property in the vicinity thereof or to the Occupants thereof. No nuisance shall be permitted to exist or operate upon any Residence so as to be harmful or detrimental to any property in the vicinity thereof or to its Occupants. No noxious or offensive activities shall be carried on in any Residence or in the Common Area, including the Street, nor shall anything be done therein which may be or become an annoyance or nuisance to the other residents. Each Owner shall

comply with all requirements of the local or state health authorities and with all other applicable governmental ordinances regarding occupancy and use of Residences. Each Owner is accountable to the Association and other Owners for the conduct and behavior of persons residing in or visiting his Residence. Any damage to the Common Area caused by such persons shall be repaired at the sole expense of the Owner of the Residence where such persons are residing or visiting; the Board may levy a Reimbursement Assessment, pursuant to Section 6.4 below, to recover expenses incurred for such repairs. The Board is entitled to determine if any noise, odor or activity constitutes a nuisance.

#### **3.1.9 Noise.**

Residents are entitled to the quiet enjoyment of their homes, and excessive noise shall be prohibited at all times. No Owner shall engage in or permit any Occupant or Guest to engage in noise, including, but not limited to the unreasonable noise of pets or playing of musical instruments or playing of sound reproduction equipment, including but not limited to stereo speakers or other loud speakers, which would unreasonably disturb another resident's quiet enjoyment of his or her Residence or of the Common Area. Other sources of noise or vibration, such as from treadmills and hot tub motors, are likewise subject to the preceding restrictions. No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on a Residence.

#### **3.1.10 Trash Containers and Collection.**

All garbage and trash, other than recycled materials, shall be placed and kept in covered containers, with covers securely closed. Recycled materials may be placed in uncovered recycling collection containers; however such materials must be secured and packaged so as to avoid spillage from these containers. All types of trash containers shall be placed on level locations, to avoid toppling.

#### **3.1.11 Clothes Drying Facilities.**

No outside clotheslines or other outside clothes drying or airing facilities shall be maintained on any Residence unless the Board finds such facilities to be adequately concealed so as not to be seen from any adjacent property.

#### **3.1.12 Fences and Walls.**

All fences and concrete or masonry walls in the Project shall be maintained as described in Exhibit "B".

#### **3.1.13 Fires and Smoking.**

There shall be no exterior fires whatsoever except barbecue fires contained within receptacles designed for such purpose. When used outdoors, all smoking products, such as cigarettes, cigars, etc., and their ashes shall be completely extinguished and discarded in secure containers.

### **3.1.14 Garages.**

The repair and maintenance of a Garage is the responsibility of those Owners who use it as described in Exhibit "B". Notwithstanding other permissible uses of space in Garages, Owners of motor vehicles shall reserve Garage space or spaces for the regular parking of said vehicles.

### **3.1.15 Parking.**

The Board shall have the power and duty to establish reasonable Parking Rules for the regulation of parking in the Project. However, the City of Oakland shall be, and is hereby granted an easement for access over, through and across the Street within the Project for purposes of enforcement of all municipal parking codes. Said Street may be so posted by the Association, subject to the City of Oakland's approval of all such posting.

3.1.15.1 Parking spaces and garages are reserved for the storage of vehicles. Storage of other property in the parking spaces and garages is prohibited, except in designated closed storage areas or lockers. This restriction applies whether the parking space or garage is separately owned, or a part of the Common Area.

### **3.1.16 Machinery and Equipment.**

No commercial machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Residence within the Residential Area except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Residence or appurtenant structures in the Project

### **3.1.17 Dry Rot, Structural Pests, Insects and Rodents.**

No Owner shall permit any thing or condition to exist upon his Residence which shall induce dry rot or excessive moisture on his or adjacent Residences; attract or give access to termites or other structural pests; or breed, harbor or attract infectious plant diseases, noxious insects or rodents.

### **3.1.18 Responsibility for Repairs, Replacement, or Maintenance re Damage by Wood-Destroying Pests or Organisms.**

The Association shall be responsible for the repair of all damages to the Common Areas caused by wood-destroying pests or organisms, and shall be entitled to recover the costs thereof as a Special Assessment. The Owners shall be financially responsible for the repair of all damages to the buildings which are caused by wood-destroying pests or organisms as set forth in Exhibit "B". The Association shall be responsible for arranging for extermination and abatement of wood-destroying pests or organisms, and Owners shall be financially responsible for costs of same. The Association may cause the temporary, summary, removal of any Occupant of a Residence for such periods and at such times as may be necessary for prompt and effective treatment of wood-destroying pests or organisms. The costs of temporary relocation during the repair and maintenance of areas damaged by wood-destroying pests or organisms shall be borne by the Owner(s) of the Residence(s) affected. The



Association shall give notice of the need to temporarily vacate, pursuant to such treatment, repair, or maintenance, in accordance with applicable law.

### **3.1.19 Restrictions on Further Subdivision.**

No Condominium and/or Residence Lot shall be further subdivided nor shall less than all of any such Residence be conveyed by an Owner thereof. No easement or other interest in a Residence shall be given without the prior written approval of the Board of Directors.

### **3.1.20 Signs.**

No signs whatsoever (including, but without limitation, commercial and similar signs) which are visible from neighboring property shall be erected or maintained on any Residence except: such signs as may be required by legal proceedings; residential identification signs, subject to the approval of the Board of Directors as to suitability; and not more than one for sale" or "for rent" sign per Residence having maximum face area of two square feet, pursuant to the Rules of the Association, or as otherwise permitted by California Civil Code Sections 713 and 1353.6.

## **3.2 Construction and Alteration of Improvements**

No construction or alteration of the exterior of improvements on a Residence shall be undertaken without prior written approval of the Board pursuant to Article 7. No construction, maintenance or alteration of the interior of a Residence shall be undertaken where such construction or alteration would compromise the structural integrity of the Unit or the adjacent Unit or Units or would impair the effectiveness of sound control between the Residences. The construction or alteration of fences and walls, whether located entirely on a Residence or extending from the Common Area into a Residence, shall only be undertaken in such manner as to be in compliance with Article 7. No Resident or his agent shall remove or alter landscaping in those areas of an individual Residence where, pursuant to Section 5.6.6, the Association has jurisdiction over landscaping.

## **3.3 Party Walls, Fences and Roofs**

### **3.3.1 General Rules of Law to Apply.**

Each wall which is built as part of the original construction of the Residences in the Project and placed on the dividing line between the Residences, or any fence constructed on the dividing line between any Residences, shall constitute a Party Wall or fence and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Each Owner of a Residence upon which a Party Wall or fence exists shall own to the center of such wall or fence. Where adjoining Residences as part of the original construction have a contiguous roof, which roof intersects or crosses a Residence line which divided these Residences, such roof shall constitute a party roof, and the provisions thereof shall apply to such party roofs.

### **3.3.2 Sharing of Repair and Maintenance.**

The Owners of each Residence upon which a Party Wall, fence or roof is located shall have a reciprocal non-exclusive easement to each contiguous Residence for the purpose of maintaining the Party Wall, fence or roof.

3.3.2.1 Maintenance of property is assigned as specified in Exhibit "B" as an equitable mechanism for maintaining the Common Area, and is to be used to determine financial responsibility for all non-disaster related repair and maintenance.

3.3.2.2 The Owner is financially responsible for all rebuilding of Residences including party walls and division fences, etc. in the event of a disaster.

3.3.2.3 The Association will be responsible for obtaining disaster related insurance for loss and earthquake insurance to the levels specified in Article 8.

3.3.2.4 In the event of a shortfall in insurance funds related to a disaster, the Board will be responsible for assigning the costs of the shortfall to individual homeowners after consultation with the homeowners.

3.3.2.5 Proceeds from any disaster related claim will be paid to the Association and the Board will contract for and conduct any necessary rebuilding, restoration or repairs.

### **3.3.3 Weatherproofing.**

Notwithstanding any other provision of this section, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

### **3.3.4 Right to Contribution Runs With Land.**

The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.

### **3.3.5 Arbitration.**

In the event of any dispute arising concerning a Party Wall, fence or roof, or under the provisions of this section, such dispute shall be submitted in writing to the Board of Directors. The written decision of the Board of Directors shall be final and binding on the parties.

## **3.4 Owners' Easements**

### **3.4.1 Easement to Common Area.**

Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Residence.

### **3.4.2 Utilities Easements.**

There is reserved an easement over, under and through each Residence and the Common Area for installation, maintenance and repair of each and every utility service, including, but not limited to, sewage, drainage, water, electricity, gas, telephone and television service for this Project and each additional Project referred to in that certain Declaration of Reciprocal Covenants and Easements - Hiller Highlands, Series No. AY-70422, recorded June 8, 1966, at Reel 1782, Image 970, Official Records of Alameda County, attached hereto as Exhibit "C". The exercise of the easements reserved by this Section shall not result in damage to existing improvements including lawns, shrubbery, or trees, unless adequate compensation is made for any such damage.

### **3.4.3 Easements for Party Walls and Encroachments.**

Whenever two Residences are located adjacent to each other with two separate walls, defined as a Party Wall in Section 3.3, or whenever Residences are located adjacent to the Common Area, such Residences are hereby granted exclusive appurtenant easements for encroachments for overhanging eaves or roofs as originally constructed and for encroachments due to settlement or shifting of structures for any cause whatsoever and encroachments due to construction, reconstruction or repair of the Residence which may so encroach, and for utility meters, lines, wires, pipes and conduits, over and on the adjoining Residence or Common Area, as servient tenement, with the contiguous Residence as dominant tenement.

### **3.5 Repair and Reconstruction**

The Board shall place all insurance proceeds from successful claims in a separate fund dedicated exclusively to cover the costs of making repairs and/or rebuilding so as to protect the interests of Owners of such property and their Mortgagees, as their respective interests may appear.

To the extent that there are any insurance proceeds unexpended relative to such loss, such proceeds shall be distributed to the Owners of the damaged Residence and the mortgagee or beneficiary of any mortgage or deed of trust upon any such Residence, as their interests may appear, according to the respective fair market value of the damaged Residences at the time of the destruction as determined by an independent appraisal.

#### **3.5.1 Damages Limited to One Residence Lot.**

If any improvements on a Residence are damaged or destroyed by fire or any other calamity, and said damage is limited solely to a particular Residence, the insurance proceeds from an Association blanket physical damage insurance policy shall be paid to the Board and the Board shall use said proceeds to rebuild or repair the damage. In the event that the insurance proceeds are insufficient to complete such rebuilding or repair, the Owner shall be responsible for the payment of such additional sums as may be necessary to complete such rebuilding or repair.

### **3.5.2 Damages Extend to Two or More Residence Lots.**

If any improvements on a Residence are damaged or destroyed and such damage or destruction extends to two or more Residences, the insurance proceeds from an Association blanket physical damage insurance policy shall be paid to the Association. The Board shall thereupon contract for the repair or rebuilding of the damaged improvements, in accordance with Article 7 of this Declaration. In the event the insurance proceeds are insufficient to pay all costs of repairing or rebuilding of the damaged improvements, each Owner of that Residence on which the improvements have been damaged or destroyed shall be responsible for the proportionate share of such costs in excess of the available insurance proceeds, if any.

3.5.2.1 In the event that damage or destruction of improvements on adjoining Residences requires the repair or rebuilding of a Party Wall, party roof or other building component which provides weatherproofing protection to an improvement on an adjoining Residence (hereinafter referred to as a "weatherproofing component"), the following requirements shall apply:

3.5.2.1.1 The Board shall commence the repair and/or rebuilding of the improvement so damaged or destroyed, in accordance with approved plans under Article 7 of this Declaration, within ninety (90) days of the commencement of framing of a Residence on an adjoining Residence or, in the case of partial damage or destruction, within ninety (90) days of the commencement of repair to a building component on an adjoining Residence which depends for weatherproofing protection, in whole or in part, upon the repair of a weatherproofing component on the Owner's Residence. In the event the weatherproofing component to be repaired on the Owner's Residence is a Party Wall, roof or fence, the cost of repair shall be determined in accordance with Section 3.3 of this Declaration.

3.5.2.1.2 The Board shall select design professionals and contractors to design and construct the necessary repairs. The necessary weatherproofing may include, but shall not be limited to, the cost of installing plywood sheathing on the exterior of the improvement on the adjoining Residence.

3.5.2.2 In all cases where damage or destruction of an improvement occurs on a Residence, the Association shall immediately remove all damaged improvements, including, but not limited to, any portions of the foundations which protrude from the ground on said Residence and shall leave the Residence in a safe condition and visually compatible with the landscaping and design of adjoining Residences and/or the Common Area. The actual cost of the repairs, plus the cost of any necessary professional services incurred by the Association, shall be assessed to the Owner as a Reimbursement Assessment in accordance with Article 6, Section 6.4 of this Declaration, except to the extent to which the repairs are covered by the association's insurance policy.

### **3.5.3 Insurance.**

The Board of the Association shall have the duty to purchase and maintain insurance to protect against any liability to the public or to the Owners incident to the

ownership of the Common Area and to purchase an Association Blanket Insurance Policy to protect the Common Area, the individual Residences and the permanent fixtures therein against damage from insurable hazards, pursuant to Article 8. Additionally, each Owner should carry Loss Assessment Coverage in an amount large enough to cover significant shortfalls in the Association's coverage.

### **3.6 Major Damage to the Project**

In the event of a major damage by any single particular occurrence such as a fire, storm, flood, earthquake, landslide, or other disaster where the cost of repair or restoration exceeds the available insurance plus loss assessment coverage held by homeowners by \$170,000.00 or more, the Association shall call a general meeting of its Members. At such meeting, the Members shall determine which of the following alternatives shall be taken by the Association.

(a) The Association and Owners may repair and restore the damage according to the foregoing provisions of this Article, provided, however, that the assessment of the Owners covering the uninsured portion of the cost shall not be equally apportioned, but shall be apportioned in the following manner. Each Owner shall be assessed for that fraction of the cost which is equivalent to the ratio of square footage of such Owner's Residence divided by the total square footage of all the Residences within the Project and to include each Owner's equal interest in the Common Area. Square footage shall mean the total living area of a Residence as specified in the policies that underwrite the Association's insurance coverage.

(b) In the alternative, but only if Owners holding in aggregate more than a 75% interest in the Common Area so vote, the Association may elect not to repair or restore the damage, but to dissolve the entire Project. If such election is made, the Association shall record a sworn declaration setting forth such election and reciting that under the provisions of this Declaration the prohibitions against severance and partition have terminated, and that judicial partition of the Project may be obtained pursuant to California Civil Code Section 1359. Upon final judgment of a court of competent jurisdiction decreeing such partition, this Declaration shall terminate.

### **3.7 Association's Right of Entry and Repair**

The Association or its agents may enter any Residence whenever such entry is reasonably necessary in connection with the performance of any maintenance or repair for which the Association is responsible. The Association's right of entry under this Declaration shall be immediate in case of an emergency originating in or threatening the Residence or other Residences or Common Area or any person, and the Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

In all non-emergency situations, the Association or its agents shall furnish to the Owner, and his or her lessee, if applicable, two (2) days' written notice of its intent to enter the Residence, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing therein.

The Association shall have the right, after advanced notice and consultation with the Owner, at any time and from time to time, at its own cost, to cut and remove any trees or shrubs, or remove or trim the branches of any trees or shrubs, on any Residence or any portion of the Common Area if it deems it desirable to do so for the benefit of other Residences or for the general benefit of the Association.

#### **ARTICLE 4. RIGHTS, EASEMENTS AND RESTRICTIONS: COMMON AREA**

##### **4.1 Permitted Uses, Construction and Alteration of Improvements**

The Common Area shall be held, maintained and used to meet the common interests of the Members of the Association, their tenants and Guests as provided by this Declaration.

##### **4.1.1 Limitation on Construction.**

No person or entity other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, shall make or create any excavation or fill upon or shall destroy or remove any tree or shrub except in Patio Gardens, in which case the Owner's activities must be done in conformity with Article 7. In those areas of individual Residences where, pursuant to Section 5.6.6, the Association has jurisdiction over landscaping, the Association shall exercise such control over the installation, maintenance and removal of landscaping as if in fact such areas were a part of the Common Area.

##### **4.1.2 Damage or Destruction of Common Area.**

In the event of any damage or destruction to the Common Area under the jurisdiction of the Association or any of the improvements or facilities located thereon, the Association shall immediately undertake to repair and reconstruct any such damage or destruction substantially in accordance with the original design or standard of construction of the damaged or destroyed Common Area, improvement or facility. The Association shall utilize all available insurance proceeds to accomplish such repair or reconstruction.

In the event the insurance proceeds are insufficient to cover all of the costs for such repair or reconstruction, the Board shall pay the insurance proceeds to a savings and loan association, bank or trust company as may be approved by the Board, which proceeds shall be held for the benefit of the Owners and their mortgagees, as their respective interests may appear, and pursuant to an insurance trust agreement consistent with the provisions of this Declaration, approved and executed by the Board. The Board shall then, utilizing such engineering and design consultants as it deems necessary, prepare a report evaluating the extent of reconstruction or repair of such damage or destruction which is reasonably possible solely utilizing the aggregate sum of the total available insurance proceeds. As soon as possible, but no later than sixty (60) days after the occurrence of the damage or destruction, the Board shall present the report to the Owners and notify all mortgagees of the findings of said report and call a special meeting of the Owners. At such special meeting the Owners shall determine by a majority vote whether to utilize solely the available insurance proceeds to reconstruct the damage or destruction in accordance with the recommendations of the report of the

Board or whether to impose a Special Assessment pursuant to Section 6.3 to reconstruct the destroyed or damaged facilities beyond what can be accomplished with the available insurance proceeds. Any determination to impose a Special Assessment shall be decided by a vote of a majority of those voting by secret ballot in a vote where a "quorum" consisting of a majority of the voting power of the Association participates as provided by Civil Code 1366(b). Any such additional Special Assessment shall be levied equally as to each Residence and be a lien on the Residence against which said assessment is levied and enforced pursuant to the terms of Section 6.6.

#### **4.2 Owners' Non-Exclusive Easements of Enjoyment in Common Area**

##### **4.2.1 Non-Exclusive Right and Easement of Use and Enjoyment.**

Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area, including easements for ingress and egress to said Owner's Residence for pedestrians, vehicles, utility lines, pipes, wires and conduits which shall be appurtenant to and shall pass with the title to every Residence, subject to the following provisions:

4.2.1.1 The Board, after giving an Owner notice of a violation of the Governing Documents or Rules and an opportunity to be heard, shall have the right to suspend the voting rights and right to use the Common Area by an Owner and his tenants and Guests pursuant to Section 5.10 of this Declaration.

4.2.1.2 Any portion of the Common Area designated as Parking Area on the Subdivision Map shall be reserved for the exclusive use of the Guests, invitees or agents of the Residents for temporary periods only, subject to all of the vehicular restrictions and conditions contained elsewhere within this Declaration and subject to such duly adopted Parking Rules as the Association may have in force.

4.2.1.3 There shall be no obstruction of any part of the Common Area and nothing shall be stored, kept or parked in the Common Area except in the areas designated as Parking Areas without the prior written consent of the Board. Each Owner shall avoid any damage to the Common Area and shall be responsible for repairing any damage or injury to the Common Area caused by him, his tenants, his Guests, his invitees, his licensees, or other agents.

4.2.1.4 Nothing shall be done or kept in the Common Area which will increase the rate of insurance on any of the Common Area without the prior written consent of the Board. No Owner shall permit anything to be done or kept in the Common Area which will result in the cancellation of insurance on the Common Area or which would be in violation of any governmental statute, ordinance, rules or regulations. No waste shall be committed in the Common Area.

##### **4.2.2 Easements for Encroachments.**

Each Residence adjacent to the Common Area is hereby declared to have an easement over all adjoining Residences and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or other similar cause or any

encroachment due to building, roof, fireplace, balcony, or deck overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; 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 misconduct of said Owner or Owners. In the event a structure on any Residence is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Residence agree that minor encroachments over adjoining Condominiums and/or Residence Lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

#### **4.2.3 Association Easements.**

There is hereby reserved to the Association or its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association as are set forth in this Declaration, or in the Bylaws, Articles, or Rules, if any.

#### **4.2.4 Covenants Running with the Land.**

Each of the easements provided for in this Declaration was deemed to be established upon the recordation of the original version of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Residences and the Common Area, as the case may be, superior to all other encumbrances applied against or in favor of any portion of the properties which are the subject of this Declaration. In furtherance of the easements provided for in this Declaration, the individual grant deeds to Condominiums and/or Residence Lots may, but shall not be required to, set forth said easements.

#### **4.3 Delegation of Right of Use**

Any Owner may delegate his rights of enjoyment in the Common Area and in the privileges of the Association to the Members of his family who reside within his Residence, to contract purchasers from such Owner, to any of his tenants who reside therein under a leasehold interest and to his Guests, subject, however, to the provisions of this Declaration and to the Articles, Bylaws and Rules of the Association. The rights and privileges of such persons are subject to suspension for the same reasons and in the same manner as this Declaration provides regarding the suspension of the rights and privileges of Owners in the Project.

#### **4.4 Restriction of Severability of Common Area**

The interest of each Residence Owner in the use and benefit of the Common Area owned by said Owner shall not be sold, conveyed or otherwise transferred by said Residence Owner separately from the ownership interest in said Residence. Any sale, transfer or conveyance of such Residence shall operate to transfer the appurtenant right to use said Common Area without the requirement of express reference thereto, and the transferee shall thereupon be permitted the use and benefit of said Common Area and the facilities located thereon. There shall be no judicial partition of the Common Area or any part thereof, and each Owner, whether by deed, gift, devise or operation of law, for



their own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests, and causes of action for judicial partition of any ownership interest in the Common Area and does further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

#### **4.5 Association's Right of Entry and Repair**

The Association or its agents may enter any portion of the Exclusive Use Common Area whenever such entry is reasonably necessary in connection with the performance of any maintenance or repair for which the Association is responsible. The Association's right of entry under this Declaration shall be immediate in case of an emergency originating in or threatening any Residence or Common Area or any person, and the Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

In all non-emergency situations, the Association or its agents shall furnish to the Owner, and his or her lessee, if applicable, two (2) days' written notice of its intent to enter the Exclusive Use Common Area, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing therein.

The Association shall have the right after advanced notice and consultation with all nearby Owners as well as Owners whose views may be affected, at any time and from time to time, at its own cost, to cut and remove any trees or shrubs, or remove or trim the branches of any trees or shrubs, on any Residence or any portion of the Common Area if it deems it desirable to do so for the benefit of other Residences or for the general benefit of the Association.

### **ARTICLE 5. THE ASSOCIATION**

#### **5.1 The Organization**

The Association is a nonprofit mutual benefit corporation charged with the duties and empowered with the rights set forth herein and in the Articles, and its affairs shall be governed by this Declaration, the Articles and the Bylaws.

#### **5.2 Membership**

##### **5.2.1 Members.**

Each Owner of a Residence, by virtue of being an Owner, shall be a Member of the Association, or, in the event of its dissolution, a Member of the unincorporated association succeeding to the Association. The membership shall be appurtenant to and may not be separate from the ownership of any Condominium and/or Residence Lot or Unit which is subject to assessment by the Association. Upon termination of Residence Ownership, membership in the Association shall also terminate. Ownership of a Residence shall be the sole qualification for Association membership. The membership of an Owner shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Condominium and/or Residence Lot or Unit and then only to the transferee of title to such Residence. Any attempt to make a prohibited transfer is void.

All rights of ownership may be exercised by an Owner's conservator, guardian of his estate, by the parent(s) entitled to custody of an Owner in the case of the Owner being a minor, or during the administration of his estate, by the executor or administrator of a deceased record owner where the latter's interest in said property is subject to administration by his estate.

#### **5.2.2 Members' Duty to inform the Association of Change of Ownership.**

Every seller and buyer of a residence, whether by contract sale, installment sales agreement, or lease with option to purchase shall notify the Association within 60 days of the execution of the documents of the intended transfer. Failure to so notify the Association may result in the imposition of a fine in an amount determined from time to time by the Board of Directors.

#### **5.2.3 Members' Rights and Duties.**

The rights, duties, privileges and obligations of all Members of the Association, or of the succeeding unincorporated association, shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of this Declaration, the Articles, Bylaws and Rules.

### **5.3 Voting**

Only Members of the Association shall be entitled to vote. The voting privileges of each Member shall be as provided herein. Any action by the Association which must have the approval of the Members before being undertaken shall expressly require the vote or written assent of a prescribed percentage, as more particularly stated within this Declaration.

#### **5.3.1 Voting Rights.**

Members shall be entitled to cast one vote or, on the occasion of the annual election of Directors, to cast one ballot for each Residence owned. When more than one person owns a single Residence, all Owners shall be Members of the Association. However, the vote or ballot for each Residence must be cast as an individual Unit and fractional votes or ballots shall not be allowed. Moreover, when more than one person holds an interest in a single Residence, the vote or ballot for such Residence shall be exercised as they among themselves determine, as provided for in the Bylaws. In no event shall more than one vote or one ballot be cast with respect to any such Residence.

Voting rights including proxy voting may be exercised by the Residence Owner's conservator, by the guardian of his estate, by the parent(s) entitled to custody of an Owner in the case of the Owner being a minor, or, during the administration of his estate, by the executor or administrator of a deceased record Owner where the latter's interest in said property is subject to administration by his estate.

#### **5.4 Assessments and Duties**

Any assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of Article 6 of this Declaration and shall be enforced pursuant to the provisions of Section 6.6 of this Declaration.

#### **5.5 Board of Directors**

The Association shall be governed by a Board of Directors. The authorized number of Directors and the term of office shall be as set forth in the Bylaws of the Association. Any vacancy occurring on the Board of Directors may be filled as provided by and in accordance with the Bylaws. The Board of Directors shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof, except as expressly reserved herein to a vote of the Members. All meetings of the Board of Directors shall be open to attendance by all members of the Association, except for meetings in executive session that have been called to discuss litigation or potential litigation, formation of contracts with third parties, personnel matters and/or member discipline.

#### **5.6 Duties of the Association**

The Association shall have the obligations and duties, subject to and in accordance with this Declaration, to do and perform the acts described in this Article for the benefit of its Members and for the maintenance and improvement of the subject property.

##### **5.6.1 Members.**

The Association shall accept all Condominium and/or Residence Lot Owners as Members.

##### **5.6.2 Annual Membership Meetings and Special Membership Meetings.**

The Association shall hold an Annual Membership Meeting within the first 90 days after January 1 of each year in accordance with the Bylaws of the Association. Special Membership Meetings for any purpose or purposes whatsoever may be called as provided by and in accordance with the Bylaws. Notice of such special meetings and the conduct thereof shall be as provided by and in accordance with the Bylaws.

##### **5.6.3 Common Area Maintenance.**

The Association shall maintain, or provide for the maintenance of the Common Area and all improvements of whatever kind and for whatever purpose located thereon.

##### **5.6.4 Operation of the Common Area.**

The Association shall operate and maintain or provide for the operation and maintenance of Common Area. The Association shall keep all improvements of whatever kind and for whatever purpose from time to time located on the Common Area, including all utility lines, pipes, conduits, irrigation systems, storm drainage channels, and facilities located thereon in good order and repair. The Association's obligation to maintain, repair and restore the Common Area shall include the obligation

to maintain, repair and restore underground water, sewer, and storm drain laterals, even though such laterals may be located underneath Residences. The expense of any extraordinary maintenance, repair or restoration of such areas caused by the intentional or negligent act of an Owner, other Resident, tenant, Guest or agent shall all be paid by such Owner, and such Owner may be assessed individually for the cost thereof in accord with Section 6.4 hereof.

#### **5.6.5 Exterior Maintenance of Residences.**

The Owners of Condominiums and/or Residence Lots are responsible for all maintenance, repair and restoration of said Residence, in accordance with attached Exhibit "B"; the Association shall have the exclusive right, obligation and duty to maintain, repair and restore landscaping in certain areas of individual Residences as defined in said Section 5.6.6.

#### **5.6.6 Maintenance of Landscaping.**

The Association shall have the obligation and duty to maintain, repair and restore all landscaping in the property subject to this Declaration, including all landscaping within the Common Area and that landscaping situated on individual Residences which landscaping is not situated within an enclosed area of such lots, in accordance with attached Exhibit "B". Examples of areas for which the Association is not responsible include but are not limited to patio entry ways, atriums, decks, patio rear yards and other such enclosed areas. The areas of Residences situated under cantilevered decks on the Residences, which areas are not enclosed, shall be included in the area to be maintained by the Association. Residences may contain Patio Gardens that are deeded to the Owner. Some of these deeded areas shall be maintained as directed by the Board (i.e. clearance of leaves).

Each Residence Owner hereby grants the Association a non-exclusive easement for entry on each such Residence during reasonable hours in order to undertake such obligations of maintenance, repair and restoration. All costs of such maintenance on such areas shall be paid for through the Association's annual assessments. Such landscaping and maintenance on Residences shall inure only to the benefit of the entire Association and not to an individual Residence Owner and all such maintenance and landscaping shall be done at the direction of the Board of Directors of the Association, with the advice and assistance of the Landscape Committee as provided for in Section 5.6.9, and by such employees or contractors as the Board of Directors shall appoint for such purposes. In no event shall an Owner remove or alter such landscaping without prior approval of the Board.

The Board of Directors of the Association shall have the power to engage in or contract for landscaping work, clean-up and debris removal on property adjacent to the Project not owned by the Association or the Residence Owners, with the consent of the property owner of such adjacent property, in the event that the Board determines that such landscaping, clean-up or debris removal is reasonable and appropriate for the enjoyment of the Owners and the Common Areas in the Subject Property. The Board of Directors shall be authorized to expend funds from the Association's General Funds in order to accomplish such work.

#### **5.6.7 Payment of Taxes.**

The Association shall have the authority to pay all real property taxes and assessments levied upon any property conveyed, leased or otherwise transferred to it, to the extent not separately assessed to the Owners. Such taxes and assessments may be contested or compromised by the Association; provided, however, that any such taxes are paid or that a bond insuring the payment is posted prior to the sale or other disposition of any property to satisfy the payment of such taxes.

#### **5.6.8 Rule Making.**

The Association shall have the duty to make, establish, promulgate, amend, repeal and enforce the Rules as provided in Section 5.9.

#### **5.6.9 Architectural Control Committee; Landscape Committee; Streets, Parking and Lighting Committee.**

The Association, through the Board, shall have the authority to appoint an Architectural Control Committee; Landscape Committee; and Streets, Parking and Lighting Committee. The Members of these and any other committees appointed by the Board shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any committee function.

#### **5.6.10 Enforcement of Restrictions and Rules.**

The Association shall have the duty to take such other action, whether or not expressly authorized by this Declaration, including the hiring of legal counsel and undertaking legal action, as may be reasonably necessary to enforce the covenants, conditions and restrictions contained herein, the Rules and to enforce, construe or interpret the Governing Documents.

#### **5.6.11 Budget and Annual Report.**

Regardless of the number of Members or the amount of assets of the Association, the Board shall prepare for the Association:

5.6.11.1 A pro-forma operating statement (budget), a copy of which shall be distributed to Owners at least sixty (60) days after the close of the fiscal year consisting of the following: (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; and (iv) any information required to be reported under Section 8322 of the Corporations Code. The annual report shall be prepared by any independent licensed accountant for any fiscal year in which the gross income to the Association exceeds \$75,000.00.

#### **5.6.12 Examination of Records.**

The Association shall maintain the membership register, books of account and minutes of meetings of the Members, of the Board, and of committees of the Board available for inspection and copying for any Member, or for a duly appointed representative of the Member, and at any reasonable time and for a purpose reasonably

related to his interest as a Member, at such place as the Board may prescribe. In accordance with the Bylaws, the Board shall establish reasonable Rules with respect to the notice to be given to the custodian of the records by the Members desiring to make the inspection, the hours and days when such inspection can be made, and the payment to be made by a Member for the costs of inspecting or reproducing documents. The Board shall not allow any Member to copy the Membership Register unless the Board determines that the Member intends to inspect or copy the Membership Register for a valid Association purpose.

#### **5.6.13 Powers and Duties.**

The Association shall perform each and every duty required of it by this Declaration, the Articles and Bylaws.

### **5.7 Powers and Authority of the Association**

The Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in operating for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, Bylaws and this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of said Declaration, 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 for the peace, health, comfort, safety or general welfare of the Owners. Without in any way limiting the generality of the foregoing, the Board of Directors, on behalf of the Association, shall have the power and authority to do the following:

#### **5.7.1 Right of Entry and Enforcement.**

In the event that the Owner of a Residence fails to maintain and repair any portion of the Residence as required by this Declaration, the Board shall have the right, after notice and opportunity for a hearing before the Board by the Owner regarding any allegation of failure to maintain or repair, to enter upon the subject Residence to undertake such maintenance or repair according to Exhibit "B". The cost of such maintenance or repair shall be assessed against said Owner as a Reimbursement Assessment. The Association shall also have the power and authority from time to time in its own name, on its own behalf or on the behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration and to enforce, by mandatory injunction or otherwise, all of the provisions of said Declaration. The costs of any such action or suit, including reasonable attorneys' fees, shall be paid to the prevailing party.

#### **5.7.2 Easements and Rights of Way.**

The Association shall have the power and authority to grant and convey to any third party easements and/or licenses for use and right of way in, on, over or under any Common Area conveyed or otherwise transferred to said Association or under its jurisdiction upon the affirmative vote or written consent of three quarters (3/4) of its voting Members.

### **5.7.3 Contracts with Adjoining Associations or Land Owners.**

The Association shall have the power and authority to enter into contracts with Owners of lands adjoining or near the Project and with associations having powers with reference to said land similar to the powers held by the Association. Said contracts may provide, among other things, for the joint installation, maintenance, and repair of facilities benefitting the Project and the adjoining land and for the joint employment of maintenance, professional and management services for the joint discharge of any of the duties of the parties to such contract. The right conferred upon the Association to contract with landowners of adjacent lands or associations having powers with reference to such adjacent lands shall include the right to merge with and into such associations, providing the Association shall first have the prior written consent or votes residing in at least three quarters (3/4) of the voting power of the Association.

### **5.7.4 Employment of Manager.**

The Association shall have the power and authority to employ the services of a Manager or other employee, or a professional manager or management company, subject to the direction and control of the Board of Directors, to manage and carry out the affairs of the Association, and, to the extent not inconsistent with the laws of the State of California and upon such conditions as are otherwise deemed advisable by the Board, to delegate to the Manager any of its powers; provided, however, that the Board may not delegate to any Manager its responsibility to levy fines, hold hearings or impose discipline or to do anything else which is not delegable by the Board as a matter of law. In no event shall any management agreement be for a term greater than three (3) years and said agreement shall provide for termination with or without cause or written notice.

### **5.7.5 Services.**

The Association shall have the power and authority to provide for or engage the services of others, including grounds keepers, painters, plumbers and other maintenance personnel, to provide for the maintenance, protection and preservation of the Common Area and Condominiums and/or Residence Lots as the nature and character of the Common Area and Residences may require; provided, however, that no contract for such services shall be for a duration of more than one year unless approved by a majority of the Members. In no event shall such contract be for a term greater than three (3) years. Said contract shall provide for termination with or without cause or written notice.

### **5.7.6 Utilities.**

The Association shall have the power and authority to contract, use and pay for utility services to the Common Area and its facilities and to Residences to the extent they are not separately metered; provided, however, that any such contract shall not exceed the shortest term for which the supplier will contract at the regular rate. The cost of said utilities and utility services for Residences may be recovered from the Owners by Individual Reimbursement Assessments.

#### **5.7.7 Other Property.**

The Association shall have the power and authority to acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise.

#### **5.7.8 Dedication.**

The Association shall have the power and authority to dedicate any of its property to an appropriate public authority for public use, provided that any such dedication shall have the approval either by affirmative vote or written consent of three quarters (3/4) of the voting power of the Association.

#### **5.7.9 Maintenance of Project**

Except as otherwise provided by law, the Association shall have the power and authority to use the operating fund of the Association for the maintenance, repair, care, preservation and painting of Common Area improvements. Said operating fund may also be used to pay for the purchase of such equipment, tools and supplies and other personal property as the Board deems necessary for use in such maintenance and repair.

### **5.8 Capital improvements**

The Board may, on its own motion, move for the construction, installation or acquisition of a capital improvement that was not in existence when the project was built. One-fifth of the Owners may also petition the Association in writing for the construction, installation or acquisition of a capital improvement on the Common Area. Upon such motion a vote of the members shall be taken. For any capital improvement which has been approved by two thirds (2/3) of the voting power of the Association, the Board shall obtain firm bids on the total cost of constructing, installing or acquiring the proposed capital improvement. The lowest acceptable bid or bids shall be deemed the estimated costs of such capital improvements. Such cost shall be levied as a Capital Improvement Assessment pursuant to Section 6.5. The Board shall establish a Capital Improvements Account in a financial institution selected by the Board in which the Capital Improvement Assessments shall be deposited, separate and apart from all other funds collected by the Association.

### **5.9 Project Rules**

#### **5.9.1 Rulemaking Power.**

Subject to the provisions of this Declaration, the Board shall from time to time enact and amend such Rules as the Board feels are necessary for the management of the Project. Such Rules may concern, but need not be limited to, matters pertaining to use of the Common Area, Condominiums, and/or Residence Lots, signs, collection and disposal of refuse, minimum standards of maintenance of property, parking and traffic restrictions, limitations on maintenance of landscaping or other improvements on any property which obstruct the vision of motorists or which create a hazard for vehicular or pedestrian traffic or which obstruct any scenic view; the terms and conditions upon which a Residence may be rented or leased by an Owner (including, but not limited to,



the adoption of a standard lease or rental agreement to be used in the leasing or renting of all Residences) and any other subject or matter within the jurisdiction of the Association as provided in this Declaration. Any rule which purports to restrict or abridge, whether directly or indirectly, the right of an Owner to sell or lease his Residence must include uniform, objective standards for invoking the restrictions upon sale or lease, none of which shall be based upon the race, color, creed, national origin, marital status, familial status, physical disability or sex of the vendee or lessee. Said Rules may restrict and govern the use of Common Areas by any Member and his family, Guest, licensee or lessee of such Member.

The Association shall have the power to adopt reasonable Rules for the regulation of the occupancy and use of the subject property, provided that such Rules are not contrary to the requirements of ETU 65-356.

#### **5.9.2 Distribution of Rules.**

A copy of said Rules, as they may from time to time be adopted, amended or replaced shall be mailed or otherwise delivered to each Member. No Rules may be adopted which materially affect the rights, preference or privileges of any Owner that are provided for in the Governing Documents. Where the provisions of this Declaration and any Rule adopted by the Association are in conflict, the provisions of this Declaration shall prevail.

#### **5.9.3 Amendment to Rules.**

Any Rules adopted by the Board may be amended from time to time by the Board by majority vote thereof. Amendments to the Rules shall be distributed to the Owners either by mail or by personal delivery. Any duly adopted amendment to the Rules shall become effective thirty (30) days from the date of adoption thereof by the Board.

### **5.10 Enforcement of Governing Documents**

#### **5.10.1 Breach of Rules or Regulations.**

In the event of a breach of any Rule or of any of the Restrictions contained in the governing documents by an Owner, his family, Guests, employees, invitees, licensees or tenants, the Board, for and on behalf of all other Members, shall enforce the obligations of each Owner to obey such Rules or restrictions in any manner provided by law or in equity, including, but not limited to, appropriate hiring of legal counsel, the pursuing of legal action or suspension of the Owner's right to use the Common facilities of the Project or suspension of the Owner's voting rights, provided, however, that such suspension may not be for a period in excess of thirty (30) days, after notice and hearing as provided in the Bylaws, for an infraction of such Rules.

#### **5.10.2 Alternative Dispute Resolution**

5.10.2.1 Before the Association or Owner brings an action solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages (other than Association assessments) not exceeding Five Thousand Dollars (\$5,000.00), relating to the enforcement of the Governing Documents,

the parties shall endeavor to submit the matter to a form of alternative dispute resolution such as mediation or arbitration as provided in Section 1369.510 of the California Civil Code, or comparable superseding statute. The form of alternative dispute resolution may be binding or non-binding at the option of the parties. Any party to such dispute may initiate this process by serving on another party to the dispute a Request for Resolution ("Request"). The Request shall include (1) a brief description of the dispute between parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request is required to respond thereto within thirty (30) days of receipt or it will be deemed rejected.

5.10.2.2 Parties receiving a Request shall have thirty (30) days following service of the Request to accept or reject alternative dispute resolution and, if not accepted within the thirty-day (30) period by a party, alternative dispute resolution shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the Request is served, the alternative dispute resolution shall be completed within ninety (90) days of receipt of the acceptance by the party initiating the Request, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by both parties. A party's refusal to participate in alternative dispute resolution prior to the filing of a complaint in any action specified in this Section 5.10.2 may be considered by a court in determining the amount of attorney's fees and costs to be awarded to the prevailing party. Further, a filing party's failure to request alternative dispute resolution may result in the loss of important legal rights. The alternative dispute resolution procedure does not apply if the applicable time limitation for commencing the civil action would run within one-hundred twenty (120) days.

5.10.2.3 Members of the Association shall annually be provided a summary of the provisions of this Section, specifically referencing California Civil Code Section 1369.510 et. seq. or comparable superseding statute, and with a copy of said statute, as provided in the By-Laws.

#### **5.11 Liability of Members of Board**

No Member of the Board nor any Member of a committee appointed by the Board, nor any individual Member of the Association acting as agent of the Board shall be personally liable to any Owner or to any other person for any error or omission of the Association, its representatives or employees, or any Committee appointed by the Board, provided that such Board Member, committee Member, or individual Member acting as agent has, upon the basis of such information as may be possessed by him, acted in good faith.

#### **5.12 Enforcement of Bonded Obligations**

The Board of Directors of the Association, with respect to any improvements, repairs or construction for the Association, may require a Faithful Performance bond from the contractor and shall have the power to make claim under such bond if the Board shall deem it necessary or appropriate.

### **5.12.1 Special Meeting.**

A special meeting of Members for the purpose of voting to override a decision by the Board of Directors not to initiate action to enforce the obligations under the bond or on the failure of the Board of Directors to consider and vote on the question may be undertaken. Such meeting shall be required to be held not less than 10 days nor more than 60 days after receipt by the Board of Directors of a petition for such a meeting signed by Members representing 5% of the total voting power of the Association.

### **5.12.2 Membership Vote.**

A vote of a majority of the voting power of the Association to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board of Directors shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

## **5.13 Dissolution of Incorporated Association**

### **5.13.1 Successor Association.**

In the event that the Association as a corporate entity is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice be formed to succeed to all the rights and duties of the Association hereunder. The affairs of such unincorporated association shall be governed by the laws of the State of California and, to the extent not inconsistent therewith, by this Declaration and the Bylaws of the Association as if they were created for the purpose of governing the affairs of an unincorporated association.

### **5.13.2 Title to Property.**

Immediately prior to the dissolution of the Association as a corporate entity, the Association shall convey to an independent institutional corporate trustee all real property vested in it to hold such real property in trust for the benefit of the unincorporated association formed pursuant to Section 5.13.1 and for the benefit of the Owners pursuant to the terms of this Declaration and the Bylaws of the Association.

### **5.13.3 Members' Rights.**

Upon dissolution of the Association and the formation of an unincorporated association, each Owner in the Project shall become a Member of the unincorporated association and shall have an underlying beneficial interest in all of the property of the Association transferred to or for the account or benefit of said unincorporated association, such interest being in direct proportion to the number of Residences owned by such Member, (each Condominium and/or Residence Lot is equal to 1/34<sup>th</sup> share of the Association) provided, however, that there shall be no judicial partition of such property or any part thereof, nor shall any such Member or other person acquiring any interest in said property, or any part thereof, seek judicial partition, the right to do so being expressly waived.

#### **5.14 Contracts with Adjoining Associations or Land Owners.**

Subject to the requirements of Section 5.7.3 hereof, the Association shall have the authority and power to enter into contracts with owners of lands adjoining or near the subject Property and with associations having powers with reference to said land similar to the powers held by the Association. Any contracts so entered into may provide, among other things, for a joint installation, maintenance and repair of facilities benefitting subject property and other lands, and for the joint retainer of and use of maintenance, professional and management services for the joint discharge of any of the duties of each party to such contract to the extent that the duties so defined shall not be inconsistent with the duties, power and rights of the Association as herein defined. Without limiting the generality of the foregoing listed contractual purposes, the Association may also contract with other owners of lands or associations created by owners of lands toward the end that enforcement of the liens established by Article VII hereof shall be exercised by such other owners or associations in the event that the Association should default in its duties of enforcement as provided in this Article. The right conferred upon the Association to contract with land owners of adjacent land or associations having powers with reference to such adjacent lands shall include the right to merge with and into such management bodies or associations.

### **ARTICLE 6. FUNDS AND ASSESSMENTS**

#### **6.1 Operating Fund**

The Association shall maintain an operating fund into which the Board shall deposit all funds paid to the Association as maintenance and operation assessments and special assessments. Said funds shall be held by the Association for the use and benefit of its individual Members and shall only be used for and applied to the common specific purposes of the Members as herein set forth.

#### **6.2 Maintenance and Operation Assessments**

##### **6.2.1 Regular Assessments.**

Not less than thirty (30) days prior to the beginning of each fiscal year the Association shall estimate the net cash requirements for the ensuing year necessary for the Association to operate and to maintain the property subject to its jurisdiction in accordance with its duties. Each Residence shall be assessed for an equal share of the amount so estimated except for the cost of purchasing fire and earthquake insurance. The estimated cash requirement of Association earthquake and fire insurance blanket policies for the ensuing year shall be assessed according to the following percentage schedule, based on square feet per Residence assigned by the insurance provider, to be rounded off to the nearest full dollar amount. Post office addresses on the Street (Spyglass Hill) are followed by Residence numbers, in parentheses, to identify the 34 Residences.

3.91% - Addresses: 1(34), 3(33), 5(32), 7(31), 9(30), and 11(29)

3.87% - Address: 41(23)

3.39% - Addresses: 29(28), 31(27), 55(18,) 57(17), 59(16), 61(15)

3.00% - Addresses: 20(1), 22(2), 24(3), 26(4), 28(5), 30(6)

2.73% Address 48(12)

2.71% - Addresses: 43(24), 45(21), 47(22), 60(13), 62(14)

2.01% - Addresses: 33(25), 35(26), 51(19), 53(20)

2.42% - Address 42(7)

2.23% - Addresses 38(8), 44(10)

1.55% - Addresses: 40(9), 46(11)

All funds of the Association shall be budgeted, allocated, assessed and collected for current maintenance and operation of the Project, contingencies, deferred maintenance, earthquake and fire insurance, and replacement of capital improvements and shall be designated for those specific purposes. Said funds shall then be used solely for the specific purpose for which they have been designated.

Within sixty (60) days after the end of each fiscal year, the Residence Owners shall receive an accounting of assessment receipts and disbursements for the last ended fiscal year. If such accounting shows that a surplus of cash results in the Project's current maintenance and operation account, such surplus shall be carried over to future assessment periods.

#### **6.2.2 Increase in Regular Assessments.**

Pursuant to California Civil Code Section 1366(b) or comparable superseding statute, the annual Regular Assessment may be increased without a vote of the owners in any subsequent year by not more than twenty percent (20%) above the maximum assessment for the previous year, except for "emergency situations" as defined in Civil Code Section 1366(b) or comparable superseding statute. Any increase in the maximum amount of the Regular Assessment in excess of said twenty percent (20%) shall require a vote constituting a "quorum" casting a majority of the votes. For purposes of this Section, the Quorum required for such meeting shall be more than fifty percent (50%) of the total voting power of the Association, consistent with Civil Code 1366(b).

#### **6.2.3 Time and Manner of Payment of Assessments.**

Assessments shall be due and payable by the Owners to the Association during the fiscal year in equal monthly installments in advance, on the first day of each month of the year to which such assessment pertains. Special and Reimbursement Assessments shall be payable in full on the first day of the first month following the date on which the Owner is informed of such Assessment, unless other provision is made therefor, or in such other manner as the Board shall designate.

Pursuant to California Civil Code Section 1366(d), Regular and Special Assessments are delinquent 15 days after they become due. If such assessments become delinquent, the Association may recover all of the following: (1) Reasonable

costs incurred in collecting the delinquent assessment, including reasonable attorney's fees; (2) a late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater; (3) interest on the delinquent assessment at a rate not to exceed twelve percent (12%) per annum, or the maximum allowed by law, commencing 30 days after the assessment become due.

The Board may, in its discretion, waive costs, late charges, or interest in any particular instance.

### **6.3 Special Assessments.**

If at any time during any fiscal year the Regular Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or because of unexpected repair, replacement or reconstruction of the improvements in the Common Area or Residences or portions of Residences for which the Association has responsibility, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy, which amount shall be assessed to the Owners individually in the manner set forth in Section 6.2.1 above; provided, however, that, except in "emergency situations" pursuant to California Civil Code Section 1366(b), or comparable superseding statute, in any fiscal year the Board may not levy such Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the vote of Owners, constituting a quorum, casting a majority of votes at a meeting or election. As used in this section, a "quorum" means more than fifty percent (50%) of the voting power of the Association.

### **6.4 Reimbursement Assessment.**

The Board shall levy an assessment against any Owner whose failure to comply with this Declaration or the Rules of the Association results in monies being expended by the Association in performing its functions under this Declaration. Such assessments shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended and shall be due and payable to the Association when levied.

### **6.5 Capital Improvement Assessment**

#### **6.5.1 Capital Improvement Assessments.**

Upon approval of a majority of the Members of a proposed capital improvement that did not exist when the project was constructed and the estimated cost thereof pursuant to Section 5.8, such estimated total cost shall be levied and assessed equally to each Condominium and/or Residence Lot as a Capital Improvement Assessment.

#### **6.5.2 Special Assessment.**

If at any time and from time to time a Capital Improvement Assessment proves or appears likely to prove inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a Special Assessment pursuant to Section 6.3 above.

### **6.5.3 Payment of Capital Improvement Assessment.**

Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate.

## **6.6 Default in Payment of Assessments.**

### **6.6.1 Assessment as Personal Debt of Owner.**

The assessments levied by the Board on behalf of the Association under this Article 6 shall constitute separate assessments. Each assessment levied under this Article together with interest, costs and reasonable attorneys' fees, shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, and shall bind his heirs, devisees, personal representatives and assigns. Each assessment levied under this Article shall also be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. The Association shall have a separate lien and a separate lien is hereby created upon each Residence against which an assessment is made to secure the payment of any assessments under this Article. The priority of all such liens on each Residence shall be in inverse order, so that upon the foreclosure of the lien for any particular month's charge on any Residence, any such sale of such Residence pursuant to such foreclosure will be made subject to all liens securing the respective monthly charges on such Residence for succeeding months. Each such lien for any particular month's charge shall likewise secure interest thereon if the same is not paid when due, and shall likewise secure costs of suit and reasonable attorneys' fees to be fixed by the court in the event any action or suit is brought to collect such charge.

### **6.6.2 Certificate of Indebtedness.**

The Board shall execute and acknowledge a certificate stating the indebtedness secured by the lien upon any Residence and such certificate shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness on the date of the certificate. The Board shall furnish a copy of such certificate to any Owner upon request. A reasonable fee may be charged for the preparation of such statement.

### **6.6.3 Liability of Successor Owners.**

Purchasers of any Residence subject to this Declaration by acceptance of a deed or other conveyance therefor shall become personally obligated and agree to pay such charges that accrue after receiving title thereto, plus costs of suit and reasonable attorneys fees as above provided, and shall thereby vest in the Association the right and power to bring all actions for the collection of such charges, costs of suit and attorneys' fees and for the enforcement of such liens. Such obligations shall run with the land so that the successive Owner or Owners of record of any Residence within the Subject Property shall in turn become liable to pay all such charges which shall become a lien thereon during the time they are the record Owners of such Residences within the Project. After a record Owner transfers title of record to any Residence owned by him, he shall not be liable for any charges thereafter to accrue against such Residence. He shall remain personally liable, however, for all unpaid amounts due and owing at the

time of transfer. A contract seller of any Residence shall continue to be liable for all such charges until a conveyance by deed of such property is recorded in the office of the County Recorder of Alameda County.

#### **6.6.4 Priority of Assessment Liens.**

The lien of each of the assessments provided for under this Article shall be subordinate to the lien of any first mortgage or mortgages or first deeds of trust now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable, prior to the sale of such property pursuant to a decree of foreclosure of any such mortgage or deed of trust or pursuant to a power of sale in such mortgage or deed of trust. Such foreclosure sale shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment. The Board may, but is not required to, agree to subordinate the lien of said assessments to the interests of the Department of Veteran Affairs of the State of California under any Cal-Vet financing contract to the same extent as said liens are made subordinate to liens of mortgages under this provision.

#### **6.6.5 Assessment in Default.**

Any assessment not paid within thirty (30) days after the due date shall be deemed to be in default and shall bear interest from the due date at the rate of twelve percent (12%) per annum, and the Board on behalf of the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien securing any assessment under this Article. To begin said foreclosure proceeding, the Association or its agent shall mail a notice of the Assessment Lien to the delinquent Owner and shall cause it to be recorded in the Office of the County Recorder of Alameda County. Said notice shall state the amount of the assessment, together with the interest, costs and reasonable attorney fees; a description of the Residence against which the same has been assessed and the name or names of the record Owner or Owners thereof. Such notice of assessment may be recorded and an action brought to foreclose the same by the Association. Upon the declaration of an assessment lien and the recording of a notice thereof, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner due and payable, which total sums may then be included in any suit, action or proceeding brought to collect said sum, including all costs, charges and attorneys' fees.

#### **6.6.6 Trustee Sale.**

Each of the Owners does hereby appoint the Association or its designee as trustee to enforce and to foreclose such lien by private power of sale as provided in Division III, Part 4, Title XIV, Chapter 2, Article 1 of the Civil Code of the State of California, and does further grant to the Board on behalf of the Association the authority and power to sell the Residence of such defaulting Owner, or any part thereof, for lawful money of the United States, to the highest bidder to satisfy said lien. The Board, for the Association, may purchase at said sale.



#### **6.6.7 Satisfaction and Release of Lien.**

Upon payment of the delinquent assessment or the satisfaction thereof, the Board shall cause to be recorded in the same manner as the notice of assessment a further certificate stating the satisfaction and release of the lien thereof.

#### **6.7 Association Funds**

The assessments collected by the Association shall be properly deposited into two or more accounts with a savings and loan association or bank selected by the Board. The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Project and another portion of said funds as collected as reserves for contingencies, replacement and deferred maintenance of the capital improvements of the Project, as specified in the annual budget. Said fund shall be deposited, as allocated, into the appropriate accounts and said accounts shall be separately maintained by the Association. Upon sale or transfer of any Residence by any Owner, the Owner's interest in the funds shall be deemed automatically transferred to the successor transferee of such Owner. In the event that the Board retains a professional management service, the Board may delegate the authority to deposit or withdraw operating funds, but not reserve funds, to responsible representatives of the professional management agent so retained. Said professional management agent may additionally be authorized to establish a common trustee account for deposit of assessments as collected. Any funds deposited in such a common trustee account shall be allocated as previously specified herein.

#### **6.8 Failure to Fix Maintenance Assessments**

The omission by the Board to fix the maintenance assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments or any Installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

#### **6.9 Property Exempt from Assessments**

The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein: (1) all properties subject to any easement or other interests dedicated and accepted by the County or other local public authority and devoted to public use; and (2) all Common Area.

### **ARTICLE 7. ARCHITECTURAL CONTROL**

Alteration of Residences: No Owner shall make any alteration whatsoever to any portion of his Residence without having first obtained the written approval of the Association. This restriction shall not apply to:

- (a.) The repainting or refinishing of any interior walls or floors;
- (b.) The alteration or installation of kitchen cabinets or appliances, so long as no alteration is made to any wall or floor.

In passing upon requests for approval under this restriction, the Association shall withhold approval if the requested alteration adversely affects:

- (a.) The exterior appearance of the Residence;
- (b.) The structural integrity of any building; or
- (c.) The sound control materials installed between floors and ceilings.

## **ARTICLE 8. INSURANCE**

Acting for the Association, the Board shall purchase a blanket insurance policy for fire, earthquake, and extended coverage for all Residences and for the Common Area including all buildings, improvements, and structures thereon, with limits at least equal to one hundred percent (100%) of replacement costs. The Board has the authority to purchase insurance for other hazards should it choose to do so. The foregoing insurance shall be written in the name of, and the proceeds thereof shall be payable to, the Association. In the event of damage from an insurable hazard, the Association is responsible for filing a claim with proof of loss to the insurance provider, and, in the event of a successful claim, expending the funds as indicated in Section 3.5. Insurance on the contents of Residences and for any additions to or alterations thereof which increase the value of the Residence from the configuration as of December 31, 2000, shall not be the responsibility of the Association, but may be purchased by the Owner of such Residence.

### **8.1 Physical Damage to Property**

The blanket policy for both the Common Area and the 34 Residences shall be written such that the entire Residence including all permanent internal fixtures normally included when a Residence is sold to a new Owner can be repaired, replaced, or rebuilt using the insurance proceeds that result from a successful claim. The insurer will set limits for any insurance claim based on the square feet of the buildings that have been damaged. The following examples serve to illustrate, but are not intended to limit insurance coverage possibilities: painting or staining interior walls, special tile surfaces, finished built in cabinets, permanently installed drapes, carpets and hardwood flooring, a built in dish washer and/or other household equipment that cannot be moved, and or permanent ceiling fixtures.

### **8.2 Public Liability Insurance**

Comprehensive Public Liability Insurance shall be carried, with limits of at least Two Million Dollars (\$2,000,000), pursuant to California Civil Code Section 1365.9 (b)(2)(A), or comparable superseding statute, insuring against liability for bodily injuries and property damage arising from the activities of the Association or with respect to the Common Area or other property under its jurisdiction. The policy limits may be

increased by the Board when it deems advisable and prudent for the best interests of the Association and its Members. The liability insurance referred to herein shall include the Association, the Board, all Board Committees and their respective Members and employees and the Members of the Association (as a class) with respect to any liability arising out of the maintenance and use of any Common Area or areas under the jurisdiction of the Association. Such policy or policies shall protect each of the insureds as if each were separately insured under separate policies; provided, however, that such policy or policies shall not require the insurers to pay any amount in excess of the maximum limit stated therein.

### **8.3 Directors and Officers Liability Insurance**

Liability insurance shall be carried, with limits of at least five hundred thousand dollars (\$500,000), pursuant to California Civil Code Section 1365.7 (a)(4)(A), or comparable superseding statute, insuring the Association's directors and officers against personal liability for their negligent acts or omissions.

#### **8.3.1 Fidelity Bonds:**

The Association shall have the authority and duty to obtain fidelity bonds for any director, officer, employee or other person charged with the management or possession of the funds or other property of the Association against any loss from malfeasance or dishonesty of any such director, officer, employee or agent.

### **8.4 Other Insurance:**

The Association is authorized to obtain other insurance, including Worker's Compensation insurance, as the Board shall deem necessary or expedient to carry out its functions as set forth in this Declaration, the Articles and Bylaws.

### **8.5 Premiums**

Premiums for all of the foregoing insurance other than building coverage carried by the Association shall be a common expense and shall be included in the assessments or charges made by the Association. Premiums for loss and earthquake building insurance coverage carried by the Association shall be based for each Residence as a percent of the total square footage of all the buildings in the project as provided in 6.2.1. The Board shall review the limits of all insurance policies of the Association at least once a year, and increase or decrease said limits as the Board deems necessary or appropriate.

### **8.6 Insurance Committee**

For assistance and advice in obtaining and evaluating insurance policies, the Board may create an Insurance Committee.

## **ARTICLE 9. CONDEMNATION**

### **9.1 Sale by Unanimous Consent or Taking**

If an action for condemnation of all or a portion of the Project is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and all institutional Mortgagees, the

Project, or a portion thereof may be sold and conveyed to the condemning authority by the Board or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Residence in the Project hereby grants and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. If the requisite number of Owners or institutional Mortgagees do not consent to a sale of all or a portion of the Project, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

## **9.2 Distribution and Sale Proceeds of Condemnation Award**

### **9.2.1 Total Sale or Taking.**

A total sale or taking of the Project means a sale or taking that (1) renders more than fifty percent (50%) of the Residences uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking) or (2) renders the Project as a whole uneconomical as determined by the vote or written consent of three quarters (3/4) of those Owners and their respective institutional Mortgagees whose Residences will remain habitable after the taking. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Project, after payment of all expenses relating to the sale or taking, shall be paid to all Owners and to their respective Mortgagees in the proportion that the fair market value of each Residence bears to the fair market value of all Lots in the Project. The fair market value of Residences shall be determined in the condemnation action, if such be instituted, or by an appraiser.

### **9.2.2 Partial Sale or Taking.**

In the event of a partial sale or taking of the Project, meaning a sale that is not a total taking, as determined in Section 9.2.1 above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgments of condemnation shall include the following provisions as part of its terms:

9.2.2.1 to the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then

9.2.2.2 to Owners and to their respective Mortgagees, as their interests may appear, of Condominiums and/or Residence Lots in the Project whose Residences have been sold or taken, an amount up to the fair market value of such Residences as determined by the court in the condemnation proceeding or by an appraiser, less such Owners' share of expenses paid pursuant to Section 9.2.2.1 (which share shall be in proportion to the ratio that the fair market value of each Owner's Residence bears to the fair market value of all Residences). After such payment, the recipient shall no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners, shall amend the Subdivision Map and this Declaration to eliminate from the Project the Residences so sold or taken; then

9.2.2.3 to any remaining Owner(s) and to his or her Mortgagees as their interests may appear, whose Residence has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Residences, as determined by the Court in the condemnation proceeding or by an appraiser, an amount up to the total diminution in value; then

92.2.4 to all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Residence bears to the fair market value of all remaining Owners' Residences as of a date immediately prior to commencement of condemnation proceedings, as determined by the court in the condemnation proceeding or by an appraiser.

### **9.3 Appraiser**

Wherever in this Article 9 reference is made to a determination of the fair market value of one or more Condominium and/or Residence Lot by an appraiser, this shall mean an appraisal by an independent appraiser selected by the Board, who shall be a Member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who shall apply the SREA or other national organization's standards in determining the value or fair market value of each Residence. The costs of such appraisals shall be paid from the Condemnation Proceeds as an expense of the Association.

## **ARTICLE 10. MISCELLANEOUS PROVISIONS**

### **10.1 Amendment and Duration**

#### **10.1.1 Amendment.**

The provisions hereof may be amended by an instrument in writing upon the vote of at least fifty-one percent (51%) of the voting power of the Association, which amendment shall be effective upon recordation in the office of the Recorder of Alameda County, but no such amendment shall adversely affect the rights of the holder of any deed of trust or mortgage recorded prior to the recordation of such amendment. Any amendment shall be binding upon every Owner and every Residence whether the burdens thereon are increased or decreased thereby and whether the Owners of such Residences consent thereto or not

#### **10.1.2 Term of Declaration.**

The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

### **10.2 Enforcement and Nonwaiver**

#### **10.2.1 Right of Enforcement.**

Except as otherwise provided herein, the Association or any Owner or Owners shall have the right to enforce any and all of the covenants, conditions and restrictions

now or hereafter imposed by this Declaration upon the Owners or upon any property in the Project.

#### **10.2.2 Arbitration.**

If the Association and one or more Owners are unable to agree on the meaning or effect of any part of this Declaration, the dispute shall be conclusively settled by arbitration. The Association shall name one arbitrator; the Owner or Owners shall name one arbitrator. The two arbitrators so named shall name a third, and these three shall resolve the dispute.

#### **10.2.3 Violation and Nuisance.**

Every act or omission whereby a covenant, condition or restriction of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or an Owner or Owners. However, any other provision of this Declaration notwithstanding, only the Board, or the Association or their duly authorized agents may enforce by self-help any covenant, condition or restriction herein set forth.

#### **10.2.4 Violation of Law.**

Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures herein set forth.

#### **10.2.5 Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.**

#### **10.2.6 Nonwaiver.**

The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of said Declaration.

### **10.3 Obligations of Owners**

No Owner may avoid the burdens or obligations imposed on him by this Declaration through non-use of any Common Area or the facilities located thereon or by abandonment of his Residence. Upon the conveyance, sale, assignment or other transfer of a residence to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Residence after the date of such transfer, and no person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of any Owner under this Declaration.

### **10.4 Construction and Severability; Singular and Plural; Titles**

#### **10.4.1 Interpretation.**

In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort,

convenience and general welfare of the Owners and Occupants of said property. It is one of the purposes of this Declaration to comply with the requirements of ETU (Exception to Use Permit) 65-356. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued or which may be adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intent of this Declaration to interfere with or abrogate or annul easements, covenants, or other agreements between parties; provided, however, that where this Declaration imposes a greater restriction upon the use or occupancy of any Residence or upon the construction of buildings or structures or in connection with any other matters than are imposed or required by such provisions of law or ordinance or by such Rules, regulations or permits or by such easements, covenants, and agreements, then in that case, the provisions of this Declaration shall control.

#### **10.4.2 Construction and Validity of Restrictions.**

All of said restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, is invalid or for any reason becomes unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be thereby affected or impaired.

#### **10.4.3 Singular Includes Plural.**

The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

#### **10.4.4 Captions.**

All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the terms or provisions of said Declaration.

## **EXHIBITS**

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**EXHIBIT "B"**

**ASSOCIATION, CONDOMINIUM AND RESIDENCE  
LOT INDIVIDUAL SPECIFIC MAINTENANCE  
RESPONSIBILITY**

**EXHIBIT "C"**

**DECLARATION OF RECIPROCAL COVENANTS AND  
EASEMENTS**

**EXHIBIT "D"**

**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS HILLER HIGHLANDS  
RECREATIONAL AREA**



## **EXHIBIT A**

### **LEGAL DESCRIPTION**

Tract 2783, Oakland, Alameda County, California, as shown on the subdivision map so named, recorded April 14, 1966 in Map Book 52 at Page 103, Alameda County Records,

Excepting Therefrom all of Recreation Area Parcel 1, as shown on said map, and

Further Excepting Therefrom the following parcel: beginning at a point at the intersection of the easterly tract limit of Tract 2783, and the southerly right-of-way line of Hiller Drive, being further described as the northerly tract limit of Tract 2783; thence from said point of beginning, along said easterly tract limit, South 64 degrees 15 minutes 36 seconds West, 90.80 feet; thence leaving said easterly tract limit, North 13 degrees 30 minutes East, 105.18 feet; thence North 72 degrees 43 minutes 47 seconds East, 36.00 feet, to the southerly right-of-way line of Hiller Drive; thence along said southerly right-of-way line, South 17 degrees 16 minutes 13 seconds East, 77.00 feet to the point of beginning.

## **EXHIBIT B**

### **ASSOCIATION, CONDOMINIUM AND RESIDENCE LOT INDIVIDUAL SPECIFIC MAINTENANCE RESPONSIBILITY**

In the event the Owners of a Condominium or Residence Lot or the Owners sharing common parking facilities file with the Board a written agreement allocating their shared responsibilities and costs of maintenance in a manner different from this Exhibit "B", and the Board accepts and approves of the agreement, said agreement will be binding for as long as the agreement is in force. In the absence of such a written agreement or following its termination, the responsibilities and costs of maintenance shall follow the assignments indicated below.

1. Excluded from the Owners' Maintenance Responsibility are all cement on grade stairs; cement-on-grade patios; retaining walls bordering decks or patios; the foundations of retaining walls; the cement floors and the foundations of all Open Garages, closed garages under Units 33 and 35; Carports, and Assigned Parking Spaces; any pipes, wires, or conduits for gas, electricity, and water which lie outside the foundation perimeter of an Owner's building; and retaining walls and their foundations which protect or support street-side decks, but not the wood decks themselves, at #20, #22, #24, #26, #28, & #30 Spyglass Hill.

Each Condominium or Residence Lot is identified by its current address on Spyglass Hill and by the parcel identification from the maps of Tract 2783. Open Garages, Carports, and Assigned Parking Places are also identified with symbols taken from the relevant pages of Tract 2783.

2. For the six buildings at #1, #3, #5, #7, #9, and #11 Spyglass Hill (Residents Lots 34, 33, 32, 31, 30, & 29), the Owners' Maintenance Responsibility includes: the foundations, the interiors, and the exteriors of each building; wood steps to the front porches and/or back decks; the front porches, wood walkways and wood railings or fences associated with entryways; the hand rails beside cement entrance steps; all wood associated with the back decks and garden sheds; wood or metal gates and fences associated with the back decks; and the wood benches on entrance patios.

The costs of maintenance and repairs for hand rails, wood benches, and fences that border areas used by two Owners or separate the property of two Owners shall be shared equally by said Owners.

3. For the six buildings at #20, #22, #24, #26, #28, and #30 Spyglass Hill (Residence Lots 1, 2, 3, 4, 5, & 6), the Owners' Maintenance Responsibility includes: the foundations, the interiors, and exteriors of each building; the street side decks, fences, steps, gates, walkways, and garden sheds (except the Association shall share maintenance responsibility of the garden shed at #20 as long as it contains Association equipment). Maintenance costs shall be shared equally.

(a) for gates, fences, walkways, stairs, and decks that provide a dual entrance for two Owners; and

(b) for the fences and/or partitions which separate the private outdoor living spaces of any two Owners.

4. The Owners of #20, #22, and #24 share the maintenance costs of one three stall Carport (G1, G2, G3) and the Owners of #26, #28, and #30 have each been assigned two parking spaces and therefore share the maintenance costs of an assigned Carport and/or an Assigned Parking Space as the case may be.

5. The maintenance costs for fences and/or partitions which separate Carports and Assigned Parking Spaces, on the one hand, from private outdoor living spaces, on the other hand, shall be divided into two equal parts; one part to be subdivided equally among the Owners to whom the parking facility has been assigned; and the second part to be paid by the Owner of the contiguous residence (in the case of the western partition of G6, assigned to #30, the second part shall be paid by the Association).

6. For the six buildings at #29, #31, #55, #57, #59, and #61 Spyglass Hill (Residence Lots 28, 27, 18, 17, 16, & 15), the Owners' Maintenance Responsibility includes: the foundations, the interiors, and exteriors of each building; the wood and metal gates or fences associated with the back patios; the wood garden sheds and all fences and railings associated with the front entrances.

(a) The costs of maintenance and repair for the handrail of the one dual entrance (#57 and #59) and any partitions which separate back patios shall be shared equally by the two Owners of the adjacent properties.

7. For the four Units at #33, #35, #51, and #53 Spyglass Hill (Units 25, 26, 19, & 20), the maintenance is divided as follows:

(a) The repair of the foundations, the on-grade rear patios, the doors to storage areas, and the structural support systems up to the ceilings of the garages (excluding painting) are assigned to the Association; when the exterior of the either Duplex is painted, the Association shall pay 10 percent of the cost of painting the stucco as distinct from, the total painting costs.

(b) The cost of painting the inside walls, storage doors, and ceilings of the garages will be shared equally by the three Owners who are assigned parking spaces in each of the two three-stall Garages, namely #33, #35, and #43, in one case, and #45, #47, and #53, in the other case.

(c) The Owners of #33 and #51 are assigned the interiors of each lower Unit including nonbearing walls, partitions, and permanent fixtures; the repair but not the exterior painting of entry doors, wood entryways to the front doors, wood entry fences, fences at south end of back patios, the wood caps to the back retaining walls, the two lower street side decks and the repair and/or replacement of glass window panes for the

lower Units.

(d) The Owners of #35 and #53 are assigned the interiors of each upper Unit including nonbearing walls, partitions and permanent fixtures; the repairs, but excluding the exterior painting of entry doors, wood staircases to front porches and the porches themselves, the two upper street side decks, and the repair and/or replacement of glass window panes for the upper Units.

(e) All other maintenance and repair are assigned jointly to the Owners of the upper and lower Units with costs to be shared equally including the roofs, repairs involving weatherproofing, the structural support systems common to the garage ceilings and floors above, the outside structural shells, bearing walls down to the level of the garage ceilings, floors, all exterior painting (including the decks, fences, and outside stairways to the upper Units), the two garden sheds, and the costs of repairing the handrails beside the cement entrance steps shall be shared equally with other Owners who use the entrance.

(f) The Owner of Unit #41 shall bear the maintenance cost of two Assigned Parking Spaces (PI2 & P13) in the five stall carport. The Owner of #51 is responsible for the maintenance costs of a single-stall Carport (next to the original G16 & G17).

8. For the four Units #38, #40, #44, and #46 Spyglass Hill (Units 8, 9, 10 & 11), the Owners' Maintenance Responsibility includes:

(a) The Owners of #38 and #44 are assigned the interiors of their respective Units including nonbearing walls, partitions, and permanent fixtures; the repair but not exterior painting of wood entryways, fences, railings, and stairways to front doors, the front doors themselves, and bayside decks; and the repair and/or replacement of glass window panes of the lower Units.

(b) The Owners of #40 and #46 are assigned the interiors of their respective Units including nonbearing walls, partitions, and permanent fixtures; the repair but not exterior painting of wood entryways, fences, railings, and stairways to front doors, the front doors, and bayside decks, the repair and/or replacement of glass window panes of the upper Units.

(c) All other maintenance and repair area assigned jointly to the Owners of each Duplex to be shared equally including the roofs, repairs involving weatherproofing, the outside structural shells, foundations, bearing walls, floors, all exterior painting including entryways, entry fences, entry stairs, and decks.

(d) All four Owners have been assigned parking spaces in Open Garages and shall share maintenance costs as indicated in the descriptions of #42 and #48 Spyglass Hill. In addition, #38 has an Assigned Parking Space (PI3) in a five stall Carport and shall share the cost of maintenance in proportion to the number of parking spots assigned with #30, #41 (2 spaces), and #43.

(e) The wood fences, wood walkways, and cement walkways starting at the south end with the entrance to #44 and continuing north until it meets the cement landing of the public steps between #30 and #38 are assigned to the Association.

9. For the four Units #41, #43, #45, and #47 Spyglass Hill (Units 23, 24, 21, and 22), the Owners' Maintenance Responsibility includes:

(a) The Owners of #41 and #45 are assigned the interiors of their respective Units including nonbearing walls, partitions, and permanent fixtures; the repair but not the exterior painting of: the wood entryways, wood fences, wood decks leading to the front doors, the front doors and bayside decks; and the repair and/or replacement of glass window panes of the lower Units.

(b) The Owners of #43 and #47 are assigned the interiors of their respective Units including nonbearing walls, partitions, and permanent fixtures; the repair but not the exterior painting of: the wood staircases leading to the front doors, front porches and their railings, the front doors and bayside decks; and the repair and/or replacement of glass window panes of the upper Units.

(c) All other maintenance and repairs are assigned jointly to the Owners of each Duplex to be shared equally including the roofs, repairs involving weatherproofing, the outside structural shells, foundations, bearing walls, floors, and all exterior painting including entryways, entry fences, entry stairs, and street side decks.

(d) All four Owners have been assigned parking spaces: #43, #45, and #47 to three stall Garages and #41 and #43 to a five stall Carport and shall share the maintenance costs in proportion to the number of parking spots assigned with others assigned to the same parking facilities.

10. For #42 and #48 Spyglass Hill (Units 7 & 12), the maintenance of these two buildings is divided as follows:

(a) The repair of the foundations, the structural support systems up to the ceilings of the garages, the doors of the storage areas, and the garage level bayside balcony railings are assigned to the Association. When the exterior of the structure is painted, the Association will pay 40 percent of the cost of painting the exterior stucco, as distinct from total painting costs.

(b) The cost of painting the walls and ceilings of the garages, the walls and doors of the storage areas, and the bayside balcony railings will be assigned in seven parts to: one part per stall to each of the Owners assigned to that stall and three parts to the Association. Owners of #42 and #48 are each assigned to two stalls below their respective Units.

(c) All other parts of each building are assigned to the respective Owners of #42 and #48 including the entrance stairways and railings, the front porches, front doors, the structural support Systems within the garage ceilings and the floors of the living quarters, the outside bearing walls of the living quarters, the interiors and

exteriors, and roofs.

11. For #60 and #62 Spyglass Hill (Units 13 & 14), the Owners' Maintenance Responsibility is as follows:

(a) The Owner of #60 is assigned the interior of the lower Unit including nonbearing walls, partitions and permanent fixtures; the repair but not the painting of the street side fences and gates; the repair but not the painting of the entire north side deck, the steps to the deck, its benches, railings, and the front door; and the repair and/or replacement of glass window panes in the lower Unit.

(b) The Owner of #62 is assigned the interior of the upper Unit including the nonbearing walls, partitions, and permanent fixtures; the repair, but not the painting of, the steps and railings to the front door, the front porch, and the front door, the bayside decks of the upper Unit; and the repair and/or replacement of glass window panes of the upper Unit.

(c) All other maintenance and repair are assigned jointly to the Owners of the two Units to be shared equally including the roof, repairs involving weatherproofing, the outside structural shell, foundation, bearing walls, floors, and all exterior painting including entryways, gates, fences, the stairway to the upper Unit, its front porch, and both front doors.

(d) The Owners of #60 are responsible for the maintenance and repair of the two stall Carport G16 and the Owners of #62 for Carport G17.

## EXHIBIT C

### DECLARATION OF RECIPROCAL COVENANTS AND EASEMENTS

Real 1782 of Official Records  
Image 970

The foregoing is a full, true and correct copy of a document filed in the Office of the County Recorder of Alameda County, on 6-8-66 under Recorder's Series AY-70422  
WESTERN TITLE GUARANTY COMPANY  
ALAMEDA COUNTY DIVISION  
By R. D. Blanchard  
Asst. Secretary

WHEREAS, HILLER HIGHLANDS, a partnership (hereinafter called "Declarant") is the owner of all of that certain real property located in the City of Oakland, County of Alameda, State of California, more particularly described as:

Lots 1, 2, 3, 4 and 5, tract 2765, filed September 10, 1965, Map Book 50, Page 7B, Alameda County Records, excepting therefrom, that portion of said lot 4 described in the deed to East Bay Municipal Utility District, recorded November 9, 1965, reel 1639 OR, Image 90, Series AX/154992, said portion being bounded on the north by the southern line of Hiller Drive, on the south by the northern line of the parcel of land described in the deed to East Bay Municipal Utility District, recorded June 15, 1961, reel 346 OR, Image 423, Series AS/72607, and on the east by the direct extension northerly of the eastern line of the last mentioned parcel of land

And;

WHEREAS, Declarant contemplates that the said real property will be divided into a recreational area and wholly separate and distinct condominium and planned development projects, to be known as HILLER HIGHLANDS Phase One, HILLER HIGHLANDS Phase Two, et cetera, each such project to be made subject to a separately recorded Declaration of Covenants, Conditions and Restrictions substantially in the form of the Declaration of Covenants, Conditions and Restrictions recorded concurrently herewith in the office of the Recorder of the County of Alameda, State of California, on May 26, 1966, at Reel 1776, Image 217, Series No. AY/66136, and each such project to be managed and controlled by a separate Property Owners Association charged with the duties and empowered with the rights set forth in the applicable Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, each project will consist of a number of condominiums, and/or residence lot ownerships, each consisting of an undivided interest in a particular condominium unit or residence lot, plus an interest in common in a common area which shall be owned by all of the owners of the condominiums and/or residence lot ownerships contained within the project as tenants in common in the proportions and with the rights and duties in regard thereto set forth in the applicable Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, it is a Declarants intention to impose upon all of the said property above described mutually beneficial restrictions under a general plan of improvement for the benefit of all of the said property and the owners thereof;

NOW, THEREFORE, Declarant hereby declares that the common area, as shown on the final subdivision map duly filed and recorded with respect to each such project within the said property, is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved, subject to the right of each owner of any condominium or residence lot contained within any of the said projects to use, pass over and enjoy the said common area contained within any other project in the said property to the same extent and in the same manner as if he were the owner of a condominium or residence lot contained within the project in which the particular said common area involved is located. The said common area of any such project within the said property shall become subject to this Declaration when a final subdivision map covering the project has been filed and recorded pursuant to the California Subdivision Map Act, and when there has been recorded a Declaration of Covenants, Conditions and Restrictions affecting the property described in the said subdivision map, which Declaration shall be substantially in the form of the Declaration of Covenants, Conditions and Restrictions of HILLER HIGHLANDS Phase One recorded concurrently herewith as described hereinabove. The foregoing right is declared and agreed to be in furtherance of a plan for the improvement of said property, the division thereof into projects and subdivision of the said projects as described above, and is established and agreed upon for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the real property, said projects, and every part thereof. Said right shall run with the real property and shall be binding on 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 the said real property or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof.

IN WITNESS WHEREOF, the undersigned Declarant has caused this Declaration to be executed this 26th day of May, 1966.

HILLER HIGHLANDS, a Partnership  
 By UNITED STATES PLYWOOD CORPORATION,  
 A partner  
 By WILLIAM P. GILMORE  
 William P. Gilmore  
 Its Attorney-in-Fact

#### ACKNOWLEDGMENT

STATE OF CALIFORNIA                    )  
   ) SS.  
 City and County of San Francisco    )

On this 26th day of May, 1966, before me, D. Virginia Arner, a Notary Public in and for the City and County of San Francisco, State of California, duly commissioned and sworn, personally appeared WILLIAM P. GILMORE, known to me to be the Attorney-in-Fact of United States Plywood Corporation, a partner of Hiller Highlands, a partnership, and also known to me to be the person who signed the foregoing Declaration, and he acknowledged to me that the said partnership executed the same.

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

D. Virginia Amer  
 D. Virginia Amer  
 Notary Public – California  
 City and County of San Francisco  
 My Commission Expires October 11, 1966

(SEAL)



## EXHIBIT D

### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS HILLER HIGHLANDS RECREATIONAL AREA

The foregoing is a full, true and correct copy of a document filed in the office of the Alameda County, on 7-19-66, under Recorder's Series AY-86411  
WESTERN TITLE GUARANTY COMPANY  
ALAMEDA COUNTY DIVISION  
By R. D. Blanchard  
Asst. Secretary

WHEREAS, HILLER HIGHLANDS, a partnership, hereinafter called "Declarant," is the owner of that certain real property, hereinafter called "The Property," located in the City of Oakland, County of Alameda, State of California, described as follows:

Lots 1, 2, 3, 4 and 5, tract 2765, filed September 10, 1965, Map Book 50, Page 78, Alameda County Records, excepting therefrom, that portion of said lot 4 described in the deed to East Bay Municipal Utility District, recorded November 9, 1965, reel 1639 OR, Image 90, Series AS/154992, said portion being bounded on the north by the southern line of Hiller Drive, on the south by the northern line of the parcel of land described in the deed to East Bay Municipal Utility District, recorded June 15, 1961, reel 346 OR, Image 423, Series AS172607, and on the east by the direct extension northerly of the eastern line of the last mentioned parcel of land

WHEREAS, Declarant contemplates that a certain part of the said property will be used primarily for recreational purposes, which certain part, hereinafter called the "Recreational Area," is described as follows:

Recreational Area Parcel 1, as shown on that certain map entitled Tract 2783, Resubdivision of Portion of Lot 4, Tract 2765, filed in the Office of the Recorder of the County of Alameda, State of California, on the 14th day of April, 1966, in Book 52 of Maps, at Page 103.

WHEREAS, Declarant contemplates that the said property, but not including the Recreational Area, will be divided into several similar but wholly separate and distinct condominium and/or planned development projects, each of which will be made subject to a separate recorded Declaration of Covenants, Conditions and Restrictions substantially in the form of the Declaration recorded in the Office of the Recorder of the County of Alameda, State of California, on May 26, 1966, at Reel 1776, Image 217, Series No. AY/66136, of the Official Records of Alameda County, and each of which will be managed and controlled by a separate Property Owners Association charged with the duties and empowered with the rights set forth in the applicable Declaration of Covenants, Conditions and Restrictions; and

WEHREAS, it is the desire and intention of Declarant to impose on the said Recreational Area certain restrictions as part of a general plan of improvement for the benefit of the said property, including the said Recreational Area, and for the benefit of the structures thereon and the future owners thereof,

NOW, THEREFORE, Declarant hereby declares that the said Recreational Area 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 subdivision, improvement and sale of the said property, including the said Recreational Area, and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of said property, and every part thereof, including the said Recreational Area. All of the limitations, restrictions, covenants and conditions shall run with the real property and shall be binding on all parties and their successors in interest having or acquiring any right, title or interest in the Recreational Area; and shall be for the benefit of all parties, or their successors in interest, having or acquiring any right, title, or interest in the property as described hereinabove, or any part thereof.

#### **ARTICLE I Definitions**

As used in this Declaration, the following definitions shall apply, unless the context otherwise requires:

- (a) Unit: The portion of a condominium as to which an owner is entitled to exclusive occupancy.
- (b) Residence Lot: Any improved parcel consisting of a lot and single family residence conveyed to an owner or owners in separate fee simple ownership.
- (c) Owner or Owners: The grantee or grantees in a deed conveying a condominium unit or residence lot.

#### **ARTICLE II Use of Recreational Area**

Section 1. General. The Recreational Area shall be used exclusively for recreational purposes and no others; provided, however, that nothing contained herein shall prevent the Recreational Area from being managed and operated as a private recreational club in the manner hereinafter set forth.

#### **ARTICLE III Management of Recreational Area**

Section 1. General. The said Recreational Area shall be managed and operated as a private recreational club, either on a profit-making or a non-profit basis; and the said club may engage in any and all activities usually incidental to the operation of private recreational clubs.

#### **ARTICLE IV Club Membership And Fees**

Section 1. General. Every owner shall be entitled to a membership in the club upon payment of the prescribed fees and dues. An owner who owns more than one unit or residence lot shall be entitled to a membership for each unit or residence lot which he owns. An owner may assign his membership or memberships, as the case may be, to any lessee, renter or occupant of a unit or residence lot which he owns, and may upon such assignment the lessee, renter or occupant shall be deemed an owner for purposes of this Declaration. Declarant may grant membership to non-owners consistent with the terms and conditions of this Declaration.

Section 2. Number of Memberships. At any given time the number of memberships in the club shall equal the sum of one hundred, plus the total number of dwelling units then permitted on the property under the applicable zoning ordinance, regulation, permit, exception, variance, or other zoning provision of the City of Oakland. On the date of execution hereof, the total density permitted by the City of Oakland is 569 dwelling units. If a dwelling unit is owned by two or more owners, other than husband and wife, each owner shall be entitled to a membership regardless of the foregoing limitation.

Section 3. Membership Privileges. An owner who is a member of the club and his immediate family shall be entitled to use the facilities of the club in accordance with such rules as

are promulgated by Declarant or its successors or assigns which are not inconsistent with the provisions of this Declaration. Such rules may provide that a member may be expelled for failure to pay membership fees and dues or for failure to comply with the club rules.

**Section 4. Priority of Membership.** A membership in the club shall be reserved for each owner of a unit or residence lot. If an owner does not accept the membership reserved for him within thirty days from the time that he purchases his unit or residence lot, or if he accepts such membership and thereafter terminates his membership, the membership so reserved will be made available to members of the general public upon such terms and conditions as may be determined by Declarant, its successors or assigns; provided, however, that such memberships to non-owners shall be given on a year-to-year basis, and at the end of each calendar or fiscal year, as the case may be, any owner-applicant shall be given priority over any non-owner applicant; provided, however, that any owner-applicant may be required to pay, as a condition to renewed membership, all fees and dues which he would have paid had he accepted and/or maintained his membership without termination.

Memberships shall also be reserved for future owners of dwelling units not yet constructed and sold, in a number equal to the total number of dwelling units from time to time permitted by the zoning provisions referred to in Section 2 of this article, applicable to undeveloped portions of the property. Memberships so reserved shall be made temporarily available to members of the general public upon such terms and conditions as may be determined by Declarant, its successors or assigns, provided, however, that such memberships shall be given subject to cancellation as follows:

- (a) Memberships of this category shall be cancelled upon 30 days notice to affected members upon the taking of reservations by purchasers of new dwelling units.
- (b) Memberships of this category may also be cancelled upon 30 days notice to affected members upon enactment or adoption of any provision by the City of Oakland reducing the density to be permitted in the undeveloped portions of the property.
- (c) All memberships of this category shall be cancelled upon 30 days notice to affected members when the property has been, in the discretion of Declarant or its successors or assigns, fully developed.
- (d) Affected members will receive a prorated refund of dues.
- (e) Memberships of this category will be cancelled in inverse order of seniority.

The foregoing provisions of this section do not apply to the one hundred memberships which are not reserved for owners or future owners.

**Section 5. Membership Fees and Dues.** The total membership fees and dues charged in any one year to any owner who is a member of the club shall not exceed 1.5 percent of the average fair market value of the units and residence lots contained in all projects then constructed. The said average fair market value of the units and residence lots shall be determined at such times and in such manner as Declarant or its successors or assigns shall determine. Nothing herein shall prohibit or limit the charge of membership fees and dues as provided for in Section 4, nor any charges for guests, food, beverages, and facilities allocated for the exclusive use of any member. The foregoing limitation on fees and dues shall not apply to non-owner members. Fees and dues for non-owner members may be fixed from time to time by Declarant or its successors or assigns.

## **ARTICLE V Enforcement**

**Section 1. General.** This declaration may be enforced by any or all of the Property Owners Associations charged with the management and control of any duly constituted project. Any such association may enjoin any breach or threatened breach of any of the provisions hereof. Individual owners of units or residence lots shall have no right to enforce this Declaration.

**ARTICLE VI**  
**Easement for Encroachments**

Section 1. General. There is reserved for the benefit of Residence Lots 2, 3, 4, and 5, as shown on that subdivision map referred to above and known as Tract 2783 Resubdivision of Lot 4, Tract 2765, Oakland, Alameda County, California, an easement for the encroachment of Balconies B1, B2, B3, and B4, as shown on said map, said easement to be defined by the boundary lines of said balconies as constructed.

**ARTICLE VII**  
**Reservation of Declarant**

Declarant hereby reserves the right to increase the size of the Recreational Area by recordation of a declaration of covenants, conditions and restrictions, substantially in the form hereof, but binding additional parcels of land then owned by Declarant within the property for Recreational Area use.

**ARTICLE VIII**  
**Repeal**

Section 1. General. Declarant and its successors or assigns reserve the right to repeal this declaration in its entirety should the property cease to be used for planned development or condominium residential projects, provided that such repeal be first approved by the City of Oakland.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed this 5th day of July, 1966.

DECLARANT: HILLER HIGHLANDS,  
A partnership,  
United States Plywood Corporation,  
Partner  
By: W. P. ELMORE  
W P. Gilmore, Attorney in Fact

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA                    )  
  ) ss.  
City and County of San Francisco    )

On this 5th day of July, 1966, before me, Helen E. Walsh, a Notary Public in and for the City and County of San Francisco, State of California, duly commissioned and sworn, personally appeared WILLIAM P. GILMORE, known to me to be the Attorney-in-Fact of United States Plywood Corporation, a partner of Hiller Highlands, a partnership, and also known to me to be the person who signed the foregoing Declaration, and he acknowledged to me that the said partnership executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal, in the City and County of San Francisco, the day and year in this certificate first above written.

Helen E. Walsh  
Helen E. Walsh  
Notary Public - California  
City and County of San Francisco  
My Commission Expires Oct 22, 1966

(SEAL)