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PINN BROTHERS CONSTRUCTION, INC.
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DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS ESTABLISHING A PLAN OF
CONDOMINIUM OWNERSHIP

This "Declaration of Covenants, Conditions and Restrictions Establishing a Plan of Condominium Ownership" is made this 4 day of June, 1980, by PINN BROTHERS CONSTRUCTION, INC., a California Corporation, hereinafter referred to as "Declarant", with reference to the following facts and circumstances:

A. Declarant is the owner of certain property in the City of Campbell, County of Santa Clara, State of California, described as:

Tract 6793 according to the Subdivision Map thereof, filed for record on February 25, 1980, in Book 459 of Maps, at Pages 21 and 22, in the Office of the County Recorder of Santa Clara County, which property together with all improvements and structures now or hereafter constructed thereon, and all appurtenances thereto, are referred to herein as the "Project"; and

B. It is the intention of Declarant to divide the Project into residential condominiums pursuant to Section 1350 et seq. of the California Civil Code, and to impose on the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all of said condominiums and the owners thereof;

NOW, THEREFORE, Declarant hereby declares that the Project, and every component thereof, shall be held, used, sold, conveyed, leased and encumbered subject to the following easements, restrictions, covenants and conditions, hereby specifying that

the provisions of this Declaration shall run with the land, and be binding on Declarant, Declarant's successors and assigns, and all subsequent owners of all or any portion of the Project, together with their grantees, lessees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I
DEFINITIONS

Section 1.1 "Project", as used herein, means that real property in the City of Campbell, County of Santa Clara, State of California, described as:

Tract 6793 according to Subdivision Map thereof, filed for record on February 25, 1980, in Book 459 of Maps, at Pages 21 and 22, in the Office of the County Recorder of Santa Clara County, together with all improvements and structures now or hereafter constructed on said property, and all of the appurtenances thereto.

Section 1.2 A "Condominium" means an estate in real property as defined in California Civil Code Section 783 consisting of an undivided interest as a tenant-in-common in the common area of the development, together with a fee interest in a unit shown and described on the Condominium Plan.

Section 1.3 A "unit" means the elements of a condominium that are not owned in common with the other owners of condominiums in the development, such units and their respective elements are more particularly described in the Condominium Plan. In interpreting deeds and plans the existing physical boundaries of a unit or of a unit reconstructed in substantial accordance with the original plans shall be conclusively presumed to be its boundaries rather than the description expressed in the deed or plans, regardless of minor variance between boundaries shown on the plans or in the deed and those of the building and regardless of settling or lateral movement of the building. Whenever reference is made in this declaration, in the Condominium Plan, in any deed or elsewhere to a unit, it shall be assumed that such reference is made to the unit as a whole, including each of its component elements, and to any and all exclusive easements appurtenant to such unit over common area, if any.

Section 1.4 "Common Area" shall mean the entire development except all units as defined in this declaration or as shown on the Condominium Plan.

Section 1.4a) "Limited Common Areas: shall mean those areas of the common area set aside for the exclusive use as an easement appurtenant to each unit as shown and delineated on the Condominium Plan.

Section 1.5 "Association" means the UNION AVENUE HOMEOWNERS ASSOCIATION, a California non-profit corporation, its successors and assigns.

Section 1.6 "Board" means the Board of Directors of the Association.

Section 1.7 "Owner" means the record fee title holder, and the contract vendee (buyer) in a contract of sale.

Section 1.8 The "Condominium Plan" means the condominium plan recorded pursuant to California Civil Code Section 1351 respecting the development and any amendments to the plan. A copy of the plan is attached as Exhibit "A".

ARTICLE II
INTEREST IN COMMON AREA AND PROPERTY RIGHTS

Section 2.1 The Common Area means the entire project excepting all units therein granted or reserved. The undivided interest in the Common Area established and which shall be conveyed with an Owner's Unit is a 1/24th interest.

The undivided interest established and to be transferred with each such Unit cannot be diminished, and Declarant and its successors and assigns covenant that the undivided interests in the Common Area and the fee title to the respective Units transferred therewith, shall not be separated or separately conveyed, and each such undivided interest shall be deemed to be transferred, or encumbered with its respective Unit even though the description and the instrument of transfer or encumbrance may refer only to the title to the Unit.

Section 2.2 The proportionate share of an Owner in the expenses of the Common Area (including the establishment of such reserves for replacement and repair as the Board deems appropriate) shall be one-twenty-fourth (1/24).

If two or more Units are combined into a single, larger Unit, the percentage share in assessments shall be the aggregate of the share represented by each of the combining Units.

Section 2.3 Each Owner shall have an undivided one twenty-fourth (1/24th) beneficial interest in such personal property as may be acquired by the Association. A transfer or conveyance (by operation of law or otherwise) of a Condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property. The transfer of such personal property by the Association shall transfer title thereto free and clear of any claim on the part of any Owner. Except as set forth

in this section, the beneficial interest of any Owner in such personal property shall not be transferable.

Section 2.4 Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) the right of the Association to suspend the voting rights and right to use the Common Area facilities by an Owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed 30 days for any infraction of its published rules and regulations, after hearing by the Board. Any hearing held for the purposes set out in this subparagraph 2.4 (a), shall be conducted at any regular or special meeting of the Board. The Unit Owner who is the subject of the hearing shall, five (5) days prior to the hearing, receive a written specification of charges. The Unit Owner shall have the right to present evidence and testimony on his own behalf and the right to examine all evidence and testimony presented at the hearing.

(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 such purposes and subject to such conditions as may be agreed to by the members; provided, however, no such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the voting power of each class of members agreeing to such dedication or transfer has been recorded.

Section 2.5 Any Owner may delegate his right of use and enjoyment of the Common Area to the members of his family, his tenants, contract purchasers or other persons occupying the Owner's Unit (collectively "Non-Owner Occupants") provided that:

(a) Each Owner shall be responsible to the Association and the other Owners for any damage attributable to the conduct of any person using the Common Area or its facilities as the guest, invitee, tenant or lessee of such Owner.

(b) If the Association has established any rules or regulations regarding the occupancy or use of the Units and Common Area facilities by Non-Owner Occupants, the occupancy shall be subject to such rules and regulations and, before possession is transferred to any non-owner occupant, the owner and the non-owner shall consent in writing to such rules and regulations. Such rules and regulations if adopted by the Association, may provide that:

i. the Association may enforce any breach of the rules and regulations directly against the Non-Owner Occupant, by

legal proceedings if appropriate, without the necessity of joining the Owner as a party to such proceedings;

ii. no pets may be kept in any Unit, or on any part of the Project, by any Non-Owner Occupant.

Section 2.6 In accordance with Regulations 2792.8(3) and 2792.17(a) of the Real Estate Commissioner, control of the Common Area will be transferred by the Declarant to the Association at an organizational meeting of the members of the Association, which meeting shall be held on the Project (or as close thereto as possible) within forty-five (45) days after the closing of the sale of the thirteenth (13th) Condominium under the first public subdivision report issued by the Department of Real Estate with respect to the Project. In no event, however, shall the organizational meeting be held later than six (6) months after the closing of the sale of the first Condominium.

At the organizational meeting, or as soon thereafter as is practicable, Declarant shall surrender to the first elected Directors of the Association such books, records, contracts and other documents pertaining to the operation, maintenance and improvements of the Common Area as may then exist.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Every person or entity who is a record Owner of a fee or undivided fee interest in any Condominium which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Condominium which is subject to assessment by the Association.

Section 3.2 The Association shall have two classes of voting membership:

(a) Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Unit owned by them. When more than one person holds an interest in any Unit, all such persons shall be members; the vote for any such Unit shall be exercised as they among themselves determine, but in no event shall the vote for such Unit be increased thereby.

(b) Class B. The Class B member shall be the Declarant which shall be entitled to three (3) times the votes allocated for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the

following events, whichever occurs earlier:

i. when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

ii. two (2) years following the issuance of the original Final Public Subdivision Report for the Project by the California Department of Real Estate.

(c) With the exception of action involving provisions for enforcement of bonded obligations of the subdivider, whenever any provision in these Restrictions, the Articles of Incorporation, or Bylaws provides for membership approval of action to be taken by the Association, said action shall require the vote or written assent of fifty-one percent (51%) of each class of membership during the time that there are two outstanding classes of membership.

(d) With the exception of action involving provisions of enforcement of bonded obligations of the subdivider and action involving amendments of the governing instruments, any requirement in the governing instruments that the vote of the subdivider shall be excluded shall be applicable only if there has been a conversion of Class B to Class A shares and only for so long as the subdivider holds or directly controls twenty-five percent (25%) or more of the voting power of the Association.

ARTICLE IV MAINTENANCE ASSESSMENTS

Section 4.1 The Declarant, for each Condominium owned within the Project, hereby covenants, and each Owner of any Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) annual assessments or charges; and
- (b) special assessments for capital improvements, 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 also be the personal obligation of the person who was the Owner of such Condominium at the time the assessment fell due. An Owner's personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 4.1a) The governing body of the Association may suspend the voting rights of an Owner on account of a failure by the Owner to comply with provisions of the governing instruments

or of duly-enacted rules of operation for Common Areas and facilities, provided that with reference to procedures for notice and hearing, the minimum requirements of Section 7341 of the Corporations Code are followed with respect to the accused member prior to reaching any decision to impose any discipline.

Section 4.2 Before January 1, of each year, the Board shall estimate the net cash requirements during such year for the payments described in Section 4.3, and to provide a reasonable provision for contingencies, including default by any Owner in the payment of assessments, after taking into account any expected income and any surplus from the prior years' assessments. The Board may, at any time and from time to time, modify its prior estimate of the net cash requirements for any year and increase or decrease the assessments payable by the Owner during the balance of such year accordingly. All assessments and all other income received shall be deposited in a maintenance fund and disbursed as provided herein.

Section 4.3 The assessments levied by the Association shall be used for the payments described below, and to promote the recreation, health, safety and welfare of the residents in the Project and for the improvement and maintenance of the Common Area, including, but not limited to, payment for the following:

(a) Water, sewer, garbage, electrical, telephone, gas and other necessary utility service for the Common Areas;

(b) A policy or policies of fire insurance, with extended coverage endorsement, for the full insurance replacement value of any improvements in the Project, except for improvements to the Units added by the Owners thereof (or such other fire and casualty insurance as the Board shall determine gives substantially equal or greater protection), payable as provided in Section 5.12, insuring the Association, the Owners, and mortgagees of the Units, as their respective interests may appear;

(c) A policy or policies, payable to the Association, in trust, insuring the Association, its officers and members of the Board, and each Owner against any liability to the public or to other Owners, their invitees, tenants, and Non-Owner Occupants incident to the ownership and/or use of the Common Area and Units, the liability under which insurance shall be not less than five hundred thousand dollars (\$500,000) (single limit for any one or more persons injured in any one accident), and one hundred thousand dollars (\$100,000) for property damage. Such limits shall be reviewed at least annually by the Board, and modified in its discretion;

(d) Worker's compensation insurance, to the extent necessary to comply with any applicable laws;

(e) Legal and accounting services necessary or proper in the operation of the Association or the enforcement of this

Declaration;

(f) A fidelity bond naming the members of the Board and the Manager, and such other persons as may be designated by the Board, as principals, and the Association and the Owners as obligees, for the first year in which an assessment is levied, in an amount exceeding twice the estimated cash requirements for that year as determined under Section 4.2 hereof, and for each year thereafter in an amount exceeding twice the total sum collected for the maintenance fund during the preceding year;

(g) Painting, cleaning, maintenance and repair of the Project (but not (i) the interior surfaces of the perimeter walls, floors, ceilings and doors forming property lines of the Units; (ii) the surfaces of bearing walls, within such property lines, and (iii) the perimeter windows, the interior surfaces of which are property lines of the Units, all of which the respective Owners shall paint, clean, maintain and repair), and such furnishings and equipment for the Common Area as the Board shall deem necessary or proper. It shall be the duty of the Association to maintain the Common Area to at least the standard of maintenance and repair prevalent in the neighborhood in which the project is situated. The Association shall have the right to terminate, at any time after three (3) months from the date of the organizational meeting of Owners, the contract of any person employed or engaged by the Declarant to conduct maintenance of the Project;

(h) Any other materials, supplies, equipment, furniture, labor, services, maintenance, repairs, structural alterations, insurance, licenses, taxes, assessments or other expenses which the Board is required or permitted to secure or pay for pursuant to the terms of this instrument or the By-Laws of the Association or which, in the exercise of sound business judgment, it deems to be necessary or proper for the operation of the Project or in order to carry out or enforce the terms of this Declaration; provided, that if any of the foregoing are provided for a single Condominium, the cost thereof shall be specially assessed to the Owner of such Condominium; and

(i) Any amount necessary to discharge any lien or encumbrance levied against the Project or any part thereof which may, in the opinion of the Board, constitute a lien against the Project or against the Common Areas, rather than merely against the interests therein of particular Owners; provided, that if one or more Owners are responsible for the existence of such lien, such Owner or Owners shall be jointly and severally liable for the cost of discharging such lien.

Notwithstanding any contrary provision contained herein, the Board shall not have the authority, without the vote or written assent of a majority of Class A members:

- i. to incur aggregate expenditures for capital

improvements to the Common Area in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

ii. to pay compensation to members of the Board, or officers of the Association, for services rendered in connection with the Association's business; provided, however, that a member or officer may be reimbursed for expenses incurred, if reasonable, in carrying on the business of the Association;

iii. to enter into a contract with a third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year, subject to such exceptions as may be specifically authorized by the regulations of the Real Estate Commissioner at the time the contract is entered into;

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

Section 4.4 Until January 1 of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment for the respective Condominiums shall be as set forth in Exhibit "B".

(a) From and after January 1 of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased each year not more than twenty percent (20%) above the maximum assessment for the previous year without the vote or written assent of a majority of the voting power of the Association residing in members other than the subdivider.

(b) The Board may fix the annual assessment at an amount not in excess of the maximum.

Section 4.5 Any action which would result in the creation of a special assessment, or in an increase in the amount of the regular annual assessment in excess of twenty percent (20%) of the previous year's annual assessment, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than 15 nor more than 60 days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite 51% of the voting power of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than 30 days from the date of such meeting.

Section 4.5a) In any fiscal year, the governing body 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 five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. A special assessment against the Owners to raise funds for the rebuilding or major repair of the structural common area housing units of the project shall be levied upon the basis of the ration of the square footage of the floor area of the unit to be assessed to the total square footage of floor area of all units to be assessed. The provisions hereof with respect to special assessments do not apply where the special assessment is a remedy utilized by the governing body to reimburse the Association for costs incurred in bringing the owner and his subdivision interest into compliance with the provisions of the governing instruments. Except as provided herein, every special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments.

Section 4.6 In accordance with Section 2792.16(f) of the Regulations of the California Real Estate Commissioner, regular assessments against all Condominiums in the Project shall commence as of the first day of the month following the closing of the first sale of a Condominium in the Project to the purchaser thereof. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Condominium at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. Financial statements shall be regularly prepared and distributed to all members, including a pro-forma operating statement (budget) for each fiscal year, to be distributed not less than sixty (60) days before the beginning of the fiscal year.

Section 4.7 If an Owner fails to pay any assessment within fifteen (15) days following receipt from the Association or the Manager of a request in writing for such payment, such Owner shall also pay to the Association a late payment charge in such amount as may be fixed from time to time by the Board, but not to exceed ten percent (10%) of such assessment. Such late payment charge shall constitute an additional assessment payable by such Owner hereunder. Moreover, all costs and expenses, including reasonable attorneys' fees, incurred in collection or

attempting to collect any valid assessment from an Owner, including any costs and expenses incurred in foreclosing the lien securing such assessment created by Section 4.8, shall be promptly reimbursed by such Owner and shall constitute an additional assessment payable by such Owner and secured by said lien. The voting rights of an Owner may not be suspended without provisions for notice and an opportunity to be heard as set forth in Section 4.1a).

Section 4.8 A lien is hereby created on each Condominium to secure the payment of the amount of each assessment, whether regular or special, payable hereunder by the Owner thereof; provided, that no action shall be brought to foreclose such lien until at least thirty (30) days after a notice of claim of lien is mailed to such Owner, and a copy thereof is recorded in the Office of the Recorder of Santa Clara County. Such notice of claim of lien shall be filed by the Association, which shall bring any necessary foreclosure action with respect thereto; however, such lien and right of foreclosure shall be in addition to, and not in substitution for, all other rights and remedies which the Association and the Owners have hereunder.

(a) The Association may at any time, in its discretion, prepare and record a certificate evidencing the release or satisfaction of any lien created by this Section 4.8, or stating the amount of indebtedness secured by any such lien. Any such certificate executed and acknowledged by a majority of the Board, or by two officers of the Association, shall be conclusive upon the Association and the Owners as to the statements contained therein, in favor of all persons who rely thereon in good faith.

Section 4.9 Notwithstanding any other provision of this Article IV:

(a) The assessment liens created hereunder upon any Condominium shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgages or first deeds of trust upon such Condominium now or hereafter recorded and made in good faith and for value; provided that after the foreclosure of or sale under any such mortgage or deed of trust there shall be a lien on the interest of the purchaser at such foreclosure or sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure or sale, which lien shall have the same effect and be enforced in the same manner as provided herein.

(b) No amendment of this Declaration shall affect the rights of the holder of any such first mortgage or first deed of trust recorded prior to recordation of such amendment unless

such holder shall join in the execution of such amendment.

Section 4.10 Each Condominium shall be separately assessed for property tax purposes. If any taxes and/or assessments may, in the opinion of the Board, be a lien on the entire Project or any part of the Common Area (other than an Owner's undivided interest therein), they shall be paid by the Association and shall be assessed by the Association to the respective Owners. Each Owner shall be obligated to pay any taxes or assessments which may be assessed against his own Condominium or personal property. Each Owner shall be obligated to pay to the Association his proportionate share of any taxes or assessments assessed against the entire Project or any part of the Common Area, in accordance with the percentages set forth in Section 2.2, such payment to be made to the Association at least thirty (30) days prior to delinquency of such tax or assessment. All assessments by the Association for the payment of taxes or assessments are secured by the lien created by Section 4.8 hereof.

ARTICLE V
USE OF UNITS, COMMON AREA
AND COMMON AREA FACILITIES

Section 5.1 Each Unit shall be improved, used and occupied for residential purposes only, except that a sales office may be maintained by Declarant in any of the Units until sales of all Condominiums have been consummated, or until three (3) years after issuance by the California Department of Real Estate of its original Final Public Subdivision Report with respect to the Project, whichever occurs first.

Section 5.2 The garage spaces identified and shown on the Condominium Plan are for the parking only of automotive passenger vehicles.

One (1) garage shall be conveyed by the Declarant with each Unit.

A garage cannot be conveyed, transferred or encumbered by an Owner apart from the Unit of which the garage is an element. In accordance with Section 1352 of the Civil Code, a conveyance or encumbrance which refers only to a Unit by number shall be deemed to transfer or encumber the entire Condominium of the transferor.

The Association shall regulate the use of Additional Parking Spaces by Owners, their guests and invitees.

No vehicles of any type shall be parked in any garage or additional parking space, or on the Common Area, for purposes of accomplishing repairs thereto or the reconstruction thereof.

Section 5.3 Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance on the Project without the prior written consent of the Board; no Owner shall permit anything to be done or kept in his Unit or in the Common Area which will result in the cancellation of insurance on the Project or which would be in violation of any law; no waste shall be committed in the Common Area.

Section 5.4 No dogs, cats, livestock, poultry or other animals or other household pets of any kind shall be raised, bred or kept in any Unit or in the Common Area, except that the Association shall have the power to approve dogs, cats or other household pets to be kept in a Unit, including the household pets of the original owners of a Unit. If approval of the Association is subject to any conditions, regulations or special requirements, such conditions, regulations or special requirements must be consented to in writing by the pet owner. The pet owner's consent (or a copy thereof) shall be maintained by the Association, and shall be made available for inspection to any member of the Association, or his authorized representative, on the request of such member or representative.

No seriously noxious or seriously offensive activity shall be carried on in any Unit or in the Common Area. Without limiting any of the foregoing, no Owner shall permit noise including, but not limited to, the playing of musical instruments or playing of sound reproduction equipment, which would unreasonably disturb another Owner's quiet enjoyment of his Unit or of the Common Area. All floor surfaces with each Unit except for non-traffic areas shall have carpeting and padding installed and maintained at the Owner's expense. The Association may establish rules for implementation of those provisions.

Section 5.5 Nothing shall be done in any Unit or in, on or to the Common Area, which will impair the structural integrity of the Project.

Section 5.6 Nothing shall be altered or constructed in or removed from the Common Area, except with the written consent of the Association. The Association shall have the exclusive right to furnish, equip and maintain the Common Area. The Association shall maintain all Common Area to at least the standard of maintenance prevalent in the neighborhood. Any contract entered into by the Declarant with respect to maintenance of the Common Areas shall be terminable by the Association on written notice at any time after a date which is three (3) months from the date of the organizational meeting of members. All hallways and lobby areas within the Common Area of the building shall have carpeting and padding.

Section 5.7 No antennas, towers, poles or any structure to be used for the purpose of receiving radio, television or related signals with the exception of equipment installed by a duly licensed cable television franchisee, or its successors or assigns, shall be installed, affixed, mounted or constructed on the real property hereby conveyed, so as to be visible to the public view.

Section 5.8 No business of any kind whatsoever shall be established, maintained, operated, carried on, permitted or conducted on or about the Project or any part thereof, excepting for the business of Declarant in disposing of the Units by sale, lease or otherwise.

Section 5.9 No sign shall be displayed to public view on or from the Common Area or any Unit without and subject to the prior consent of the Association.

Section 5.10 Each Owner shall comply with such additional reasonable rules governing the use and occupancy of the Units and Common Area as may be adopted from time to time by the Association.

Section 5.11 The Association or its agents may enter any Unit when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association, at the expense of the maintenance fund. Such entry shall be made only upon twenty-four (24) hours prior notice to the occupant of the Unit if no emergency exists.

Section 5.12 Improvements added to a Unit by an Owner may be insured against fire or any other casualty by such Owner. The Owners may also insure their respective Units, or any part thereof, against any casualty not insured against by the Association pursuant to Section 4.3(b) and (c) hereof. Except as provided above, no Owner shall insure his Unit, or any part thereof, without the prior written consent of the Association, which consent shall always be conditional upon the insurance policy to be obtained by the Owner bearing a loss payable endorsement for payment in accordance with this Section 5.12 of any proceeds payable as a result of coverage duplicating that procured by the Association.

A. If the Project is destroyed or damaged by fire or any other casualty, the payment and the application of the insurance proceeds, if any, from any policy obtained by the Association

pursuant to Section 4.3 hereof or from any loss payable endorsement, the repair and rebuilding of the Project and the other consequences of such destruction and damage shall be as follows:

i. If such insurance proceeds are within One Hundred Thousand Dollars (\$100,000) of the cost of repairing or rebuilding, any such insurance proceeds shall be paid to the Association, which shall contract to repair or rebuild the damaged portions of the Project so that it will be restored to its condition immediately prior to such damage, excluding any improvements added by individual Owners; provided, however, that if the Association so elects, it may pay over to the Owner of any damaged Unit designated by it the amount of the insurance proceeds deemed by it to be attributable to the damage to such Unit and such portions of the Project as are to be maintained by the Owner, and the Owner of such Unit shall thereupon be responsible for and shall apply such amount to repairing or rebuilding the damaged portions of his Unit and such portions of the Project as said Owner is responsible to maintain.

If there are no such insurance proceeds, or if they are insufficient to pay all of the costs of repairing or rebuilding as provided above, the Association shall levy a special assessment on all Owners to make up any deficiency, which assessment shall be applied in the same manner as insurance proceeds.

ii. If subparagraph (i) is inapplicable then such insurance proceeds shall be paid to California Land Title Company, as trustee, or such bank, savings and loan association or title company as may be designated by the Owners by amendment hereof, to be held in trust for the benefit of the Owners and their mortgagees, as their respective interests shall appear. The Association is authorized, on behalf of the Owners, to enter into such agreement or agreements with such insurance trustee, relating to its powers and duties, as the Association may approve. The Association shall obtain firm bids from two (2) or more responsible contractors to restore the Project as nearly as possible to its condition immediately prior to such damage or destruction, excluding improvements added by individual Owners, and shall, as soon as possible thereafter, call a special meeting of the Owners to consider such bids. At such special meeting, the Owners shall accept or reject the respective bids and, if a bid is accepted, the Association shall levy a special assessment to make up any deficiency between any insurance proceeds and the accepted bid for such repair or rebuilding. Such assessment and all insurance proceeds, whether or not subject to liens of mortgages or holders of deeds of trust, shall be paid to said insurance trustee, to be used for such repair or rebuilding. If all bids are rejected, such rejection shall constitute an election by the Owners not to rebuild, and the Association, as soon as reasonably possible thereafter and as agent for all Owners, shall sell

the Project in its then condition, and the land thereunder free from the effect of this Declaration, which shall terminate upon such sale, on terms satisfactory to the Association. The net proceeds of the sale, together with the insurance proceeds, shall thereupon be distributed to the Owners in proportion to their respective percentages in the expenses of the Common Area, as provided in Section 2.2, and to the mortgagees of, or holders of deeds of trust upon, the interests of such Owners, as their interests may appear.

iii. As soon as reasonably possible following any special meeting of the Owners pursuant to the foregoing subparagraph (ii), a majority of the Board shall execute, acknowledge and record an affidavit stating (1) that the Project has been damaged to the extent and under the circumstances contemplated by said subparagraph (ii); (2) that the Owners, at a special meeting thereof duly called to consider bids for the restoration of the Project, have rejected all such bids or have accepted a bid for such restoration, as the case may be; (3) if all bids have been rejected, that the title of each Owner to his Unit has been determined and all Owners are tenants in common of the Project and underlying land and that portion of the Common Area under and by virtue of the provisions of this Declaration and the instruments of conveyance made hereunder, and (4) that a copy of said affidavit has been delivered personally or mailed to each of the Owners, and to City. The matters recited in such affidavit shall be presumed to be true, and shall be conclusive upon the Association and the Owners as to such matters in favor of all persons who rely thereon in good faith.

B. If any improvements to the Project, other than the building, are destroyed or damaged by fire or other casualty, the insurance proceeds, if any, from any Section 4.3 policy, or from any loss payable endorsement shall be paid to the Association, which shall contract to repair or rebuild the damaged improvements so that they will be restored to their condition immediately prior to such damage. If there are no such insurance proceeds, or if they are insufficient to pay all costs of repairing or rebuilding, the Association shall levy a special assessment on all Owners to make up any deficiency. Any assessments so collected shall be applied in the same manner as insurance proceeds.

Section 5.13 Any special assessment provided for under Section 5.12 shall be fixed for each Condominium in accordance with the percentages set forth in Section 2.2.

Section 5.14 Each Owner shall have the exclusive right and duty to maintain, repair, paint, repaint, tile, wax, paper, panel and otherwise refinish or decorate the interior surfaces of the

walls, ceilings, floors, windows and doors of his own Unit; provided, however, that there shall be no structural alteration or addition to the building without prior written approval of the Board or a majority of the voting power of the Owners. Because it is to the advantage of all Owners that the external appearance of the building be aesthetically acceptable, each Owner agrees not to place any drapery, curtain or screen over, across or above any window without the approval of the Association. Until the organizational meeting of members of the Association, decisions with respect to the placement by Owners of draperies, curtains or screens shall be made by the Declarant. The Declarant's approval of any proposed drapery, curtain or screen shall not be unreasonably withheld, but its decision shall be final.

The first elected Directors of the Association shall, within thirty (30) days of their election, adopt regulations or guidelines for the purpose of evaluating proposed draperies, curtains or screens. Such responsibilities may be delegated by the Board to a committee in accordance with Section 1(k) of Article VII of the ByLaws.

Each Owner is responsible for the maintenance of his Unit (specifically including the areas which constitute exclusive easements appurtenant to the Unit), and must perform promptly all maintenance and repair work within his own Unit which, if omitted, would detrimentally affect the Project. An Owner shall be responsible for any damage or liability precipitated by reason of his failure to observe the covenants contained in this Section 5.14. The maintenance and use of said exclusive appurtenant easements shall be in accordance with the rules and regulations promulgated and as provided by the Homeowner's Association.

Section 5.15 If any Unit shall for any reason be deemed to encroach upon any other Unit or upon the Common Area, or the Common Area upon any Unit, the Owner or Owners of the encroaching Unit or the Association with respect to the Common Area, as the case may be, shall have an easement for the maintenance of such encroachment, so long as the building stands, provided that no easement shall be created if the encroachment is willful.

Section 5.16 There shall be no judicial partition of the Common Area, nor shall Declarant or any person acquiring any interest in the Project or any part thereof seek any such judicial partition, until the Project is totally or partially destroyed and the Unit Owners shall elect not to rebuild, as provided in Section 5.12 hereof; provided, however, that if any Condominium shall be owned by two or more persons, nothing herein contained shall be deemed to prevent a judicial partition as between such co-owners.

Section 5.17 In the event all or any portion of the Project is taken by any public entity under its power of eminent domain, the rights and obligations of the Owners shall be governed by the Eminent Domain Law (Cal. Code Civ. Proc SS 1230.010 1273.050), or any successor statute in effect at the time the taking occurs.

ARTICLE VI
FINANCING BY FEDERAL HOME LOAN MORTGAGE
CORPORATION AND FEDERAL NATIONAL MORTGAGE ASSOCIATION

Section 6.1 Notwithstanding any provision of this Declaration to the contrary, in order to induce the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA") to participate in the financing of the sale of Condominiums within the Project, this Article VI is added hereto (and to the extent the provisions of this Article conflict with any other provisions of the Declaration, these added provisions shall control):

A. A "first mortgagee" (meaning herein a mortgage encumbering a Condominium with priority over other mortgages encumbering such Condominium) at its request is entitled to written notification from the Association of any default by the mortgagor of such Condominium in the performance of such mortgagor's obligations under the "Enabling Documents" (meaning collectively the Declaration, the Articles, ByLaws, Association rules and Board regulations) which is not cured within sixty (60) days;

B. Any first mortgagee who comes into title or possession of a Condominium by foreclosure of the mortgage shall be exempt from any "right of first refusal";

C. Any first mortgagee who comes into title or possession of a condominium by foreclosure of the mortgage, shall take the Condominium free of any claims for, and shall not be liable for, unpaid assessments or charges against the mortgaged Condominium which accrued prior to the time such first mortgagee came into title or possession of the Condominium (except for claims for a pro rata reallocation of such assessments or charges to all Condominiums including the mortgaged Condominium);

D. Unless seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage owned) of Condominiums have given their prior written consent, the Association and the Owners shall not be entitled to:

i. Change the method of determining the assessments which may be levied against an Owner or his Condominium;

ii. Except as in statute made and provided, by act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of improvements constructed upon the Project, or the maintenance and upkeep of the Common Area;

iii. Fail to maintain fire and extended coverage on insurable portions of the 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);

iv. Use casualty insurance proceeds for losses to any improvements of the Common Area for other than the repair, replacement or reconstruction of such improvements; and

v. By action or inaction allow the Association to be dissolved.

Section 6.2 Unless all first mortgagees of Condominiums have given their prior written consent, the Association and the Owners shall not be entitled to, except as in statute made and provided, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or any improvement thereon. In this regard, the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this Section 6.2.

Section 6.3 First mortgagees of Condominiums shall be entitled to: (a) inspect the books and records of the Association during normal business hours; (b) receive an annual balance sheet and operating (income) statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and (c) written notice of all meetings of the Association, and to designate a representative to attend all such meetings.

Section 6.4 First mortgagees of Condominium shall be entitled to thirty (30) days' written notice for: (a) abandonment or termination of the Project; (b) any material amendment to the Enabling Documents.

Section 6.5 Nothing in the Enabling Documents shall be construed as giving any Owner or any other party priority over any rights of first mortgagees of Condominiums pursuant to their respective mortgages in the case of a distribution to Owners or the Association of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Area. Such first mortgagees shall be entitled to thirty (30) days' written notice of such damage, destruction, condemnation or taking.

Section 6.6 If any Condominium or the Common Area or any portion thereof is substantially damaged or destroyed, or is made the subject matter of any condemnation or eminent domain proceeding, no provision of the Enabling Documents shall entitle the

Owner of a Condominium or other party to priority over any first mortgagees pursuant to their respective mortgages with respect to the proceeds of any condemnation or eminent domain award or settlement. Such first mortgagees shall be entitled to a thirty (30) days' written notice of any such proceeding or proposed acquisition.

Section 6.7 Any lease agreement between an Owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles and ByLaws, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. A rental agreement shall be deemed a lease for the purposes hereof. Other than the foregoing, and except as provided in Section 2.5 of this Declaration, there is no restriction on the right of any Owner to lease his condominium.

Section 6.8 The right of any Owner to sell, transfer or otherwise convey his condominium may not be made subject to any right of first refusal or any similar restriction in favor of the Association.

Section 6.9 Each Owner shall be entitled to non-severable use and enjoyment of the Common Area, including the facilities thereon, subject only to suspensions of such use rights and easements as provided in this Declaration.

Section 6.10 There is no restriction upon any Owner's right of ingress to and egress from his Condominium.

Section 6.11 A first mortgagee may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage on the lapse of a policy, covering the Common Area; and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 6.12 Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those Common Area improvements which must be replaced on a periodic basis, and such reserve must be funded by regular assessments collected on a monthly basis rather than by special assessments.

Section 6.13 If, at any time, flood insurance is required by any mortgagee of a Condominium or by any lender who desires to become a mortgagee of any Condominium by reason of any applicable

law, ordinance, statute or the like requiring flood insurance as a condition of such mortgagee's or lender's loan remaining or being made, the Association shall forthwith obtain such flood insurance covering the entirety of the Project in amount and coverage, and with such carrier(s) and subject to such terms as shall satisfy such mortgagee or lender.

Section 6.14 Upon request, the Association shall give a first mortgagee notice in writing of (a) any loss in excess of Ten Thousand Dollars (\$10,000.00) or any taking of all or any portion of the Common Area, or (b) any loss in excess of One Thousand Dollars (\$1,000.00) or any taking of all or any portion of any Condominium.

Section 6.15 The Association shall continuously maintain in effect casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for Condominium projects established by PFLMC, FMNA and the Government National Mortgage Association ("GNMA"), so long as either is a mortgagee or Owner of a Condominium within the project, except to the extent such coverage is not available or has been waived in writing by PFLMC and by FNMA or GNMA.

Section 6.16 Whenever the term "mortgage" is used herein, said term shall mean and include a deed of trust; whenever the term "mortgagee" is used herein, said term shall mean and include a beneficiary under a deed of trust; and whenever the term "first mortgage" is used herein, said term shall mean and include a deed of trust having priority over all other mortgages and deeds of trust. The successor in interest (including an assignee) of an original mortgagee shall also be considered a "mortgagee" for purposes hereof.

Section 6.17 Any managing agent for the project shall not be the Declarant, an affiliate of Declarant, or any person or entity unacceptable to FNMA. Any management agreement entered into regarding the Project shall be for a term not exceeding one (1) year and shall be terminable by the Association without cause and without the payment of a termination fee upon not more than thirty (30) days notice. Such agreement shall be renewable by agreement of the parties for successive one-year periods. Declarant shall not allow the delegation to any managing agent of the authority to levy fines, hold hearings, impose discipline, make capital expenditures, file suit, record a claim of lien, or foreclose for failure to pay assessments.

ARTICLE VII
GENERAL PROVISIONS

Section 7.1 The Association, or any Owner, shall have the

right to enforce, by any proceeding at law or in equity, all restrictions, conditions, 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. No right or remedy conferred or reserved by this Declaration is exclusive of any other right or remedy, but each is cumulative, and shall be in addition to every other right or remedy given hereby or hereafter existing at law or equity or by statute.

Section 7.2 Each Owner, at the time he has entered into an agreement to sell his Unit, agrees to advise the Association of the intended sale. The Association on receipt of such notice, shall furnish to the Owner, without charge, a copy of this Declaration, the ByLaws and Articles of Incorporation of the Association, together with any amendments thereto (collectively the "Project Documents"). Owner shall forward the Project Documents to the intended buyer and, if the sale is consummated, shall provide the Association, no later than fifteen (15) days from the closing of said sale, a receipt for said Project Documents signed by the buyer.

Section 7.3 Invalidation of any one of these covenants, conditions or restrictions by court order shall in no event affect any other provision, which shall continue in full force and effect.

Section 7.4 The covenants, conditions and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Amendment of this Declaration shall require the assent (by vote or written consent) of members representing two-thirds of the voting power of each class of membership. To be effective, an amendment must be:

(a) Signed by the President and Secretary (or Assistant Secretary) of the Association; and

(b) Contain the full text of the amendment, and the names of all members who voted for the amendment, and the Condominiums respectively owned by said members.

Section 7.5 Within ten (10) days of its receipt of a written request therefor, the Association shall provide the owner of any Condominium in the Project with a legible copy of this Declaration (and any amendments thereto), the Articles of Incorporation of the Association, and the ByLaws of the Association. The Association may impose a fee for providing such documents,

but in no event shall such fee exceed the reasonable cost to prepare and reproduce the requested documents.

Section 7.6 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.

Section 7.7 Limitation of Restrictions on Declarant: Declarant is undertaking the construction of a condominium project and incidental improvements upon the property. The completion of that work and the sale, rental and other disposal of lots is essential to the establishment and welfare of the property as a residential community. In order that said work may be completed and said property be established as a fully occupies residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Prevent Declarant, its contractors, or subcontractors from doing on the property or any lot, whatever is reasonably necessary in connection with the completion of said work; or
- (b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the property such structures as may be reasonable and necessary for said property as a residential community; or
- (c) Prevent Declarant from conducting on any part of the property its business of completing said work and of establishing a plan of residential ownership; or
- (d) Prevent Declarant from maintaining such sign or signs on the property as may be necessary for the sale, lease or disposition thereof.

The foregoing limitations of the application of the restrictions to Declarant shall terminate upon the sale of Declarant's entire interest in the project. So long as Declarant, its successors and assigns, owns one or more of the Lots described herein, Declarant, its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make every effort to avoid disturbing the use and enjoyment of their lots and the Common Area by owners, while completing any work necessary to said lots or Common Area.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first above written.

PINN BROTHERS CONSTRUCTION, INC.,
a California Corporation

By


ALAN R. PINN, PRESIDENT

By


TONI A. PINN, SECRETARY

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

On June 4, 1980, before me, the undersigned, a Notary Public in and for said State, personally appeared ALAN R. PINN, known to me to be the President, and TONI A. PINN, known to me to be the Secretary of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Charles W. Bonmarito

Notary Public in and for said State



