

NOTICE

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the *Government Code*. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

RECORDED AT REQUEST OF

Recording Requested By, and When **86 155148**
Recorded Return to:

Attorney

DIABLO SOUTH HOMEOWNERS ASSOCIATION
c/o Law Offices of Ronald M. Abend, Inc.
2173 Ygnacio Valley Rd.
P.O. Box 9355
Walnut Creek, California 94598-0955

SEP 16 1986

AT 12 O'CLOCK P.M.
CONTRA COSTA COUNTY RECORDS
J.R. OLSSON
COUNTY RECORDER

FEES

75⁰⁰ pd c

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AMENDED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
DIABLO SOUTH HOMEOWNERS ASSOCIATION

This Amended Declaration is made on the date hereinafter set forth by Diablo South Homeowners Association, a California Non-Profit Mutual Benefit Corporation, (hereinafter referred to as the "Association").

WITNESSETH:

WHEREAS, the Association is the successor in interest of Arnico, Inc., which, as Declarant, made the Declaration of Covenants, Conditions and Restrictions of Diablo South Homeowners Association, dated on or about September 16, 1980, and recorded on October 3, 1980, as Series # 131524, Contra Costa County Official Records; and

WHEREAS, the Association is now the owner of certain real property located in the City of Concord, County of Contra Costa, State of California, which is more particularly described as Lot 1 as shown on the map of Subdivision 5621, filed on February 5, 1980, Map Book 235, Page 13, Contra Costa County Records.

WHEREAS, pursuant to Section 20 of the aforesaid Declaration of Covenants, Conditions and Restrictions of Diablo South Homeowners Association dated on or about September 20, 1980, the Association desires to amend, modify and change the aforesaid Declaration of Covenants, Conditions and Restrictions;

NOW THEREFORE, the Association hereby declares that the aforesaid Declaration of Covenants, Conditions and Restrictions dated on or about September 20, 1980, and any amendment thereof, be and they are hereby repealed, and in their place and stead the Association hereby adopts the within Amended Declaration of Covenants, Conditions and Restrictions of Diablo South Homeowners Association; and

IT IS FURTHER hereby declared by the Association that all of the real property described above shall be held, sold and conveyed subject to the following Covenants, Conditions and Restrictions, which are for the purpose of

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protecting and preserving the value and desirability of the real property described herein, and which shall run with said real property and be binding upon all parties having any right, title or interest in the described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of all of the Units and the Common Area and each Owner, present or future, thereof.

ARTICLE I

DEFINITIONS

Unless the context clearly indicates a different meaning therefore, the terms used herein and used in the Deed and the Condominium Plan shall have the meaning given in the following definitions:

Section 1. Architectural Control Committee: The term "Architectural Control Committee" shall mean the Committee created pursuant to Article X of this Declaration.

Section 2. Architectural Control Committee Rules: The term "Architectural Control Committee Rules" shall mean the Rules adopted by the Architectural Control Committee pursuant to Article X of this Declaration.

Section 3. Articles: The term "Articles" shall mean the Articles of Incorporation of Diablo South Homeowners Association as they may be amended from time to time, and as filed with the Office of the Secretary of State for the State of California.

Section 4. Association: The term "Association" shall mean and refer to the Diablo South Homeowners Association, and its successors and assigns.

Section 5. Board: The term "Board" shall mean the Board of Directors of the Association as provided in this Declaration.

Section 6. By-Laws: The term "By-Laws" shall mean the By-Laws of Diablo South Homeowners Association as they shall be adopted by the Board of Directors and any duly adopted Amendments thereto.

Section 7. Common Area: The term "Common Area" shall mean all the Project which is not included within any Unit, as shown on the Plan. Common Area shall include, but shall not be limited to, Restricted Common Area, all facilities and improvements located within the Common Area including driveways, open spaces, planted and landscaped areas, roofs, foundations, stairs, walkways, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, bearing walls and columns and girders to the

unfinished surfaces thereof, regardless of location, and all other improvements which may be placed upon or located in the Common Area.

Section 8. Condominium: A "Condominium" consists of an undivided interest in common in a portion of real property coupled with a separate interest in a space called a Unit, the boundaries of which are described in this Declaration, in the Condominium Plan attached hereto as Exhibit "B."

Section 9. Declaration: The term "Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions of Diablo South Homeowners Association and as said Declaration may from time to time be amended.

Section 10. Maintenance: The term "Maintenance" shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting and other related improvements, structures and fixtures in a state similar to their original conditions, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of regular fertilization, irrigation, and other garden management practices necessary to promote a healthy weed-free environment for optimum plant growth.

Section 11. Manager: The term "Manager" refers to the person or corporation appointed as set forth in the By-Laws.

Section 12. Map: The term "Map" refers to that certain Subdivision Map recorded on February 5, 1980, in Book 235, at Page 13; Official Records of the Recorder of Contra Costa County, State of California, and entitled "Subdivision 5621, Contra Costa County, California."

Section 13. Member: shall mean each person or entity who holds membership in the Association, as provided in the By-Laws.

Section 14. Parking Stall: The term "Parking Stall" as used in this Declaration shall mean those portions of the Common Area which are individual parking stalls. These parking stalls are part of the Common Area, and the use thereof shall be assigned by the Association and shall be subject to the control of the Association.

Section 15. Plan: The term "Plan" shall mean that certain Condominium Plan entitled "Subdivision 5621 Diablo South Condominium Plan" prepared in accordance with the provisions of Section 1351 of the California Civil Code, which Plan is attached hereto as Exhibit "B" and incorporated herein by this reference.

Section 16. Project: The term "Project" shall mean the entire parcel of

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real property described in this Declaration which is divided into Condominiums, including all structures thereon.

Section 17. Restricted Common Area: The term "Restricted Common Area" as used herein and on the Plan shall mean any portion of the Common Area, the exclusive use of which is restricted to a particular Unit. Restricted Common Area shall include the Yards, Balconies, Storage, and Garages as defined herein. Each Yard, Balcony, and Garage shall be granted as an exclusive easement appurtenant to each Unit according to Exhibit "A" - Schedule of Units. Said grants of exclusive easement shall be specifically designated in each individual Condominium Grant Deed. Restricted Common Area shall also include any parking stall contained in the Common Area to which the Association, pursuant to its authority herein contained, has assigned the exclusive use to a particular Unit Owner.

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Section 18. Single Family: The term "Single Family" shall mean one or more persons each related to the other by birth, marriage, or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Unit.

Section 19. Storage, Yards, Balconies, and Garages: The terms "Yard", "Balcony", "Storage", and "Garage" as used in this Declaration and on the Plan shall mean that portion of the Common Area (defined and delineated herein and on said Plan as a portion of the Restricted Common Area) shown on the Plan as "Y" for Yard, "B" for Balcony, Storage (See "Note" on Condominium Plan), and "G" for Garage. An exclusive appurtenant easement for the use and possession of the Balconies, Yards, and Garages shall be granted to each Unit according to Exhibit "A" - Schedule of Units. Notwithstanding any provision herein to the contrary, storage spaces shall be as described on the Condominium Plan, i.e. located within the garages, and will not be conveyed as a separate exclusive easement to the Unit purchaser.

Section 20. Unit: The term "Unit" shall mean the elements of a Condominium not owned in common with the Owners of other Condominiums in the Project. Each Unit is an individual apartment residence and is a numbered Parcel or Unit as shown, defined and delineated on the Plan. The boundary lines for each Unit are the interior unfinished surfaces (exclusive of paint, paper, wax, tile, enamel, or other finishes) of the ceilings, floors, perimeter walls, bearing walls, interior beams and columns, windows and window frames,

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doors and door frames and trim, and the interior and/or exposed surfaces of the fireplaces, if any, (excluding the flue) and the airspace so encompassed, excluding all bearing walls and all walls containing any utility conduit to the unfinished surfaces of any such walls.

Section 21. Unit Owner: shall mean the record Owner or Owners of a fee simple title to any Unit which is a part of the properties, including contract sellers, but excluding those holding such interest merely as security for the performance of any obligation.

ARTICLE II

WAIVER OF PARTITION

There shall be no Judicial Partition of the Project or any part thereof, and, except as provided in the California Code of Civil Procedure, Section 752(b), each Unit Owner, and the successors of each Owner, whether by deed, gift, devise, or operation of law, for their own benefit and for the Units and for the benefit of all other Unit Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Project and do further promise and covenant that no action for such judicial partition shall be instituted, prosecuted, or reduced to judgment; PROVIDED, HOWEVER, that if any condominium shall be owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-owners of a single condominium.

ARTICLE III

COMMON AREA

Section 1. Interest Conveyed: Each Unit Owner shall own an undivided interest in the Common Area, which interest shall be equal to the interest owned by each other Unit Owner and which shall be conveyed with the respective Unit. The undivided interest in the Common Area established hereunder and to be conveyed with the respective Units is hereby set forth in the "Schedule of Units," attached hereto as Exhibit "A" and incorporated herein by reference, and cannot be changed; and Declarant, its successors and assigns, and grantees, covenant and agree that the undivided interests in the Common Area and the fee title to the respective Units conveyed therewith, shall not be separated or separately conveyed, and each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even

though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

ARTICLE IV

HOMEOWNERS ASSOCIATION

Section 1. The Organization: The Association is a non-profit mutual benefit corporation charged with duties and empowered with the rights set forth herein and in the Association Articles, By-Laws, and any amendments thereto.

Section 2. Membership: Each Owner of a Unit, by virtue of being an Owner and for so long as he is an Owner, shall be a Member of the Association, provided that any person or entity who holds such ownership interest merely as security for the performance of an obligation shall not be a Member. Each Unit Owner shall be entitled to one (1) membership in the Association for each Unit owned. Association membership shall be appurtenant to and may not be separated from the ownership of any Unit. Upon termination of Unit Ownership, the membership in the Association shall also terminate. Ownership of a Unit shall be the sole qualification for membership in the Association. Except as otherwise provided herein, the rights, duties, privileges, and obligations of all Members of the Association shall be as provided in this Declaration, the Association By-Laws and Rules. The membership of an Owner shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Unit and then only to the transferee of title to such Unit. Any attempt to make a prohibited transfer is void.

Section 3. Voting: Membership in the Association entitles the holder(s) thereof the right to vote on matters before the Association, as provided herein. Only one vote shall be cast for each Unit. In the event that more than one person owns a given Unit, and the joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that he, she, or they were acting with the authority and consent of all other Owners of the same Unit.

Section 4. Board of Directors: The affairs of the Association shall be managed by a Board of Directors. The number of Directors shall be established by the By-Laws, and the Members of the Board shall be elected as provided in

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the By-Laws.

Section 5. Powers, Duties and Authority of Association: The Association shall have all of the powers set forth in this Declaration, and in the Articles, By-Laws, and Rules of the Association, together with general power to do any and all things that a non-profit, mutual benefit corporation may lawfully do, under the laws of the State of California, in operating the Project for the benefit of the Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Articles, By-Laws, and Rules of the Association.

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Section 6. Financial Statement: The Board of Directors shall, in compliance with California Code of Civil Procedure, Section 1730, prepare and cause to be distributed to Unit Owners:

A. A Pro-Forma Operating Budget at least forty-five (45) but not more than sixty (60) days prior to commencement of each accounting year. The Pro-Forma Budget must include:

- (1) An estimate of revenue and expenses;
- (2) Identification of total cash reserves;
- (3) Identification of estimated life remaining in the line items to be repaired or replaced on a cyclical basis;
- (4) The methods of funding those reserves; and
- (5) A statement setting forth the procedures used to calculate and establish reserves.

B. An Annual Financial Statement (revenue and expense, asset and liability balance sheet), which must be prepared in accordance with accepted accounting principals, by a Licensee of the California Board of Accountancy for a fiscal (accounting) year where the Gross Income of the Association exceeds \$75,000. If the Statement is not prepared by an independent accountant, it must be accompanied by the Certificate of the Association's authorized officer that the Statement was prepared from the books and records of Diablo South Homeowners Association without independent audit or review. This Annual Financial Statement must be distributed within one-hundred and twenty (120) days subsequent to the close of each fiscal (accounting) year.

C. A written statement of the policies and practices of Diablo South Homeowners Association in enforcing lien rights or other legal remedies for default in payment of assessments. This Policy and Practice Statement must be

delivered to the Membership sixty (60) days prior to the beginning of the ensuing fiscal (accounting) year.

Section 7. Taxes: The Association shall have the authority to pay all real property taxes and assessments levied upon any property within the Project to the extent not separately assessed to the Unit 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.

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Section 8. Association Rules: The Board of Directors of the Association shall have the power and the authority to establish, promulgate, amend and repeal such Rules as the Board deems 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, signs, collection and disposal of refuse, minimum standards for maintenance of property, parking and traffic regulations, rental or leasing of Lots within the Project, and any other subject matter within the jurisdiction of the Association as provided in this Declaration.

Section 9. Enforcement of Rules: In the event of a breach or infraction of any Rule promulgated by the Board, by a Unit Owner, his family, tenants, or guests, the Board, for and on behalf of all other Unit Owners, shall enforce the obligation of each Unit Owner to obey such Rules, in any manner provided by law or equity. The Board shall also have the power to impose a monetary penalty against a Unit Owner for an infraction of any Rule, and shall have the right to suspend a Unit Owner's voting rights, or a Unit Owner's right to use of the recreational facilities on the Common Area, for a period not to exceed sixty (60) days. A suspension of voting rights or right to use of recreational facilities shall be effective only after notice and an opportunity for hearing as provided in the By-Laws. Any monetary penalty imposed pursuant to this Section shall not exceed \$50.00 for each violation. The payment of any such fine may be enforced as provided in Article V.

Section 10. Architectural Committee: The Board of Directors shall have the power and duty to appoint and remove Members of the Architectural Committee as provided in Article X of this Declaration, and to insure that, at all reasonable times, there is available a duly constituted Architectural Committee.

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Section 11. Manager: The Board of Directors shall have the power and authority to employ the services of a Manager, Management Company, or other employee, 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 such Manager, Management Company or other employee, any of its power and authority; provided, however, that the Board may not delegate its responsibility or authority to levy monetary penalties, hold hearings, or impose discipline.

Section 12. Good Faith Action: The Members of the Board of Directors and of the Architectural Committee shall not be held liable for any error or omission or any action taken provided that he or she has acted in good faith.

ARTICLE V

FUNDS AND ASSESSMENTS

Section 1. Operating Fund: The Association shall maintain an operating fund into which the Board shall deposit all funds paid to the Association as Assessments. Said funds shall be held in trust 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.

Section 2. Regular Assessments:

A. At least forty-five (45) days prior to the beginning of each subsequent fiscal year, the Board shall estimate the total charges to be paid out of the maintenance fund during such year (including a reasonable reserve for contingencies and replacement and less any expected surplus from the prior year). The Board shall allocate and assess said estimate of total charges to each Unit Owner in accordance with the percentages set forth in Exhibit "A" - Schedule of Units. All funds of the Association shall be budgeted, allocated, assessed and collected for current maintenance and operation of the Project, contingencies, deferred maintenance 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.

B. Within one hundred twenty (120) days after the end of each fiscal year, the Unit Owners shall receive an accounting of assessment receipts and disbursements for the last-ended fiscal year, including a statement of changes in financial position for the fiscal year.

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C. In the absence of the affirmative vote or written consent of at least fifty-one percent (51%) of the membership, the Board shall not increase the regular annual assessment for any given year by more than the maximum amount permitted by Section 1366 of the Code of Civil Procedure, or other applicable law.

D. Assessments shall be due and payable by the Owners to the Association during the fiscal year in equal monthly installments, on or about the first day of each month, or in such other manner as the Board shall designate. If not paid within thirty (30) days after its due date, each such charge shall thereafter be subject to interest and late charges at the maximum rate permitted by law until paid, but the Board may, in its discretion, waive interest and or late charges in any particular instance. If any suit or proceeding is initiated to collect any such charge, there shall be added to the amount thereof interest, late charges, costs of collection and reasonable attorneys' fees.

Section 3. Special Assessments: If at any time during any fiscal year the maintenance assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, or unexpected repair, replacement or reconstruction of the improvements in the Common Area or Units 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 2 above; provided, however, that in any fiscal year the Board may not levy such special assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of a majority of the Members.

Section 4. Reimbursement Assessment: The Board shall levy an assessment against any Owner whose failure to comply with this Declaration, the By-Laws, the Rules of the Association or the Architectural Control Committee Rules or where conduct resulted in monies being expended by the Association from the operating fund 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.

Section 5. Capital Improvement Assessment: Upon approval by two-thirds

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(2/3) of the Members of a proposed capital improvement and the estimated total cost thereof, such estimated total cost shall be levied and assessed equally to each Unit as a capital improvement 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 3 above. 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.

Section 6. Purpose of Assessments: Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Project and for the improvement and maintenance of the Project's Common Area properties as more particularly set forth in Article IV of this Declaration.

Section 7. Personal Obligation of Owner; Lien Upon The Land:

A. The assessments levied by the Board on behalf of the Association under this Article V shall constitute separate assessments. Each assessment levied under this Article, together with interest, late charges, 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, successors 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 Unit against which an assessment is made to secure the payment of any assessments under this Article. The priority of all such liens on each Unit shall be in inverse order, so that upon the foreclosure of the lien for any particular month's charge on any Unit, any sale of such Unit pursuant to such foreclosure will be made subject to all liens securing the respective monthly charges on such Unit for succeeding months. Each such lien for any particular month's charge shall likewise secure interest and late charges thereon if the same is not paid when due, and shall likewise secure costs of collection and reasonable attorneys' fees.

B. The Board shall execute and acknowledge a certificate stating the indebtedness secured by the lien upon any Unit, 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 the Owner upon request. A reasonable fee may be charged for the preparation of such statement.

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Section 8. Covenant of Owner: Each Owner of a Unit, subject to this Declaration by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall become personally obligated and be deemed to covenant and agree to pay such assessments and 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 initiate all procedures for the collection of such assessments and charges, costs of collection, and attorneys' fees and for the enforcement of such liens. Such right and power shall continue in the Association and such obligations shall run with the land so that the successive Owner or Owners of record of any Unit within the Project shall in turn become liable to pay all such charges which shall become a lien thereon during the time they are the record Owner of such Unit within the Project. After a record Owner transfers any Unit owned by him, he shall not be liable for any charges thereafter to accrue against such Unit. He shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer. A contract seller of any Unit shall continue to be liable for all such charges until a conveyance by deed of such Unit is recorded in the Office of the Recorder, Contra Costa County.

Section 9: Subordination: 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 agree to subordinate the lien of said assessments to the interests of the Department of Veterans 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.

Section 10. Default and Foreclosure: Any assessment not paid within thirty (30) days after the due date shall be deemed to be in default and shall be subjected to interest and late charges from the due date at the maximum rate permitted by law 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 against the Unit. No action shall be brought to foreclose the lien securing any assessment under this Article less than thirty (30) days following the mailing of a notice of assessment, duly signed in behalf of a majority of the Board, to the Owner of such Unit and the recording of a copy of such notice in the Office of the Recorder of Contra Costa County. Said notice shall state the amount of the assessment, together with the interest, late charges, costs and reasonable attorneys' fees; a description of the Unit 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 or the Owner of any Unit. Upon the declaration of an assessment 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 Unit Owner due and payable, which total sum may then be included in any suit, action or proceeding brought to collect said sum, including all costs, charges and attorneys' fees.

Section 11. Power of Sale: Each of the Owners does hereby appoint the Association 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 I 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 Unit 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 as trustee for the remaining Owners, or any other Owner, may purchase at said sale. The Board may commence any procedure for collection upon its own decision, and it must so proceed upon the written request therefor signed by any five (5) Owners.

Section 12. Certificate of Satisfaction: 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. A failure to record said certificate

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of discharge within thirty (30) days after written demand by the Owner of such Unit shall entitle him to recover a penalty of ONE HUNDRED DOLLARS (\$100.00) from the Association, plus his actual damages.

Section 13. Association Funds: The assessments collected by the Association shall be properly deposited into two separate accounts with a savings and loan association or bank selected by the Board, which accounts shall be clearly designated as the DIABLO SOUTH HOMEOWNERS ASSOCIATION CURRENT MAINTENANCE AND OPERATION ACCOUNT and the DIABLO SOUTH HOMEOWNERS ASSOCIATION DEFERRED CAPITAL MAINTENANCE AND REPLACEMENT ACCOUNT. The assessments collected by the Association shall be held in trust by the Association for and on behalf of each Unit 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 funds 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 Unit by any Owner, the Owner's interest in the trust 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 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.

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Section 14. 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.

Section 15. Property Exempt from Assessments: The following property

subject to this Declaration shall be exempt from the assessments, charges and liens created herein;

A. 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

B. All Common Area.

ARTICLE VI

BOOKS OF ACCOUNT

Section 1. The Board shall maintain full, complete and correct books and records of account of the operation of the Project and vouchers supporting all expenditures. The books and records shall be open during all reasonable hours for inspection and copying by any Unit Owner, or his duly authorized representative. The books and records shall be kept at the office of the Association or at such other place within the Project as the Board may designate. The Board may establish reasonable rules with respect to notice to be given the custodian of records, reasonable hours for inspection and payment of costs of reproduction. Every Director shall have the absolute right during reasonable hours to inspect and copy the books and records of the Association and to inspect the Project.

ARTICLE VII

LIMITATIONS TO GOVERNING BOARD AUTHORITY

Section 1. The governing board of the Association shall be prohibited from taking any of the following actions:

A. Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Owners' Association for a term longer than one year with the following exceptions:

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

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

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

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B. Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

C. Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

D. Paying compensation to members of the governing body or to Officers of the Association for services performed in the conduct of the Association's business provided, however, that the governing body may cause a member or Officer to be reimbursed for expenses incurred in carrying on the business of the Association.

E. Filling of a vacancy on the governing body created by the removal of a governing body member.

ARTICLE VIII

MAINTENANCE

Section 1. Power, Authority and Duties. Association and Unit Owners' respective power, authority and duties are set forth with particularity in Sections 2 and 3 of this Article.

Section 2. Association Power, Authority and Duties.

A. Power and Authority:

(1) The Association shall have full power and authority to act for and on behalf of all of the Owners to keep and maintain the Common Area in good condition and repair; shall provide for lighting, landscaping, pest control, gardening and janitorial services as needed, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in first class condition and repair, including painting of the exterior of the building and such other portions of the Common Area as the Board, in its discretion, determines to be necessary.

(2) The Association, or its agents, may enter any Unit, and any portion of the Common Area to which an Owner has been granted an exclusive easement, whenever such entry is necessary in connection with the performance of any maintenance, repair or construction for which the Board is responsible. Such entry shall be made with as little inconvenience to an Owner as practicable, and only upon reasonable advance written notice of at least forty-eight (48) hours, except in emergency situations.

(3) The Association may enter any Restricted Common Area to maintain, clean, repair and/or upkeep that Restricted Common Area whenever the Board, in its discretion, determines such entry is necessary because the Owner has not maintained the Restricted Common Area as hereinafter set forth. Any costs incurred by the Association in the course of maintaining the Restricted Common Area shall be charged as a Reimbursement Assessment, pursuant to Article V, Section 4, hereof, against the Owner to whom exclusive use of said Restricted Common Area has been granted.

B. Duties. Subject to this Article, Section 3(B)(2), the Association shall acquire and pay for, out of funds derived from assessments, the following:

(1) Water, sewer, garbage, pest control, electrical, lighting, telephone, air conditioning, plumbing, gas and other necessary utility service for the Common Area.

(2) Maintenance and repair of storm drains, sanitary sewers, and driveways lying within the Common Area.

(3) Fire insurance covering the full insurable replacement value of the Common Area with a minimum extended coverage.

(4) Liability insurance insuring the Association against any liability to the public or to any Owner, their invitees or tenants incident to their occupancy and/or use of the Common Area and the Units in a combined personal injury and property damage coverage of liability not less than ONE MILLION DOLLARS (\$1,000,000.00) for each occurrence (such limits and coverage to be reviewed at least annually by the Association and increased in its discretion).

(5) Workers' Compensation Insurance to the extent necessary to comply with any applicable laws, and any other insurance deemed necessary by the Board of Directors of the Association.

(6) Standard fidelity bond covering all Members of the Board of Directors of the Association and all other employees of the Association in the minimum sum of TEN THOUSAND DOLLARS (\$10,000.00) or in such greater amounts as the Board of Directors may determine from time to time.

(7) Painting, maintenance, repair, replacement and all landscaping of the Common Area, and such furnishings and equipment for the Common Area as the Association shall determine are necessary and proper,

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including, but without limiting the generality of the foregoing, all equipment, furnishings, and personnel for the recreational areas necessary or proper for the use thereof, and the facilities thereon, by the Owners for recreational purposes, and the Association shall have the exclusive right and duty to acquire same.

(8) Painting, maintenance, and repair of the exterior surfaces of the residences, as the Association shall deem necessary and proper, including, but without limitation, replacement of trim, caulking and repair of the roof cover, and other miscellaneous repairs. Such exterior maintenance shall not include glass surfaces.

(9) Landscape planting (including irrigation) and maintenance service for the Common Areas by the Owner thereof.

(10) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay for pursuant to the terms of these restrictions or by law, or which in the opinion of the Association's Board of Directors shall be necessary or proper for the operation of the Common Area, or for the benefit of the Unit Owners, or for the enforcement of these restrictions.

Section 3. Unit Owner Power, Authority and Duties.

A. Power and Authority.

(1) Each Owner shall have the power and authority, at his sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile, and finish interior surfaces of the ceilings, floor, and perimeter walls of his Unit, the surfaces of the bearing walls located within the said Unit, and the surfaces of any other finishes owned by the Owner as herein defined. Said Owner shall have the power and authority to substitute new, finished surfaces for the finished surfaces then existing on said ceilings, floors and walls, including, without limiting the generality of the foregoing, the following: substitution of paint for paper, or paper for paint; substitution of tile for paneling, or paneling for tile, or substitution of wood for linoleum or tile, or of linoleum or tile for wood, except that carpeting or other like sound-proofing material shall be maintained in all rooms except the bathroom(s) and kitchen, which rooms shall be maintained with flooring material of sound-proofing quality at least equal to the flooring provided for in original construction. Said Owners and

their agents shall have the power and authority to maintain, repair, paint, finish, alter, substitute, add, or remove any fixtures attached to said ceilings, floors or walls.

B. Duties.

(1) The Owner has the duty and is liable for the maintenance and replacement of the finishes of interior walls, floors and ceilings. The maintenance and repair of internal installations to the Unit, such as toilets, showers, bathtubs, sinks, kitchen appliances, telephone facilities, the connections thereto, and all other accessories within the boundaries of the Unit shall be the responsibility and liability of the Owner.

(2) The Unit Owner has the duty to repair, maintain and otherwise care for water, sewer, interior pest control, electrical services, air conditioning, plumbing and other utility services of exclusive use to the applicable Unit. Exclusive use shall include and be limited to utility lines and services of primary benefit to an identifiable Unit.

(3) The Unit Owner has the duty and liability of cleaning, repair, upkeep and replacement of doors, windows and screens thereto of the Unit owned by such Owner.

(4) The Unit Owner has the duty and liability of cleaning, repair and upkeep of the Restricted Common Area granted to that Owner pursuant to the Condominium Plan set forth in this Declaration.

(5) This Article VIII, Section 3(B)(1-4) shall not be construed to permit any interference with or damage to the structural integrity of the building. No Owner shall drill or permit the drilling into any slab incorporated within the building.

ARTICLE IX

PROPER USE OF PREMISES

Section 1. Each Unit shall be used as a residence for a single family and for no other purpose. An Owner shall be entitled to rent said Unit to a single family provided that said Unit is rented for a term greater than thirty (30) days.

Section 2. There shall be no use or occupancy of any parking or storage space or of the Common Area, except by the Owners of a Unit, their guests or tenants. Only motor vehicles as defined by the Vehicle Code shall be parked in assigned parking spaces. No person, agent, employee, guest or tenant of a

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Unit Owner shall park in any parking space except such parking space as has been assigned to such Unit Owner or in designated visitor parking areas. There shall be no boats, campers, trailers, non-operational vehicles, trucks exceeding 3/4 ton, or other recreational vehicles parked or stored upon the Common Area or designated parking area. There shall be no obstruction of any part of the Common Area. Nothing shall be stored, kept, or parked in the Common Area, (except as specifically reserved storage areas) without the prior consent of the Board. No storage closet, locker, or facility of any kind shall be built, placed, or kept in any parking space without the prior approval of the Board.

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Section 3. Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance on the Common Area without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his Unit or the Common Area which will result in the cancellation of insurance on any Unit or any part of the Common Area or which would be in violation of any governmental statute, ordinance, rule or regulation.

Section 4. No Unit Owner may permit or suffer anything to be done or kept upon the premises or in or about his Unit which will obstruct or interfere with the rights of other Unit Owners or annoy other Unit Owners by unreasonable noise, smell or otherwise, or which will be noxious or offensive to other Unit Owners.

Section 5. No Unit Owner shall cause or permit any objects or articles of any kind, except for plants, outdoor patio or lounge furniture and barbecue equipment, to be placed within the interior confines of the balconies or porches of any Unit without obtaining the prior consent of the Board.

Section 6. No Unit Owner shall cause or permit any object(s) or article(s) to be placed on or hung from any balcony, railing or porch without obtaining prior consent of the Board.

Section 7. Each Unit Owner shall keep the interior of any balcony, patio, parking stall or storage area to which he has been assigned an exclusive right of use clean and free of debris.

Section 8. No sign of any kind shall be displayed to the public view on or from any Unit or the Common Areas; provided, however, (1) that one sign of not more than five (5) square feet may be placed at a central location previously designated by the Association advertising a Unit for sale; (2) the

Association may maintain and display one or more signs identifying the Project as the Board may deem appropriate; and (3) the Board and any Owner may post and maintain such signs as may be required by legal proceedings.

Section 9. No animals, livestock, or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Area except that a reasonable number of dogs, cats, or other household pets may be kept provided that they are not bred or maintained for any commercial purpose, and provided further that the Board by rules adopted as specified in the By-Laws may limit or restrict the keeping of any such household pets.

Section 10. Nothing shall be done in any Unit or in, on or to the Common Area which will impair the structural integrity of the building or which would structurally alter the building except as is otherwise provided herein.

Section 11. No development shall be made of the air space above any Unit or the Common Area without the written approval of the Board.

Section 12. Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Board and subsequent recommendation by the Architectural Control Committee.

Section 13. The Board shall propose monetary penalties, not to exceed \$50.00 per infraction, temporary suspension of a Unit Owner's rights as a member of the Association or other disciplinary measures for failure to comply with this Declaration or the By-Laws. The proposed penalties shall be within the Board's power, provided that the accused is given notice and an opportunity to be heard by the Board before a decision to impose discipline is reached. There shall be no forfeiture or abridgement of an Owner's rights to the full use and enjoyment of his Unit except as a result of the judgment of the court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Association.

ARTICLE X

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Establishment: There shall be an Architectural Control Committee consisting of three (3) persons appointed by the Board. There shall also be one (1) alternate Committee member who may be designated by the Committee to act as substitute on the Committee in the event of absence or disability of any Committee member.

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Section 2. Duties: It shall be the duty of the Architectural Control Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Control Committee Rules, to perform other duties delegated to it by the Association and to carry out all other duties imposed upon it by this Declaration.

Section 3. Meetings: The Architectural Control Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of any two (2) members shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by this Declaration. The Committee shall keep and maintain a record of all actions taken by it at such meetings or otherwise. The Architectural Control Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Architectural Control Committee function.

Section 4. Rules: The Architectural Control Committee may, from time to time and in its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural Control Committee Rules." Said rules shall interpret and implement the provisions hereof by setting forth the standards and procedures for Architectural Control Committee review and guidelines for architectural design, placement of buildings, landscaping in the Common Areas, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that said rules shall not be in derogation of the minimum standards required by this Declaration.

Section 5. Application: Any Owner proposing to perform any work of any kind whatever, which requires the prior approval of the Architectural Control Committee, shall apply to such Committee for approval by notifying the Architectural Control Committee, in writing, of the nature of the proposed work and furnishing such information as the committee may require.

Section 6. Grant of Approval: The Architectural Control Committee shall grant the requested approval only if:

- A. The Owner shall have complied with the provisions of Section 5 above; and
- B. The Architectural Control Committee shall find that the plans and specifications conform to this Declaration and to the Architectural Control

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Committee Rules in effect at the time such plans were submitted to such Committee; and

C. The Members of the Architectural Control Committee, in their sole discretion, determine that the proposed improvements would be consistent with the standards of the Project and the purposes of this Declaration as to quality of workmanship and materials, as to harmony of exterior design with the existing structures and as to location with respect to topography and finished grade elevations.

Section 7. Form of Approval: All approvals given under Section 6 shall be in writing; provided, however, that any request for approval which has not been rejected within thirty (30) days from the date of submission thereof to the Architectural Control Committee shall be deemed approved.

Section 8. Commencement: Upon receipt of approval from the Architectural Control Committee pursuant to Section 7 above, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations pursuant to said approval, said commencement to be, in all cases, within one year from the date of such approval. If the Owner shall fail to comply with this section, any approval given pursuant to Section 7, above, shall be deemed revoked unless the Architectural Control Committee, upon written request of the Owner made prior to the expiration of said one-year period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Architectural Control Committee that there has been no change in the circumstances upon which the original approval was granted.

Section 9. Completion: The Owner shall, in any event, complete the construction, reconstruction, refinishing or alteration of any such improvement within one (1) year after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If Owner fails to comply with this section, the Architectural Control Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 10 below, as though the failure to complete the improvements was a non-compliance with approved plans.

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Section 10. Inspection: Inspection of work and correction of defects therein shall proceed as follows:

A. Upon the completion of any construction, reconstruction, alteration or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Architectural Control Committee.

B. Within sixty (60) days thereafter, the Architectural Control Committee, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved plans. If the Architectural Control Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

C. If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the Architectural Control Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the Architectural Control Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the Architectural Control Committee and, in the discretion of the Board, to any other interested party.

D. At the hearing, the Owner, the Architectural Control Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any

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extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a reimbursement assessment against such Owner pursuant to Article V hereof.

E. If, for any reason, the Architectural Control Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of said notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

Section 11. Preliminary Approval: Any Owner proposing to construct improvements requiring the prior approval of the Architectural Control Committee may apply to the Committee for preliminary approval by submission of preliminary drawings of the proposed improvements in accordance with the Architectural Control Committee Rules. The purpose of the preliminary approval procedure is to allow an Owner proposing to make substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Application for preliminary approval shall be considered and disposed of as follows:

A. Within thirty (30) days after proper application for preliminary approval, the Architectural Control Committee shall consider and act upon such request. The Architectural Control Committee shall grant the approval only if the proposed improvement, to the extent its nature and characteristics are shown by the application, would be entitled to a final approval on the basis of a full and complete application. Failure of the Architectural Control Committee to act within said thirty (30) day period shall constitute an approval. In granting or denying approval, the Architectural Control Committee may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant.

B. Any preliminary approval granted by the Architectural Control Committee shall be effective for a period of ninety (90) days from the date of the issuance thereof. During said period, any application for final approval which consists of proposed improvements in accordance with the provisions of

the preliminary approval, and is otherwise acceptable under the terms of this Declaration, shall be approved by the Architectural Control Committee.

C. In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject improvements.

Section 12. Non-Waiver: The approval by the Architectural Control Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Control Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

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Section 13. Estoppel Certificate: Within thirty (30) days after written demand is delivered to the Architectural Control Committee by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Architectural Control Committee shall record an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Lot of said Owner) that based on the date thereof, either: (a) all improvements made and other work completed by said Owner comply with this Declaration, or (b) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Lot through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

Section 14. Liability: Neither the Architectural Control Committee nor any Member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of an estoppel certificate pursuant to Section 13, above, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him. Without

any way limiting the generality of the foregoing, the Architectural Control Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Architectural committee.

Section 15. The application to and the review and approval by the Architectural Control Committee of any proposals, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the respective Unit Owner.

ARTICLE XI

USE OF COMMON FACILITIES

Section 1. The Owners of the individual Condominiums and their tenants and guests may enjoy in common with all other Unit Owners use of all facilities in the Common Area so long as they abide by the terms of this Declaration and any rules and regulations which may be adopted by the Board, subject to the grant of the exclusive easements to individual Unit Owners of the yards, balconies, storage, and garages, and to the exclusive use of the parking stalls contained within the Restricted Common Area.

ARTICLE XII

USE OF PRIVATE OPEN SPACE

Section 1. Those areas originally constructed as open space, recreational area, and pool area are specifically restricted to park and recreational purposes. This covenant specifically runs with the land in favor of future owners of property in the Project. Such use cannot be defeated or eliminated without the written consent of the City of Concord being first had and obtained.

ARTICLE XIII

EASEMENTS

Section 1. There are hereby specifically reserved for the benefit of the Unit Owners, in common and for each Owner severally, as their respective interest shall obtain, the easements reciprocal negative easements, secondary easements, and rights of way as particularly identified in this Declaration.

Section 2. There is reserved for the benefit of each Condominium as dominant tenement, an easement for utility services over, under, and through

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the subject property, Common Area, and each other Unit, jointly as the servient tenement.

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Section 3. There is reserved for the benefit of each Condominium, as dominant tenement, an easement for encroachment, occupancy and use of such portion of the subject property and each other Condominium Unit and the Common Area, jointly as the servient tenement, as shall be encroached upon, used and occupied by the Owner as the dominant tenement, as a result of any construction errors, movement or subsidence of the structures, or any portion thereof, or any other cause. The easement of encroachment here reserved shall continue notwithstanding that the encroachment may be cured by repair and restoration of the structure.

Section 4. The Board and each Unit Owner have an easement appurtenant to the Common Area and all other Units through each Unit for the maintenance and repair of the Common Area.

Section 5. Each Unit Owner has a non-exclusive easement for the ingress and egress through, or over and across the Common Area

Section 6. Each Unit and Unit Owner shall have an exclusive easement, and such exclusive easement is hereby granted, for the use, possession and enjoyment of the yard, balcony, garage, and storage as delineated on Exhibit "A" - Schedule of Units. Said exclusive easements shall be subject however, to the right of the Board to enter in and upon said yard, balcony, garage or storage for the purpose of maintaining and repairing the same pursuant to this Declaration and enforcing the terms hereof, provided that unless an emergency exists every reasonable effort will be made to notify the Unit Owner at least twenty-four (24) hours prior to said entry.

Section 7. Where exclusive use, possession, and enjoyment of parking stalls has been assigned by the Declarant, said exclusive use shall be subject to the right of the Board to enter in and upon said parking stalls for the purpose of maintaining and repairing the same and any other portion of the Common Area pursuant to this Declaration and enforcing the terms hereof, provided that unless an emergency exists every reasonable effort shall be made to notify the Unit Owner at lease twenty-four (24) hours prior to said entry.

ARTICLE XIV

UTILITY ACCESS

Section 1. All public utilities including but not limited to Pacific Gas &

Electric, Pacific Bell, water, sewage, fire, and cable T.V., servicing Subdivision 5621 are hereby authorized to enter upon any Unit whenever installation, maintenance removal of any public utility service requires such entry. The public utilities shall have the right to install, move, remove or run lines in or on any portion of the Common Area including the interior and exterior of any buildings as required to maintain service within the Project, in the public utilities' reasonable discretion.

Section 2. All Units shall be provided with separate utility meters and shut-off valves for such services as gas, electric power, and water.

ARTICLE XV

MECHANICS' LIENS

Section 1. In case there shall be filed a Notice of Mechanics' Lien against the Project for, or purporting to be for, labor or material alleged to have been furnished or delivered at the Project or any Condominium Unit for the Unit Owner, the Unit Owner shall forthwith cause such lien to be discharged by payment, bonding or otherwise. If the Unit Owner shall fail to cause such lien to be discharged by payment, bonding or otherwise within five (5) days from the date of notice from the Board, then the Board may cause such lien to be discharged by payment, bond or otherwise, and shall after obtaining a court judgment therefor, have the right to collect from said Unit Owner all amounts so paid, together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorney's fees.

ARTICLE XVI

DESTRUCTION OF BUILDING

Section 1. If the Project is damaged by fire or other casualty which is insured against and said damage is limited to a single Unit, the insurance proceeds shall be paid to the Owner or Owners of such Unit, or the mortgagees thereof as their respective interests appear, and such Owner or mortgagee shall use the same to rebuild or repair such Unit. In the event such proceeds are insufficient to complete such work, the Unit Owner shall pay and advance such additional sums as may be necessary to complete such rebuilding and repair. If such damage extends to two (2) or more Units or extends to any part of the Common Area, then and in that event:

A. If the insurance proceeds do not exceed the sum of FORTY

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THOUSAND DOLLARS (\$40,000.00), and the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than TEN THOUSAND DOLLARS (\$10,000.00), such insurance proceeds shall be paid to the Board, who shall thereupon contract to repair or rebuild the damaged portion of the property, including all Units so damaged, as well as the Common Area. In the event the insurance proceeds are insufficient to pay all of the costs of repairing and/or rebuilding, the Board shall levy a special assessment against all Unit Owners in proportions as shown on Exhibit "A" - Schedule of Units to make up any deficiency.

Such Special Assessment may not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the vote or written assent of a majority of the voting power of the Association.

B. In the event such insurance proceeds exceed the sum of FORTY THOUSAND DOLLARS (\$40,000.00), or the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than TEN THOUSAND DOLLARS (\$10,000.00), then such insurance proceeds shall be paid to a bank or trust company to be held for the benefit of the Owners and their mortgagees, as their respective interests shall appear, and pursuant to an insurance trust agreement consistent with the provisions of this Declaration, approved and executed by the Board. The Board shall obtain bids from three (3) or more responsible contractors to restore the building to its condition immediately prior to such damage or destruction. The Board shall, within four (4) months of such damage or destruction, call a special meeting of the voting Owners and shall recommend the bid it determines, in good faith, to be the most acceptable. At such special meeting, the voting Owners shall accept or reject the bid by a majority vote. In the event the bid is accepted, the Board shall levy a Special Assessment against all Unit Owners in proportion as shown on Exhibit "A" (Allocation of Assessment, % Per Unit) to make up the deficiency, if any, between the total insurance proceeds on the contract price for such repair and rebuilding, and all insurance proceeds, including any subject to liens or mortgagees or holders of deeds of trust, shall be used for such rebuilding. If such special assessment exceeds five percent (5%) of the budgeted gross expenses of the Association for the fiscal year, then such special assessment must be approved by a majority of the voting power of the Association. If the bid shall be accepted to repair or rebuild, the contractor

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shall provide a completion bond. In the event the bid is rejected, the Board shall review all remaining bids with the voting Owners at such special meeting. In the event all other bids are rejected, the Board shall accept the recommended bid unless by a vote of one-third (1/3) of the voting Owners the Association elects to partition and sell the Project. Upon the election to partition and sell, the Board shall, as agent for all Owners, sell the entire Project, including all Condominiums and the Common Area in its then present condition, on terms satisfactory to the Board. The net proceeds shall thereupon be distributed to the Owners and to the mortgagees of or holders of deeds of trust upon the interests of such Owners, all as their interest may appear in proportion to the value of the units as determined by an appraisal by an independent appraiser retained by the Association to make such a determination. In the event less than fifty percent (50%) of the voting Owners cast votes at the special meeting, the meeting shall be adjourned and the Board shall accept the recommended bid.

ARTICLE XVII

TERM OF COVENANTS, CONDITIONS AND RESTRICTIONS

Section 1. The provisions of these Covenants, Conditions and Restrictions shall run with and bind the land and be effective for a period of fifty (50) years from October 3, 1980, after which time this Declaration shall be automatically extended for successive periods of ten (10) years until a majority vote of the Unit Owner shall determine that it shall terminate. In the event that such a determination to terminate said Declaration is made, then such termination shall be effected by the recordation by the Board of Directors in the Official Records of the County in which the Project is located appropriate duly executed notice of any such termination.

ARTICLE XVIII

RIGHTS OF FIRST MORTGAGEES

Section 1. Notwithstanding contrary or conflicting provisions contained in other articles of this Declaration:

A. The first mortgagee of any dwelling unit may, by written notice to the Association, request written notice of any default by the mortgagor of such Unit in the performance of such mortgagor's obligations to pay assessments under this Declaration within thirty (30) days. Such request shall state the name and mailing address of the mortgagee, the name of the mortgagor, the

date of recording of the mortgage and the official records book and page number, file number or other reference identifying such recording, and such request shall also contain a reference to this section of this Declaration. Each notice of default given pursuant to such request may be sent by regular mail, postage prepaid, addressed to the mortgagee at the address stated in such request.

B. Any first mortgagee who comes into possession of a Unit pursuant to the remedies provided for in the mortgage, or foreclosure of the mortgage shall be exempt from any existing right of first refusal of any party as to the purchase of such Unit from the mortgagor thereof, provided, however, any first mortgagee who comes into possession of a Unit must comply with any restrictions then in effect upon sale or lease of a Unit.

C. Any first mortgagee who comes into possession of a Unit pursuant to the remedies provided in the mortgage or upon foreclosure of the mortgage, shall take the Unit free of any claims for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such mortgagee comes into possession of the Unit, provided, however, any first mortgagee who comes into possession of a Unit covenants to pay assessments levied after such mortgagee comes into possession, including an assessment for a pro-rata allocation of such unpaid assessments to all Units within the Project.

D. Unless at least seventy-five percent (75%) of the first mortgagees (based upon one (1) vote for each mortgage owned) or Owners (other than Declarant) of Units within the Project have given their written approval, the Association shall not be entitled to:

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

(2) Change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rate share of ownership of each Unit in the Common Area.

(3) By act or omission change, waive or abandon any scheme of

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regulations, or enforcement, thereof, pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the project and Common Areas.

(4) Fail to maintain fire and extended coverage on insurable common area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs).

(5) Use hazard insurance proceeds for losses to the project (whether to Units or to the Common Area) for other than the repair, replacement or reconstruction of the same, except as provided by statute in cases of substantial loss to the Units and/or common area of the project.

(6) Partition or subdivide any condominium unit;

(7) By act or omission, seek to abandon or termination of the condominium project.

E. First mortgagees shall have the right to examine the books and records of the Association, upon reasonable advance request in writing.

F. Should the Association fail to pay insurance premiums or cause a lapse of insurance coverage for common areas and or property covered by insurance which the Association caused to lapse, first mortgagees of Units in the project may, jointly or singularly, pay overdue premiums on such hazard insurance policies, or secure new hazard insurance coverage. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

G. First mortgagees, to the extent of the indebtedness, shall be entitled to priority over any Unit owner or any other party in and to any distribution of insurance proceeds or condemnation awards which may become available for distribution to Unit Owners or the Association.

H. The Federal Home Loan Mortgage Corporation shall receive notice (in care of Servicer at Servicer's address) from the Homeowners Association of any taking or loss of: (1) the Common Area when such loss or taking shall exceed the value of TEN THOUSAND DOLLARS (\$10,000.00), or (2) damage to a Condominium Unit in excess of ONE THOUSAND DOLLARS (\$1,000) covered by a mortgage purchased in whole or in part by Federal Home Loan Mortgage Corporation.

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I. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual condominium Units and not to the Condominium Project as a whole.

ARTICLE XVIV

AMENDMENTS

Section 1. This Declaration may be amended by affirmative vote or written consent of not less than sixty percent (60%) of the its Members after first obtaining the written consent of the City of Concord, which amendment shall be effective upon recordation in the Office of the County Recorder, but no such amendment shall affect the rights of the holder of any deed of trust or mortgage recorded prior to the recordation of such amendment.

ARTICLE XX

CONSTRUCTION OF PROVISIONS

Section 1. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project pursuant to the provisions of Section 1350 et seq. of the Civil Code of the State of California. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provisions of any other provision hereof.

ARTICLE XXI

ANNEXATION - MERGER - CONSOLIDATION

Section 1. Any additional lands to be annexed to the existing Subdivision, or any action to merge or consolidate the Association with another Association, shall require the vote or written assent of not less than two thirds (2/3) of the total voting power of the Membership.

ARTICLE XXII

BINDING

Section 1. This Declaration shall be for the benefit of and be binding upon all Unit Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators.

ARTICLE XXIII

SEVERABILITY OF PROVISIONS

Section 1. The provisions hereof shall be deemed independent and severable. Invalidation of any one of these covenants, conditions, and restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

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ARTICLE XXIV
ENFORCEMENT

Section 1. The Association, or any Owner or the City of Concord as a third party beneficiary, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservation, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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ARTICLE XXV
GENDER, NUMBER AND CAPTIONS

Section 1. As used herein, the singular shall include the plural and the masculine shall include the feminine. The titles and captions of each paragraph hereof are not a part hereof and shall not affect the construction or interpretation of any part hereof.

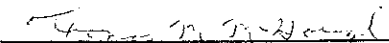
The sale of any Unit shall not be prevented because of race, religion, age, sex, or family composition of any potential buyer.

IN WITNESS WHEREOF, we, Members of Diablo South Homeowners Association, being at least seventy-five percent (75%) of all Unit Owners of Diablo South Homeowners Association, a California non-profit mutual benefit corporation, hereby affirm and approve the foregoing amended Declaration of Conditions, Covenants, and Restrictions of Diablo South Homeowners Association, in accordance with Paragraph 20 of the Declaration of Covenants, Conditions, and Restrictions, dated September 16, 1980, and recorded October 3, 1980, as series #131524, Contra Costa County Official Records, by means of the signatures of the President and Secretary of Diablo South Homeowners Association, duly authorized by the aforesaid CC&R's pursuant to written ballot by at least 75% of the non-developer Members; and which Amended Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder, Contra Costa County, California.

DATED: JULY 24, 1986.

DIABLO SOUTH HOMEOWNERS ASSOCIATION

By: 
President

By: 
Secretary

State of California)
) ss
County of Contra Costa)

On this 24th day of July, 1986, before me, the undersigned Notary Public in aforesaid County, personally appeared ROBERT G. BEUKER and THOMAS M. MCGOUGH personally known to me or proven to me on the basis of satisfactory evidence to be the President and Secretary, respectively of Diablo South Homeowners Association and acknowledged to me that they executed the within amended Declaration of Covenants, Conditions and Restrictions on behalf of at least seventy-five percent (75%) of the Members of said Homeowners Association whose written consent was first had and obtained pursuant to the Declaration of Covenants, Conditions and Restrictions of said Homeowners Association recorded on October 3, 1980 as Instrument No. 13524, Contra Costa County Official Records.

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[Signature]
Notary Public



FORM APPROVED BY CITY OF CONCORD

Harold R. Wail, Deputy City Attorney

DATED: Sept. 11, 1986.

(Name)

(Title)

[Seal]