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OFFICIAL RECORDS OF SAN MATEO COUNTY  
ASSESSOR-COUNTY CLERK-RECORDER  
WARREN SLOCUM

UPON RECORDING, RETURN TO:

Thomas S. Reif  
Mayer, Brown & Platt  
190 South La Salle Street  
Chicago, IL 60603

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FIRST AMERICAN TITLE COMPANY  
97-076680 06/25/97 04:23

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### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made as of the 24th day of June, 1997, by and between MOZAD, L.P., a California limited partnership ("Mozart"), and HOMESTEAD VILLAGE INCORPORATED, a Maryland corporation (the "Homestead" and, collectively with Mozart, the "Declarant").

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#### RECITALS:

- A. Mozart is the owner of certain real property located in San Mateo County, California, consisting of 6.43 acres of useable land, and legally described in Exhibit A attached hereto ("Mozart Land").
- B. Homestead is the owner of certain real property located in San Mateo County, California, consisting of 1.91 acres of useable land, and legally described in Exhibit B attached hereto (the "Homestead Land" and, together with the Mozart Land, the "Property").
- C. The parties hereto wish to grant to each various easements for the mutual benefit of the parties and the development of the Property on the terms and conditions set forth herein.
- D. Mozart intends to develop the Mozart Land as a first-class office complex. Mozart may then subdivide the Mozart Land. Homestead intends to develop the Homestead Land as a first-class, extended-stay hotel.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions, restrictions and limitations hereinafter set forth, all of which are declared to be in furtherance of a plan for the development of the Property as a first-class office and extended-stay hotel complex and the subsequent lease or sale of the Property, or any part thereof, and are established for the purpose of enhancing and protecting the value, desirability

and attractiveness of the Property. All covenants, conditions, restrictions and limitations shall run with the land and every part thereof and interest therein shall be for the benefit of and bind all parties having or acquiring any right, title, interest or estate in the Property or any part thereof, and shall inure to the benefit of and bind each and every successor in interest of the Owners thereof.

## ARTICLE 1: DEFINITIONS

1.1 Agents. "Agents" means the officers, directors, employees, agents and partners of an Owner or Occupant.

1.2 Building. "Building" or "Buildings" means one or more of the buildings indicated on the Site Plan, including the covered parking structure depicted generally on the Site Plan.

1.3 Circle Star Sign. "Circle Star Sign" means the Circle Star sign located on the Mozart Land and visible from Highway 101, and "Circle Star Operator" means a third party to whom Mozart assigns its rights with respect to the Circle Star Sign.

1.4 Entryway Sign. "Entryway Sign" means the sign located at the entryway to the complex as depicted generally on the Site Plan.

1.5 Homestead Sign. "Homestead Sign" means the freeway-oriented sign located on the Mozart Land as depicted generally on the Site Plan.

1.6 Homestead. "Homestead" means Homestead Village Incorporated and its successors, transferees and assigns.

1.7 Improvements. "Improvements" means all building, outbuildings, structures and anything erected, built, placed, installed or constructed on, over or under the Property, including, but not limited to, all Outdoor Area Improvements.

1.8 Invitees. "Invitees" means the contractors, customers, visitors, invitees, licenses and concessionaires of an Owner or Occupant.

1.9 Maintenance Charges. "Maintenance Charges" means the total of all direct, out-of-pocket costs and expenses incurred by the Owners (or the Manager under the Management Agreement) in connection with the management, maintenance, operation and repair of the Outdoor Area and Outdoor Area Improvements, as outlined in Exhibit D, and any management fee due the Manager under the Management Agreement.

1.10 Management Agreement. "Management Agreement" means any Property Management Agreement entered into between the Owners and the Manager. The Owners may

delegate certain of their rights and obligations under this Declaration to the Manager under the Management Agreement.

1.11 Manager. "Manager" means Mozart Development Company or any other Person assuming the duties and obligations of the Manager pursuant to Article 7. Any Manager other than Mozart Development Company shall be selected as provided in Article 7.

1.12 Mozart. "Mozart" means Mozad, L.P., and its successors, transferees and assigns.

1.13 Mortgage and Mortgagee. "Mortgage" means any mortgage, deed of trust or other security instrument given in good faith and of value which constitutes a first mortgage lien on all or any portion of the Property. "Mortgagee" means the holder from time to time of a Mortgage.

1.14 Occupant. "Occupant" means any Person which is in possession of or otherwise occupying all or part of the Property, whether as an Owner, lessee, sublessee, licensee or other occupancy agreement entered into with the Owner or a lessee of such portion of the Property.

1.15 Outdoor Area. "Outdoor Area" means all areas of the Property except for the interior of the Buildings, the exterior surfaces of the Buildings, the space occupied by the Buildings, the plaza area located between the two buildings located, or to be located, on the Mozart Land, and the enclosed parking structure located, or to be located, on the Mozart Land..

1.16 Outdoor Area Improvements. "Outdoor Area Improvements" means all improvements heretofore constructed as a part of the Outdoor Area and such other improvements as the Owners may from time to time construct or install and designate as Outdoor Area Improvements, including, without limitation, all parking areas, walkways, roadways, drive aisles, fountains and landscaping.

1.17 Owner. "Owner" means any Person which is (a) the record owner of fee simple title to all or part of a Parcel, (b) a lessee or manager designated by a fee owner, or (c) any Mortgagee in possession of all or part of a Parcel.

1.18 Parcel. "Parcel" means each parcel of real property that is a portion of the Property and which has resulted from a division of the Property as contemplated by the Subdivision Map Act, Government Code Section 66410 et seq. and as shown by the Official Records of San Mateo County, California. Each Parcel shall be a separate tax lot.

1.19 Permittees. "Permittees" means the Agents and Invitees of an Owner or Occupant.

1.20 Person. "Person" or "Persons" means one or more individuals, partnerships, associations, corporations or other entities.

1.21 Share. "Share" means share of certain items of expense or liability to be allocated between or among the Owners as set forth on Exhibit D attached hereto. If the Mozart Land is subdivided, the Owners of the subdivided Mozart Land Parcels shall each be responsible for an equal part of the Share allocated to the Mozart Land as set forth on Exhibit D. The Share allocated to the Homestead Land shall remain unaffected by any subdivision of the Mozart Land.

1.22 Site Plan. "Site Plan" means the site plan attached hereto as Exhibit C.

## ARTICLE 2: USE AND OPERATING RESTRICTIONS

2.1 Uses of Property. The Property shall be used for a first-class extended-stay hotel and office complex. No other uses of the Property shall be allowed without the prior unanimous written consent of all of the Owners.

2.2 Prohibited Uses. No use or operation shall be made, conducted or permitted on any part of the Property that constitutes, results in or requires:

- (a) Any public or private nuisance;
- (b) Any noise or sound that is objectionable due to intermittence, beep, frequency, shrillness or loudness, except for security devices that have been approved by the Owner of the Parcel within which such security devices will be located, or soundmaking devices that are required by governmental authorities having jurisdiction over the affected portion of the Property;
- (c) Any ground vibration that is perceptible, without instruments, at any point along any exterior lot line, or any disruptive radio, television, microwave or electronic above-ground transmission beyond the boundaries of the Parcel;
- (d) Any fumes, obnoxious odors, smoke, radiation, gases or vapors;
- (e) Any dust, dirt or ash in excessive quantities;
- (f) Any fire, explosion or other damaging or dangerous hazards (except that normal cooking operations may be conducted in any food preparation facility located on the Property);
- (g) Any drilling for removal of subsurface substances;
- (h) Any distillation, refining, smelting, industrial, agricultural, drilling or mining operation; or

(i) Any dumping, disposal, incineration or reduction of garbage or refuse, other than handling or reducing such waste if produced on the Property from authorized uses and if handled in a reasonably clean and sanitary manner.

### 2.3 Signage.

(a) The Circle Star Sign. Mozart shall have the exclusive right to use the Circle Star Sign, which shall be located or relocated on the Mozart Land. Mozart may assign or transfer its rights in the Circle Star Sign to a third party who will construct and operate a signage structure that may include video and other forms of electronic advertising. Such assignee or transferee shall not become an Owner of any Parcel, but shall have the exclusive right to use the Circle Star Sign in accordance with the requirements of this Declaration. Mozart, or the party to whom it transfers or assigns its rights to the Circle Star Sign, shall be solely responsible for the operation, maintenance and repair of the Circle Star Sign.

(b) The Homestead Sign. Homestead shall have the exclusive right to install and use the Homestead Sign. The cost of maintenance, operation and repair of the Homestead Sign shall be the sole responsibility of Homestead. Homestead shall maintain the Homestead Sign in a manner that is consistent with the operation of a first-class extended-stay hotel and office complex.

(c) Shared Entryway Sign. Mozart and Homestead shall have the shared right to use the Entryway Sign to be erected at the entryway to the Property in accordance with the Site Plan. The Entryway Sign shall be used solely to designate Occupants, Permittees, and other users of the Property. The Entryway Sign shall be used in a manner that is consistent with a first-class office and extended-stay hotel complex and in harmony with the design and location of the Entryway Sign. Mozart shall be entitled to use 67% of the useable area of the Entryway Sign, and Homestead shall be entitled to use 33% of the useable area the Entryway Sign. If the Mozart Land is subdivided, the Owners of the subdivided Mozart Land shall divide equally the use of the useable area of the Entryway Sign allocated to Mozart.

(d) Signs and Banners on Buildings. All signs, symbols, advertisements or billboards installed or used on any portion of a Building on the Property shall conform to applicable signage criteria of the sign program approved by the City of San Carlos, and, where applicable, the City of Redwood City. In no event shall any banners, balloons, inflated figures or other lighter-than-air devices be tethered, tied to or otherwise affixed or flown from or in any portion of the Property so as to be visible from the exterior of any Building without the prior written consent of all of the Owners; provided, however, that an Owner may use such items on a temporary basis in junction with a grand opening or on occasion in connection with special, one-day events (such as company picnics) without such prior written approval, so long as such Owner (i) gives the other Owners written notice of such special event at least ten (10) business days in advance of such special event, (ii) uses its best efforts to minimize any interference which the use of such items may cause to activities of the Owners, Occupants and/or Permittees

of the other Parcel, and (iii) removes all such items promptly following the conclusion of such special event at its sole cost and expense.

2.4 Exterior Sound Systems. No loud-speakers or other devices for the production or projection of sound or noise on the outside of any Building shall be permitted without the written approval of all Owners.

2.5 Waste and Refuse. All Occupants shall regularly remove all waste and refuse from their premises. No Owner or Occupant shall permit or cause any waste or refuse to be kept on any portion of the Outdoor Area except in the disposal areas or containers designated for such purpose. Each Parcel shall have its own exclusive waste and refuse enclosure area.

2.6 Outside Storage and Equipment. No materials, supplies, equipment or products shall be stored or permitted to remain on any portion of the Outdoor Area without the prior written approval of the Owners. Such storage shall be permitted only where screened from view by a permanent wall or other appropriate screen compatible with such Building's design. Approval shall not be required for storage of materials, equipment and supplies in relation to and as a part of the construction of Improvements on the Property, provided that such materials, equipment and supplies are removed immediately upon completion of construction.

2.7 Temporary Structures. No temporary buildings or other temporary structures shall be permitted on the Property, except for construction purposes during the construction of Improvements.

2.8 Barriers. No fence, wall, structure or other barrier of any kind (except as specifically permitted herein) shall be placed, kept, permitted or maintained upon the Outdoor Area without the prior written consent of the Owners.

2.9 Drainage. There shall be no interference that significantly alters the established drainage pattern over any portion of the Property.

2.10 Selling Activities. There shall be no goods or services sold or offered for sale or displayed in the Outdoor Area other than outdoor selling or promotion in connection with irregular or special events, which shall require the prior written consent of the Owners and shall not unreasonably interfere with the flow of traffic or parking.

### ARTICLE 3: IMPROVEMENTS

3.1 General. Each Building on the Property has been designed to be of first quality construction performed in a first-class manner and to be architecturally and aesthetically compatible and harmonious with the other Buildings on the Property. Any work done pursuant to this Article 3 shall be performed in a first-class manner in compliance with all applicable governmental rules and regulations and all provisions of this Declaration. No modifications to

any existing Building shall be approved under this Article that will adversely affect the fire resistivity of such Building.

3.2 Development of Property. Each Owner shall comply with all conditions of approval imposed by the City of San Carlos in connection with the development of such Owner's Parcel. Mozart shall have the right to subdivide the Mozart Land into two or more parcels, and to develop each such subdivided Parcel independently.

3.3 Maintenance of Buildings. Each Owner shall maintain or cause to be maintained at its expense any Building located on such Owner's Parcel, in good order, condition and repair, commensurate with the operation of a first-class extended-stay hotel and office complex. Building maintenance shall include periodic washing of exterior surfaces of the windows and painting of any painted surfaces on the exterior of the Building. If an Owner fails to repair or maintain the exterior of a Building as required by the terms of this Section 3.3, the other Owner(s) shall provide written notice thereof to the Owner in accordance with the notice provisions hereof. If the Owner does not commence such maintenance or repair work within thirty (30) days after its receipt of such notice and does not thereafter prosecute such work diligently to completion, then the other Owner(s) shall have the right, but not the obligation, to clean the exterior surfaces of the Building, repair and replace broken glass on the exterior of the Building, paint any customarily painted surfaces of the exterior of the Building and undertake other similar maintenance or repairs reasonably necessary to maintain the aesthetic appearance of the exterior of the Building. Within ten (10) days after demand therefor, the Owner shall reimburse the other Owner(s) for the cost of all such maintenance and repair, together with an amount equal to ten percent (10%) of the cost thereof to compensate the other Owner(s) for the administrative burden incurred. In the event that such cost is not paid within the ten-day period, the other Owner(s) may enforce collection thereof in accordance with Article 7 below.

3.4 New Construction, Additions and Alterations. After the initial construction of the Improvements on a Parcel, all new construction thereafter and any material exterior change, addition, alteration or modification of any existing Improvement (collectively, "modifications") shall be consistent with the standard set forth in Section 3.1 above. Prior to making any material exterior modifications, the Owner who desires to make such modifications shall submit to the other Owners whatever portion of its plans, specifications, drawings and other pertinent information is necessary for the other Owners to adequately review the exterior design, color and elevations that are proposed for such Improvement, and to either approve or disapprove of the same. The prior written consent of the other Owners shall be required and shall be obtained prior to any such modification, provided that nothing herein shall preclude an Owner or other interested Person from reconstructing a damaged or destroyed Improvement to its condition existing immediately prior to such damage or destruction (subject to any modifications required by law) or require the approval of the other Owners as a condition to such reconstruction. No Owner may arbitrarily or unreasonably withhold or delay its approval of such plans and specifications if they are consistent with the plans and specifications of the existing Improvement.

3.5 Repair or Restoration. In the event that an Owner's Improvements are damaged or destroyed, within one hundred eighty (180) days after such damage or destruction, such Owner, subject to the rights of any Mortgagee, shall determine in its sole discretion whether or not to restore the affected property and shall notify the other Owners of its decision. If such Owner elects to restore the affected property, then it shall be obligated, subject to the rights of any Mortgagee, to diligently rebuild, replace and repair, within a reasonable period of time, any damaged or destroyed Improvements located on its Parcel, substantially to the same general appearance as existed immediately prior to such damage or destruction and in compliance immediately prior to such damage or destruction and in compliance with all applicable federal, state or local laws, ordinances and regulations. If such Owner elects not to restore the affected property, then it shall be obligated, subject to the rights of any Mortgagee, to diligently raze and remove, within a reasonable period of time, all damaged or destroyed Improvements located on its Parcel and undertake whatever action is reasonably necessary to return the Parcel to a safe, sightly and landscaped condition. In either event, such Owner shall diligently rebuild, replace and repair, within a reasonable period of time, any damaged or destroyed Outdoor Area Improvements located on its Parcel, substantially to the same design, construction and general appearance as existed immediately prior to such damage or destruction, including, if other Improvements remain or are to be reconstructed, an obligation to landscape the affected Parcel in a manner consistent with the landscaping on Property in general prior to such damage or destruction.

3.6 Palm Trees. The landscaping for the Outdoor Area includes palm trees with a minimum height of twenty (20) feet cleared trunk, not including fronds, head and root ball. In the event of loss or destruction, such palm trees shall be replaced with palm trees of equal minimum height.

3.7 Security. Each Owner shall be responsible for security on its Parcel, including the Outdoor Area and Outdoor Area Improvements located on the Parcel.

#### ARTICLE 4: GRANT OF EASEMENTS

4.1 Grant of General Easements. Any conveyance of any portion of the Property shall include the following appurtenant easements on, over, across and under the Outdoor Areas of all other portions of the Property for the benefit of the conveyed portion, and any portion of the Outdoor Area included in such conveyance shall be subject to the following appurtenant easements for the benefit of all other portions of the Property not included in such conveyance:

(a) Access Road and Drive Aisles. Nonexclusive easements for the purpose of vehicular and pedestrian ingress and egress by Owners, Occupants and Permittees on, over and across the access road into the Property and all drive aisles and parking areas now or hereafter constructed on the Property.



(b) Walkways. Nonexclusive easements, within the Outdoor Area only, for the purpose of pedestrian passage of Owners, Occupants and Permittees on, over and across all walkways now or hereafter constructed on the Property, except those within fifteen feet (15') of the main entrance to any Building.

(c) Cross Drainage Easement. Nonexclusive easements on, over, across and under all paved or unpaved surfaces of the Property at locations where storm water drainage from other portions of the Property crosses on, over, across or under such portion of the Property for the benefit of all other portions of the Property, for purposes of conveying such drainage to public drainage systems, as generally depicted on the Site Plan.

(d) Utilities. Nonexclusive easements, which easements shall be located five feet (5') on either side of the centerline of any utilities installed, and 5' surrounding all vaults and boxes relating thereto, on, over, across and under the utility easement areas on the Property, as generally depicted on the Site Plan, for the purpose of operation, maintenance, inspection, removal, replacement and repair from time to time of the electric, gas, telephone, cable, water, sanitary sewer, and storm water sewer lines located, or to be located, therein.

(e) Communication Easements. Nonexclusive easements, which easements shall be located five feet (5') on either side of the centerline of any communications lines installed, within the communication easement areas on the Property, as generally depicted on the Site Plan, for the purpose of the installation, repair, operation, maintenance, replacement and repair from time to time of underground communication facilities located within such easement areas, including without limitation, all necessary and proper conduits, lines, protective devices and other communication apparatus and equipment.

(f) Storm Drainage Easements. Nonexclusive easements, which easements shall be located five feet (5') on either side of the centerline of any storm drainage lines installed, within the storm drainage easement areas on the Property, as generally depicted on the Site Plan, for the purpose of the installation, repair, operation, maintenance, replacement and repair from time to time of underground storm drainage facilities located within such easement areas, including without limitation, all necessary and proper lines, pipes, pumps, protective devices and other storm drainage apparatus and equipment.

4.2 Grant of Specific Easements. Homestead and Mozart hereby grant the following specific appurtenant easements:

(a) Parking Spaces. Homestead grants to Mozart, for the benefit of the Mozart Land, a nonexclusive easement to use 36 parking spaces located on the Homestead Land between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday. During the period beginning when a Building Permit is issued for the second office building and parking structure planned for construction on the Mozart Land under the Site Plan, and ending upon the earlier to occur of (i) the issuance of a Certificate of Occupancy for the covered parking structure planned for construction on the Mozart Land, and (ii) the date twelve (12) months after the date the building

permit for such covered parking structure is issued, Homestead further grants to Mozart, for the benefit of Mozart Land, a nonexclusive easement to use an additional twenty-three (23) parking spaces ("Additional Spaces") located on the Homestead Land, for a total of fifty-nine (59) spaces, during the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday. If Homestead determines that the additional spaces unreasonably interfere with Homestead's business, Homestead may give written notice to Mozart and Mozart shall then have 10 days in which to mitigate the interference, at Mozart's expense. Such mitigation shall be offsite or on the south end of the Mozart Land, or as otherwise reasonably agreeably to Homestead.

(b) Parking Spaces. Mozart grants to Homestead, for the benefit of the Homestead Land, a nonexclusive easement to use 36 parking spaces located on the Mozart Land, but not including any parking spaces in the covered parking structure planned for the Mozart Land, between the hours of 5:30 p.m. and 8:00 a.m., Monday through Friday and all day on Saturday and Sunday.

(c) Homestead Sign. Mozart grants to Homestead, for the benefit of the Homestead Land, an easement for access, use, operation, maintenance, repair and restoration of the Homestead Sign and an easement for the installation, maintenance, and repair of a conduit for utilities from the Homestead Property to the Homestead Sign.

(d) Entryway Sign. Homestead grants to Mozart, for the benefit of the Mozart Land, an easement for access, maintenance, repair and use of the Entryway Sign.

(e) Circle Star Sign. Mozart may assign and transfer its rights in the Circle Star Sign to the Circle Star Sign Operator. Mozart and Homestead each grant to the Circle Star Sign Operator, for the benefit of the Circle Star Operator, and its successors, transferees and assigns, an easement on and across the Mozart Land and across the Homestead Land for access, use, maintenance, operation, repair and restoration of the Circle Star Sign. The Circle Star Sign Operator may assign or transfer this easement to a third party, and this easement shall inure to the benefit of the successors, transferees or assigns of the Circle Star Sign Operator; provided, however, the terms of this easement as set forth herein shall be binding on any such successors, transferors, and assigns.

(f) Interference with Signs. Neither Owner may erect any Sign or other structure on its Parcel that obstructs or blocks the view corridor between the Circle Star Sign or the Homestead Sign and Highway 101.

4.3 Relocation of Easements. The Owner of a Parcel burdened by any of the easements created under this Article 4 shall have the right to relocate on its Parcel any such easements, provided that such relocation is performed only after the Owner has given thirty (30) days' prior written notice of its intention to do so to the Owner of the other Parcel, and such relocation (a) will not unreasonably interfere with or diminish the enjoyment of the easement by the Owner of the other Parcel; (b) will not reduce or unreasonably impair the usefulness or

function of any such easements; and (c) is performed without cost or expense to the Owner of the other Parcel.

4.4 Duration of Easements. Except as expressly specified herein to the contrary, the easements created under this Article 4 are perpetual; provided, however, that if any single Owner becomes the sole owner of both Parcels, such single Owner shall have the right, but not the obligation, to terminate such easements upon the recordation of a notice of such termination in the Official Records of San Mateo County, California.

4.5 Easements to Run with the Land. The easements granted herein shall run with the land and shall inure to the benefit of, and shall be binding upon, the Owners, their respective heirs, successors and assigns.

4.6 Due Care. Each Owner shall use due care in the exercise of the rights granted in this Article 4 so as to cause the least practicable interference with the operation of the remainder of the Property. Each Owner, at its expense, shall promptly repair, replace or restore any and all Improvements or other property which have been damaged or destroyed in the exercise of the easements granted to such Owner hereunder. To the extent permitted by law, each Owner shall indemnify, defend and hold harmless all other Owners against all claims, costs, expenses (including attorneys' fees), and liabilities arising from the use of the easements granted to such Owner.

#### ARTICLE 5: OPERATION AND MAINTENANCE OF OUTDOOR AREA

5.1 Possession. Each Owner may, at any time, remove, exclude and restrain any Person from the use or occupancy of the portion of the Outdoor Area on its Parcel, except for Owners, Occupants and Permittees who make use of such area in accordance with the provisions of Article 4. In addition, each Owner shall have the right to close off the Outdoor Area on its Parcel for such reasonable periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone. Before closing off any part of the Outdoor Area as provided above, such Owner shall give notice to the other Owners of its intention to do so and must coordinate its closing with the activities of the other Owners so that no material interference with the operation of the Property occurs.

5.2 Changes in Outdoor Area. Unless required by a governmental entity having authority over the matter, the location, size and design of the Outdoor Area and Outdoor Area Improvements, including, without limitation, all parking areas, walkways, drive aisles, and landscaping shall not be materially altered from the design thereof depicted on the Site Plan, without the unanimous written consent of the Owners.

5.3 Management of Outdoor Area. The Outdoor Area shall be managed, controlled, maintained and operated in a first-class manner by the Owners; provided, however, that the Owners may delegate such responsibilities to the Manager pursuant to the terms of the

Management Agreement; and provided further, however, that neither the Owners nor the Manager shall be responsible for the operation, maintenance or repair of the Circle Star Sign or the Homestead Sign, which shall remain the sole responsibility of the Circle Star Sign Operator and Homestead, respectively.

5.4 Rules and Regulations. In the management and operation of the Outdoor Area, the Owners may from time to time adopt and thereafter enforce reasonable rules and regulations pertaining to the use of the Outdoor Area by Owners, Occupants and Permittees. All such rules and regulations and other matters affecting the use of the Outdoor Area shall apply equally and be enforced without discrimination with respect to the Owners, Occupants and Permittees.

5.5 Cost of Maintenance and Operation. Each Owner shall be obligated to pay its Share of the Maintenance Charges.

5.6 Cost of Utilities. Each Owner shall be responsible for the full cost of any utilities used in connection with the maintenance and operation of that portion of the Outdoor Area situated within the boundaries of such Owner's Parcel and that portion of the public right-of-way for Industrial Road immediately adjacent to such Owner's Parcel, said utilities delivered to each such Owner's Parcel being separately metered.

5.7 Parking. The Owners may adopt parking rules and regulations to ensure that only the Owners, Occupants and Permittees of a Parcel use the parking areas located in that Parcel or in easements granted herein for the benefit of that Parcel.

5.8 Adopt A Highway Program. Homestead and Mozart intend to enter into an agreement with the California Department of Transportation whereby Homestead and Mozart would agree to maintain the right-of-way for Highway 101 immediately adjacent to the Property under the California "Adopt A Highway" program. If such an agreement is executed, the costs of removing existing shrubs and weeds, reseeding the right-of-way and maintaining the right-of-way shall be included as a Maintenance Charge under this Declaration and shall be shared by the Owners based on the relative acreage of each Parcel compared to the acreage of the Property. Nothing under this Section, however, shall obligate any Owner to be responsible for landscaping the Highway 101 right-of-way, and if the California Department of Transportation installs landscaping within such right-of-way, then the Owners shall use the best efforts to terminate the Adopt A Highway agreement.

## ARTICLE 6: INSURANCE

6.1 Insurance Program. The Owners shall adopt by unanimous written consent an insurance program (the "Insurance Program") setting forth certain requirements with respect to the insurance coverage of the Property. The Insurance Program shall address for each Parcel such issues as the amount of coverage of each type of insurance required to be carried and the required minimum rating standards of insurers. The Owners shall review the Insurance Program

at least every five (5) years during the term of this Declaration and shall update the Insurance Program as and when it is commercially reasonable to do so, upon the written consent of the Owners. Each Owner's insurer shall have a Best Insurance Guide Rating of not less than AX.

6.2. Duty to Carry Casualty Insurance. The Insurance Program shall require each Owner to carry or cause to be carried during such Owner's ownership of a Parcel, at such Owner's sole cost and expense, an "Special Form" insurance policy, but excluding flood and earth movement, covering 100% of the replacement value of all Improvements situated on its Parcel, including all Buildings and Outdoor Area Improvements. Such policy shall provide for loss or damage settlement on a current replacement cost basis, without deduction for depreciation or coinsurance.

6.3 Policy Proceeds. The payment of casualty insurance proceeds to an Owner by reason of damage to or destruction of any Improvements shall be subject to the rights of any Mortgagee to such proceeds.

6.4 Duty to Carry Liability Insurance. The Insurance Program shall require each Owner to carry or cause to be carried during such Owner's ownership of a Parcel, at such Owner's sole cost and expense, a policy or policies of commercial general liability and property damage insurance covering its portion of the Outdoor Area and all Improvements situated thereon. Such policy shall insure against claims for personal injury or death or property damage occurring in, on or about each Owner's Parcel or any Improvements on such Parcel. The minimum coverage for such policy shall be \$10,000,000 for claims arising out of a single occurrence, and \$20,000,000 in the aggregate. Such insurance shall afford protection in the amount set forth in the Insurance Program, and may be subject to such deduction as is set forth therein.

6.5 Certificate of Insurance. On an annual basis, beginning on the effective date of this Declaration, each Owner shall deliver, or cause to be delivered, to the other Owners a certificate of insurance issued by or on behalf of its insurer certifying that the coverages required hereunder are in fact in place.

6.6 Release and Waiver of Subrogation—Parties. Each Owner hereby waive all rights of recovery and causes of action and release every other such party from any liability for losses and damages sustained by reason of risks covered under the types of policies required by this Article, to the extent of any amounts reimbursed by an independent insurer. To the extent commercially reasonable, the required policies shall provide waivers of any right of subrogation that the insurer of one such party may acquire against all other such parties hereto with respect to any such releases.

6.7 Release and Waiver of Subrogation—Tenants. Each person who becomes an Occupant (excluding transient guests of the extended-stay hotel located on the Homestead Land) of any Improvements on the Property shall be deemed to have waived and released all rights to recover from each Owner all losses and damages sustained by reason of risks covered under the

types of policies required by this Article, to the extent of any amounts reimbursed to such Occupant by an independent insurer. Each Owner hereby waives and releases all rights to recover from each Occupant (who is deemed to have made the above-described waiver and release) all losses and damages sustained by reason of risks covered under the types of policies required by this Article, to the extent of any amounts reimbursed to the Owner by an independent insurer.

#### ARTICLE 7: MANAGEMENT OF PROPERTY

7.1 Manager. Mozart Development Company shall be the initial Manager of the Property and shall have all rights and obligations delegated to the Manager by the Owners under this Declaration or as outlined in the Management Agreement.

#### 7.2 Collection of Maintenance Charges.

(a) Election of Remedies. The Manager, on behalf of the Owners, shall diligently pursue the collection and enforcement of each Owner's Share of the Maintenance Charges and may enforce the obligations of any Owner to pay its Share of Maintenance Charges by commencement and maintenance of a suit at law or in equity, or may foreclose by judicial proceedings pursuant to this Section 7.2 to enforce the lien rights created. The nondefaulting Owner or Owners, by written consent, may direct the Manager in the election and enforcement of remedies hereunder, and if the Manager is unable or unwilling to carry out such directions, then the nondefaulting Owner or Owners may elect, by written consent, to carry out such enforcement themselves, or may substitute another authorized representative to do so, who need not meet the qualifications for Manager under this Declaration.

(b) Creation of Liens. If an Owner fails to make the payment of its Share of any Maintenance Charge within thirty (30) days after receipt of an invoice therefor, the Manager, as the authorized representative of the Owners, shall deliver to such Owner a written notice of such delinquency and if such delinquency has not been cured within ten (10) days after delivery of such notice, the Manager (or any nondefaulting Owner if the Manager fails or refuses to act) shall record a notice of assessment in the office of the County Recorder of San Mateo County. Upon the recordation of such notice any Maintenance Charges that are delinquent, together with interest thereon from the due date thereof until the date of payment in full at the rate of four percent (4%) per annum over the then-existing prime rate of interest announced from time to time by the Bank of America (but in no event exceeding the maximum lawful annual rate allowed by law), and all costs that are reasonably incurred by the non-defaulting Owners, or the Manager as their authorized representative, in the collection of such Maintenance Charges, including reasonable attorneys' fees, shall be a lien against such Owner's Parcel. Unless the non-defaulting Owners, or the Manager as their authorized representative, institutes judicial foreclosure within 180 days after the date of recordation of the notice of assessment, the lien resulting from such notice of assessment shall expire and shall be void and of no further force or effect.

### 7.3 Selection of Successor Management.

(a) Manner of Selection. If and when the Owners select a successor to Mozart Development Company to serve as the Manager, the Owners shall do so in the manner provided in this Section 7.3. Every Manager shall have at least five (5) years of experience in managing first-class office and hotel complexes and shall be retained under a Management Agreement on customary terms and conditions, including a term not exceeding one year. The terms of such Management Agreement shall be subject to the unanimous written consent of the Owners, which shall not be unreasonably delayed or withheld.

(b) Selecting Party. When selecting a replacement for the Manager, one of the Owners shall be designated as the "Selecting Party" in accordance with the procedures set forth below. The Selecting Party shall have a period of one month within which to make its selections, and shall act reasonably and in good faith in making such selections. The other Owners shall then have one week within which to eliminate a candidate or cast their votes with respect thereto, all in accordance with the following:

(i) Single Owner of Property. If the entire Property is owned by a single Owner, that Owner shall be the Selecting Party and shall select the successor Manager.

(ii) Two or More Owners of Property. If the Property is owned by two (2) or more Owners, the Owner of the smallest Parcel shall be the Selecting Party and shall select three (3) qualified candidates. The other Owners shall have the right by majority vote to select one of the three candidates to become the successor Manager. In the event of a tie vote, the Owner of the smallest Parcel shall cast a tie-breaking vote.

## ARTICLE 8: ENFORCEMENT

8.1 Injunctive Relief. In the event of any violation or threatened violation by any Owner or Occupant of any of the provisions of this Declaration, each of the Owners shall have the right to enjoin such violation or threatened violation in a court of proper jurisdiction. Nothing in this Section shall be deemed to affect whether or not injunctive relief is available with respect to such violation or threatened violation.

8.2 Limitation on Liability. Except for the obligation to pay the Maintenance Charges as provided herein and the administrative costs of arbitration pursuant to Section 13.13 and any award of attorneys' fees pursuant to Section 13.14, no Owner shall be entitled to recover damages from another Owner for breach of the provisions of this Declaration as a contract. However, this provision shall not affect, limit, or otherwise restrict (i) the right of an Owner to obtain injunctive or other equitable relief hereunder, or (ii) any other right or remedy an Owner has at law, including any right or remedy resulting from the easements created pursuant to Article 4.

8.3 Excuse For Non-Performance. If performance by an Owner of any act or obligation hereunder is prevented or delayed by war, national emergency, labor disputes or strikes, acts of God, governmental restrictions or moratoria, or any other causes beyond the reasonable control of such party, then the time for performance of the act or obligation will be extended for the period that such act or obligation is delayed or prevented by any of the above causes. Any party claiming inability to perform pursuant to this Section 8.3 shall give prompt notice thereof to all Owners.

8.4 Notice as Prerequisite for Default. An Owner shall not be in default under this Declaration except under such provisions as required the performance of an act on or before a specific date or within a specific period of time, unless the Owner has been given a written notice specify the default and (a) fails to cure it within thirty (30) days, or (b) if such default cannot be cured within thirty (30) days, fails to commence within thirty (30) days and diligently proceed to cure the default, but in no event shall an Owner have more than forty (40) days within which to cure such default.

8.5 Default Shall Not Permit Termination. No default under this Declaration shall entitle any party to cancel or otherwise rescind this Declaration, provided, however, that this limitation shall not affect any other rights or remedies that a party may have by reason of any default hereunder.

8.6 Waiver of Default. A waiver of any default by an Owner must be in writing and no such waiver shall be implied from any omission by a party to take any action in respect of such default. No express written waiver or any default shall affect any default or cover any period of time other than the default and the period of time specified in such express waiver. One or more written waivers of any default in the performance of any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained herein. The consent or approval by any Person to or of any act or request by another Person requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. The rights and remedies given to a Person by this Declaration shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity that a party might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by a party shall not impair such party's standing to exercise any other right or remedy.

## ARTICLE 9: TERM AND TERMINATION

9.1 Term. This Declaration shall remain in full force and effect for a term of fifty (50) years from the date first set forth above, unless extended or earlier terminated by an agreement in accordance with the provisions of Section 9.2. Notwithstanding the foregoing, the easements granted in Article 4 shall be perpetual, except as otherwise provided in Section 4.4.



9.2 Amendment; Termination. This Declaration may not be amended, terminated or otherwise modified (including the amendment or termination of any easements granted pursuant hereto) except by a writing signed and acknowledged by each Owner and recorded in the office of the Recorder of San Mateo County.

#### ARTICLE 10: MORTGAGEE PROTECTION

10.1 Mortgagee's Opportunity to Cure. During the continuance of any Mortgage and until such time as the lien of any Mortgage has been extinguished:

(a) Any Mortgagee shall have the right, but not the obligation, at any time prior to the termination of this Declaration, to pay all amounts due hereunder, to obtain any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of any Owner hereunder and to do any act or thing that may be necessary and proper in the performance and observance of the agreements, covenants and conditions hereof to remedy or to prevent a violation of this Declaration. All payments so made and all things so done and performed by a Mortgagee shall be as effective to prevent or to cure a default under this Declaration as if made, done and performed by the defaulting Owner instead of by the Mortgagee.

(b) Upon the occurrence of any event of default under this Declaration, the Mortgagee of the defaulting Owner shall have sixty (60) days after receipt of notice from the other Owners setting forth the nature of such event of default and, if the default is such that possession of the property of the defaulting Owner may be reasonably necessary to remedy the default, a reasonable time after the expiration of such sixty (60) day period, within which to remedy the default; provided that (i) the Mortgagee has fully cured any default in the payment of any monetary obligations of the defaulting Owner under this Declaration within such sixty (60) day period and shall continue to pay currently such monetary obligations as and when the same are due, and (ii) the Mortgagee has acquired the defaulting Owner's property or commenced foreclosure or other appropriate proceedings in the nature thereof within such period, or prior thereto, and is diligently prosecuting any such proceedings.

(c) Any event of default under this Declaration that in the nature thereof cannot be remedied by the Mortgagee of the defaulting Owner shall be deemed to be remedied if (i) within sixty (60) days after receiving written notice from the other Owners setting forth the nature of such event of default, or prior thereto, the Mortgagee of the defaulting Owner acquires the defaulting Owner's property, or commences foreclosure or other appropriate proceedings in the nature thereof and diligently prosecutes any such proceedings to completion, and (ii) the Mortgagee fully cures any default in the payment of any monetary obligations of the defaulting Owner hereunder that do not require possession of the defaulting Owner's property within such sixty (60) day period and thereafter continues to faithfully perform all such monetary obligations that do not require possession of such property, and (iii) after gaining possession of such

property, the Mortgagee performs all other obligations of the defaulting Owner hereunder as and when the same are due.

(d) If the Mortgagee of the defaulting Owner is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the defaulting Owner from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in Subsection 10.3(b) and (c) above the commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that the Mortgagee has cured any default in the payment of any monetary obligations of the defaulting Owner under this Declaration and continues to pay currently such monetary obligations as and when the same fall due.

10.2 Application of Charges to Mortgagee. Although authorized to make such payments pursuant to this Article, no Mortgagee shall be personally liable for the payment of Maintenance Charges or other charges against that portion of the Property to which its lien applies, except those accruing after the Mortgagee obtains title to such property pursuant to its remedies under the Mortgage. All liens for unpaid Maintenance Charges and other charges shall be subordinate to the lien of any Mortgage against the applicable portion of the Property, and each Mortgagee who obtains title pursuant to its remedies under the Mortgage, and any purchaser at a foreclosure sale, shall take title to such property free and clear of any claims for unpaid Maintenance Charges and other charges, and liens therefore, that accrued prior to such acquisition of title. Any such sale shall extinguish such liens, but the purchaser or Mortgagee who so acquires title shall be liable for charges and impositions accruing after the date of such sale.

10.3 Limitation of Enforcement Against Mortgagee. No violation of this Declaration by, or enforcement of this Declaration against, an Owner, including an action of foreclosure of any lien for unpaid Maintenance Charges, shall impair, defeat, eliminate or render invalid the lien of any Mortgage, but this Declaration shall, subject to Section 10.2, be enforceable against any Owner who has acquired its title by foreclosure, trustee's sale, voluntary conveyance of otherwise.

#### ARTICLE 11: CONSENT OF OWNERS

11.1 General. In furtherance of the long-term goal of harmonious management and operation of the Property, the procedure for obtaining the consent, approval or concurrence of one or more Persons under this Declaration shall be as set forth below. All requests or notices specified shall be sent in accordance with the notice provisions set forth in Section 13.1. Whenever the expiration of a specified time period falls on a Saturday, Sunday or holiday, the time period shall be deemed to expire on the first business day thereafter.

### 11.2 Consent of Owners.

(a) Whenever the consent, approval or concurrence (collectively, "consent") of one or more Owners (the "reviewing party") is required under this Declaration, the Person seeking such consent, approval or concurrence (the "requesting party") shall send a written request therefor to each reviewing party, setting forth all particulars of the matter to be considered, including copies of any and all pertinent documents and items, such as, for example, plans and specifications to be reviewed. Each reviewing party shall then have twenty (20) calendar days within which to provide the requesting party written notice that the reviewing party has either approved or disapproved of such matter, which approval shall not be unreasonably withheld or delayed. Any such disapproval shall include a written explanation in reasonable detail of the reviewing party's reasons for such disapproval. If a reviewing party who disapproves a matter fails to provide such written explanation within the twenty-day period, such party shall be deemed to have approved the matter. If approval or disapproval of any matter is not given within twenty (20) calendar days after receipt of a request for such consent, approval or concurrence, and all pertinent information with respect thereto, then the reviewing party failing to act within such time period shall be deemed to have approved or consented to such matter.

(b) Whenever the consent, approval or concurrence of the Owners is required under this Declaration, the unanimous consent, approval or concurrence of the Owners shall be required, unless otherwise expressly provided herein.

11.3 Voting of Owners. In the event that any Owner transfers or conveys all or any portion of its interest in its Parcel, or any portion of its Parcel, in such manner as to vest ownership of the Parcel or interest therein in more than one Person, then all Persons owning interests in such Parcel shall be jointly considered a single Owner and such Persons shall designate one of their number to act on behalf of all such Persons in the performance of the provisions of this Agreement. Any such designation shall be in writing, duly executed, verified and acknowledged by each such Person, shall be served upon the Manager and all other Owners in accordance with the notice provisions of this Agreement, shall contain a certificate that a copy thereof has been so served and shall be recorded in the office of the Recorder of Santa Clara County. In the absence of such written designation, the acts of the Owner whose interest is so divided with respect to the performance of the provisions of this Agreement shall be binding upon all Persons owning any interest in such Parcel, until such time as the written designation is properly served and recorded as provided by this Section 11.3, and whether or not such Owner retains any interest in the Parcel or Parcels in question.

## ARTICLE 12: CONDEMNATION

### 12.1 Definitions.

(a) "Condemnation" means the taking or possession of all or any part of the Property under the power of eminent domain, or the voluntary sale (with the consent of any Owner and

any other Persons having an interest therein) of all or any part of the Property to any Person having the power Of eminent domain, provided that the Property or such part thereof is then under the threat of condemnation evidenced by notice of the same from a governmental agency having the power to do so.

(b) "Condemnation Date" means the earlier of the date when possession of the condemned property or any part thereof is taken by the condemning authority, or the date when title to the condemned property or any part thereof vests in the condemning authority.

12.2. Restoration Upon Condemnation. If any part of the Improvements on any Owner's Parcel is taken by condemnation, such Owner shall, subject to the rights of any Mortgagee, reconstruct such Improvements as nearly as possible to the condition as existed immediately prior to such taking, to the extent that proceeds available to the Owner from the condemnation award are adequate and the reconstruction is economically feasible in such Owner's reasonable judgment. Notwithstanding anything to the contrary contained in this Article, in no event shall any Owner be required to rebuild, replace or restore any Improvements beyond the extent it would be required to do so pursuant to Section 3.5.

12.3 No Termination of Easements and Licenses. Nothing contained in this Article shall affect the existence of the easements described under Article 4, except to the extent such easements burden the portion of land taken by condemnation.

12.4 Mortgagee Participation. Nothing contained in this Article shall be deemed to prohibit any Mortgagee or Occupant from participating in any eminent domain proceedings on behalf of or in conjunction with any Owner.

### ARTICLE 13: MISCELLANEOUS

13.1 Notices. Any notice, request, demand, instruction or other document to be given hereunder or pursuant hereto to any Person shall be in writing and shall either be (a) personally delivered, delivered by facsimile transmission or delivered by reputable overnight courier service (in which event such notice shall be deemed given on the date of delivery), or (b) delivered by registered or certified mail, postage prepaid, return receipt requested (in which event such notice shall be deemed given three (3) days after the date of mailing), to such party at the last address listed with the other Owners. Notice of any change in address must be given to the other Owners in the manner provided above.

13.2 Exhibits. Each reference herein to an Exhibit refers to the applicable Exhibit attached to this Declaration. All such Exhibits constitute a part of this Declaration and by this Section are expressly made a part hereof.

13.3 Table of Contents and Captions. The captions of this Declaration are inserted only as a matter of convenience and for reference. They do not define, limit or describe the scope or intent of this Declaration and shall not affect the interpretation hereof.

13.4 Declaration for Exclusive Benefit of the Owners. Except for provisions expressly stated to be for the benefit of a Mortgagee or other Person, the provisions of this Declaration are for the exclusive benefit of the Owners and their successors and assigns, and not for the benefit of any third person, and this Declaration shall not be deemed to have conferred any rights upon any third person, including any Occupant or Permittee, except as otherwise expressly provided herein.

13.5 No Partnership, Joint Venture or Principal Agent Relationship. Neither anything in this Declaration nor any acts of the Owners shall be deemed by the Owners or by any third person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Owners.

13.6 Rights, Privileges and Easements with Respect to Liens. Except as specifically provided to the contrary herein, the rights, privileges and easements of the Owners with respect to the other Owners and the Property shall in all events be superior and senior to any lien placed upon any portion of the Property and the Improvements, including the lien of any Mortgage. Any amendments or modifications of this Declaration, whenever made, shall be deemed superior and senior to any and all liens, including the lien of any Mortgage, the same as if such amendments or modifications had been executed concurrently herewith.

13.7 Successors. This Declaration shall be binding upon and shall inure to the benefit of the respective successors and assigns of the Owners.

13.8 Severability. If any provision of this Declaration is held to any extent to be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to Persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Declaration, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

13.9 Consent or Approval. Whenever the consent or approval of one or more of the Owners and/or the Manager is required pursuant to any provision of this Declaration, the Owner or Manager whose consent or approval is required shall not be entitled to unreasonably withhold or delay the giving of such consent or approval unless such provision states that such Owner or the Manager can give or withhold consent or approval in its discretion.

13.10 Governing Law. This Declaration shall be construed and governed in accordance with the laws of the State of California.

13.11 Release. If any Owner or other Person obligated to comply with any provision of this Declaration sells, transfers or otherwise conveys its portion of the Property, or any part thereof, such Owner or Person shall, as respects the property conveyed, be released from all liabilities and obligations arising hereunder from and after the date of transfer, and the obligations of this Declaration from and after the date of transfer shall be binding on such transferee. The transferring party shall remain liable for any obligation arising hereunder prior to the date of transfer to the extent of the value of such transferring party's interest in the property conveyed as of the time immediately preceding such transfer.

13.12 Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any part of the Property to or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes expressed herein. No Owner shall dedicate its portion of the Property or any part thereof for public purposes without the consent of the other Owners.

13.13 Arbitration. Upon the written request of the Manager or any Owner, any dispute, controversy or claim between or among such parties arising out of or in connection with this Declaration shall be submitted to mandatory binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, which rules are deemed to be incorporated by reference herein, except where inconsistent with this Declaration. The place of arbitration shall be San Carlos, California. Unless the parties to such dispute agree to submit the matter to a single arbitrator, the arbitration panel (the "Arbitration Panel") shall consist of (3) arbitrators. The Arbitration Panel shall be appointed by the American Arbitration Association in accordance with its rules and procedures then in effect. Except as hereafter provided, each person selected to be a member of the Arbitration panel shall have at least five years' experience in the operation and management of first-class office or hotel complexes in the San Mateo County area. Any required initial deposit or other payments to the American Arbitration Association or to the Arbitration Panel shall be advanced in equal shares by all parties to the arbitration, with the final allocation thereof to be determined by the Arbitration Panel. Each party shall make available to the Arbitration Panel in a timely fashion all books, records and other information requested by the Arbitration Panel. The Arbitration Panel shall have the right to consult experts to assist it in making its determination, but any such consultation shall be made in the presence of both parties with full right on their part to cross-examine. The Arbitration Panel shall, prior to rendering its determination, afford each of the parties an opportunity, orally or in writing, as the Arbitration Panel may deem appropriate, to express its point of view as to the proper determination of such matters. The Arbitration Panel shall diligently pursue the determination of any dispute under consideration and shall render its decision within thirty (30) days after submission of the dispute to it. The parties agree that the decision of the Arbitration Panel shall be final and binding, shall not be subject to de novo judicial review, and may be enforced by any court of proper jurisdiction.

13.14 Attorneys Fees. In the event of any litigation or arbitration to interpret or enforce any provision of this Declaration or to protect or establish any right or remedy of a party hereunder, the prevailing party shall be entitled to an award of all legal fees and costs of

proceedings, including, without limitation, reasonable attorneys' fees, fees paid to arbitrators, witness fees and expenses and accounting fees incurred by such prevailing party in connection with such dispute.

13.15 Estoppel Certificate. Within ten (10) days after receipt of a written request from any other Owner, an Owner shall issue to the requesting Owner or to any Mortgagee or to any prospective purchaser or prospective Mortgagee specified by such requesting Owner, an estoppel certificate stating (a) whether the Owner to whom the request has been directed has actual knowledge of any default under this Declaration, and if there are known defaults, specifying the nature thereof; (b) whether the Owner has actual knowledge that the Declaration has been modified or amended in any way, and if it has, stating the nature thereof; and (c) whether to the Owner's actual knowledge this Declaration as of that date is in full force and effect.

13.16 Local Ordinances. All Owners and Occupants shall comply with all local ordinances, laws, rules and regulation.

13.17 Incorporation of Declaration. Any deed or other instrument evidencing conveyance of all or any portion of the Property, whether by fee, easement, leasehold interest or otherwise, shall be subject to the provisions of this Declaration. Any such instrument of conveyance shall be deemed to incorporate the provisions of this Declaration, regardless of whether such instrument makes reference hereto.

13.18 Taxes. Each Owner shall pay or cause to be paid directly when due all real and personal property taxes and other special taxes, assessments, fees, impositions and governmental charges of any kind or nature whatsoever that may be imposed, levied or assessed against or with respect to such Owner's Parcel, including, without limitation, any amounts levied or imposed with respect to that portion of the Outdoor Area located on such Owner's Parcel.

13.19 Nondisturbance. Notwithstanding anything to the contrary contained in this Declaration, no tenant occupying any portion of the Property pursuant to a lease shall be evicted from the premises by the Owners (in the Owners' capacity as parties or successors to this Declaration) in connection with the foreclosure of a lien for nonpayment of Maintenance Charges, so long as the tenant does not violate any of the terms and conditions of this Declaration and the Owner of such portion of the Property entered into the lease in good faith and prior to the recordation of any notice of assessment pursuant to Section 7.2. An Owner shall be deemed to have entered into a lease in good faith if the lease does not provide for more than one month's prepaid rent and is with a party that is not affiliated with such Owner. In the event of the foreclosure of a lien pursuant to Section 7.2, the successor to the Owner whose property is subject to the tenant's lease shall be obligated to permit the tenant to continue to occupy the premises on the terms and conditions of such lease, so long as the tenant performs all its obligations thereunder, including the payment of rent to the successor Owner. Notwithstanding anything to the contrary in this Declaration, any Owner shall be permitted to grant to any tenant of the Owner the right to enforce this Declaration against the other Owners;

provided, however, that by doing so the Owner shall be relieved of such right to the extent such tenant is permitted to act on behalf of the Owner.



MAYER, BROWN & PLATT 6-23-1997 13:46

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MBP-Chicago

IN WITNESS WHEREOF, the parties hereto have caused this Declaration to be executed as of the date set forth above.

MOZAD, L.P., a California limited partnership

By: [Signature]  
Name: John Mozart  
Title: Managing General Partner

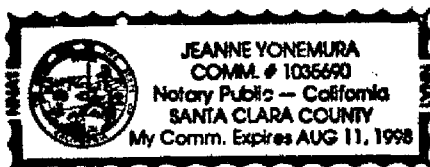
STATE OF CALIFORNIA

COUNTY OF Santa Clara

)  
) SS.  
)

On June 23, 1997, before me, Jeanne Yonemura, a Notary Public, personally appeared John Mozart, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Jeanne Yonemura  
Notary Public

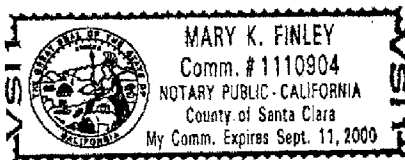
HOMESTEAD VILLAGE INCORPORATED

By: *Steve Tancney*  
Name: STEVE TANCNEY  
Title: VICE PRESIDENT

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF ALAMEDA )

On JUNE 20, 1997, before me, MARY K. FINLEY, a Notary Public, personally appeared STEVE TANCNEY, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



*Mary K. Finley*  
Notary Public

## EXHIBITS

- A - Mozart Land
- B - Homestead Land
- C - Site Plan
- D - Maintenance Charges Allocation

## Brian Kangas Foulk

Engineers • Surveyors • Planners

June 13, 1997

BKF Project No. 975001-50

Exhibit "A"  
Mozad Parcel

### PROPERTY DESCRIPTION OF APPROVED PARCEL 1 CONFIGURATION

ALL that real property situate in the City of San Carlos and the City of Redwood City, County of San Mateo, State of California, being a portion of Parcel I and Parcel II and being all of Parcel III, Parcel IV and Parcel V, as described in the Trustee's Deed from Seaside Financial Corporation to California Commerce Bank, recorded June 9, 1995, as Series Number 95059343, Official Records of San Mateo County, described as follows:

BEGINNING at the southwesterly corner of said Parcel II at the centerline of Industrial Way (80 feet wide); thence along the westerly line of said Parcel II North (the bearing North being used for the purpose of this description) 53.02 feet to a point distant 40.00 feet northeasterly, measured at a right angle, from said centerline of Industrial Way; thence leaving said westerly line of Parcel II parallel with and distant 40.00 feet northeasterly, measured at a right angle, from said centerline of Industrial Way South  $48^{\circ}58'53''$  East 220.17 feet; thence leaving said parallel line North  $48^{\circ}01'00''$  East 133.64 feet; thence North  $41^{\circ}59'00''$  West 220.81 feet; thence North 78.95 feet; thence North  $48^{\circ}01'00''$  East 132.19 feet; thence North  $41^{\circ}59'00''$  West 170.00 feet; thence North  $48^{\circ}01'00''$  East 41.50 feet; thence North  $41^{\circ}59'00''$  West 49.07 feet to a point from which the radial center of a curve having a radius of 60.00 feet bears North  $39^{\circ}21'02''$  West; thence southwesterly along said curve through a central angle of  $21^{\circ}41'29''$ , an arc distance of 22.72 feet; thence South  $72^{\circ}20'27''$  West 33.28 feet to a tangent curve to the left having a radius of 70.00 feet; thence along said curve through a central angle of  $72^{\circ}20'20''$ , an arc distance of 88.38 feet to the westerly line of said Parcel I; thence along the perimeter of said Parcel I the following four (4) courses: 1) North 114.94 feet; 2) North  $46^{\circ}30'48''$  East 126.81 feet; 3) South  $41^{\circ}59'00''$  East 1187.08 feet; 4) South  $89^{\circ}08'07''$  West 254.81 feet to the most easterly corner of said Parcel V; thence along the perimeter of said Parcel V the following two (2) courses: 1) South  $46^{\circ}38'37''$  West 42.11 feet; 2) North  $43^{\circ}21'23''$  West 38.58 feet to the most westerly corner thereof; thence along the southerly line of said Parcel I and Parcel III, South  $89^{\circ}08'07''$  West 117.62 feet to the most easterly corner of said Parcel IV; thence along the perimeter of said Parcel IV the following two (2) courses: 1) South  $46^{\circ}38'37''$  West 74.14 feet to a point from which the radial center of a curve having a radius of 3674.71 feet bears South  $44^{\circ}16'34''$  West; 2) southwesterly along said curve through a central angle of  $01^{\circ}06'45''$ , an arc distance of 71.35 feet to the southerly line of

Exhibit "A"

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June 13, 1997

BKF Project No. 975001-50

said Parcel III; thence along said southerly line South  $89^{\circ}08'07''$  West 56.06 feet to the most southwesterly corner of said Parcel III; thence along the southwesterly line of said Parcel III, Parcel I and Parcel II, North  $48^{\circ}58'53''$  West 391.05 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

BEGINNING at a point in the northerly boundary line of the lands conveyed in that certain Grant Deed from Saul Witschner, et al., to Metal Machine Manufacturing, Inc., recorded October 3, 1958, in Book 3468 at Page 89 (80537-Q), Official Records of San Mateo County, distant thereon, North  $89^{\circ}08'07''$  East (called North  $89^{\circ}08'$  East in said Trustee's Deed recorded as Series Number 95059343) 105.49 feet from the most westerly corner of said lands; thence from said POINT OF BEGINNING, leaving said northerly boundary line, North  $46^{\circ}38'37''$  East 86.73 feet; thence South  $43^{\circ}21'23''$  East 79.45 feet to said northerly boundary line; thence along said last mentioned line, South  $89^{\circ}08'07''$  West 117.62 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

COMMENCING at the most easterly corner of aforesaid Parcel 1 as said parcel is described in that certain Grant Deed from Robinwood Lane Corporation to Russell A. Margiotta and Deborah B. Margiotta, as Trustees under Declaration of Trust dated May 6, 1981, recorded August 17, 1984 as Series Number 84091556, Official Records of San Mateo County; thence southwesterly along the line common to said Parcel 1 (Series Number 84091556), and aforesaid Parcel I (Series Number 95059343), South  $46^{\circ}30'48''$  West 15.04 feet to the POINT OF BEGINNING; thence leaving said common line, South  $15^{\circ}03'06''$  East 44.56 feet to a tangent curve to the right having a radius of 45.00 feet; thence along said curve through a central angle of  $84^{\circ}16'48''$ , an arc distance of 66.19 feet; thence South  $69^{\circ}13'42''$  West 40.72 feet to a tangent curve to the left having a radius of 50.00 feet; thence along said curve through a central angle of  $33^{\circ}51'48''$ , an arc distance of 29.55 feet; thence South  $35^{\circ}21'54''$  West 7.01 feet to the westerly line of said Parcel I (Series Number 95059343); thence along said westerly line North 57.84 feet to said line common to said Parcel 1 (Series Number 84091556), and aforesaid Parcel I (Series Number 95059343); thence northeasterly along said common line, North  $46^{\circ}30'48''$  East 111.77 feet to the POINT OF BEGINNING.

Exhibit "A"

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The bearing "North" of the westerly line of said Parcel I as described in the Trustee's Deed from Seaside Financial Corporation to California Commerce Bank, recorded June 9, 1995, as Series Number 95059343, Official Records of San Mateo County, was taken as the Basis of Bearings for this description.

Containing a gross area of 6.983 acres, more or less, excluding the above described exceptions.

A plat showing the above described parcel is attached hereto and made a part hereof as Exhibit "C".

For BRIAN KANGAS FOULK:

Paul Kittredge  
Paul Kittredge, P.L.S. No. 5790  
License Expires June 30, 2000

Dated: 6/13/97



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**Brian Kangas Foulk**

Engineers • Surveyors • Planners

June 18, 1997

BKF Project No. 975001-10

Exhibit "B"

Homestead Parcel

**PROPERTY DESCRIPTION  
HOMESTEAD VILLAGE HOTEL  
(NET AREA)**

All that real property situate in the City of San Carlos, County of San Mateo, State of California, being a portion of Parcel I and Parcel II as described in the Trustee's Deed from Seaside Financial Corporation to California Commerce Bank, recorded June 9, 1995, as Series Number 95059343, San Mateo County Records, described as follows:

COMMENCING at the southwesterly corner of said Parcel II at the centerline of Industrial Way (80 feet wide); thence along the westerly line of said Parcel II North (the bearing North being used for the purpose of this description) 53.02 feet to a point distant 40.00 feet northeasterly, measured at a right angle, from said centerline of Industrial Way, said point also being the POINT OF BEGINNING of this description; thence leaving said westerly line of Parcel II parallel with and distant 40.00 feet northeasterly, measured at a right angle, from said centerline of Industrial Way South  $48^{\circ}58'53''$  East 220.17 feet; thence leaving said parallel line North  $48^{\circ}01'00''$  East 133.64 feet; thence North  $41^{\circ}59'00''$  West 220.81 feet; thence North 78.95 feet; thence North  $48^{\circ}01'00''$  East 132.19 feet; thence North  $41^{\circ}59'00''$  West 170.00 feet; thence North  $48^{\circ}01'00''$  East 41.50 feet; thence North  $41^{\circ}59'00''$  West 49.07 feet to a point from which the radial center of a curve having a radius of 60.00 feet bears North  $39^{\circ}21'02''$  West; thence southwesterly along said curve through a central angle of  $21^{\circ}41'29''$ , an arc distance of 22.72 feet; thence South  $72^{\circ}20'27''$  West 33.28 feet to a tangent curve to the left having a radius of 70.00 feet; thence along said curve through a central angle of  $72^{\circ}20'20''$ , an arc distance of 88.38 feet to the westerly line of said Parcel I; thence along said westerly line of Parcel I and the westerly line of said Parcel II South 379.45 feet to the POINT OF BEGINNING. Containing a gross area of 2.018 acres, more or less.

EXCEPTING THEREFROM the following proposed road dedication to the City of San Carlos described as follows:

COMMENCING at the southwesterly corner of said Parcel I at the centerline of Industrial Way (80 feet wide); thence along the westerly line of said Parcel I North (the bearing North being used for the purpose of this description) 53.02 feet to a point distant 40.00 feet northeasterly, measured at a right angle, from said centerline of Industrial Way, said point also being the POINT OF BEGINNING of this description; thence leaving said westerly line of Parcel I parallel with and distant 40.00 feet northeasterly, measured at a right angle, from said centerline of Industrial Way South  $48^{\circ}58'53''$  East 220.17 feet; thence leaving said parallel line North

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June 18, 1997

BKF Project No. 975001-10

48°01'00" East 49.14 feet; thence North 48°58'53" West 31.21 feet to a point from which the radial center of a curve having a radius of 98.00 feet bears North 18°44'08" West; thence southwesterly along said curve through a central angle of 23°36'42", an arc distance of 40.39 feet to a point distant 59.00 feet northeasterly, measured at a right angle, from said centerline of Industrial Way; thence leaving said curve along a non-tangent line parallel with and distant 59.00 feet northeasterly, measured at a right angle, from said centerline of Industrial Way North 48°58'53" West 184.61 feet to the westerly line of said Parcel II; thence along said westerly line of Parcel II South 25.18 feet to the POINT OF BEGINNING. Containing an area of 5,582 square feet, more or less.

Containing a gross area of 1.890 acres, more or less, excluding the above described exception.

The bearing "North" of the westerly line of said Parcel I as described in the Trustee's Deed from Seaside Financial Corporation to California Commerce Bank, recorded June 9, 1995, as Series Number 95059343, Official Records of San Mateo County, was taken as the Basis of Bearings for this description.

This property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act, and shall not be utilized in any conveyance which may violate the Subdivision Map Act of the State of California or local ordinances.

For BRIAN KANGAS FOULK:

Paul Kittredge  
Paul Kittredge, P.L.S. No. 5790  
License Expires June 30, 2000

Dated: 6/18/97

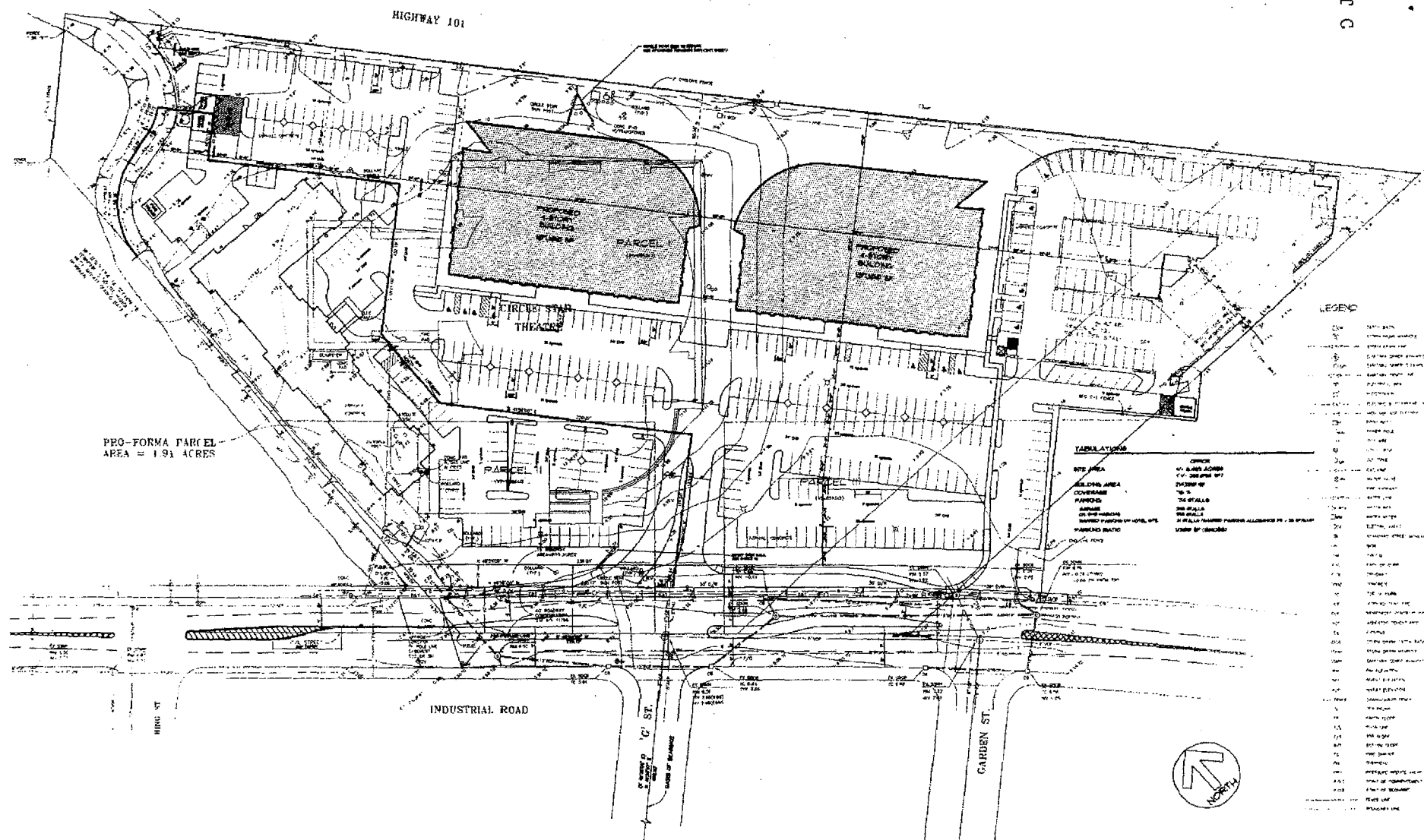
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Exhibit "A"  
Page 2 of 2



EXHIBIT C

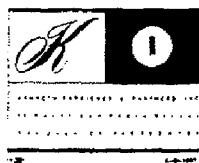


# CIRCLE STAR OFFICE / HOTEL COMPLEX

MASTER SITE PLAN --- SCENARIO 3

SAN CARLOS, CALIFORNIA

THE MOZART DEVELOPMENT COMPANY



**Brian Karpas Foulk**  
 Engineers • Surveyors • Planners  
 3727 NORTH MAIN STREET  
 SUITE 200  
 SAN CARLOS, CA 94066  
 (916) 291-1100  
 (916) 291-1101 FAX

Exhibit D  
Maintenance Charges Allocation

Landscaping

Cost allocated based on the landscaped area on each parcel including the offsite area adjacent to each Parcel.

Paved Area/Electroler Maintenance

Cost allocated based on paved area and electrolers on each Parcel.

Traffic Signal Maintenance Cost

Cost allocated based on parking spaces located on each Parcel.

Sanitary Sewer Pump Maintenance

Cost allocated based on fixture unit counts.

Management Fee

Cost allocated based on each Owner's actual reimbursement of manager.

Adopt-A-Highway Program

Cost allocated based on each Parcel's acreage.

Miscellaneous

Cost allocated based on each Parcel's acreage.

Office Plaza and Fountain

Cost allocated exclusively to office owners.

Entryway Sign

Per acreage for structure; each Owner is responsible for the signage on its portion of the sign.

Parking/Traffic Signage

Each Owner is responsible for the cost of signage on its Parcel.

**ACKNOWLEDGEMENT AND ACCEPTANCE**

2500 W.L.B., Inc. hereby acknowledges and accepts the rights and obligations of the Circle Star Sign Operator with respect to the Circle Star sign as set forth in the Declaration of Covenants, Conditions and Restrictions dated as of June 24, 1997 by and between Mozart-Wilson Ventures, Inc. and Homestead Village Incorporated.

Executed as of June 24, 1997

2500 W.L.B., Inc.

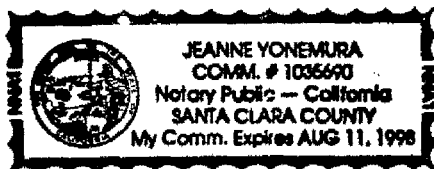
By: \_\_\_\_\_

John Mozart  
Its: President

STATE OF CALIFORNIA     )  
COUNTY OF Santa Clara   ) ss.

On June 23, 1997, before me, Jeanne Yonemura, Notary Public  
(here insert name and title of the officer), personally  
appeared Johan Hozart, personally known to me  
~~(or proved to me on the basis of satisfactory evidence)~~  
to be the person(s) whose name(s) is/are subscribed to  
the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal.



Jeanne Yonemura  
Notary Public

CERTIFIED TO BE A TRUE AND CORRECT

COPY OF THE ORIGINAL *First American*

~~COMMONWEALTH~~ TITLE CO.

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

This Declaration of Covenants, Conditions and Restriction (the "Declaration") is made as of the 24th day of June, 1997, by and between MOZAD, L.P., a California limited partnership ("Mozart"), and HOMESTEAD VILLAGE INCORPORATED, a Maryland corporation (the "Homestead" and, collectively with Mozart, the "Declarant").

**RECITALS:**

- A. Mozart is the owner of certain real property located in San Mateo County, California, consisting of 6.43 acres of useable land, and legally described in Exhibit A attached hereto ("Mozart Land").
- B. Homestead is the owner of certain real property located in San Mateo County, California, consisting of 1.91 acres of useable land, and legally described in Exhibit B attached hereto (the "Homestead Land") and, together with the Mozart Land, the "Property").
- C. The parties hereto wish to grant to each various easements for the mutual benefit of the parties and the development of the Property on the terms and conditions set forth herein.
- D. Mozart intends to develop the Mozart Land as a first-class office complex. Mozart may then subdivide the Mozart Land. Homestead intends to develop the Homestead Land as a first-class, extended-stay hotel.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions, restrictions and limitations hereinafter set forth, all-of which are declared to be in furtherance of a plan for the development of the Property as a first-class office and extended-stay hotel complex and the subsequent lease or sale of the Property, or any part thereof, and are established for the purpose of enhancing and protecting the value, desirability