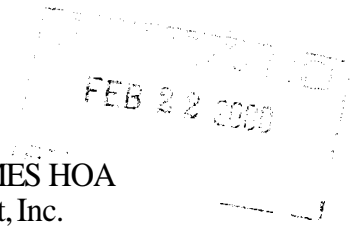




2000-0005512

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Santa Cruz, CA 95062



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County Of		
SANTA CRUZ		
RICHARD W. BEDAL		
Recorder		
08:32AM 02-Feb-2000	MLD	
	Page 1 of 2	

FIRST AMENDMENT TO

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
SCOTTSBOROUGH TOWNHOMES**

SCOTTSBOROUGH TOWNHOMES HOMEOWNERS ASSOCIATION, INC., a California non-profit mutual benefit corporation ("Association"), is the regularly constituted and operating Homeowners Association for certain real property consisting of one hundred forty (140) individually owned Lots and Common Area located in the City of Scotts Valley, County of Santa Cruz, State of California, known as SCOTTSBOROUGH TOWNHOMES, all is shown on that certain Final Subdivision Map known as Tract No. 674, filed for record on March 6, 1984, in Book 73 of Maps, Page 27, Official Records of Santa Cruz County.

The Association has determined through action of its members that the Declaration of Covenants, Conditions and Restrictions ("Declaration") recorded on July 3, 1984 in Book 3730, Page 95, et seq., of the official records of Santa Cruz County, requires amendment as set forth in this Amendment.

NOW THEREFORE, Association hereby declares that the described real property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the Declaration of Covenants, Conditions and Restrictions as previously recorded and as amended by the following Amendment:

Article V, Section 5.5.1 is hereby amended to delete the entire text of that Section and to substitute the following text:

Section 5.5.1 Association's Responsibilities. The Association shall paint and provide structural repair and replacement of the exterior surfaces of any fences (except those which are party fences) and of the residences including roofs, gutters and skylights. Roof repairs will be made for all leaks occurring after August 1, 1999. Roof leaks prior to August 1, 1999 are the unit owner's responsibility. The Association is NOT responsible for the maintenance or replacement of the windows and other glass surfaces and any screens covering doors and windows.

Article V, Section 5.5.2 is hereby amended to delete the entire text of that Section and to substitute the following text:

Section 5.5.2 Owner's Responsibilities: Each owner shall maintain, repair and otherwise care for all walkways and driveways located within his lot at the owner's sole expense. Mechanical and electrical equipment and hardware for opening and closing garage doors shall be maintained, repaired and replaced by the owner of the garage.

The foregoing Amendment shall take effect immediately.

IN WITNESS WHEREOF, the undersigned being the President of Scottsborough Townhomes Association, Inc., a California non-profit, mutual benefit corporation, certify that the foregoing was adopted by the approval of the required number of Unit Owners who are members of the Association and therefore they and each of them have executed this Amendment to the Declaration of Covenants, Conditions and Restrictions this 31st day of January, 2000.

Executed at Santa Cruz, California:

Harry Weigandt
Harry Weigandt, President

STATE OF CALIFORNIA)
County of Santa Cruz)

On 1/31/00 before me, Wendy Miller, Notary Public
Date Name, Title of Officer - E.G., "Jane Doe, Notary Public"
personally appeared Harry Weigandt
Name(s) of Signer(s)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, person acted, executed the instrument.

WITNESS my hand and official seal,

Wendy Miller
Signature of Notary



When recorded return to:
 TICOR TITLE INSURANCE COMPANY
 1636 Soquel Drive
 Santa Cruz, CA. 95065

BOOK 3730 PAGE 95

31264
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I N D E X

TO

DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS
 OF
 SCOTTSBOROUGH TOWNHOMES
 A PLANNED DEVELOPMENT PROJECT

JUL 3 1984
Richard W. Beal
 RICHARD W. BEAL, Recorder
 SANTA CRUZ COUNTY, Official Rec

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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
SCOTTSBOROUGH TOWNHOMES
A Planned Development Project
(Tract 674)

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SCOTTSBOROUGH TOWNHOMES ("Declaration") is made this 28th day of June, 1984, by SCOTTSBOROUGH LTD., a limited partnership ("Declarant").

ARTICLE I

INTENTION OF DECLARATION

1.1 FACTS: This Declaration is made with reference to the following facts:

1.1.1 Property Owned by Declarant: Declarant is the owner of all the real property and Improvements thereon located in the City of Scotts Valley, County of Santa Cruz, State of California, described as follows:

Lots 1 through 22, inclusive, and Lot 23 as shown on the subdivision map filed for record on March 6, 1984, in Book 73 of Maps at Page 27 in the Official Records of the County of Santa Cruz, State of California.

1.1.2 Nature of Project: Declarant intends to develop the Subject Property and the Additional Property as a planned development project within the meaning of California Business and Professions Code Section 11003 and in conformity with the provisions of the California Subdivided Lands Law (California Business & Professions Code, Section 11000 et seq.). To establish the planned development project, Declarant desires to impose on the Subject Property, and any property annexed thereto, these mutually beneficial restrictions, easements, assessments and liens under a comprehensive general plan of improvement and development for the benefit of all of the Owners, the Lots and Common Area within the Subject Property and any property annexed thereto.

1.1.3 Phases of Project: The Subject Property and the Additional Property are intended to be developed in two (2) or more Phases. The first Phase consists

of the Subject Property. Declarant may but shall have no obligation to annex all or any portion of the Additional Property to the Subject Property. After annexation, the property annexed shall constitute a part of the Project and shall be subject to this Declaration.

1.2 APPLICABILITY OF RESTRICTIONS: Pursuant to California Business and Professions Code Section 11003, Declarant hereby declares that the Subject Property and all Improvements thereon are subject to the provisions of this Declaration. The Subject Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions stated in this Declaration. All such covenants, conditions and restrictions are declared to be in furtherance of the plan for the subdivision, improvement and sale of the Subject Property as a planned development project. All of the limitations, easements, uses, obligations, covenants, conditions, and restrictions stated in this Declaration shall run with the Subject Property and shall inure to the benefit of and be binding on all Owners and all other parties having or acquiring any right, title or interest in any part of the Subject Property. Upon the recordation of a Declaration of Annexation, the property described therein shall be a part of the Project and shall be subject to this Declaration.

ARTICLE IIDEFINITIONS

Unless the context clearly indicates a different meaning, the terms used in this Declaration, the Map, and any grant deed to a Lot shall have the meanings specified in this Article.

2.1 ADDITIONAL CHARGES: The term "Additional Charges" shall mean costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

2.2 ADDITIONAL PROPERTY: The term "Additional Property" shall mean the real property described on Exhibit "A" and all Improvements situated on such real property.

2.3 ARTICLES: The term "Articles" shall mean the Articles of Incorporation of SCOTTSBOROUGH TOWNHOMES HOMEOWNERS' ASSOCIATION, which are or shall be filed in the Office of the Secretary of State of the State of California.

2.4 ASSOCIATION: The term "Association" shall mean SCOTTSBOROUGH TOWNHOMES HOMEOWNERS' ASSOCIATION, its successors and assigns, a nonprofit mutual benefit corporation incorporated under the laws of the State of California.

2.5 BOARD: The term "Board" shall mean the Board of Directors of the Association.

2.6 BYLAWS: The term "Bylaws" shall mean the Bylaws of the Association and any amendments thereto.

2.7 CAPITAL IMPROVEMENTS: The term "Capital Improvements" shall mean Improvements which when made must be amortized over a term of years in order to comply with applicable state and/or federal tax laws.

2.8 CITY: The term "City" shall mean the City of Scotts Valley, County of Santa Cruz, State of California.

2.9 COMMON AREA: The term "Common Area" shall mean Lot 23 as shown on the Map and all Improvements thereon. The term "Common Area" shall include improvements situated on land which is subject to an easement in

favor of the Association, whether or not included within the Project. The term "Common Area" shall also mean those portions of the Additional Property described as Common Area in the Declaration of Annexation for a particular Phase.

2.10 COUNTY: The term "County" shall mean the County of Santa Cruz, State of California.

2.11 DECLARANT: The term "Declarant" shall mean Scottsborough Ltd., a limited partnership. The term "Declarant" shall also mean successors in interest of Declarant, if (i) such successor(s) in interest acquires all or any portion of Declarant's interest in the Subject Property and/or the Additional Property for the purpose of development and/or sale, and (ii) a certificate has been recorded in the County in which the successor(s) in interest assumes the rights and duties of Declarant to the portion of the Subject Property and/or the Additional Property so acquired. Notwithstanding the foregoing sentence, Harold E. Porter, the owner of a portion of the Additional Property, is hereby designated a successor Declarant as to the Additional Property owned by him without the necessity of satisfying any of the conditions set forth in this Section. At any time, there may be more than one Declarant.

2.12 DECLARATION: The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of Scottsborough Townhomes, and any amendments hereto.

2.13 DECLARATION OF ANNEXATION: The term "Declaration of Annexation" shall mean any instrument recorded in the County which annexes all or a portion of the Additional Property or any other property to the Project by imposing the provisions of this Declaration upon such property.

2.14 ELIGIBLE HOLDER: The term "Eligible Holder" shall mean any Institutional Mortgagee who has delivered a written notice to the Association containing its name, address and the number or address of the Lot encumbered by the Mortgage and requesting that the Association deliver written notice to it of any or all of the events specified in Section 9.5.

2.15 FIRST MORTGAGE: The term "First Mortgage" shall mean a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Lot.

2.16 FIRST MORTGAGEE: The term "First Mortgagee" shall mean the Mortgagee of a First Mortgage.

2.17 IMPROVEMENTS: The term "Improvements" shall mean buildings, facilities, streets, driveways, fences, walls and other structures and all landscaping constructed or to be constructed upon property subject to this Declaration.

2.18 INSTITUTIONAL MORTGAGEE: The term "Institutional Mortgagee" shall mean a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under or regulated by any federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage including without limitation the Federal Housing Authority and the Veteran's Administration; (iii) the State of California; or (iv) Declarant.

2.19 INVITEE: The term "Invitee" shall mean any person whose presence within the Project is approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants, and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

2.20 LOT: The term "Lot" shall mean Lots 1 through 22, inclusive, as shown on the Map and all Improvements thereon. The term "Lot" shall also mean those portions of the Additional Property described as Lots in a Declaration of Annexation for a particular Phase.

2.21 MANAGER: The term "Manager" shall mean the person or entity appointed or hired to manage and operate the Project.

2.22 MAP: The term "Map" shall mean the subdivision map recorded on March 6, 1984, in Book 73 of Maps at Page 27, et. seq., in the Official Records of the County. The term "Map" shall also mean any recorded subdivision map described in a Declaration of Annexation.

2.23 MEMBER: The term "Member" shall mean an Owner.

2.24 MORTGAGE: The term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

2.25 MORTGAGEE: The term "Mortgagee" shall mean a Mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

2.26 NOTICE AND HEARING: The term "Notice and Hearing" shall mean the procedure which gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board.

2.27 OWNER: The term "Owner" shall mean the holder of record fee title to a Lot, including Declarant as to each Lot owned by Declarant. If more than one person owns a single Lot, the term "Owner" shall mean all owners of that Lot. The term "Owner" shall also mean a contract purchaser (vendee) under an installment land contract but shall exclude any person having an interest in a Lot merely as security for performance of an obligation.

2.28 PARKING AREA: The term "Parking Area" shall mean all parking wherever located within the Project, including driveways (irrespective of the location of the driveway) and Parking Spaces but not including enclosed garages.

2.29 PARKING SPACES: The term "Parking Spaces" shall mean those portions of the Common Area which are designed and designated for the parking of motor vehicles, excluding driveways.

2.30 PHASE: The term "Phase" shall mean two or more Lots and/or Common Area which will simultaneously be made subject to the provisions of this Declaration either by recording this Declaration or by recording a Declaration of Annexation.

2.31 PROJECT: The term "Project" shall mean the Subject Property and any property described in a Declaration of Annexation.

2.32 PROJECT DOCUMENTS: The term "Project Documents" shall mean the Articles, Bylaws, this Declaration and the Rules.

2.33 PUBLIC REPORT: The term "Public Report" shall mean a Final Subdivision Public Report issued by the Department of Real Estate of the State of California for a Phase of the Project.

2.34 RESIDENCE: The term "Residence" shall mean a dwelling unit designed for human occupancy.

2.35 RULES: The term "Rules" shall mean the rules adopted by the Association, including architectural guidelines, restrictions and procedures.

2.36 SUBJECT PROPERTY: The term "Subject Property" shall mean Lots 1 through 22, inclusive, and Lot 23, as shown on the Map and all Improvements thereon.

ARTICLE IIIOWNERSHIP AND EASEMENTS

3.1 NON-SEVERABILITY: The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by the Owner separately from the interest in the Common Area. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance. There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise or operation of law, for his own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The ownership interests in the Common Area and Lots described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Lots superior to all other encumbrances applied against or in favor of any portion of the Project.

3.2 OWNERSHIP OF LOTS: Title to each Lot in the Project shall be conveyed in fee to an Owner. If more than one person and/or entity owns an undivided interest in the same Lot, such persons and/or entities shall constitute one Owner.

3.3 OWNERSHIP OF COMMON AREA: Title to the Common Area in each Phase of the Project shall be conveyed to the Association prior to or concurrently with the conveyance of the first Lot in that particular Phase to an Owner.

3.4 OWNERSHIP OF PARTY WALLS, PARTY FENCES, AND/OR PARTY ROOFS: That portion of any wall which is originally constructed as a wall common to two Residences shall be a "party wall". That portion of any roof which is originally constructed as a roof common to two Residences shall be a "party roof". Any fence originally constructed and placed upon a common lot boundary line shall be a "party fence". Each Owner of a Lot upon which a party wall, party roof and/or party fence is situated shall own to the center of such wall, roof and/or fence.

3.5 EASEMENTS: Individual grant deeds to Lots may, but shall not be required to, set forth the easements specified in this Article.

3.5.1 Easements On Map: The Common Area and Lots are subject to the easements and rights of way shown on the Map.

3.5.2 Easements For Common Area: Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Board, after Notice and Hearing, to suspend an Owner's right to use any recreational facilities; and

(b) The right of the Association to dedicate and/or grant easements over all or any portion of the Common Area.

3.5.3 Utilities: There are reserved and granted for the benefit of each Lot, as dominant tenement, over, under, across and through the Project (including the Common Area and each other Lot, jointly), as the servient tenement, non-exclusive easements for utility services.

3.5.4 Encroachment: There are reserved and granted for the benefit of each Lot, as dominant tenement, over, under and across each other Lot and the Common Area, as servient tenements, and for the benefit of the Common Area, as dominant tenement, over, under and across each Lot, as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of Lots and/or Common Area as shall be encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for maintenance of the encroaching Improvement shall exist for as long as the encroachment exists; provided, however, that no valid easement for encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement for encroachment may but need not be cured by repair or restoration of the structure.

3.5.5 Support, Maintenance and Repair: There is hereby reserved and granted a non-exclusive easement appurtenant to the Common Area and to all other Lots, as dominant tenements, through each Lot and the Common Area, as servient tenements, for the support, maintenance and repair of the Common Area and all Lots.

3.5.6 Easement to Declarant For Adjoining Property: Declarant shall have, and hereby expressly reserves, an easement over and across the Common Area, as servient tenement, for the purposes of reasonable ingress to and egress from, over and across the Project, including private roads and pathways, to the Additional Property until all of the Additional Property is annexed to the Project.

3.5.7 Annexation of Additional Property: Upon the recordation of a Declaration of Annexation, the Lots and the Owners of Lots in the annexed Phase shall have all of the easements specified in this Article and the Lots and the Owners of Lots in the Project prior to the annexation shall have all of the easements specified in this Article as though the annexed Phase were initially part of the Project.

3.5.8 Additional Easements: Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of the Project.

3.5.9 Association's Easements: There are hereby reserved to the Association and its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in the Project Documents, including without limitation and subject to Section 5.8, the right to enter upon Lots.

3.5.10 Party Walls, Party Roofs and/or Party Fences: Each Owner of a Lot containing a party wall, party fence and/or party roof and the Lot upon which such party wall, party fence and/or party roof is located shall have a reciprocal non-exclusive easement over and across such portions of the contiguous Lot as is necessary to maintain such wall, roof and/or fence.

ARTICLE IVUSES AND RESTRICTIONS

4.1 USE AND OCCUPANCY OF LOTS AND RESIDENCES: Each Residence shall be used solely for residential purposes. No other use is allowed except as specifically permitted by local ordinance. No Residence shall be permanently occupied by any more than two (2) persons per bedroom. No Owner may permit, or cause anything to be done or kept upon, in or about his Lot which might obstruct or interfere with the rights of other Owners or which would be noxious, harmful or unreasonably offensive to other Owners. Each Owner shall comply with all of the requirements of all governmental authorities, federal, state or local, and all laws, ordinances, rules and regulations applicable to his Lot and Residence.

4.2 RENTAL OF RESIDENCES: An Owner shall be entitled to rent or lease his Residence, if:

4.2.1 There is a written rental or lease agreement which incorporates by reference the provisions of the Project Documents, as the same presently exist or may hereafter be amended and specifies that (i) the tenant shall be subject to all provisions of the Project Documents and (ii) a failure to comply with any provision of the Project Documents shall constitute a default under the agreement;

4.2.2 The period of the rental or lease is not less than thirty (30) days;

4.2.3 The Owner gives notice of the tenancy to the Board and has otherwise complied with the terms of the Project Documents; and

4.2.4 The Owner gives each tenant a copy of the Project Documents.

4.3 ANIMALS: An Owner may keep not more than two (2) ordinary household pets (such as two (2) dogs or two (2) cats or one (1) dog and one (1) cat) within his Lot. Each Owner may also maintain a reasonable number of small caged animals, birds or fish. The Rules may increase the number and type of animals which may be kept. The Board shall specifically have the right to prohibit the maintenance of any pet which, after Notice and Hearing, is found to be a nuisance to other Owners. The maintenance or keeping of animals on any lot shall be subject to all applicable laws, ordinances, resolutions, rules or regulations of the City, County or State.

4.4 USE OF COMMON AREA: All use of Common Area is subject to the Rules. There shall be no use of the Common Area except by Owners and their Invitees. All persons residing within the Project may enjoy the use of all facilities in the Common Area as long as they abide by the terms of the Project Documents. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior consent of the Board, except the parking of vehicles in Parking Areas. No alterations or additions to Common Area shall be permitted without the approval of the Board. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior consent of the Board. No Owner shall permit anything to be done or kept in the Common Area or any other part of the Project which might result in the cancellation of insurance on any Lot or any part of the Common Area, which would interfere with rights of other Owners, which would be noxious, harmful or unreasonably offensive to other Owners or which would be in violation of any governmental statute, ordinance, rule or regulation. No waste shall be committed in the Common Area.

4.5 PARKING: Vehicles shall not be parked anywhere in the Project except wholly within garages and Parking Areas. Only the Owner(s) of the Lot and his Invitees may park on the driveway which provides access to the Lot of that Owner(s). Parking Spaces are restricted to guest parking on a first-come, first served basis. All Parking Areas shall be used solely for the parking and storage of motor vehicles used for personal transportation. No boat, trailer, camper, motorcycle, golf cart, commercial vehicle, mobile home, other recreational vehicle or any dilapidated vehicle shall be parked or stored in any Parking Area for a period exceeding thirty-six (36) hours. Garage doors shall remain closed, except when the Garage is in use. No part of the Common Area shall be used for repair, construction or reconstruction of any vehicle, boat or any other item or thing except in an emergency. As long as applicable ordinances and laws are observed, the Board may cause the removal of any vehicle which is in violation of this Declaration.

4.6 SIGNS: All signs displayed in the Project shall be attractive and compatible with the design of the Project and shall comply with all applicable local ordinances. The only signs of any kind which may be displayed to the public view on or from any Lot or the Common Area in the Project shall be as follows:

ARTICLE IV

4.6.1 One (1) sign of reasonable dimensions may be placed on a Lot advertising the Lot for sale or rent;

4.6.2 Signs may be displayed by Declarant on Common Area or unsold Lots, as Declarant deems appropriate, advertising Lots owned by Declarant for sale or rent;

4.6.3 Appropriate signs may be displayed by the Association to identify the Project;

4.6.4 Other signs, posters and notices approved by the Board or specified in the Rules or in this Declaration may be posted in locations designated by the Board; and

4.6.5 Signs required by legal proceedings may be displayed.

4.7 STORAGE OF WASTE MATERIALS: All garbage, trash and accumulated waste material shall be placed in appropriate covered trash containers. No individual trash containers or receptacles shall be permitted unless garbage pickup service is billed directly to individual Lots. In that event, the containers may be placed on Common Area or where visible only on the day of the week that pick-up is to occur.

4.8 ANTENNAS: Except for those erected or constructed by Declarant or installed by a licensed public or quasi-public utility or cable franchise or whose erection or construction is approved by the Board, no outside television antenna, aerial or radio tower shall be erected, constructed or placed on any Lot.

4.9 INVITEES: Each Owner shall be responsible for compliance with the provisions of the Project Documents by his Invitees. An Owner shall promptly pay any Reimbursement Assessment levied and/or any fine or penalty imposed against such Owner for violations committed by his Invitee.

4.10 RESTRICTION ON BUSINESS: No business of any kind shall be established, maintained, operated, permitted or constructed in any portion of the Project, except the business of Declarant in completing the development and sale of the Lots in the Project and except as may be permitted by local ordinance.

4.11 WINDOW COVERINGS: All drapes, window shades or other window coverings installed in the windows of Residence which are visible from the exterior of the Residence shall comply with the Rules, if applicable. Any

drapes or other window covering installed in compliance with the Architectural Rules may remain for the useful life thereof. All window coverings shall be installed within ninety (90) days after close of escrow for the Lot.

4.12 MINERAL EXPLORATION: No Lot shall be used to explore for or to remove any oil, hydrocarbons or minerals of any kind without the approval of the Board and only if permitted by local ordinances.

4.13 MACHINERY AND EQUIPMENT: No machinery or equipment of any kind shall be maintained or operated upon any Lot except as is customary and necessary in connection with approved construction without the approval of the Board.

ARTICLE VIMPROVEMENTS

5.1 MAINTENANCE OF COMMON AREA: The Association shall be responsible for maintenance, repair, replacement, painting and upkeep of Common Area. The Association shall keep the Common Area and Improvements thereon in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Area in first class condition. Common Area includes without limitation those portions of all utility systems servicing the Project whether or not located within the Project which have not been accepted for maintenance purposes by the City, County or appropriate utility agency. Maintenance and care of any Detention Pond(s) shall include cleaning and replacing the siltation and sediment traps.

5.2 ALTERATIONS TO COMMON AREA:

5.2.1 Approval: Only the Board shall construct, reconstruct, refinish or alter any improvement situated upon the Common Area. A proposal for any construction of or alteration, maintenance or repair to an Improvement may be made at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws.

5.2.2 Funding: Expenditures for alterations, maintenance or repairs to an existing capital Improvement for which a reserve has been collected shall be made from the Reserve Account. The Board may levy a Special Assessment to fund any construction, alteration, repair or maintenance of an Improvement for which no reserve has been collected or if the Reserve Account is insufficient to cover the cost of the proposed Improvement.

5.3 MAINTENANCE OF RESIDENCES: Each Owner shall keep all portions of his Residence, except those described in Section 5.5.1, in good repair and condition, including the skylights, windows and other glass surfaces of his Residence and the screens covering doors and windows of his Residence.

5.4 ALTERATIONS TO RESIDENCES: Owners may alter or remodel the interiors of their Residences, if the alterations do not impair the structural integrity of the Residence and if the Owner complies with all laws and ordinances regarding alterations and remodeling.

5.5 MAINTENANCE AND REPAIR OF EXTERIORS OF RESIDENCES AND FENCES: The responsibility for maintaining and repairing exteriors of Residences and fences shall be as follows:

5.5.1 Association's Responsibilities: The Association shall paint and provide structural repair and replacement of the exterior surfaces of any fences (which are not party fences) and of the Residences, excluding roofs, skylights, windows and other glass surfaces and any screens covering doors and windows.

5.5.2 Owner's Responsibilities: Each Owner shall maintain, repair and otherwise care for the roof of his Residence and all walkways and driveways located within his Lot at the Owner's sole expense. Mechanical and electrical equipment and hardware for opening and closing Garage doors shall be maintained, repaired and replaced by the Owner of the Garage.

5.5.3 Responsibilities for Party Walls, Party Fences and/or Party Roofs: The Owners of a party wall, party fence, and/or party roof shall be responsible for maintaining, repairing and replacing it. The costs of such maintenance, repair and/or replacement shall be shared equally by the Owners; provided, however, that all costs of any maintenance, repair or replacement necessitated by the negligent or willful action of an Owner shall be borne by that Owner. In the absence of negligent or willful conduct, any necessary maintenance, repair or replacement performed by an Owner shall entitle that Owner to a right of contribution from the other Owners of the party wall, party fence or party roof. The right of contribution shall be appurtenant to the Lot and shall pass to the successor(s) in interest of the Owner entitled to contribution.

5.6 ALTERATIONS TO EXTERIORS OF RESIDENCES AND/OR LOTS: Any proposals for alterations, additions or other Improvements to the exteriors of Residences and/or Lots shall be made in accordance with the provisions of Article XII. The costs of any alteration or addition shall be paid by the Owner who has obtained the approval.

5.7 LANDSCAPING: All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality as originally established by Declarant and in a condition comparable to that of other first class residential subdivisions in the City. Specific restrictions on landscaping may be established in the Rules. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and

replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed.

5.7.1 Common Area: The Association shall be responsible for all landscaping located on Common Area and all unenclosed portions of Lots.

5.7.2 Lots: Each Owner shall be responsible for all landscaping located within the enclosed portions of his Lot. If landscaping within Lots is not installed by Declarant, each Owner shall install, plant and complete permanent landscaping within his Lot within six (6) months after the close of escrow for the sale of the Lot to the Owner.

5.8 RIGHT OF ENTRY: In order to effectuate the provisions of Sections 5.3 through 5.7, inclusive, the Board may enter any Residence or Lot whenever entry is necessary in connection with the performance of any maintenance or construction which the Board is authorized to undertake. Entry shall be made with as little inconvenience to an Owner as practicable and only after reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

5.9 DAMAGE AND DESTRUCTION: The term "restore" shall mean repairing, rebuilding or reconstructing a damaged Lot or Common Area to substantially the same condition in which it existed prior to fire or other casualty damage, with each Improvement, to the extent possible, having the same vertical and horizontal boundaries, appearance and location as before.

5.9.1 Contracting to Restore: If fire or other casualty damage extends to any Lot(s) or Common Area which is so insured, the Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association. The Board shall obtain such bids from responsible licensed contractors to restore the Lot(s) or Common Area as the Board deems reasonable and, if the total funds available without a vote of Members, as described in Section 5.9.2, is sufficient to restore the damaged Lot(s) or Common Area, the Board, on behalf of the Association, shall contract with the contractor whose bid the Board deems to be the most reasonable. The contractor shall provide a completion bond naming the Association and each affected Owner as beneficiaries. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid to the Reserve Account and held for the benefit of the Association.

5.9.2 Priority in Use of Funds: The costs of restoration of Lot(s) or Common Area shall be funded first by any insurance proceeds paid to the Association under existing insurance policies and then by any Reserve Account funds designated for the repair or replacement of the capital improvement which has been damaged. If the aggregate amount of funds is still insufficient to pay the total costs of restoration, a Special Assessment against all Owners shall be levied by the Board up to the maximum permitted without a vote of the Members in accordance with the limitations of set forth in the Bylaws.

5.9.3 Insufficient Funds: If the total funds available to restore the Lot(s) or Common Area pursuant to Section 5.9.2 is insufficient to restore the Lot(s) or Common Area, then:

(a) With respect to the Lot(s), a special meeting of the Members shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof. If an additional Special Assessment in an amount sufficient to complete the restoration is approved, the Board shall then contract for the restoration of the Lot(s) as described above. If a decision is made not to impose such an additional Special Assessment, a meeting may be called by the Owners whose Lots were damaged for the purpose of voting whether to impose an additional Special Assessment on only those Owners. Any decision to impose such an additional assessment on only the affected Owners must have the affirmative vote of all the affected Owners. If a decision is made not to levy the necessary assessment, all funds described in Section 5.9.2 shall be paid to the Owners of the damaged or destroyed Improvements according to the fair market values of the damaged Lots immediately prior to the time of destruction, as determined by an independent appraisal made by a qualified real estate appraiser with a Member of the Appraisal Institute Certificate or the equivalent, as selected by the Board, or

(b) With respect to the Common Area, a special meeting of the Members shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof. The Board shall then contract for the restoration of the Common Area as described above, making use of whatever funds are then available to it.

5.10 CONDEMNATION OF COMMON AREA: If all or any portion of the Common Area is taken for any public or quasi-

public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be deposited into the Current Operation Account until distributed. The Association shall distribute such funds proportionately to all Owners as their interests appear according to the respective fair market values of their Lots at the time of condemnation, as determined by an independent appraisal made as described in Section 5.9.3. The Association shall represent the interests of all Owners.

5.11 MECHANIC'S LIENS: If a notice of mechanic's lien is filed against the Project for, or purporting to be for, labor or material alleged to have been furnished to or delivered for any Owner within the Project or at his Lot or Residence, the Owner shall immediately cause the lien to be discharged by payment, bond or otherwise. If the Owner fails to discharge the lien, the Board may provide Notice and Hearing to the Owner to determine the effect of the lien and any offsets or defenses thereto. At the hearing, if the Board determines that the lien adversely and improperly affects and encumbers the ownership interests of other Owners and that no adequate protection of the interests of other Owners has been provided, the Board may cause the lien to be discharged by payment, bond or otherwise. The Board shall then levy a Reimbursement Assessment against the Owner(s) responsible for the existence of the lien together with any Additional Charges incurred. If the Board determines that the lien does not adversely affect the interests of other Owners, it may take whatever other action may be necessary to properly protect the interests of the Owners.

ARTICLE VIFUNDS AND ASSESSMENTS

6.1 COVENANTS TO PAY: Declarant and each Owner covenants and agrees to pay to the Association the assessments and any Additional Charges levied pursuant to this Article VI.

6.1.1 Liability for Payment: The obligation to pay assessments shall run with the land so that each successive record Owner of a Lot shall in turn become liable to pay all such assessments. No Owner may waive or otherwise escape personal liability for assessments or release the Lot owned by him from the liens and charges hereof by non-use of the Common Area, abandonment of the Lot or any other attempt to renounce rights in the Common Area or the facilities or services within the Project. Each assessment shall constitute a separate assessment and shall also be a separate, distinct and personal obligation of the Owner of the Lot at the time when the assessment was levied and shall bind his heirs, devisees, personal representatives and assigns. Any assessment not paid when due is delinquent. The personal obligation of an Owner for delinquent assessments shall not pass to a successive Owner unless the personal obligation is expressly assumed by the successive Owner. No such assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. After an Owner transfers fee title of record to his Lot, he shall not be liable for any charge thereafter levied against the Lot.

6.1.2 Funds Held in Trust: The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. Upon the sale or transfer of any Lot, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

6.1.3 Offsets: No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

6.2 REGULAR ASSESSMENTS:

6.2.1 Payment of Regular Assessments: Regular Assessments for each fiscal year shall be estab-

lished when the Board approves the budget for that fiscal year. Regular Assessments shall be levied on a fiscal year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration. Regular Assessments shall commence for all Lots in the Phase on the first day of the first month following the month in which the first Lot in that Phase is conveyed to an Owner and may commence prior to that date at the option of Declarant.

6.2.2 Budgeting: Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing: (i) estimated revenue and expenses on an accrual basis; (ii) the amount of the total cash reserves of the Association currently available for replacement or major repair of Common Area and for contingencies; (iii) an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the Common Area; and (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area. The total amount shall be charged equally against all Lots as Regular Assessments, subject to the limitations set forth in the Bylaws. For the first fiscal year, the budget shall be based upon the budget accepted by the Department of Real Estate of the State of California and shall be approved by the Board no later than the date on which Regular Assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy thereof to each Member, together with written notice of the amount of the Regular Assessment to be levied against the Owner's Lot, not less than forty-five (45) days prior to the beginning of the fiscal year.

6.2.3 Restrictions for Tax Exemption: Notwithstanding any other provision in the Project Documents, the Board shall prepare its annual budget and otherwise conduct the business of the Association in such a manner that the Association shall qualify and be considered as an organization exempt from Federal and State income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 23701t and any amendments thereto. As long as either federal or state regulations may so require for the Association to receive tax exempt status, the following budgeting limitations shall be observed:

(a) On Gross Income: Sixty percent (60%) or more of the gross income of the Association for each taxable year shall consist solely of amounts received as membership dues, fees and assessments from Members;

(b) On Nature of Expenditures: Ninety percent (90%) or more of the expenditures of the Association for the taxable year shall be expenditures solely for providing management, maintenance and care of the property of the Association or for the general welfare of the Members;

(c) On Benefit to Individuals: No part of the net earnings of the Association shall inure to the benefit of any Member or individual (other than those benefits provided by the Association's management, maintenance and care of property within the Project or by a rebate of excess assessments);

(d) On Expenditures for Utilities: The Association shall not provide or maintain facilities to provide utilities for its Members (provided, however, that the Association may charge for commonly metered services provided to the Project by utility companies); and

(e) On Funds for Capital Improvements: Amounts received as assessments which are not expended for Association purposes during the taxable year (funds collected for contingencies and deferred maintenance, repair and replacement of capital Improvements), not including excess funds in the Current Operation Account, shall be transferred or deposited to and held in separate trust account(s) to provide for management, maintenance and care of the property within the Project and to promote the general welfare of the Members.

6.2.4 Assessments after Annexation:

(a) Reallocation of Assessments: After annexation of each Phase, the allocation and assessment of the charges in the budget shall be reallocated among all Lots in the Project, including those in the annexed Additional Property, in the same manner as described above.

(b) Revision of Budget: After a new Phase has been annexed, the Board shall approve a new budget for the remainder of the current fiscal year for use upon the commencement of Regular Assessments against Lots in the new Phase. Declarant shall give notice to the Association

of the recordation of a Declaration of Annexation for a Phase and shall give the Association a copy of the budget submitted to the Department of Real Estate in connection with the Public Report for that Phase. The Board shall then determine whether to accept the budget provided by Declarant or revise such budget as the Board determines. Notice of the new Regular Assessment to be levied against each Lot in the Project shall be delivered to the Owners and Declarant within five (5) days after the close of escrow for the first Lot sold in the new Phase.

6.2.5 Non-Waiver of Assessments: If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

6.2.6 Exemption from Regular Assessment: Notwithstanding the provisions of Section 6.2, those portions of the Project which do not include structural Improvements suitable for human occupancy shall be exempt from the payment of those portions of the Regular Assessment which are allocated for defraying operating expenses and reserves directly attributable to the existence and use of the structural Improvements, including (i) roof replacement; (ii) exterior maintenance; (iii) deferred structural maintenance and repair; (iv) walkway and Parking Area lighting; (v) refuse disposal; (vi) cable television; (vii) water supplied to Residences; (viii) landscaping; (ix) electricity; (x) gas; (xi) heating system replacement; and (xii) water heater replacement. The exemption from payment of those portions of the Regular Assessment shall be effective only until a notice of completion of construction of the structural Improvements has been recorded or until one hundred twenty (120) days after the issuance of a building permit for the structural Improvements, whichever first occurs.

6.3 SPECIAL ASSESSMENTS: Subject to the limitations in the Bylaws, Special Assessments may be levied in addition to Regular Assessments for (i) constructing capital Improvements, (ii) correcting an inadequacy in the Current Operation Account, (iii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of Improvements in the Lot(s) or Common Area, or (iv) paying for such other matters as the Board may deem appropriate for the Project. Special Assessments shall be levied in the same manner as Regular Assessments.

6.4 REIMBURSEMENT ASSESSMENTS: The Association shall levy a Reimbursement Assessment against any Owner and his Lot if a failure to comply with the Project Documents

has (i) necessitated an expenditure of monies by the Association to bring the Owner or his Lot into compliance or (ii) resulted in the imposition of a fine or penalty. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been given. Notwithstanding any other provision in the Project Documents expressed or implied to the contrary, Reimbursement Assessments are assessments but they may not be enforced by any lien rights provided in this Declaration.

6.5 ACCOUNTS:

6.5.1 Types of Accounts: Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a bank and/or savings and loan association, which accounts shall be clearly designated as (i) the Current Operation Account and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operation Account and shall deposit those portions of the assessments collected as reserves for contingencies and for replacement and deferred maintenance of capital Improvements into the Reserve Account.

6.5.2 Current Operation Account: All of the following may be paid from the Current Operation Account:

(a) All costs of enforcing the provisions of the Project Documents;

(b) Taxes and assessments, if any, levied or assessed separately against the Common Area;

(c) Sums necessary to discharge any lien or encumbrance, including taxes, levied against any Lot which constitutes a lien against any portion of the Common Area;

(d) Insurance premiums and costs for policies purchased for the benefit of the Association;

(e) Water, sewer, garbage, electrical, gas, telephone and other necessary utility services for the Common Area, the Lots and Residences to the extent such services are not separately metered or individually charged (however, each Residence will be separately metered for gas, electricity, water and sewer);

(f) Costs of routine maintenance, repair, and upkeep of Improvements in the Common Area; and

(g) All other goods, materials, supplies, furniture, labor, services, maintenance, repairs or alterations which the Association is authorized to secure and pay for pursuant to the terms of this Declaration or by law, other than those to be expended from the Reserve Account.

6.5.3 Reserve Account: The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of capital Improvements for which reserves have been collected and held. No portion of a reserve designated for a particular capital Improvement may be expended for any purpose other than the maintenance or replacement of the capital Improvement. Except for funds collected for contingencies, no funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes.

6.6 ENFORCEMENT OF ASSESSMENTS:

6.6.1 Establishment of Lien: There is a present lien, with power of sale, against each Lot to secure payment of all assessments (except Reimbursement Assessments) levied against the Lot pursuant to this Declaration, all Additional Charges and all sums which become due and payable in accordance with this Declaration after the date of recordation of a notice of assessment ("Notice"). Except for the transfer of a Lot pursuant to a foreclosure proceeding, the sale or transfer of a Lot shall not affect such a lien. The priority of all assessment liens shall be in inverse order so that, upon foreclosure of the lien for a particular assessment, any foreclosure sale will be subject to all assessment liens previously levied on such Lot. Any lien recorded shall be in favor of the Association. Each Owner, including Declarant, hereby appoints the Association as his trustee and empowers the Association, as trustee, to enforce the lien and to foreclose the lien by the private power of sale provided in Section 11003.3 of the Business and Professions Code of the State of California, as it may be revised, amended or altered from time to time, or by judicial foreclosure. Each Owner further grants to the Association, as trustee, the power and authority to sell the Lot of any defaulting Owner to the highest bidder to satisfy such lien. Each Owner hereby waives the benefit of any homestead or exemption laws of this State of California now or then in effect regarding any lien created pursuant to this Declaration.

6.6.2 Enforcement: In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the Owners to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

(a) By Suit: The Association may commence and maintain a suit at law against any Owner personally obligated to pay a delinquent assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, Additional Charges and any other amounts as the court may award. A proceeding to recover a judgment for unpaid assessments may be maintained without the necessity of foreclosing or waiving the lien established herein.

(b) By Lien: The Association may commence and maintain proceedings to foreclose the lien established herein. No action shall be brought to foreclose a lien until a Notice authorized by the Board and signed by an authorized agent thereof, or by any Owner if the Board fails or refuses to act, has been recorded in the Official Records of the County and a copy of the recorded Notice has been delivered to the Owner(s) named in the Notice. The Notice shall state the amount of the delinquent assessment(s), the Additional Charges incurred to date, a description of the Lot and the name(s) of the record Owner(s) thereof. Once (i) thirty (30) days has elapsed since the recordation of the Notice and (ii) ten (10) days has elapsed since the mailing or delivery of a copy of the recorded Notice to the Owner, an action in the name of the Association may then be commenced to foreclose the lien for the delinquent assessment(s). The lien recorded shall continue for a period of one (1) year unless extended for a period of one (1) additional year by the recording of a written extension by the Association. When a Notice has been recorded, such assessment shall constitute a lien on each respective Lot prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage.

6.6.3 Additional Charges: In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. All Additional Charges shall be included in any judgment in any suit or ac-

tion brought to enforce collection of delinquent assessments or may be levied against a Lot as a Reimbursement Assessment. Additional Charges shall include, but not be limited to, the following:

(a) Attorneys' Fees: Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

(b) Late Charges: A late charge in an amount to be fixed by the Board in accordance with Civil Code Section 1725 to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

(c) Costs of Suit: Costs of suit and court costs incurred as are allowed by the court; and

(d) Other: Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

6.6.4 Certificate of Satisfaction of Lien: Upon payment of a delinquent assessment or other satisfaction thereof, the Association shall record a certificate stating the satisfaction and release of the assessment lien.

6.7 STATEMENT OF ASSESSMENT LIEN: Within ten (10) days of a request from an Owner liable for assessments, the Association shall furnish to that Owner a written certificate signed by an officer or authorized agent of the Association stating the amount of any assessment and any Additional Charges secured by the lien upon his Lot. A charge, not to exceed the reasonable costs of preparation and reproduction of the certificate, may be levied by the Board for the issuance of such certificate.

6.8 SUBORDINATION OF LIEN: Notwithstanding any provision to the contrary, the liens for assessments created by this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of a First Mortgage made in good faith and for value. Upon the foreclosure of any First Mortgage on a Lot, any lien for assessments which became due prior to such foreclosure shall be extinguished; provided, however, that after such foreclosure there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all assessments, whether Regular or Special, charged to such Lot after the date of

such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this Subsection, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration.

ARTICLE VIIMEMBERSHIP IN THE ASSOCIATION

7.1 THE ORGANIZATION: The Association is a non-profit mutual benefit corporation. Its affairs shall be governed by and it shall have such powers as are set forth in the Project Documents.

7.2 MEMBERSHIP: Each Owner (including Declarant for so long as Declarant is an Owner), by virtue of being an Owner, shall be a Member of the Association. No other person shall be accepted as a Member.

7.2.1 Appurtenant to Ownership: Association membership is appurtenant to and may not be separated from the ownership of a Lot. Membership shall terminate upon termination of Lot ownership. Ownership of a Lot shall be the sole qualification for Association membership. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Lot (and then only to the transferee of title to such Lot). Any attempt to make a prohibited transfer is void. The rights, duties, privileges and obligations of all Members shall be as provided in the Project Documents.

7.2.2 Annexation: Upon annexation of any property, the Owners of those Lots described in the Declaration of Annexation shall become Members.

7.3 CLASSES OF MEMBERSHIP: The Association shall initially have two (2) classes of Members.

7.3.1 Class "A" Members: Each Owner, except Declarant, shall be a Class A Member.

7.3.2 Class "B" Member: Declarant shall be the sole Class B Member. Class B membership shall expire and shall be converted to Class A membership on the first to occur of the following events:

(a) When the total number of Class A votes equals the total number of Class B votes;

(b) The date which is the second (2nd) anniversary of the original issuance of the Public Report for the most recent Phase of the Project; or

(c) The date which is the fourth (4th) anniversary of the original issuance of the Public Report for the first Phase of the Project.

ARTICLE VIIIDEVELOPMENT RIGHTS

8.1 LIMITATIONS OF RESTRICTIONS: Declarant is undertaking the work of developing Lots and other Improvements within the Project. The completion of the development work and the marketing and sale, rental and other disposition of the Lots is essential to the establishment and welfare of the Subject Property and the Additional Property as a residential community. In order that the work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

8.2 RIGHTS OF ACCESS AND COMPLETION OF CONSTRUCTION: Until the third anniversary of the original issuance of a Public Report for the most recent Phase, Declarant, its contractors and subcontractors shall have the right to:

8.2.1 Obtain reasonable access over and across the Common Area of the Project and/or do within any Lot owned by it whatever is reasonably necessary or advisable in connection with the completion of the Project; and

8.2.2 Erect, construct and maintain on the Common Area of the Project and/or within any Lot owned by it such structures as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Project in parcels by sale, lease or otherwise.

8.3 SIZE AND APPEARANCE OF PROJECT: Declarant shall not be prevented from increasing or decreasing the number of Lots that may be annexed to the Project or from changing the exterior appearance of Common Area structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by law.

8.4 MARKETING RIGHTS:

8.4.1 Generally: Subject to the limitations of this Section, Declarant shall have the right to: (i) maintain model homes, sales offices, storage areas and related facilities in any unsold Lots or Common Area within the Project as are necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Lots; (ii)

make reasonable use of the Common Area and facilities for the sale of Lots; and (iii) conduct its business of disposing of Lots by sale, lease or otherwise.

8.4.2 Agreement After One Year: If one year following the first conveyance of a Lot in a Phase to an Owner, Declarant requires exclusive use of any portion of the Common Area in that Phase for marketing purposes, Declarant may use the Common Area only if an agreement is entered into between Declarant and the Association. The agreement must specifically provide for a limited duration for such use and must provide for a specific reasonable rate of compensation to the Association by Declarant. Compensation shall be commensurate with the nature, extent and duration of the use proposed by Declarant. In no event, however, shall Declarant be denied the rights to use the Common Area and any Lots owned by Declarant as an Owner.

8.5 TITLE RIGHTS: This Declaration shall not be construed to constitute a limitation on Declarant's title rights to the Additional Property prior to its annexation, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any portion of the Additional Property. The rights of Declarant under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant to any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

8.6 AMENDMENT: After the expiration of Class B membership, the provisions of this Article may not be amended without the consent of Declarant until either (i) all of the Additional Property has been annexed to the Project and all of the Lots in the Project owned by Declarant have been sold or (ii) three (3) years after the original issuance of the most recent Public Report for the Project, whichever occurs first.

ARTICLE IXRIGHTS OF MORTGAGEES

9.1 CONFLICT: Notwithstanding any contrary provision contained elsewhere in the Project Documents, the provisions of this Article shall control with respect to the rights and obligations of Institutional Mortgagees specified herein.

9.2 LIABILITY FOR UNPAID ASSESSMENTS: Any Institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Lot which accrue prior to the acquisition of title to the Lot by the Institutional Mortgagee.

9.3 PAYMENT OF TAXES AND INSURANCE: Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or Improvements thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

9.4 TERMINATION OF CONTRACTS AND AGREEMENTS:

9.4.1 Any contract or lease, including any contract providing for the services of Declarant, entered into by the Association while Declarant controls the Association shall provide that the Association has the right to terminate such contract or lease without cause and without penalty or the payment of a termination fee at any time after the transfer of control of the Association from Declarant upon not more than ninety (90) days notice to the other party. For purposes of this Subsection, the term "control" shall mean the right of Declarant to exercise unilateral control over the Association, the Board, the Project or the Owners in any manner other than Declarant's exercise of votes allocated to Declarant on the same basis as votes are allocated to other Owners.

9.4.2 Any agreement for professional management of the Project or any agreement providing for services of

Declarant shall be for a term not to exceed one (1) year without the consent of fifty-one percent (51%) of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

9.5 NOTICES TO ELIGIBLE HOLDERS: An Eligible Holder is entitled to timely written notice of:

9.5.1 Any condemnation loss or casualty loss which affects either a material portion of the Project or the Lot on which the Eligible Holder holds a First Mortgage;

9.5.2 Any delinquency in the payment of assessments or charges owed by the Owner of a Lot which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

9.5.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

9.5.4 Any proposal to take any action specified in this Article or in Section 10.1.2; or

9.5.5 Any default by an Owner-mortgagor of a Lot in the performance of his obligations under this Declaration or the Bylaws which is not cured within sixty (60) days.

9.6 RESERVE FUND: The Association shall maintain as reserve funds the Reserve Account which shall be sufficient to pay for maintenance, repair and periodic replacement of Common Area Improvements which the Association is obligated to maintain. This reserve fund shall be funded by Regular Assessments of Owners which are payable in installments, as specified in Section 6.2 hereof, rather than by Special Assessments; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of assessment or charge authorized by this Declaration.

9.7 INSPECTION OF BOOKS AND RECORDS: Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Project Documents and any amendments there-

to during normal business hours or under other reasonable circumstances.

9.8 FINANCIAL STATEMENTS: If the Project contains more than fifty (50) Lots, the Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year and furnish the same within one hundred twenty (120) days after written request from any Institutional Mortgagee. If the Project contains fifty (50) or fewer Lots, if fifty-one percent (51%) of the Institutional Mortgagees desire to have audited financial statements of the Association for the immediately preceding fiscal year, the Institutional Mortgagees, at their expense, may cause an audited financial statement to be prepared, if one is not otherwise available.

9.9 VOTING RIGHTS OF MORTGAGEES: For purposes of this Section, a Mortgagee shall be entitled to one (1) vote for each First Mortgage owned.

9.9.1 Unless at least sixty-seven (67%) of the Institutional Mortgagees or sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission to abandon, partition, subdivide, encumber, sell or transfer any property or Improvements owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the property by the Association and Owners shall not be deemed a transfer within the meaning of this Subsection);

(b) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of party walls, party fences or party driveways, or the upkeep of lawns, plantings or other landscaping in the Project;

(c) Fail to maintain fire and extended coverage insurance 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;

(d) Use hazard insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement or reconstruction of the property and Improvements.

9.9.2 Any election to terminate the legal status of the Project as a Planned Development Project shall require:

(a) The approval of at least fifty-one percent (51%) of the Eligible Holders, if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Project; or

(b) The approval of sixty-seven percent (67%) of the total voting power of the Association and sixty-seven percent (67%) of the Eligible Holders.

9.9.3 In the event a portion of the Project is condemned, destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of this Declaration and the original plans and specifications for the Project, unless fifty-one percent (51%) of the Eligible Holders approve the taking of other action by the Association.

9.9.4 The vote or written consent of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) of the Eligible Holders shall be required to assume self-management of the Project, if professional management of the Project has been required by an Eligible Holder at any time.

9.10 MORTGAGE PROTECTION: A breach of any of the conditions contained in this Declaration shall not defeat or render invalid the lien of any First Mortgage made in good faith and for value as to any Lot in the Project; provided however that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Lot if the Lot is acquired by foreclosure, trustee's sale or otherwise.

ARTICLE XAMENDMENT AND ENFORCEMENT

10.1 AMENDMENTS: Prior to the conveyance of the first Lot, any Project Document may be amended by Declarant alone. After the conveyance of the first Lot, the Project Documents may be amended in accordance with the following provisions:

10.1.1 With respect to any action to be taken under this Section 10.1 which is also governed by provisions of Article IX that require a specified vote of Owners and/or Mortgagees, the requirements of Article IX must be satisfied before action may be taken under this Section 10.1. After the requirements of Article IX have been satisfied, a vote to amend this Declaration in compliance with this Section 10.1 may then be taken.

10.1.2 The vote or written consent of sixty-seven percent (67%) of each class of Members and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, shall be required to add to, amend or modify, whether by formal amendment or otherwise, any material provision of this Declaration or the Bylaws which establishes, provides for, governs or regulates any of the following subjects:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of assessment liens;
- (c) Reserves for maintenance, repair and replacement of Common Area;
- (d) Insurance policies or fidelity bonds;
- (e) Rights to use the Common Area;
- (f) Responsibilities for maintenance and repair of any portion of the Project;
- (g) The boundaries of a Lot;
- (h) The interest of an Owner in Common Area;
- (i) Convertibility of Lots into Common Area or of Common Area into Lots;

(j) Leasing of Lots;

(k) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Lot;

(l) The provisions of Section 6.8, Article IX and this Section 10.1.2.

Any amendment or addition to the Declaration or Bylaws regarding any of the foregoing subjects shall not be considered material and need not be approved by Eligible Holders if the amendment or addition is solely for the purposes of correcting technical errors or for clarification. Any Eligible Holder who receives a written request to approve an addition or amendment and who does not deliver or have its response postmarked within thirty (30) days of the date contained within the written request shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally delivered against receipted copy; or (ii) mailed by certified or registered mail, postage prepaid, in either case (i) or (ii) to the parties at their last known address.

10.1.3 Other Provisions of Declaration: Any other provision of this Declaration may be amended by the vote or written consent of record Owners constituting not less than seventy-five percent (75%) of each class of Members.

10.1.4 Recordation of Amendment: Any amendment shall be effective upon the recordation in the Official Records of the County of an instrument setting forth the terms of the amendment, duly certified and executed by the President and Secretary of the Association.

10.2 CONSENT OF THE CITY: Notwithstanding anything to the contrary set forth in Sections 10.1 through 10.4, inclusive, or elsewhere in this Declaration, no amendment to this Declaration which concerns any matter contained in the provisions of Section 17.47.200 through 17.47.280, inclusive, of the Scotts Valley Municipal Code, as the same presently exist or may hereafter be amended shall be effective for any purpose whatsoever with the prior written consent of the City.

10.3 ENFORCEMENT:

10.3.1 Rights to Enforce: The Association the City, and/or any Owner shall have the power to enforce the provisions of the Project Documents in any manner provided by law or in equity and in any manner provided in this Declaration. The Association may institute appropriate legal action, suspend an Owner's use of the recreation facilities or his voting rights for a period not to exceed thirty (30) days and/or levy a fine against an Owner in an amount not to exceed Fifty Dollars (\$50.00) or such other standard maximum amount as may be approved by fifty-one percent (51%) of each class of Members; provided, however, that Reimbursement Assessments are not enforceable by any lien provisions of this Declaration. No determination of whether a violation has occurred shall be made until Notice and Hearing has been provided to the Owner. In the event legal action is instituted by the Association, any judgment rendered shall include all appropriate Additional Charges. Notwithstanding anything to the contrary contained in this Declaration, the Association shall not have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned Lot, including access thereto over and across the Common Area, due to the Owner's failure to comply with the provisions of the Project Documents, unless the loss or forfeiture is the result of the judgment of a court, an arbitration decision, a foreclosure proceeding or a sale conducted pursuant to this Declaration. The provisions of this Declaration shall be equitable servitudes, enforceable by any Owner and/or the Association against the Association and/or any other Owner, tenant or occupant of the Project. Except as otherwise provided, Declarant, the Association or any Owner(s) shall have the right to enforce, in any manner permitted by law or in equity, any and all of the provisions of the Project Documents, including any decision made by the Association, upon the Owners, the Association or upon any property in the Project.

10.3.2 Violation of Law: The Association may treat any Owner's violation of any state, municipal or local law, ordinance or regulation, which violation creates a nuisance to the other Owners in the Project or to the Association, in the same manner as a violation by an Owner of the Project Documents by making such violation subject to any or all of the enforcement procedures set forth in this Declaration, provided that the Association complies with the Notice and Hearing requirements herein.

10.3.3 Remedies Cumulative: Each remedy provided by this Declaration is cumulative and not exclusive.

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

10.4 RIGHTS OF CITY: The Owners of all Lots subject to this Declaration recognize that proper maintenance of the Common Area is for the benefit of all citizens of the City and the City is intended to be a third party beneficiary of the provisions of this Declaration. Therefore, after thirty (30) days notice to the Association, the City may exercise the same powers of enforcement as the Association. If the Association does not properly maintain the Common Area, the City, after thirty (30) days written notice to the Association, may undertake the maintenance of such Common Area. Any and all costs incurred by the City in maintaining such Common Area shall be a lien against the Current Operation Account and the Lots subject to assessment and shall be the personal obligation of all Owners. In addition, should the Association fail to landscape the front yards of each Lot and/or should any Owner fail to properly maintain the landscaping, the City may landscape and/or maintain the same after thirty (30) days notice to the Association describing what work is to be accomplished. In that event, the City shall be reimbursed by the Association for the cost of the work. If the work performed by the City relates to maintenance, the Association shall be reimbursed by the Owner involved for the cost incurred by the Association.

10.5 RIGHT OF ENTRY OF GOVERNMENTAL AUTHORITIES: Officers, agents and employees of the City, the County, the State, and the United States, and any department, bureau or agency thereof, shall have the right of immediate access to all Common Areas of the project at all times for the purpose of preserving the public health, safety and welfare.

ARTICLE XIANNEXATION

11.1 RESTRICTION ON ANNEXATION: Property may be added to the Project by annexation only upon the prior written approval of the City and in accordance with the provisions of this Article.

11.2 PROPERTY WHICH MAY BE ANNEXED; APPROVAL OF MEMBERS: All or any portion of the Additional Property may be added to the Project as subsequent Phases without the approval of any other Owner or the Association, if annexed prior to the third (3rd) anniversary of the original issuance of the most recent Public Report issued for a Phase of the Project ("Annexation Period"). Property other than the Additional Property and any portion of the Additional Property not annexed within the Annexation Period may be annexed to the Project only with the vote or written consent of not less than two-thirds (2/3rds) of each class of Members.

11.3 PROCEDURE FOR ANNEXATION: In addition to any required approval by Members, a final subdivision map(s) or final parcel map(s), and a Declaration of Annexation for the property to be annexed must be recorded. The Declaration of Annexation shall: (i) describe the portion of the Additional Property to be annexed; (ii) set forth the ownership of the Common Area; (iii) set forth the allocation of Regular Assessments to be paid; and (iv) specify that all of the covenants, conditions and restrictions of this Declaration shall apply to the annexed Additional Property in the same manner as if it were originally covered by this Declaration. The Declaration of Annexation shall also provide that Declarant shall pay to the Association an amount equal to that portion of the Regular Assessment which would have been attributable to each Lot in that Phase and which would have been allocable to reserves for replacement and deferred maintenance of Common Area Improvements if and only if Declarant has rented or leased Lots in that Phase for a period of at least one (1) year prior to the conveyance of title to an Owner of a Lot in that Phase. Declarant shall be required to make such payment to the Association only for those Lots which Declarant has actually rented or leased. The Declaration of Annexation may also (i) impose any additional provisions that are necessary to include the Additional Property in the Project and that affect only the Additional Property if those restrictions are necessary to reflect differences in nature, if any, of the Improvements to be constructed on the Additional Property or the obligations of Owners with respect to the annexed Lots and (ii) provide for a specified date on which assessments shall commence for

Lots in that Phase, provided that the date specified may not be later than the first day of the first month following the month in which the first Lot in that Phase is conveyed to an Owner. Any such restrictions added shall not affect the rights or obligations of Owners of Lots in any Phase other than the annexed Phase. Upon the recording of the Declaration of Annexation, notice of the recording shall be given to the Association. No Declaration of Annexation shall diminish the covenants, conditions or restrictions established by this Declaration nor shall it discriminate between the Owners in the Project. No Declaration of Annexation shall alter or change the general common plan or scheme created by this Declaration nor shall it affect the provisions hereof as covenants running with the land or as equitable servitudes.

11.4 EFFECT OF ANNEXATION: After complying with the procedures for annexation and upon the conveyance of the first Lot in the annexed Phase to an Owner, Owners of Lots in the annexed Phase shall be Members, shall be subject to this Declaration and shall be entitled to use all Common Area in the Project. The Association shall reallocate the Regular Assessments so as to assess each Owner of a Lot in the Project for an equal share of the total expenses of the Project.

11.5 DEANNEXATION: Declarant has the right, at its sole option, to remove from the Project any property described in a recorded Declaration of Annexation for a Phase by recording a rescission of the Declaration of Annexation at any time if no Lot in that Phase has been conveyed to an Owner and if no Common Area in that Phase has been conveyed to the Association.

11.6 AMENDMENT: After the conversion of Class B membership to Class A membership and until the third (3rd) anniversary of the original issuance of the most recent Public Report issued for a Phase of the Project, this Article may not be amended without the consent of Declarant unless all of the Additional Property has been annexed to the Project.

ARTICLE XIIARCHITECTURAL REVIEW

12.1 APPLICABILITY: Declarant shall have the right to appoint and remove all members of the architectural review committee until one (1) year after the original issuance of the Public Report for the first Phase of the Project and the right to appoint all but one of the members of the Committee, including successors, until ninety percent (90%) of the Lots in the Project have been sold or until the third anniversary of the original issuance of the Public Report for the first Phase of the Project, whichever occurs first. Thereafter, all architectural review shall be performed by the Board, or a committee appointed by the Board, in accordance with the provisions of this Article. If the Board appoints a committee to perform the architectural review functions, there shall be no fewer than three (3) members and no more than five (5) members, all of whom must be Owners or officers, directors, or employees of an Owner. The terms of office shall be as designated by the Board. Any Owner who wishes to make any alteration or addition which will affect the exterior of his Residence or Lot is required to obtain the approval of the Board pursuant to this Article prior to making any such alteration or addition. Any Owner who makes an alteration or addition without the prior approval of the Board shall be deemed to be in violation of this Declaration; and the Board, upon its own motion, shall proceed as though the Owner gave the notice of completion as specified in Section 12.8.1. Nothing in this Article shall be deemed to relieve any Owner from obtaining all consents and permits and otherwise complying with all applicable State and local laws and ordinances.

12.2 DUTIES: The Board shall consider and act upon proposals and/or plans submitted pursuant to this Article. The Board, from time to time and in its sole discretion, may propose architectural rules, regulations and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used in the Project; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration. The Architectural Standards shall be accepted as Rules when adopted in accordance with the provisions of the Bylaws.

12.3 APPLICATION FOR APPROVAL OF IMPROVEMENTS: Any Owner, except Declarant and its designated agents, who wants to perform any alteration or addition for which approval is required shall notify the Board in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Board.

12.4 BASIS FOR APPROVAL OF IMPROVEMENTS: The Board may approve the proposal only if the Board finds that (i) the plans and specifications conform to this Declaration and to the Architectural Standards in effect at the time the proposal was submitted and (ii) the proposed alteration or addition will be consistent with the standards of the Project and the provisions of this Declaration as to quality of workmanship and materials, harmony of exterior design, visibility with respect to existing structures and environment, and location with respect to topography and finished grade elevation.

12.5 FORM OF APPROVALS AND DENIALS: All approvals and denials shall be in writing. Any denial of a proposal must state the reasons for the decision to be valid. Any proposal which has not been rejected in writing within forty-five (45) days from the date of submission shall be deemed approved.

12.6 PROCEEDING WITH WORK: Upon approval of the Board, the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within one (1) year from the date of the approval. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed revoked unless the Board extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the Board finds that there has been no change in the circumstances under which the original approval was granted.

12.7 FAILURE TO COMPLETE WORK: Completion of the work approved must occur in the twelve (12) month period following the approval of the work unless the Board determines that completion is impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If the Owner fails to complete the work within the one (1) year period, the Board shall proceed in accordance with the provisions of Section 12.8.2, below.

12.8 DETERMINATION OF COMPLIANCE: Any work performed, whether or not the Owner obtained proper approvals, shall be inspected and a determination of compliance shall be made as follows:

12.8.1 Upon the completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion to the Board. If the Owner fails to give the notice of completion of work performed for which approval was required, the Board may proceed upon its own motion.

12.8.2 Within sixty (60) days, the Board shall inspect the work performed and determine whether it was performed in substantial compliance with the approval granted. If the Board finds that the work was not performed in substantial compliance with the approval granted or if the Board finds that the approval required was not obtained, the Board shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy the non-compliance.

12.9 FAILURE TO REMEDY THE NON-COMPLIANCE: If the Board has determined that an Owner has not constructed an Improvement consistent with the specifications of the approval granted and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated costs of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying Improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner as a Reimbursement Assessment.

12.10 WAIVER: Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

12.11 ESTOPPEL CERTIFICATE: Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall record an estoppel certificate, executed by any two (2) Directors, certifying that as of the date thereof, either: (a) the work completed complies with this Declaration or (b) the work completed does not comply. In the latter situation, the certificate shall also identify the particulars of the non-compliance. Any successor in interest of the Owner shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through any of them.

12.12 LIABILITY: If Directors have acted in good faith on the basis of such information possessed by them, neither the Board nor any Director shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

12.13 NON-APPLICABILITY TO DECLARANT: The provisions of this Article shall not apply to any Lot owned by Declarant or prior to the first conveyance of a Lot to an Owner.

ARTICLE XIIIMISCELLANEOUS PROVISIONS

13.1 TERM OF DECLARATION: This Declaration shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until a vote of the Owners determines that this Declaration shall terminate; provided however, that no vote of the Owners to terminate this Declaration shall be effective without the prior written consent of the City, which consent shall not be withheld if the Owners can demonstrate that there will be a procedure(s) established to ensure continued maintenance of the Project in accordance with the standards established in this Declaration.

13.2 CONSTRUCTION OF PROVISIONS: The provisions of this Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a planned development project.

13.3 BINDING: This Declaration shall be for the benefit of and be binding upon all Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants, encumbrancers, donees, grantees, mortgagees, lienors and assigns.

13.4 SEVERABILITY OF PROVISIONS: The provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

13.5 GENDER, NUMBER AND CAPTIONS: As used herein, the singular shall include the plural and masculine pronouns shall include feminine pronouns, where appropriate. The title and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part hereof.

13.6 REDISTRIBUTION OF MANAGEMENT DOCUMENTS: Upon the resale of any Lot by any Owner, the Owner shall supply to the buyer of the Lot a copy of each of the Project Documents.

13.7 EXHIBITS: All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

EXHIBIT "A"

Description of Additional Property

Lots 24 through 52 as shown on the subdivision map entitled "Tract No. 674" filed for record in Book 73 of Maps at Page 27 on March 6, 1984, in the Official Records of the County of Santa Cruz, State of California.

The undersigned, being the beneficiary and the trustee under that certain Deed of Trust recorded April 8, 1980 in book 3183, at Page 684, Santa Cruz County Official Records, do hereby subordinate same to the above Declaration of Covenants, Conditions and Restrictions executed by HAL PORTER HOMES, a California corporation, and we agree that any sale made under the provisions of said Deed of Trust shall be subject to said Declaration of Covenants, Conditions and Restrictions.

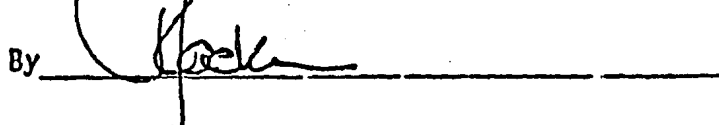
The beneficiary hereby directs the trustee to execute this subordination.

Dated: March 20, 1984

BENEFICIARY

GENSTAR MORTGAGE CORPORATION,
a Delaware corporation, formerly
WMC DEVELOPMENT COMPANY,
a California corporation

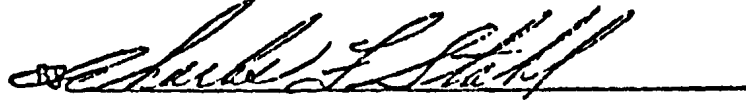
By 

By 

Dated: 3-22-84

TRUSTEE

GUARANTEE HOLDING COMPANY,
a California corporation

By 

By 

The undersigned, being the beneficiary and the trustee under that certain Deed of Trust recorded December 27, 1972 in Book 2270, at Page 405, Santa Cruz County Official Records, do hereby subordinate same to the above Declaration of Covenants, Conditions and Restrictions executed by HAL PORTER HOMES, a California corporation, and we agree that any sale made under the provisions of said Deed of Trust shall be subject to said Declaration of Covenants, Conditions and Restrictions.

The beneficiary hereby directs the trustee to execute this subordination.

Dated: FEB 2 1984

BENEFICIARY

ANSTEN R. NESS AND PATRICIA B. NESS, AS TRUSTEES OF THE 1978 NESS TRUST CREATED JUNE 2, 1978

Ansten R. Ness
ANSTEN R. NESS, as Trustee

Patricia B. Ness
PATRICIA B. NESS, as Trustee

Ansten R. Ness
ANSTEN R. NESS, individually

Patricia B. Ness
PATRICIA B. NESS, individually

Dated: 3/7/84

TRUSTEE

GUARANTEE HOLDING COMPANY,
a California corporation

By Charles F. Stahl
By Mary Sacullo

The undersigned, being the beneficiary and the trustee under that certain Deed of Trust recorded March 28, 1984 in Book 3694, at Page 644, Santa Cruz County Official Records, do hereby subordinate same to the above Declaration of Covenants, Conditions and Restrictions executed by SCOTTSBOROUGH, LIMITED, a limited partnership, and we agree that any sale made under the provisions of said Deed of Trust shall be subject to said Declaration of Covenants, Conditions and Restrictions.

The beneficiary hereby directs the trustee to execute this subordination.

Dated: 6-27-84

HOMESTATE SAVINGS & LOAN ASSOCIATION,
a California corporation

By *B. Beeson*

By *Paul Knutson*

Dated: 6-27-84

EDEN FINANCIAL CORPORATION,
a California corporation

By *Mark*

By *John*

