

# *Forest Glade Estates*

## **Declaration of Covenants, Conditions and Restrictions**

A. David S. Madis, Melania W. Madis, James McGlinchey, William McGlinchey, Mary McGlinchey, Joseph A. McGlinchey, Catherine McGlinchey (herein after called "Declarant") is the owner of all that certain real property located in City of Livermore, county of Alameda, State of California, commonly known as Forest Glade Estates, California, and more particularly described as follows: Lots 1 through 55 inclusive, Lots 57 through 70, inclusive, Tract 4138, filed March 26, 1979, in Map Book 108 at pages 31-71, Alameda County Records.

B. The project is being developed by Declarant as a Planned Development in accordance with the applicable laws of the State of California;

C. Declarant intends to impose upon the property mutually beneficial restrictions under a general plan of improvements for the benefit of the property and the owners thereof;

NOW THEREFORE, Declarant hereby declares that the Subject Property 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 said property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the real property and every part thereof. All of the limitations, covenants, restrictions and conditions 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 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. Each and all of the said limitations, easements, used, obligations, covenants, conditions, and restrictions shall be deemed to be, and shall be construed as equitable servitudes, enforceable by any of the owners of any of the individual units against any other owner, tenant, or occupant of the property, or any portion thereof.

### **1. DEFINITIONS:**

Unless the context clearly indicates a different meaning therefore, the terms used herein shall have the meaning given to them in the deed, the Tract Map and as hereinafter defined as follows:

1.1 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for the Planned Unit Development of Forest Glade Estates, Tract 4138, Livermore, California.

1.2 "Subject Property" and "the project" shall mean and refer to that certain real property described as follows:

Lots 1 through 55, inclusive, Lots 57 through 70, inclusive, Tract 4138, filed March 26, 1979 in Map Book 108 at pages 87-91, Alameda County Records, and all other real property, which may become subject to this Declaration.

1.3 "Common Area" shall mean and refer to Lot #23 as shown on the Tract map of the Subject Property and intended to be devoted to the common use and enjoyment of the owners and other to other than exclusively residential use. Common Area shall include all facilities, and improvements located within the Common Area, including paving, sidewalks, parking areas, sewers.

1.4 "Association" shall mean and refer to the Forest Glade Estates Homeowners Association, an unincorporated nonprofit association its successors and assigns, under the laws of the State of California, to own, manage and operate the Common Area.

1.5 "Declarant" shall mean and refer to its successor or assigns should they acquire more than one undeveloped lot from the declarant for the purpose of development.

1.6 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Subject Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.7 "Lot" shall mean and refer to any plot of land whether vacant or improved shown upon any Tract map of the Subject Property with the exception of the Common Area.

1.8 "Mortgage" shall mean a deed of trust as well as a mortgage.

1.9 "Mortgagee" shall mean a beneficiary under or holder of a deed of trust as well as a mortgagee.

1.10 "Board" shall mean the Board of Directors of the Association.

1.11 "Maintenance" shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting, and other related improvements and fixtures in a condition comparable to their original condition, (normal wear and tear excepted.) Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weed free environment for optimum plant growth.

## **2. MEMBERSHIP IN ASSOCIATION AND VOTING RIGHTS.**

2.1 Every owner of a lot shall be a member of the Association, provided that any person who holds such interest merely as security for the performance of any obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any lot.

2.2 The Association shall have two classes of voting membership:

CLASS A - Class A members shall be all owners, with the exception of the declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

CLASS B - The Class B members shall be the Declarant who shall be entitled to three (3) votes for each lot owned which has been made part of the Subject Property. The Class B membership shall cease forever and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership;

(b) upon the second anniversary of the issuance of the most recent public report issued by the California Department of Real Estate, or

(c) June 30, 1980.

2.3 Any vote may be cast by an owner in person or by proxy. All proxies shall be in writing, dated and

signed by the member(s) and filed with the Secretary of the Associates before commencement of any meeting. No proxy shall extend beyond a period of eleven (11) months, and every proxy automatically cease upon conveyance by the owner(s) of his lot or upon the death or legally declared incapacity of any member that executed the proxy.

2.4 Regular meeting of members of the Association shall be held not less frequently than once each calendar year at a time and place prescribed by the by-laws. The first annual meeting of the Association shall be held upon the earlier occurrence of (1) within 45 days after the closing of the sale of the subdivision interest which represents the 51st percentile interest authorized for sale under the first public report for (i.e. 36 lots) or (2), six months after the closing of the sale of the first subdivision interest.

2.5 All meetings of the Association shall be held within the project or at a meeting place in Alameda County as close thereto as possible.

2.6 A special meeting of the members of the Association called by the Board upon:

(a) the vote for such a meeting by a majority or a quorum of the Board;

(b) receipt of a written request therefore signed by members representing not less than 25% of the total voting power of the Association or by representing not less than 15% of the voting power residing in the Class A members.

2.7 Written notice of regular and special meeting of the Association shall be given to each member by mail by the Secretary of the Association. Except in emergency situations, at least 10 days notice of any meeting shall be provided. The notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken.

2.8 A quorum for the transaction of business at a meeting of members of the Association through presence in person or by proxy shall be 50% of the voting power of each class of the Association. In the absence of a quorum at a meeting of the Association, a majority of those present in person or by proxy may adjourn the meeting to another times but may not transact any other business. An adjournment for lack of a quorum shall be to date not less than five days and not more than thirty days from the original meeting date. The quorum for such meeting shall be 25% of the voting power of each class of the Association.

2.9 The first election of the Board shall be conducted at the first regular meeting of the Association. All positions of the Board shall be filled at that election.

2.10 Cumulative voting in the election of members shall be prescribed for all elections in which more than two positions on the Board are to be filled. Voting for the Board shall be by secret written ballot. Unless the entire Board is removed from office by the vote of Association members, an individual Board member shall not be removed prior to the expiration of his term of office if the number of votes cast against his removal is greater than the quotient arrived at by dividing the total number of votes that may be cast under cumulative voting procedures by a divider equal to 1 plus the authorized number of Board members.

2.11 At least one representative of the Board shall be elected solely by the votes of the Class A members. A Board member who has been elected to office solely by the votes of the Class A members may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in the Class A members.

2.12 At each annual meeting the members shall elect five directors for a term of one year; directors shall serve concurrently. Cumulative voting is permitted for the election of all directors.

### **3. MAINTENANCE: ASSESSMENTS**

3.1 The declarant, for each lot owned as set forth above, hereby covenants and each owner of any lot, by acceptance of a deed therefore whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual Assessment or charges; and

(b) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

3.2 Assessments collected by the Association shall be used to pay for the following:

(a) A policy or policies insuring the Board, the owners, and any manager appointed as hereinafter provided, against any liability to the public or to the owners (of lots and of the Common Area), and their invitees, or tenants, incident to the ownership and/or use of the subject Property, and including the personal liability exposure of the owners. Limits of liability under such insurance shall not be less than Three Hundred Thousand Dollars (\$300, 000.) for any one person injured, Five Hundred Thousand Dollars (\$500,000.) for any one accident and Fifty Thousand Dollars (\$50,000.00) for property damage for each occurrence (such limits and coverage to be reviewed at least annually by the Board and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall be cross-liability endorsed so that the rights of named insureds under the policy or policies shall not be prejudiced as represents his, her or their action against another named insured;

(b) Workmen's Compensation insurance to the extent necessary to comply with any applicable laws;

(c) The services of a person or firm to manage its affairs (herein called "the Manager") to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine shall be necessary or proper for the performance of its functions or operation of the Subject Property, whether such personnel are employed directly by the Board or are furnished by the Manager;

(d) Legal and accounting services necessary or proper in the operation of the Subject Property or the enforcement of this Declaration;

(e) If the Board deem it advisable, a fidelity bond naming the Manager, and such other persons as may be designated by the Board as principals and the owners as obligees, for the first year in an amount at least equal to the estimated cash requirement for that year as determined by the Board, and for each year thereafter in an amount at least equal to the total sum collected through the maintenance fund during the preceding year;

(f) Maintenance and repair of the private street, sidewalks, storm drains, sanitary sewers, driveway and walkways lying within the Common Area and the landscaped medians lying within the public street;

(g) Any other materials, supplies, labor, services, maintenance, repairs, alterations, insurance taxes or assessments which the Board is required to secure or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation of the Common Area or for the enhancement of this Declaration;

(h) Any amount necessary to discharge any lien or encumbrance levied against the entire property or

any part thereof which say in the opinion or the Board constitute a lien against the Common Area, rather than merely against the interests therein of particular owners, provided that where one or more owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost or discharging it any costs incurred by the Board by reason of said lien or liens shall be specially assessed to said owners;

(i) To the extent not assessed to or paid directly by the owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Common Area or other property owned by the Association;

(j) To maintain (1) street islands, landscaping, and irrigation; (2) Common Areas and (3) drainage ditches along rear lot lines in perpetuity.

3.3 Water, gas, electrical, cable television and telephone service for each house and lot shall be paid for by the owner thereof.

### 3.4 UNIFORM ASSESSMENTS

Annual and special assessments shall be fixed at a uniform rate for all lots in the Subject Property and shall be collected on a monthly basis.

3.5 Within sixty (60) days prior to the beginning of each calendar year the Board shall estimate the net charges to be paid during such year including a reasonable provision for contingencies and replacements and less any expected income and any allocated surplus from the prior year's fund. Such estimated cash requirements shall be assessed to the owner of each lot. Declarant shall be liable for payment of any assessment against Lots owned by Declarant, subject to provisions hereof. If said sum estimated proves inadequate for any reason, including payment of any owner's assessment the Board may at any time levy a further assessment, which shall be assessed in like proportion, subject to the following:

(a) The Board may not impose a regular assessment on each lot which is greater than 12% of the regular assessment for the preceding year without the vote or written consent of a majority of the voting power of each class of membership;

(b) The Board may not levy a special assessment, which in the aggregate exceeds 5% of the budgeted gross expenses of the Association for that fiscal year.

3.6 Assessments made pursuant to this paragraph shall be paid to the Board in equal monthly installments on or before the first day of each month during such year, or in other reasonable manner as the Board shall designate.

3.7 The rights, duties and functions of the board set forth in this paragraph may be exercised by Declarant for the period ending thirty (30) days after the election of the first period ending thirty (30) days after the election of the first Board hereunder, at the option of the first elected Board.

3.8 All funds collected hereunder shall be expended for the purposes designated herein.

### 3.9 SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.

In addition to the annual and special assessments authorized above, the Association may levy, in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of 51% of the voting power of each class of member of the Association (and, after the expiration of class B, 51% of the voting power of members other than the Declarant).

#### NOTICE AND QUORUM FOR MEETING FOR ASSESSMENTS.

Written notice of any meeting of the members of the Association at which an assessment is to be made shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast 50% of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another seating may be called subject to the meeting notice requirement and the required quorum at the subsequent meeting shall be half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following preceding meeting.

#### 3.10 DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES.

The regular assessments provided for herein shall commence as to all lots in the Subject Property on the first day or the month following the close of escrow of the first lot in the Subject Property. Until the commencement of assessments, Declarant shall maintain the improvements on the Common Area in good condition and repair at its own expense. Declarant and its successor in interest, if any, is an owner subject to the payment of regular and special assessments against lots, which it owns.

#### 3.11 DEFAULT IN PAYMENT OF ASSESSMENTS.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against owner personally obligated to pay the same, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his lot. Each of the Lot owners hereby grants and appoints the Board as trustee to enforce such lien and foreclose such lien by private power of sale as provided in Title XLV Chapter 2, Article I of the Civil Code of the state of California - and the authority and power to sell the lot of such defaulting lot owner, or any part thereof, to satisfy said lien, for lawful money of the United States to the highest bidder. Such lien and the right to foreclose the same shall be in addition to and not in substitution for all other rights and remedies which the owner and the Board of Directors may have to enforce provisions hereof.

3.12 A certificate executed and acknowledged by the Treasurer stating the indebtedness secured by the lien upon any lot created hereunder shall be conclusive upon the owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any owner upon request at a reasonable fee, not to exceed fifteen dollars (\$15.00).

3.13 The Board of Directors of the Association may not, without the vote or written assent of a majority of the voting power of the Association residing in members other than the subdivider, impose a regular annual assessment per subdivision interest which is more than 20% greater than the regular assessment for the immediately preceding fiscal year.

3.14 In any fiscal year, the Board of Directors of the Association may not, without the vote or written assent of a majority of the voting power of the Association residing in members other than the subdivider, levy special assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year.

3.15 Every general special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments.

3.16 The above provisions with respect to the special assessments do not apply in the case where the special assessment against a member is a remedy utilized by the Board of Directors to reimburse the Association for costs incurred in bringing the member and his subdivision interest into compliance with provisions of the governing instruments for the subdivision.

#### 4. POWERS AND DUTIES OF THE BOARD.

(a) The powers and duties of the Board shall include, but shall not be limited to, the following:

(1) Enforcement of applicable provisions of the CC&R's, Articles, Bylaws and other instruments for the ownership, management and control of the subdivision.

(2) Payment of taxes and assessments, which are, or could become, a lien on the common area or a portion thereof.

(3) Contracting for casualty, liability and other insurance on behalf of the Association.

(4) Contracting for goods and/or services for the Common areas, facilities and interests or for the Association subject to the limitations set forth below.

(5) Delegation of its powers to committees, officers or employees of the Association as expressly authorized by the governing instruments.

(6) Preparation of budgets and financial statements for the Association as prescribed in the governing instruments.

(7) Formulation of rules of operation of the common areas and facilities owned or controlled by the Association.

(8) Initiation and execution of disciplinary proceedings against members of the Association for violations of provisions of the governing instruments in accordance with procedures set forth in the governing instruments.

(9) Entering upon any privately owned subdivision interest as necessary in connection with construction, maintenance or emergency repair for the benefit of the common area or the owners in common.

(b) The Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of each class of the voting power of the Association (and after the conversion of class B to Class A membership, the vote or written assent of a majority of the voting power of the entire Association which shall include the vote or written assent of a majority of members other than the Declarant):

(1) 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:

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

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

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

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

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

(4) 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.

## **5. MORTGAGE PROTECTION.**

Notwithstanding any provision to the contrary:

5.1 The liens created hereunder upon any lot shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value; provided, however, that after the foreclosures of any such mortgage a lien may be again created pursuant to Paragraph 3.11 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same affect and be enforced in the same manner as provided herein:

5.2 No amendment of this paragraph shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof;

5.3 By subordination agreement executed by a majority of the Board, the benefits of 5.1 and 5.2 above may be extended to mortgages not otherwise entitled thereto.

## **6. PROPERTY RIGHTS OF OWNERS AND ASSOCIATION.**

6.1 Declarant hereby covenants declares that all areas designated Area as hereinbefore defined shall be conveyed to the Association prior to the conveyance of any lot in the Subject property by a grant deed free and clear of all liens and encumbrances except the lien of current taxes and assessments and restrictions of record and legal highways or rights of way.

6.2 Every member of the Association shall have a right and assessment of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to said member's lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights of an owner for any period during which assessment against his lot remains unpaid (Subject to Section 12, below);

(b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for purposes subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded; provided, that during the development and construction of the planned unit development on file with Alameda County or approved modifications thereof.

6.3 Any owner or member of the Association may delegate in accordance with the by-laws, his right of enjoyment to the Common Area and Facilities to the members of his family, his tenants, or contract purchaser who reside on the property, subject to all management documents of the Association.

6.4 There shall be no judicial partition of the Subject Property of any part thereof, nor shall Declarant or



any person acquiring any interest in the Subject Property or any part thereof seek any such judicial partition, until the happening of the conditions set forth In Paragraph 13 hereof; provided, however, that if any lot shall be owned by two or more co-tenants as co-tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants.

## **7. USE OF THE SUBJECT PROPERTY.**

The lots and Common Area shall be occupied and used as follows:

7.1 Each lot shall be used for residential purposes by the owner, his lessees, or guests, and for no commercial business, or other purposes; provided however, that Declarant may use any of the lots owned by Declarant at any time as sales models until all lots are sold.

7.2 Those portions of the Common Area which are improved for a private street shall be used exclusively for a roadway for vehicles of all kinds, pedestrians and animals and shall not be used for residential or commercial purposes.

7.3 There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board except in designated parking spaces.

7.4 Nothing shall be done or kept in any lot or in the Common Area which will increase the rate of insurance on the Common Area or any part of the Subject Property without the prior written consent of the Board. No owner shall permit anything to be done or kept on his lot or in the Common Area, which will result in the cancellation of insurance on any Lot or any part of the Common Area, or which would be in violation of any law; no waste will be deposited in the Common Area. No gasoline, kerosene, cleaning solvents or other flammable liquid shall be stored however, that reasonable amounts in metal containers may be stored in garage areas.

7.5 No sign of any kind shall be displayed to the public view on or from any Lot of the Common Area, without the prior consent of Board; provided, however, that nothing herein shall be deemed to prohibit the display of signs of customary and reasonable advertising any lot for sale; and provided further, that Declarant shall have the right to maintain nonmoving signs in connection with the operation of its model units and the conduct of selling activities in connection therewith until all lots are sold.

7.6 No noxious or offensive activity shall be carried on in any house or lot or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other owners;

7.7 Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board.

7.8 Parking spaces shall be used solely for parking and storage of noncommercial passenger motor vehicles, except as otherwise permitted by the Board, and no such area shall be used for major repair, construction or reconstruction of any vehicle, boat or any other item or things: (temporary emergency repairs are not prohibited).

7.9 None of the rights and obligations of the owners created herein shall be altered in any way by encroachments due to settlement or shifting of structures or any other causes. There shall be valid easements for the maintenance of said encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the willful conduct of said owner or owners after conveyance of that lot by Declarant:

7.10 Except as shown on the final planned unit development as approved by the City of Livermore the Subject Property, or any city approved modification thereof;

(a) No mast, towers, poles, or antennas, including but not limited to antennas used for radios, television, FM radio or AM radio, shall be erected or maintained upon any lot or house or other structure erected thereon; and

(b) No fence, wall or hedge higher than six (6) feet shall be erected or maintained on any lot;

(c) No lot shall have constructed thereon a house, exclusive of a garage, which shall have less than 1600 square feet of living area.

(d) Lots must be maintained in accordance with reasonable community standards.

7.11 All landscaping shall be installed and maintained solely by the lot owners.

7.12 No boats, campers or house trailers shall be stored within the 20 foot front yard setback or in such a manner as to be visible from the street.

7.13 Facilities in the Common Area shall be used only in conformance with the written rules adopted by the Board, upon payment of the fees or deposits required by such rules. The Board is authorized to impose fines of up to Fifty Dollars (\$50.00) each for violations of its rules, after notice and a hearing before the Board.

7.14 Each owner shall be responsible for compliance with the provisions hereof by his guests and lessees.

## **8. OWNERS' OBLIGATIONS TO REPAIR.**

Except for those portions which the Board is required to maintain and repair hereunder each owner shall, at his sole cost and expense, maintain and repair his house and lot, keeping the same in good condition.

## **9. DAMAGE AND DESTRUCTION.**

If any of the Common Area is damaged, all insurance proceeds shall be used to rebuild or repair such improvements in accordance with the original plans and specifications therefore.

9.1 If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than Two Thousand Dollars (\$2,000.00) such insurance proceeds shall be paid to the insurance trustee designated in the same manner as set forth in paragraph 9.2 (a). The Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area, in accordance with the original plans and specifications therefore and the funds held in the insurance trust fund shall be used for this purpose. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Board shall levy a special assessment on all owners to make up any deficiency.

9.2 If subparagraph 9.1 is inapplicable, then:

(a) All insurance proceeds shall be paid to a bank or trust company designated by the Board to be held for the benefit of the owners and their mortgagees as their respective interests may appear. The Board is authorized to enter on behalf of the owners into such agreement, consistent with these restrictions, with such insurance trustee, relating to its powers, duties and compensation, as the Board may approve.

(b) The Board shall obtain firm bids (including an obligation to obtain a performance bond) from two or more responsible contractors to rebuild the improvements of the Common Area in accordance with

its original plans and specifications and shall, as soon as possible thereafter, call a special meeting of the owners to consider such bids. If the Board fails to do so within sixty (60) days after the casualty occurs, any owner may obtain such bids, and call and conduct such meeting as herein provided (failure to call such meeting, or to repair such casualty damage, within twelve (12) months from the date such damage occurred shall be deemed for all purposes a decision not to rebuild said common improvement). At such meeting, the owners may by sixty-six and two-thirds percent (66 2/3%) vote elect to reject all of such bids shall authorize the Board to accept the unrejected bid it considers most favorable;

(c) If a bid is to be accepted, the Board shall levy a special assessment, equally apportioned for each lot, to make up any deficiency between the total insurance proceeds and the contract price for such repair or rebuilding, and such assessment and all insurance proceeds whether or not subject to liens of mortgagees, shall be paid to said insurance trustee to be used for such rebuilding. If any owner shall fail to pay the special assessment within thirty (30) days after the levy thereof, the Board shall make up the deficiency by payment from the maintenance fund. Upon payment, the Board shall let the contract to the successful bidder:

(d) Upon an election not to rebuild, the Board, as soon as reasonably possible and as agent for the owners, shall sell the entire Common Area in its then condition, free from the effect of this Declaration, which shall terminate upon such sale, on terms satisfactory to the Board. The net proceeds, and all funds held by said insurance trustee, shall thereupon be distributed to the owners in proportion to the interest of each owner in the Common Area, and to the mortgagees of the owners, as their interests may appear;

9.3 Within sixty (60) days after any such damage occurs, the Board, or if they do not, an owner, the insurer, the insurance trustee, or any mortgagee of any owner, shall record a sworn declaration setting forth such decision and reciting that under the provisions of this Declaration the prohibition against judicial partition of the project may be obtained pursuant to section 1354 of the Code of Civil Procedure of the State of California or Section 66499.21 of the Subdivision map act. Upon final judgment of a court of competent jurisdiction decreeing such partition, these restrictions shall terminate;

9.4 Mortgagees shall be notified of any such damage to the Common Area. The Common Area may not be abandoned by the Association unless approved by 75% of the mortgagees on the basis of one vote per lot.

## **10. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS OF COMMON AREA.**

There shall be no structural alterations, capital additions to or capital improvements of the Common Area without the prior approval of owners holding a majority or votes of each class of membership.

## **11. PROPERTY BUDGETS AND FINANCIAL RECORDS.**

11.1 Financial statements for the Association shall be regularly prepared and copies shall be distributed to each member as follows:

(a) A pro forma operating statement (budget) for each fiscal year shall be distributed not less than 60 days before the beginning of the fiscal year.

(b) A balance sheet as of an accounting date which is the last day of the month closest in time to six months from the date of closing of the first sale of an interest in the subdivision and an operating statement for the period from the date of the first closing to the said accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the subdivision interest and the name of the entity assessed.

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

11.2 An external audit by an independent public accountant shall be required for fiscal year financial statements (other than budgets) for any fiscal year in which the gross income to the Association exceeds \$75,000.00

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

(a) Notice to be given to the custodian of the records by the member desiring to make the inspection.

(b) Hours and days of the week when such an inspection may be made.

(c) Payment of the cost of reproducing copies or documents requested by a member.

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

## **12. ENFORCEMENT.**

12.1 The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, condition, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Notwithstanding anything herein to the contrary.

12.2 The Association may not cause a forfeiture or abridgment of any owners rights to the full use and enjoyment of his individually owned interest on account of a failure by the owner to comply with provisions of the governing instruments or of duly enacted rules or operation for common areas and facilities except where the loss of forfeiture is the result of the judgment of a 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: provided, further,

12.3 The Board may impose monetary penalties, temporary suspensions of an owner's rights as a member of the Association or other appropriate discipline for failure to comply with the governing instruments provided that the accused is given at least 30 days written notice and the opportunity to be heard by the Board with respect to the alleged violations before a decision to impose discipline is reached.

12.4 All conditions shown on the recorded subdivision map shall apply to all lots, building plots and buildings constructed thereon and such conditions shall be enforced by the Association.

## **13. SEVERABILITY.**

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

## **14. RIGHTS OF FIRST MORTGAGEES.**

Notwithstanding contrary or conflicting provisions contained in other articles of this declaration.

14.1 The first mortgagee of any Lot may, by written notice to the Association, request written notice of any default by the mortgagor of such house and lot in the performance of such mortgagor's obligations 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 amid the official records book and page number, file number or other reference identifying such recording, and the lot number of the project encumbered by said mortgage; and such request shall also contain a reference to this Article 14, of the declaration of covenants, conditions and restrictions for said project. Each notice of default given pursuant to such request may be sent by regular mail, postage prepaid, addressed to the mortgages at the address stated in such request.

14.2 Any first mortgagee who comes into possession of or title to a Lot pursuant to the remedies (other than a deed in lieu of foreclosure) 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 house and lot from the mortgagor thereof. Any first mortgagee who obtains title to a house and lot pursuant to foreclosure of the mortgage shall be liable for all assessments as they accrue on and after the date said mortgages acquires title. Successors in interest are otherwise liable for delinquent assessments, whether or not a lien has been filed.

14.3 Unless at least seventy-five percent (75%) of the first mortgagees (based on one (1) vote for each mortgage) of lots within the Subject Property have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by Association for the benefit of the lots in the Subject Property; (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Subject Property shall not be deemed a transfer within the meaning of this clause);

(b) Change the method or determining the obligations, assessments, dues or other charges, which may be levied against an owner;

(c) By act or omission change, waive or abandon any scheme or regulation, or enforcements thereof, pertaining to the architectural design or the exterior appearance of houses, the maintenance of party walls or common fences and driveways, or the upkeep of lawn and plantings in the Subject Property;

(d) 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 cost);

(e) Use hazard insurance proceeds for losses to any common area for other than the repair, replacement or reconstruction of such improvements.

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

14.5 Nothing herein or any other instrument relating to the subject Property gives any owner of any lot or other party priority over any rights of first mortgagees pursuant to their mortgages, in the case of a distribution to such lot owners or insurance proceeds or condemnation awards for losses to or taking of common property in the Subject Property.

14.6 Association assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments.

14.7 The terms "mortgage", "mortgagor", and "mortgagee" as used in this Article shall include, respectively a deed of trust and the trustor and beneficiary there under.

**15. INTERPRETATION.**

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 Planned Unit Development. Failure to enforce any provisions hereof shall not constitute a waiver of the right to enforce said provisions or any other provision hereof.

**16. AMENDMENT.**

Except as otherwise provided herein, the provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by record owners holding seventy-five percent (75%) of the voting power of each class of members; except that after the expiration of Class B membership, an amendment shall require the assent of 75% of the total voting power of the Association which shall include at least 51% of the voting power of members other than declarant. Amendments shall be effective upon recordation in the office of the Recorder of the County of Alameda.

**17. RULES FOR COMMON AREA.**

The Board may, from time to time, propose such rules as it deems necessary for the management and control of the common area, which rules shall become effective and binding upon all members of a lot after vote or written assent fifty percent (50%) of the voting power of each class of members at a meeting called for that purpose. A copy of rules so adopted shall be furnished to each member, and each member, his family, guests, employee, invitees, licensees, or tenants, shall comply with such rules. In the event of breach of any such rules by any member, his family, guests, employees, invitees, licensees, or tenants, the board for and on behalf of all other owners may take such steps, legal or otherwise, as may be deemed appropriate to enforce compliance with such rules. The Board may adopt use charges to be imposed upon members and or non-members (i.e. the public) for use of the common facilities, except that no charge may be made for use of any private roadway maintained by the Association.

**18. PURCHASES FOR COMMON AREA.**

At any regular or special meeting of the members or owners, the Board may be authorized to purchase fixtures for use in or on the common area, provided that if the cost of said fixtures will be in excess of two hundred dollars (\$200.00), the authorization for such purchase must be by the affirmative or written assent vote of at least fifty percent (50%) of the voting power of each class of membership. The cost of any such fixtures, purchase of which is so authorized, shall be paid from the Association funds and/or the Board may levy a special assessment to cover said cost.

**19. TERM**

These covenants are to run with the land and shall be binding on all parties all persons claiming under them for a period of thirty-five years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants, in whole or in part.

**20. ADDITIONS TO PROPERTY SUBJECT TO THIS DECLARATION.**

Real property located in the County of Alameda, State of California, in addition to the Subject Property may be made subject to this Declaration in any or all of the following circumstances: Upon prior written approval by two-thirds of the then existing members of each voting class of the Association and as provided in this Declaration, the owner of any property who is desirous or subjecting it to the scheme of this Declaration (and

thereby to the jurisdiction of the Association) may file of record in the Office of the County Recorder of the County of Alameda, State of California, Declaration of Annexation, which filing shall, upon the date thereof, extend the scheme of the covenants, and restrictions of this Declaration (and the jurisdiction of the Association) to such property. Such Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any of the added properties, as are not inconsistent with the scheme of this Declaration, and as are given such prior written approval.

20.1 Upon the prior written approval by two-thirds of the then existing voting members of each class of the Association, (two-thirds of owners other than Declarant after expiration of Class B membership), upon a merger or consolidation of the Association with another association, as provided in this Declaration of the Association, its properties, rights and obligations all thereby be transferred to such other surviving association or to the consolidated association, or alternatively, the properties, rights and obligations of such other association shall by such merger be transferred to and added to the properties, rights and obligations of the Association as the surviving corporation pursuant to such merger. The surviving or consolidated association may administer the covenants and restrictions, and exercise the rights of the Association, established by this Declaration as to the Subject Property (and such other real property subjected to this Declaration in the manner provided in this Paragraph 22 and prior to such merger or consolidation), together with the covenants restrictions and rights established upon and as to any other properties, as one scheme. Except as otherwise provided in this Declaration, no such merger or consolidation shall effect any revocation of, addition to or other modification of this Declaration, or any provision thereof.

## **21. LIMITATION OF RESTRICTIONS ON DECLARANT.**

Declarant is undertaking the work of completing the project. The Completion of that work and the sale, rental and other disposition of said lots is essential to the establishment and welfare of the Subject Property as a residential community. In order that Declarant may complete said work, sell, lease, or otherwise dispose of each and all of the lots upon the Subject Property, and establish the Subject Property as a fully occupied, residential community as rapidly as possible, the Declarant and its contractors, sub-contractors, and representatives shall have the right to enter upon the Subject Property or any portion thereof for the purpose of completing improvements, for the performance of necessary repair work, and/or for entry onto adjacent property in connection with the development of additional phases of the overall project. Any exercise of this easement right shall be after prior notice to the Association, and Declarant and/or successors shall be obligated to repair any damage done to an individual lot and/or successors shall be obligated to repair any damage done to an individual lot and/or the common area in the exercise of this easement right. This right shall terminate upon (1) the conveyance of all lots and (2) the expiration of all warranty periods. The Declarant may reenter the project to make repairs upon the request of any individual lot owner, the Association, or the City.

## **22. ARCHITECTURAL CONTROL.**

22.1 No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Approval shall be as provided in Paragraph 22.6 hereof.

22.2 The Architectural Control Committee is composed of:

David S. Madis  
1011 Geneva St., Livermore  
Christopher C. Cornett  
2835 Pardee Pl., Livermore

Daniel C. Spruiell  
1900 Buena Vista, Livermore  
Marion W. Spruiell  
2699 Regent Rd., Livermore

A majority of the committee may designate a representative to act for it. Neither the members of the committees nor its designated representative shall be entitled to any compensation for service performed pursuant to these covenants.

22.3 The Declarant may appoint all replacements to this committee, until the first anniversary of the issuance of a public report for the subdivision. The Declarant shall have the power to appoint a majority of the members of the committee until 90% of all the subdivision interests in the overall development have been sold or until the anniversary of the issuance of the final public report for the subdivision, whichever first occurs.

22.4 After the first anniversary or issuance of a final public report for the subdivision, the Board shall have the power to appoint one member of the Architectural Control Committee until 90% of all of the subdivision interests in the overall development have been sold or until the second anniversary date of the issuance of the final public report for the subdivision, whichever occurs. Thereafter the Board shall have the power to appoint all of the members of the Architectural Control Committee.

22.5 Members appointed to the Architectural Control Committee by the Board shall be from the membership of the Association.

22.6 The committee's approval or disapproval as required in these covenants shall be in writing. If the committee or its designated representative fails to approve or disapprove within 30 days after plans and specification have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

### **23. BONDED OBLIGATION**

When common area improvements which are included in the subdivision offering have not been completed prior to the issuance of the public report and the subdivision, owners' (hereafter Association) is obliged under a bond or other arrangement (hereafter Bond) to secure performance of the commitment of the subdivider to complete the improvements, then the following substantive and procedural provisions relative to the initiation of action to enforce the obligations of the subdivider and the surety under the Bond shall control:

(1) The Board of Directors of the Association shall be directed to consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any area improvement, the governing body shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within 30 days after the expiration or the extension.

(2) 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 governing body to consider and vote on the question. The meeting shall be required to be held not less than 15 days nor more than 30 days after receipt by the Board of Directors of a petition for such a meeting signed by members representing a proscribed percentage of not less than 5% nor more than 10% of the total voting power of the Association.



(3) A vote by members of the Association other than the subdivider at the special meeting called for the purpose set forth in (2) above.

(4) A vote of a majority of the voting power of the Association residing in members other than the subdivider 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.