



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

Recorded at Request of  
FIRST AMERICAN TITLE COMPANY

97-111040 09/04/97 04:26

Recording Fee: 188- HBR00KS

**RECORDED AT THE REQUEST OF:**  
First American Title

**WHEN RECORDED RETURN TO:**  
Ponderosa Homes  
6671 Owens Drive  
Pleasanton, CA 94588

62 Q

**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
OF  
GOSSAMER COVE**

A Common Interest Development

**LITTLE & SAPUTO**  
ATTORNEYS AT LAW  
1901 OLYMPIC BOULEVARD, #100  
WALNUT CREEK, CA 94596-5024  
(510) 944-5000

**INDEX TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
GOSSAMER COVE  
A Common Interest Development**

I	INTENTION AND APPLICABILITY OF DECLARATION . . . . .	1.1
II	DEFINITIONS . . . . .	2.1
	2.1 ADDITIONAL CHARGES . . . . .	2.1
	2.2 ADDITIONAL PROPERTY . . . . .	2.1
	2.3 ALTERATION . . . . .	2.1
	2.4 ARTICLES . . . . .	2.1
	2.5 ASSOCIATION . . . . .	2.1
	2.6 BOARD . . . . .	2.1
	2.7 BUDGET . . . . .	2.1
	2.8 BYLAWS . . . . .	2.1
	2.9 CITY . . . . .	2.2
	2.10 COMMON AREA . . . . .	2.2
	2.11 COMMUNITY ASSOCIATION . . . . .	2.2
	2.12 COMMUNITY DECLARATION . . . . .	2.2
	2.13 COUNTY . . . . .	2.2
	2.14 DECLARANT . . . . .	2.2
	2.15 DECLARATION . . . . .	2.2
	2.16 DECLARATION OF ANNEXATION . . . . .	2.2
	2.17 FIRST MORTGAGE . . . . .	2.2
	2.18 FIRST MORTGAGEE . . . . .	2.3
	2.19 IMPROVEMENTS . . . . .	2.3
	2.20 INVITEE . . . . .	2.3
	2.21 LANDSCAPE MAINTENANCE AREA . . . . .	2.3
	2.22 LOT . . . . .	2.3
	2.23 MAP . . . . .	2.3
	2.24 MEMBER . . . . .	2.3
	2.25 MORTGAGE . . . . .	2.4
	2.26 MORTGAGEE . . . . .	2.4
	2.27 NOTICE AND HEARING . . . . .	2.4
	2.28 OWNER . . . . .	2.4
	2.29 PARTY FENCE . . . . .	2.4
	2.30 PHASE . . . . .	2.4
	2.31 PRIVATE STREET . . . . .	2.4
	2.32 PROJECT . . . . .	2.4
	2.33 PROJECT DOCUMENTS . . . . .	2.4
	2.34 PUBLIC REPORT . . . . .	2.4
	2.35 RESIDENCE . . . . .	2.4
	2.36 RULES . . . . .	2.4
	2.37 SUBJECT PROPERTY . . . . .	2.5

III	OWNERSHIP AND EASEMENTS . . . . .	3.1
3.1	NON-SEVERABILITY . . . . .	3.1
3.2	OWNERSHIP OF LOTS . . . . .	3.1
3.3	OWNERSHIP OF COMMON AREA . . . . .	3.1
3.4	OWNERSHIP OF PARTY FENCES . . . . .	3.1
3.5	EASEMENTS . . . . .	3.1
3.5.1	Easements On Map . . . . .	3.1
3.5.2	Easements For Common Area . . . . .	3.1
3.5.3	Party Fences . . . . .	3.2
3.5.4	Private Access . . . . .	3.2
3.5.5	Landscape Maintenance Areas . . . . .	3.2
3.5.6	Utilities . . . . .	3.2
3.5.7	Storm Drains . . . . .	3.2
3.5.8	Encroachment . . . . .	3.2
3.5.9	Support, Maintenance and Repair . . . . .	3.3
3.5.10	Easement to Governmental Entities . . . . .	3.3
3.5.11	Association's Easements . . . . .	3.3
3.5.12	Additional Easements . . . . .	3.3
3.5.13	Easement to Declarant For Adjoining Property . . . . .	3.3
3.5.14	Annexation of Additional Property . . . . .	3.3
IV	USES AND RESTRICTIONS . . . . .	4.1
4.1	ALTERATIONS . . . . .	4.1
4.2	ANIMALS . . . . .	4.1
4.3	ANTENNAS AND SATELLITE DISHES . . . . .	4.1
4.4	CLOTHES DRYING . . . . .	4.1
4.5	DRAINAGE . . . . .	4.1
4.6	EARTHQUAKE PRECAUTIONARY MEASURES . . . . .	4.2
4.7	EXTERIOR LIGHTING . . . . .	4.2
4.8	INVITEES . . . . .	4.2
4.9	LANDSCAPE MAINTENANCE AREAS . . . . .	4.2
4.9.1	Alterations . . . . .	4.2
4.9.2	Irrigation . . . . .	4.2
4.10	MAILBOXES . . . . .	4.3
4.11	MINERAL EXPLORATION . . . . .	4.3
4.12	NUISANCE . . . . .	4.3
4.13	PARKING . . . . .	4.3
4.14	PRIVATE STREETS . . . . .	4.3
4.15	RENTAL OF LOTS . . . . .	4.3
4.16	RULES . . . . .	4.4
4.17	SIGNS . . . . .	4.4
4.17.1	Declarant . . . . .	4.4
4.17.2	Legal Proceedings . . . . .	4.4
4.17.3	Project Identification . . . . .	4.4
4.17.4	Sale or Rent . . . . .	4.4
4.17.5	Signs Approved By Board . . . . .	4.4
4.18	SOLAR PANELS . . . . .	4.4
4.19	SPORTS EQUIPMENT . . . . .	4.4
4.20	STORAGE . . . . .	4.5
4.20.1	Of Waste Materials . . . . .	4.5
4.20.2	Of Garden Equipment . . . . .	4.5
4.21	TEMPORARY STRUCTURES . . . . .	4.5

4.22	USE AND OCCUPANCY OF RESIDENCES . . . . .	4.5
4.23	USE OF COMMON AREA . . . . .	4.5
V	MAINTENANCE, REPAIR AND RECONSTRUCTION OF IMPROVEMENTS . . . . .	5.1
5.1	MAINTENANCE OF COMMON AREA . . . . .	5.1
	5.1.1 Private Streets and Street Lighting . . . . .	5.1
	5.1.2 Decorative Paving . . . . .	5.1
	5.1.3 Pedestrian Bridge . . . . .	5.1
5.2	ALTERATIONS TO COMMON AREA . . . . .	5.1
	5.2.1 Approval . . . . .	5.1
	5.2.2 Funding . . . . .	5.1
5.3	MAINTENANCE OF LOTS AND RESIDENCES . . . . .	5.1
	5.3.1 Driveways . . . . .	5.2
	5.3.2 Mailboxes . . . . .	5.2
	5.3.3 Landscape Maintenance Areas . . . . .	5.2
	5.3.4 Water Lines . . . . .	5.2
	5.3.5 Sanitary Sewer . . . . .	5.2
	5.3.6 Storm Drainage . . . . .	5.2
	5.3.7 Sidewalks . . . . .	5.2
	5.3.8 Public Service Easements . . . . .	5.2
	5.3.9 Private Access Easements . . . . .	5.2
	5.3.10 Lagoon Rip Rap . . . . .	5.2
5.4	ALTERATIONS TO LOTS AND RESIDENCES . . . . .	5.3
5.5	MAINTENANCE AND REPAIR OF FENCES, MASONRY WALLS AND WROUGHT IRON . . . . .	5.3
	5.5.1 Party Fences . . . . .	5.3
	5.5.2 Masonry Walls . . . . .	5.3
	5.5.3 Wrought Iron Fences . . . . .	5.3
	5.5.4 Fences Separating Common Area and Lots . . . . .	5.3
5.6	LANDSCAPING . . . . .	5.3
	5.6.1 Common Area . . . . .	5.4
	5.6.2 Landscape Maintenance Areas . . . . .	5.4
	5.6.3 Lots . . . . .	5.4
	5.6.4 Public Right-of-Way . . . . .	5.4
5.7	RIGHT OF MAINTENANCE AND ENTRY BY ASSOCIATION . . . . .	5.4
5.8	DAMAGE AND DESTRUCTION . . . . .	5.4
	5.8.1 Bids . . . . .	5.5
	5.8.2 Sufficient Proceeds . . . . .	5.5
	5.8.3 Additional Special Assessment . . . . .	5.5
5.9	DAMAGE OR DESTRUCTION TO RESIDENCES AND/OR LOTS . . . . .	5.5
5.10	CONDEMNATION OF COMMON AREA . . . . .	5.6
VI	FUNDS AND ASSESSMENTS . . . . .	6.1
6.1	COVENANTS TO PAY . . . . .	6.1
	6.1.1 Liability for Payment . . . . .	6.1
	6.1.2 Funds Held in Trust . . . . .	6.1
	6.1.3 Offsets . . . . .	6.1
6.2	REGULAR ASSESSMENTS . . . . .	6.1
	6.2.1 Payment of Regular Assessments . . . . .	6.1
	6.2.2 Allocation of Regular Assessments . . . . .	6.2
	6.2.3 Exemptions from Regular Assessment . . . . .	6.2
	6.2.4 Non-Waiver of Assessments . . . . .	6.2
6.3	SPECIAL ASSESSMENTS . . . . .	6.3

6.4	REIMBURSEMENT ASSESSMENTS . . . . .	6.3
6.5	LIMITATIONS ON ASSESSMENTS . . . . .	6.3
6.6	ACCOUNTS . . . . .	6.3
	6.6.1 Types of Accounts . . . . .	6.3
	6.6.2 Reserve Account . . . . .	6.3
	6.6.3 Current Operation Account . . . . .	6.4
6.7	BUDGET, FINANCIAL STATEMENTS, REPORTS AND STUDIES	6.4
	6.7.1 Preparation and Distribution of Budget . . . . .	6.4
	6.7.2 Annual Report . . . . .	6.4
	6.7.3 Quarterly Reconciliation . . . . .	6.4
	6.7.4 Reserve Account Study . . . . .	6.4
	6.7.5 Notice of Increased Assessments . . . . .	6.4
	6.7.6 Statement of Outstanding Charges . . . . .	6.4
	6.7.7 Schedule of Monetary Penalties . . . . .	6.5
6.8	ENFORCEMENT OF ASSESSMENTS . . . . .	6.5
	6.8.1 Procedures . . . . .	6.5
	6.8.2 Additional Charges . . . . .	6.6
	6.8.3 Satisfaction of Lien . . . . .	6.6
	6.8.4 Lien Eliminated By Foreclosure . . . . .	6.7
	6.8.5 Waiver of Homestead Protections . . . . .	6.7
6.9	SUBORDINATION OF LIEN . . . . .	6.7
VII	MEMBERSHIP IN AND DUTIES OF THE ASSOCIATION . . . . .	7.1
7.1	THE ORGANIZATION . . . . .	7.1
7.2	MEMBERSHIP . . . . .	7.1
	7.2.1 Appurtenant to Ownership . . . . .	7.1
	7.2.2 Annexation . . . . .	7.1
7.3	VOTING . . . . .	7.1
7.4	RULES . . . . .	7.1
7.5	TRANSFERS OF COMMON AREA . . . . .	7.1
7.6	INSURANCE . . . . .	7.2
	7.6.1 General Provisions and Limitations . . . . .	7.2
	7.6.2 Types of Coverage . . . . .	7.3
	7.6.3 Annual Review . . . . .	7.4
	7.6.4 Annual Notice to Members . . . . .	7.4
VIII	DEVELOPMENT RIGHTS . . . . .	8.1
8.1	LIMITATIONS OF RESTRICTIONS . . . . .	8.1
8.2	RIGHTS OF ACCESS AND COMPLETION OF CONSTRUCTION . . . . .	8.1
8.3	SIZE AND APPEARANCE OF PROJECT . . . . .	8.1
8.4	MARKETING RIGHTS . . . . .	8.1
8.5	TITLE RIGHTS . . . . .	8.2
8.6	AMENDMENT . . . . .	8.2
IX	RIGHTS OF MORTGAGEES . . . . .	9.1
9.1	CONFLICT . . . . .	9.1
9.2	INSPECTION OF BOOKS AND RECORDS . . . . .	9.1
9.3	FINANCIAL STATEMENTS FOR MORTGAGEES . . . . .	9.1
9.4	MORTGAGE PROTECTION . . . . .	9.1

X	AMENDMENT AND ENFORCEMENT . . . . .	10.1
10.1	AMENDMENTS . . . . .	10.1
10.2	ENFORCEMENT . . . . .	10.1
	10.2.1 Rights to Enforce . . . . .	10.1
	10.2.2 Violation of Law . . . . .	10.1
	10.2.3 Remedies Cumulative . . . . .	10.2
	10.2.4 Nonwaiver . . . . .	10.2
10.3	NOTICES TO MEMBERS OF LEGAL PROCEEDINGS . . . . .	10.2
10.4	CONDITIONS TO CERTAIN LEGAL PROCEEDINGS . . . . .	10.2
	10.4.1 Association's Notice . . . . .	10.2
	10.4.2 Notice Tolls Limitations on Actions . . . . .	10.3
	10.4.3 Meetings . . . . .	10.3
	10.4.4 Inspections and Testing . . . . .	10.4
	10.4.5 Settlement Offer . . . . .	10.4
	10.4.6 Time Periods and Notices . . . . .	10.5
	10.4.7 Rejection of Settlement Offer . . . . .	10.5
	10.4.8 Association Relieved of Obligations . . . . .	10.6
	10.4.9 Failure to Comply . . . . .	10.6
10.5	OPTIONAL LEGAL PROCEEDINGS . . . . .	10.7
XI	ARCHITECTURAL AND LANDSCAPING CONTROL . . . . .	11.1
11.1	APPLICABILITY . . . . .	11.1
	11.1.1 Exemptions . . . . .	11.1
	11.1.2 Approval from Community Association . . . . .	11.1
11.2	RESERVATION TO DECLARANT . . . . .	11.1
11.3	MEMBERS . . . . .	11.1
11.4	DUTIES . . . . .	11.2
11.5	APPLICATION FOR APPROVAL OF IMPROVEMENTS . . . . .	11.2
11.6	BASIS FOR APPROVAL OF IMPROVEMENTS . . . . .	11.2
11.7	FORM OF APPROVALS AND DENIALS . . . . .	11.3
11.8	PROCEEDING WITH WORK . . . . .	11.3
11.9	FAILURE TO COMPLETE WORK . . . . .	11.3
11.10	DETERMINATION OF COMPLIANCE . . . . .	11.3
	11.10.1 Notice of Completion . . . . .	11.3
	11.10.2 Inspection . . . . .	11.3
11.11	FAILURE TO REMEDY THE NON-COMPLIANCE . . . . .	11.3
11.12	WAIVER . . . . .	11.4
11.13	APPEAL OF DECISION OF COMMITTEE . . . . .	11.4
11.14	LIABILITY . . . . .	11.4
11.15	EVIDENCE OF APPROVAL OR DISAPPROVAL . . . . .	11.5
XII	ANNEXATION . . . . .	12.1
12.1	PROPERTY WHICH MAY BE ANNEXED . . . . .	12.1
	12.1.1 Additional Property . . . . .	12.1
	12.1.2 Other Property . . . . .	12.1
12.2	PROCEDURE FOR ANNEXATION . . . . .	12.1
12.3	EFFECT OF ANNEXATION . . . . .	12.2
12.4	DEANNEXATION AND AMENDMENT . . . . .	12.2
12.5	AMENDMENT . . . . .	12.2
XIII	MISCELLANEOUS PROVISIONS . . . . .	13.1
13.1	TERM OF DECLARATION . . . . .	13.1
13.2	CONSTRUCTION OF PROVISIONS . . . . .	13.1

13.3	BINDING . . . . .	13.1
13.4	SEVERABILITY OF PROVISIONS . . . . .	13.1
13.5	GENDER, NUMBER AND CAPTIONS . . . . .	13.1
13.6	REDISTRIBUTION OF PROJECT DOCUMENTS . . . . .	13.1
13.7	EXHIBITS . . . . .	13.1
13.8	BONDED OBLIGATIONS . . . . .	13.1
	13.8.1 Improvements Complete . . . . .	13.1
	13.8.2 Improvements Not Complete . . . . .	13.2
	13.8.3 Action by Members . . . . .	13.2
	13.8.4 Release of Bond . . . . .	13.2
13.9	REQUIRED ACTIONS OF ASSOCIATION . . . . .	13.2
13.10	SUCCESSOR STATUTES . . . . .	13.2
13.11	CONFLICT . . . . .	13.3

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
GOSSAMER COVE  
A Common Interest Development**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF GOSSAMER COVE ("Declaration") is made by PONDEROSA HOMES, INC., a California corporation ("Declarant").

ARTICLE I  
INTENTION AND APPLICABILITY OF DECLARATION

1.1 Declarant is constructing a residential common interest subdivision that is anticipated to consist of one hundred sixty-eight (168) lots depicted on one subdivision map located on certain real property in Redwood City, California, and developed in two (2) or more Phases. The first Phase consists of thirty (30) Lots located on the real property more particularly described as Lots 28 through 33, inclusive, Lots 40 through 45, inclusive, Lots 52 through 57, inclusive, Lots 64 through 69, inclusive, Lots 73 through 78, inclusive, and those parcels designated as "Common Area Q", "Common Area R", "Common Area S" and "Common Area T" on the subdivision map ("Map") entitled "Gossamer Cove" filed for record on SEPTEMBER 4, 1997, in Book 128 of Maps at Pages 9 through 18, inclusive, in the Official Records of the County of San Mateo, State of California. The Map describes one hundred sixty-eight (168) residential building Lots, including the thirty (30) Lots in the first Phase and one hundred thirty-eight (138) Lots that may be annexed in later Phases.

1.2 Declarant intends to develop the Subject Property and the Additional Property as a Common Interest Development which shall be a planned development as defined in California Civil Code Section 1351(k). The Project is intended to be created in conformity with the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code, Section 1350 et seq.). To establish the 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.

1.3 The first Phase consists of the real property described in Section 2.37, below. Prior to annexation, the Additional Property shall not be subject to any provision of this Declaration. Declarant may, but shall have no obligation to, annex all or any portion of the Additional Property to the Project by recording a



Declaration of Annexation in compliance with the provisions of this Declaration.

1.4 Pursuant to California Civil Code Sections 1353 and 1354, Declarant hereby declares that the Project and all Improvements thereon are subject to the provisions of this Declaration. The Project 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, development and management of the Project as a Common Interest Development. All of the limitations, easements, uses, obligations, covenants, conditions, and restrictions stated in this Declaration shall run with the Project 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 Project. After recordation of a Declaration of Annexation, the property described therein shall constitute a part of the Project and shall be subject to this Declaration.

ARTICLE II  
DEFINITIONS

Unless otherwise defined or unless the context clearly requires 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 Lots 1 through 27, inclusive, Lots 34 through 39, inclusive, Lots 46 through 51, inclusive, Lots 58 through 63, inclusive, Lots 70 through 72, inclusive, Lots 79 through 168, inclusive, and those parcels shown as "Common Area A" through "Common Area P", inclusive, "Common Area U" through "Common Area Z", inclusive, "Common Area AA", "Common Area BB", "Common Area CC", "Common Area DD", "Common Area EE", and "Common Area FF" as shown on the Map, and all Improvements situated on all such real property.

2.3 ALTERATION: The term "Alteration" shall mean constructing, performing, installing, remodeling, repairing, replacing, demolishing, and/or changing the color or shade of any Improvement. The term "Alteration" does not include repainting or refinishing any Improvement in the same color, hue, intensity, tone, and shade or repairing any Improvement with the same materials.

2.4 ARTICLES: The term "Articles" shall mean the Articles of Incorporation of Gossamer Cove Owners' Association, which are or shall be filed in the Office of the Secretary of State of the State of California.

2.5 ASSOCIATION: The term "Association" shall mean Gossamer Cove Owners' Association, its successors and assigns, a nonprofit mutual benefit corporation incorporated under the laws of the State of California.

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

2.7 BUDGET: The term "Budget" shall mean a pro forma operating budget prepared by the Board in accordance with Section 6.7.1 of this Declaration.

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

2.9 CITY: The term "City" shall mean the City of Redwood City, California.

2.10 COMMON AREA: The term "Common Area" shall mean those parcels designated as "Common Area Q", "Common Area R", "Common Area S" and "Common Area T" on the Map. The term "Common Area" shall also mean any property described as Common Area in a Declaration of Annexation and any real property estate or interest owned by the Association. Common Area includes all Improvements situated thereon or therein.

2.11 COMMUNITY ASSOCIATION: The term "Community Association" shall mean the Redwood Shores Owners Association, a California nonprofit mutual benefit corporation.

2.12 COMMUNITY DECLARATION: The term "Community Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions for Redwood Shores Owners Association recorded on February 13, 1981 as Series No. 14180-AS in the Official Records of the County and includes all subsequently recorded amendments.

2.13 COUNTY: The term "County" shall mean the County of San Mateo, State of California.

2.14 DECLARANT: The term "Declarant" shall mean Ponderosa Homes, Inc., a California corporation. The term "Declarant" shall also mean any successor or assign of Declarant, if (i) a certificate, signed by Declarant and Declarant's successor or assign, has been recorded in the County in which the successor or assign assumes the rights and duties of Declarant to some portion of the Subject Property or the Additional Property or (ii) such successor or assign acquires all of the Subject Property and all of the Additional Property then owned by a Declarant which must be more than one (1) Lot. There may be more than one Declarant at any given time. Each Declarant shall be a Declarant only with respect to those portions of the Subject Property or Additional Property owned by that Declarant. A Declarant shall cease being a Declarant when it no longer owns any portion of the Project or the Additional Property.

2.15 DECLARATION: The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of Gossamer Cove and includes any subsequently recorded amendments.

2.16 DECLARATION OF ANNEXATION: The term "Declaration of Annexation" shall mean any instrument recorded in the County which extends the provisions of this Declaration to all or a portion of the Additional Property or any other property.

2.17 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.

2.18 FIRST MORTGAGEE: The term "First Mortgagee" shall mean the Mortgagee of a First Mortgage. The term "First Mortgagee" shall also include an insurer or governmental guarantor of a First Mortgage including, without limitation, the Federal Housing Authority and the Department of Veteran's Affairs.

2.19 IMPROVEMENTS: The term "Improvements" shall mean everything constructed, installed or planted on property subject to this Declaration, including without limitation, buildings, streets, fences, walls, paving, pipes, wires, grading, landscaping and other works of improvement as defined in Section 3106 of the California Civil Code, excluding only those Improvements or portions thereof which are dedicated to the public or a public or quasi-public entity or utility company, and accepted for maintenance by the public, such entity or utility company.

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

2.21 LANDSCAPE MAINTENANCE AREA: The term "Landscape Maintenance Area" shall mean those portions of a Lot which are accessible to a pedestrian from a Private Street without the pedestrian needing to come (i) through the Residence on the Lot, (ii) through a gate on the Lot, (iii) directly from the lagoon, or (iv) directly from the Lot on either side. Each Landscape Maintenance Area includes all landscaping within the Landscape Maintenance Area and the landscape irrigation systems and components, for the Landscape Maintenance Area, including wiring, automatic valves, controllers and timers, wherever located.

2.22 LOT: The term "Lot" refers to a Separate Interest as defined in California Civil Code Section 1351(1) and shall mean Lots 28 through 33, inclusive, Lots 40 through 45, inclusive, Lots 52 through 57, inclusive, Lots 64 through 69, inclusive, and Lots 73 through 78, inclusive, as shown on the Map. The term "Lot" shall also mean any Lot described as such in a Declaration of Annexation. Lot includes all Improvements situated thereon or therein.

2.23 MAP: The term "Map" shall mean the subdivision map entitled "Gossamer Cove" recorded on SEPTEMBER 4, 1997, in Book 128 of Maps at Pages 9 through 18, inclusive, in the Official Records of the County, including any subsequently recorded amended final maps, parcel maps, certificates of correction, lot line adjustments and/or records of survey. The term "Map" shall also mean any recorded subdivision map described in a Declaration of Annexation.

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

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

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

2.27 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.

2.28 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 the contract vendor and any person having an interest in a Lot merely as security for performance of an obligation.

2.29 PARTY FENCE: The term "Party Fence" shall mean any portion of a fence or masonry wall which is constructed and placed approximately on the common boundary of two (2) or more Lots.

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

2.31 PRIVATE STREET: The term "Private Street" shall mean that portion of the Common Area shown on the Map as "Common Area Q", "Common Area R", "Common Area S" and "Common Area T". The term "Private Street" shall also mean any portion of the Common Area described as such in a Declaration of Annexation.

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

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

2.34 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 one or more Phases of the Project.

2.35 RESIDENCE: The term "Residence" shall mean a dwelling situated on a Lot, including any garage also situated on a Lot.

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

2.37 SUBJECT PROPERTY: The term "Subject Property" shall mean Lots 28 through 33, inclusive, Lots 40 through 45, inclusive, Lots 52 through 57, inclusive, Lots 64 through 69, inclusive, Lots 73 through 78, inclusive, and those parcels designated as "Common Area Q", "Common Area R", "Common Area S" and "Common Area T" on the Map and all Improvements thereon.

ARTICLE III  
OWNERSHIP 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 an 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. Each Owner, whether by deed, gift, devise or operation of law, for the Owner's benefit and for the benefit of all other Owners and each successor of each Owner, 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 described, granted and reserved in this Declaration. Each of the easements described, granted or reserved herein shall be established upon the recordation of this Declaration and shall be enforceable as equitable servitudes and 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.

3.3 OWNERSHIP OF COMMON AREA: Title to or a legal ownership interest in the Common Area in each Phase shall be conveyed to the Association prior to or concurrently with the conveyance of the first Lot in that particular Phase to an Owner. The Association shall be deemed to have accepted the Common Area conveyed to it when (i) a grant deed conveying title to the Common Area has been recorded in the Official Records of the County and (ii) assessments for the Phase in which the Common Area is located have commenced.

3.4 OWNERSHIP OF PARTY FENCES: Each Owner of a Lot upon which a Party Fence is situated shall own that portion of the fence from the surface which faces the Owner's Lot up to the center of the Party Fence.

3.5 EASEMENTS: The easements and rights specified in this Article are hereby created and shall exist whether or not they are also set forth in individual grant deeds to Lots.

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 for the ingress, egress, use and enjoyment of 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;

(b) The right of the Association to grant, convey and dedicate fee title to or easements over all or any portion of the Common Area; and

(c) Any easement which affects the Common Area or which is set forth in the deed which conveys the Common Area to the Association.

3.5.3 Party Fences: Each Owner of a Lot containing a Party Fence shall have a reciprocal non-exclusive easement over and across such portions of the contiguous Lot as are necessary to maintain the Party Fence.

3.5.4 Private Access: Every Owner shall have a non-exclusive right and easement for pedestrian ingress and egress over those portions of each Lot shown as "Private Access Easement" on the Map.

3.5.5 Landscape Maintenance Areas: The Association shall have a non-exclusive easement over the Landscape Maintenance Areas for the purposes of maintaining, irrigating, repairing and replacing the Landscape Maintenance Areas.

3.5.6 Utilities: Each Owner shall have a non-exclusive right and easement over, under, across and through the Project, except for portions of the Project on which a structure is situated, for utility lines, pipes, wires and conduits installed by Declarant.

3.5.7 Storm Drains: The Association have an non-exclusive right and easement for storm drainage purposes through the storm drainage Improvements located within those portions of Lots 31, 43 and 54 shown as "Private Storm Drain Easement" on the Map. There are also reserved and granted for the benefit of each Lot and the Common Area, over, under, across and through the Project, except for portions of the Project on which a structure is situated, non-exclusive easements for surface and subsurface storm drains and the flow of storm waters in accordance with natural drainage patterns and the drainage patterns and Improvements installed or constructed by Declarant.

3.5.8 Encroachment: Non-exclusive rights and easements are reserved and granted (i) for the benefit of each Lot, as dominant tenement, over, under and across each other Lot and the Common Area, as servient tenements, and (ii) for the benefit of the Common Area, as dominant tenement, over, under and across each Lot,



as servient tenement. Such easements shall be for the purposes of 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, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof. If 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 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 Improvement.

3.5.9 Support, Maintenance and Repair: The Association and each Owner shall have a non-exclusive right and easement appurtenant to the Common Area and to all Lots through each Lot and the Common Area for the support, maintenance and repair of the Common Area and all Lots.

3.5.10 Easement to Governmental Entities: All governmental and quasi-governmental entities, agencies and utilities and their agents shall have a non-exclusive easement over the Common Area for the purposes of performing their duties within the Project.

3.5.11 Association's Easements: The Association and its duly authorized agents and representatives shall have a non-exclusive right and easement as is necessary to perform the duties and obligations of the Association set forth in the Project Documents, including the right to enter upon Lots, subject to the limitations contained in this Declaration.

3.5.12 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.

3.5.13 Easement to Declarant For Adjoining Property: Declarant shall have, and hereby expressly reserves, a right and easement over and across the Common Area 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.

3.5.14 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 rights and easements specified in this Article and the Lots and the Owners of

Lots in the Project prior to annexation shall have all of the easements specified in this Article as though the annexed Phase were initially part of the Project.

3.4

08/29/97

LITTLE & SAPUTO  
ATTORNEYS AT LAW  
1901 OLYMPIC BOULEVARD, #100  
WALNUT CREEK, CA 94596-5024  
(510) 944-5000

ARTICLE IV  
USES AND RESTRICTIONS

4.1 ALTERATIONS: Except as otherwise specifically provided in this Declaration, no Alteration may be made to any Improvement until plans have been submitted and approved pursuant to Article XI.

4.2 ANIMALS: An Owner may keep two (2) customarily uncaged household pets within the Owner's Lot. Each Owner may also maintain a reasonable number of small caged animals, birds or fish. Unless the Rules increase the number or type of animals which may be kept, no other animals or pets are permitted in the Project. The Board shall have the right to prohibit the maintenance of any pet which, after Notice and Hearing, is found to be a nuisance to other Owners. No animals may be kept for commercial purposes. No dog shall be allowed in the Common Area unless it is under the control of a responsible person by leash or other means. Each Owner or Invitee shall restore the Common Area to the condition it was in immediately preceding its use by any dog permitted on the Common Area by the Owner or Invitee.

4.3 ANTENNAS AND SATELLITE DISHES: No outside television antenna, microwave or satellite dish, aerial, or other such device (collectively "Video Antennas") with a diameter or diagonal measurement in excess of one (1) meter shall be erected, constructed or placed on any Common Area or Lot. Video antennas with a diameter or diagonal measurement of one (1) meter or less may be installed only if they conform to the Architectural Standards and, if then required by the Architectural Standards, any necessary approval is obtained in accordance with the provisions of Article XI. Reasonable restrictions which do not significantly increase the cost of the Video Antenna system or significantly decrease its efficiency or performance may be imposed.

4.4 CLOTHES DRYING: No clotheslines or other outside clothes drying or airing facilities shall be maintained within any Lot.

4.5 DRAINAGE: No Owner shall impede, alter or otherwise interfere with the drainage patterns and facilities in the Project until plans have been submitted and approved pursuant to Article XI and any public authority having jurisdiction thereof.

**This Declaration provides notice to each Owner that each Lot was carefully graded to provide positive drainage away from the entire foundation line of the Residences. Positive drainage is achieved by shaping and cutting drainage swales or channels in the ground. These swales are engineered progressively lower than the adjoining surface ground areas on the Lot and provide a receptacle and conduit to drain water away from foundations and**

**into the Project storm drainage system. Swales also help to prevent surface drainage water from flowing to adjacent Lots.**

If a Residence constructed by Declarant has a roof gutter system and downspouts which are directly connected to the Project's storm drainage system, the Residence shall at all times remain so connected to the Project storm drainage systems; the Owner of such a Residence may not alter the Owner's Residence in any manner which results in additional roof waters draining anywhere other than directly into the Project's storm drainage system. An Owner shall not alter the drainage of water which exists pursuant to the drainage plan originally created by Declarant except through the use of a positive drainage device and then only if the drainage device does not materially affect the concentration or flow direction of drainage water.

4.6 EARTHQUAKE PRECAUTIONARY MEASURES: To reduce hazards associated with earthquakes, each Owner shall (i) attach all water heaters in the Residence to the structural framework of the Residence; (ii) firmly anchor light fixtures and decorative features; (iii) provide flexible joints or details to allow flexibility where utility lines enter Residences and (iv) install manual shut-off valves for branch gas lines.

4.7 EXTERIOR LIGHTING: No Owner shall remove, damage or disable any exterior light, regardless of where located, which is connected to the Association's electric service.

4.8 INVITEES: Each Owner shall be responsible for compliance with the provisions of the Project Documents by that Owner's Invitees. An Owner shall promptly pay any Reimbursement Assessment levied and/or any fine or penalty imposed against an Owner for violations committed by that Owner's Invitees.

4.9 LANDSCAPE MAINTENANCE AREAS:

4.9.1 Alterations: No Alteration may be made by an Owner within a Landscape Maintenance Area without first obtaining approval of the Board. Unless otherwise determined by the Board, any Owner who adds landscaping in any Landscape Maintenance Area shall be responsible for maintaining and caring for the additional landscaping. The Association shall not be responsible for any damage caused to any such added landscaping as long as the damage occurs in the ordinary course of the Association's regular landscape maintenance program.

4.9.2 Irrigation: The water supply for the irrigation system for each Landscape Maintenance Area may be connected to the meter for the Residence on the Lot subject to the Landscape Maintenance Area. No Owner may disconnect or otherwise restrict the flow of water from the Owner's meter to the irrigation system for the Landscape Maintenance Area on that Owner's Lot. All

water used by the Association in irrigating the Landscape Maintenance Area shall be paid for by the Owner of the Lot subject to the Landscape Maintenance Area. No Owner shall have the right to contest the amount of water used by the Association as long as the Association is treating each Lot substantially the same as other similarly situated Lots.

4.10 MAILBOXES: No Alteration shall be made to any mailbox installed by Declarant, unless such Alteration is first approved pursuant to Article XI. Unless installed by Declarant or approved by the Architectural Committee, there shall be no exterior newspaper tubes or freestanding mailboxes placed on any Lot.

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

4.12 NUISANCE: No nuisance shall be permitted to exist upon any Lot which might be harmful or detrimental to any other Lot or other occupant within the Project. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed within a Lot.

4.13 PARKING: Vehicles shall not be parked anywhere in the Project except in areas designed and established for the parking of passenger motor vehicles ("Parking Areas") or wholly within garages or upon public streets. All Parking Areas shall be used solely for the parking of motor vehicles used for personal transportation. No boat, trailer, camper, commercial vehicle, mobile home, recreational vehicle or any inoperable vehicle shall be parked or stored in any Parking Area. Unless otherwise provided for in the Rules, garage doors shall remain closed, except when the garage is in use. Garages shall be kept sufficiently clear so as to permit parking of the number of vehicles for which the garage was designed. No part of the Common Area shall be used for repair, construction or reconstruction of any vehicle. No resident in the Project shall park in any Parking Area designated as "guest parking". As long as applicable ordinances and laws are observed, including the requirements of Section 22658.2 of the California Vehicle Code, any vehicle which is in violation of this Declaration may be removed.

4.14 PRIVATE STREETS: The Private Streets shall be owned and maintained by the Association as required in the conditions of approval imposed by the City in connection with its approval of the development of the Project. The Private Streets shall remain irrevocably as "Private Streets". Each Lot must always have direct physical access to a Private Street.

4.15 RENTAL OF LOTS: An Owner shall be entitled to rent or lease a Lot, if: (i) there is a written rental or lease agreement

specifying that the tenant shall be subject to all provisions of the Project Documents and a failure to comply with any provision of the Project Documents shall constitute a default under the agreement; (ii) the period of the rental or lease is not less than thirty (30) days; (iii) the Owner gives notice of the tenancy to the Board and has otherwise complied with the terms of the Project Documents; and (iv) the Owner gives each tenant a copy of the Project Documents. Upon satisfaction of the foregoing conditions all rights to the use and enjoyment of the Common Area shall be exercised by the tenant rather than by the Owner of the leased or rented Lot; however, the Owner shall not be relieved of the obligations and duties imposed by this Declaration.

4.16 RULES: The Board may promulgate rules concerning the use of the Project by Owners and their Invitees. The Board shall have the right to limit the number of an Owner's guests that may use any recreational facilities. Neither an Owner nor its Invitees shall violate any provision of this Declaration, the Bylaws or the Rules as the same may be amended from time to time.

4.17 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 shall be as follows:

4.17.1 Declarant: 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;

4.17.2 Legal Proceedings: Signs required by legal proceedings may be displayed;

4.17.3 Project Identification: Appropriate signs may be displayed by the Association to identify the Project;

4.17.4 Sale or Rent: One (1) sign of reasonable dimensions may be placed on a Lot advertising the Lot for sale or rent; and

4.17.5 Signs Approved By Board: 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.

4.18 SOLAR PANELS: No solar collectors, panels, or other devices shall be erected, constructed or placed on any Lot or Residence unless approved pursuant to the provisions of Article XI.

4.19 SPORTS EQUIPMENT: No basketball standards, fixed sports apparatus or similar equipment shall be attached to the exterior of any Residence or permanently placed on any Lot except in accordance with the provision of Article XI. Portable or movable basketball

equipment or other movable sports apparatus may not remain overnight on any Lot where visible from adjacent Lots or streets without the prior approval of the Board.

4.20 STORAGE: No storage sheds or similar structures may be placed on any Lot without first obtaining approval pursuant to Article XI.

4.20.1 Of Waste Materials: All garbage, trash and accumulated waste material shall be placed in appropriate covered trash containers which must be stored behind permanent screening or fencing adjacent to the Residence (or in the garage) and which may be placed on Common Area or where visible from the street only on the night before and the day that pick-up is to occur.

4.20.2 Of Garden Equipment: When not in use, gardening tools and equipment shall be stored within the Owner's garage, an approved storage shed or within an enclosed backyard as long as the tools and equipment are screened from the view of neighboring Lots, Common Area and streets serving the Project.

4.21 TEMPORARY STRUCTURES: No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a Residence either temporarily or permanently.

4.22 USE AND OCCUPANCY OF RESIDENCES: Each Residence shall be used for residential purposes and for uses within Residences mandated by federal or state laws or permitted by local ordinances. Otherwise, no business of any kind shall be established, maintained, operated, permitted or constructed in any portion of the Project, except for the business of Declarant in completing the development and disposition of the Lots in the Project. 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 or in a 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 federal, state and local governmental authorities, and all laws, ordinances, rules and regulations applicable to the Owner's Lot.

4.23 USE OF COMMON AREA: All use of Common Area is subject to the Rules. 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. 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 physically done or kept in the Common Area or any other part of the Project which might result in the cancellation of insurance on any

part of the Common Area, which would interfere with rights of other Owners, or which would be a nuisance, noxious, harmful or unreasonably offensive to other Owners. No waste shall be committed in the Common Area. The provisions of this Declaration concerning use, maintenance and management of the Common Area are subject to any rights or limitations established by any easements or other encumbrances which encumber the Common Area.



ARTICLE V  
MAINTENANCE, REPAIR AND RECONSTRUCTION OF IMPROVEMENTS

5.1 MAINTENANCE OF COMMON AREA: The Association shall be responsible for the maintenance, repair, replacement, management, operation, painting and upkeep of Common Area and all Improvements situated in, upon or under the 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.

5.1.1 Private Streets and Street Lighting: Maintenance of the Private Streets includes but is not limited to maintaining and repairing the (i) pavement, (ii) the traffic signs and street signs, (iii) the street lighting, (iv) pavement striping and (v) sidewalks.

5.1.2 Decorative Paving: The Association shall maintain, repair and replace, as necessary, the decorative paving situated within those portions of The Embarcadero and Canvasback Way which lie within the perimeter boundaries of the Project.

5.1.3 Pedestrian Bridge: When that portion of the Project shown as "Common Area A" on the Map is annexed to the Project, the Association shall maintain, repair and replace the entire pedestrian bridge located on the north side of the Project even though the bridge is only partially located on Common Area A.

5.2 ALTERATIONS TO COMMON AREA:

5.2.1 Approval: Alterations to any Improvements situated in, upon or under the Common Area may be made only by the Association. A proposal for an Alteration 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 maintenance, repair or replacement of an existing capital Improvement for which reserves have been collected may be made from the Reserve Account. Subject to the limitations set forth in Section 6.5, the Board may levy a Special Assessment to fund any Alteration of an Improvement for which no reserve has been collected.

5.3 MAINTENANCE OF LOTS AND RESIDENCES: Except as otherwise specifically provided in this Declaration, each Owner shall maintain and care for the Owner's Lot, including the Residence, and other Improvements located thereon, in a manner consistent with the standards established by the Project Documents and other well maintained residential areas in the vicinity of the Project and in compliance with the Architectural Standards.

5.3.1 Driveways: Each Owner shall maintain, repair and replace all portions of the driveway which provides access between the Owner's Residence and the Private Street which provides access to that Lot.

5.3.2 Mailboxes: The Association shall maintain, repair and replace all mailboxes and the support structures for all mailboxes.

5.3.3 Landscape Maintenance Areas: The Association shall maintain all landscaping within Landscape Maintenance Areas.

5.3.4 Water Lines: Each Owner shall maintain, repair and replace all domestic water lines which connect the Owner's meter to the Owner's Residence. Irrigation lines for Landscape Maintenance Areas shall be maintained, repaired and replaced by the Association.

5.3.5 Sanitary Sewer: Each Owner shall maintain, repair and replace the lateral that connects the Owner's Residence to the sanitary sewer system.

5.3.6 Storm Drainage: The Association shall maintain repair and replace (i) the storm drainage Improvements within those portions of Lots 31, 43 and 54 shown on the Map as "Private Storm Drain Easement" and (ii) all portions of the storm drainage system, wherever located, which connect individual storm drain lines serving individual Residences to the main storm drain system at the outlet in the public right-of-way. Each Owner shall clean all catch basins and storm drainage Improvements within the Owner's Lot, so as to maintain their capacity and flow.

5.3.7 Sidewalks: The Association shall maintain all sidewalks within the Project which provide pedestrian circulation to more than one (1) Lot within the Project. Each Owner shall maintain all walkways on the Owner's Lot which serve only the Owner's Lot.

5.3.8 Public Service Easements: The Association shall maintain each Improvement within the Public Service Easements shown on the Map if (a) the Improvement is not maintained by the public and (b) the Improvement serves more than one (1) Lot.

5.3.9 Private Access Easements: The Association shall maintain all landscaping, sidewalks, and any pathway lighting within those portions of Lots 28, 33, 40, 45, 52, 57, 64 and 69 shown on the Map as "Private Access Easement."

5.3.10 Lagoon Rip Rap: The Association shall perform weed and litter control for those portions of Lots which contain rip rap and which adjoin a lagoon.

5.4 ALTERATIONS TO LOTS AND RESIDENCES: Alterations may be made to the interior of an Owner's Residence, 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. Any proposals for Alterations on Lots or to the exteriors of Residences shall be made in accordance with the provisions of Article XI.

5.5 MAINTENANCE AND REPAIR OF FENCES, MASONRY WALLS AND WROUGHT IRON:

5.5.1 Party Fences: The Owners of a Party Fence 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 Fence. 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.

5.5.2 Masonry Walls: Any masonry wall installed by Declarant which separates a Lot from The Embarcadero, Canvasback Way, or any portion of a lagoon shall be maintained, repaired and replaced by the Association. The Association's obligation shall extend to the entire masonry wall even if only a portion of the wall satisfies the description in the preceding sentence.

5.5.3 Wrought Iron Fences: Any wrought iron fence installed by Declarant which separates a Lot from The Embarcadero, Canvasback Way, or any portion of a lagoon shall be maintained, repaired and replaced by the Association. The Association's obligation shall extend to the entire wrought iron fence even if only a portion of the fence satisfies the description in the preceding sentence.

5.5.4 Fences Separating Common Area and Lots: Any fence which separates a Lot from Common Area and which is not addressed in Sections 5.5.2 or 5.5.3 shall be maintained, repaired and replaced by the Owner of the Lot. Maintenance shall include refinishing the exterior surface of the fence if that surface was previously finished with paint or stain.

5.6 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 well maintained residential areas in the vicinity of the Project. 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. Other specific restrictions on landscaping may be established in the Rules. Irrigation systems, if any, shall be fully maintained in good working condition to ensure continued regular watering of landscape areas, and health and vitality of landscape materials.

5.6.1 Common Area: The Association shall maintain all landscaping located on Common Area.

5.6.2 Landscape Maintenance Areas: The Association shall maintain all landscaping within Landscape Maintenance Areas.

5.6.3 Lots: Each Owner shall maintain all landscaping located within the Owner's Lot, excluding any Landscape Maintenance Area. If landscaping within the enclosed portions of Lots is not installed by Declarant, each Owner shall install permanent landscaping within the enclosed portions of the Owner's Lot within six (6) months after the conveyance of the Lot to the Owner.

5.6.4 Public Right-of-Way: The Association shall maintain all landscaping located within the public right-of way which adjoins Common Area and within the public right-of way which adjoins any Lot. The Association shall also maintain all landscaping located within the median island in The Embarcadero and the median circles in Canvasback Way which lie within the perimeter boundaries of the Project.

5.7 RIGHT OF MAINTENANCE AND ENTRY BY ASSOCIATION: If an Owner fails to perform maintenance and/or repair which that Owner is obligated to perform pursuant to this Declaration, and if the Association determines, after Notice and Hearing given pursuant to the provisions of the Bylaws, that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of the Project, the Association may cause such maintenance and/or repair to be performed. The costs of such maintenance and/or repair shall be charged to the Owner of the Lot as a Reimbursement Assessment. In order to effectuate the provisions of this Declaration, the Association may enter any Lot whenever entry is necessary in connection with the performance of any maintenance or construction which the Association is authorized to undertake. Entry within a Lot shall be made with as little inconvenience to an Owner as practicable and only after reasonable advance written notice of not less than forty-eight (48) hours, except in emergency situations.

5.8 DAMAGE AND DESTRUCTION: The term "restore" shall mean repairing, rebuilding or reconstructing a damaged Common Area Improvement to substantially the same condition and appearance in which it existed prior to fire or other casualty damage. If fire or other casualty damage extends to any 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.

5.8.1 Bids: Whenever restoration is to be performed pursuant to this Section, the Board shall obtain such bids from responsible licensed contractors to restore the damaged Common Area as the Board deems reasonable; and the Board, on behalf of the Association, shall contract with the contractor whose bid the Board deems to be the most reasonable.

5.8.2 Sufficient Proceeds: The costs of restoration of the damaged Common Area shall be funded pursuant to the provisions and in the priority established by this Section 5.8.2. A lower priority procedure shall be utilized only if the aggregate amount of funds then available pursuant to the procedures of higher priority are insufficient to restore the damaged Common Area. The following funds and procedures shall be utilized:

1. The first priority shall be any insurance proceeds paid to the Association under existing insurance policies.

2. The second priority shall be all Reserve Account funds designated for the repair or replacement of the capital improvement(s) which has been damaged.

3. The third priority shall be funds raised by a Special Assessment against all Owners levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in Section 6.5.

4. The fourth priority shall be any funds raised by a Special Assessment against Owners levied by the Board pursuant to a vote of the Members pursuant to Section 5.8.3.

5.8.3 Additional Special Assessment: If the total funds available to restore the damaged Common Area pursuant to the first three priorities described in Section 5.8.2 is insufficient to restore the damaged Common Area, then 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 damaged Common Area as described above, making use of whatever funds are then available to it.

5.9 DAMAGE OR DESTRUCTION TO RESIDENCES AND/OR LOTS: If all or any portion of a Lot or Residence is damaged by fire or other casualty, the Owner shall either (i) restore the damaged Improvements or (ii) remove all damaged Improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration under (i) preceding must be performed so that the Improvements are in substantially the same condition in which they existed prior to the damage, unless the provisions of Article XI

are complied with by the Owner. Unless extended by the Board, the Owner must commence such work within one hundred twenty (120) days after the damage occurs and must complete the work within one (1) year thereafter.

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 equally to all Owners and shall represent the interests of all Owners.

ARTICLE VI  
FUNDS AND ASSESSMENTS

6.1 COVENANTS TO PAY: Declarant and each Owner covenant and agree 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 Owner's Lot 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 the Owner's 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 a Lot, the Owner shall not be liable for any charge thereafter levied against that 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.

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 established when the Board approves the Budget for that fiscal year. Regular Assessments shall be levied on a fiscal year basis; however, each Owner shall be entitled to pay the Regular Assessment in twelve (12) equal monthly installments, one installment payable on the first day of each calendar month during the fiscal year, as long as the Owner is not delinquent in the payment of any monthly installment. If an Owner fails to pay any monthly installment by the sixtieth (60th) day after the date the installment was due, the Board may terminate that Owner's right to pay the Regular



Assessment in monthly installments and declare the then unpaid balance of the Regular Assessment for that year immediately due and payable. Regular Assessments shall commence for all Lots in each 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 Allocation of Regular Assessments: The total amount of the Association's anticipated revenue attributable to Regular Assessments as reflected in the Budget for that fiscal year shall be allocated equally among the Lots. After annexation of each Phase, the allocation and assessment of the charges in the Budget shall be reallocated equally among all Lots in the Project, including those in the annexed Additional Property. For the first fiscal year, the Budget shall be substantially based upon the operating budget accepted by the Department of Real Estate of the State of California. After a new Phase has been annexed, the Board shall approve a Budget, which is substantially based upon the operating Budget accepted by the Department of Real Estate of the State of California in connection with the Public Report for that Phase, for the remainder of the current fiscal year for use upon the commencement of Regular Assessments against Lots in the new Phase.

6.2.3 Exemptions from Regular Assessment: Notwithstanding the provisions of Section 6.2, the Board shall exempt each Owner of a Lot which satisfies paragraph (a), below, and may exempt all Owners if paragraph (b), below, is satisfied, from the payment of a portion of the Regular Assessment levied against that Lot as described in those paragraphs.

(a) Lots: An Owner of a Lot is exempt from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to landscaping situated on Lots for which the Association is responsible until any such landscaping which is to be installed on the Owner's Lot is installed and no one other than the Association has any obligation to maintain, repair or replace the landscaping.

(b) Other Common Area: Each Owner may be exempted from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to the existence and use of a common facility (including landscaping) that is not complete at the time Regular Assessments commence until the first to occur of the following events: (i) a notice of completion of the common facility is recorded; (ii) the common facility has been placed into use; or (iii) in the case of landscaping, the landscaping is installed and no one other than the Association has any obligation to maintain, repair or replace the landscaping.

6.2.4 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.

6.3 SPECIAL ASSESSMENTS: Subject to the limitations set forth in Section 6.5, 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 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 an Owner to (a) reimburse the Association for the costs of repairing damage caused by that Owner or that Owner's Invitee or (b) if a failure to comply with the Project Documents has (i) necessitated an expenditure of monies, including attorneys' fees, by the Association to bring the Owner or the Owner's Lot or Improvements 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 in accordance with the Bylaws. Reimbursement Assessments described in clause (a) may be enforced by lien after Declarant no longer owns any portion of the Project or the Additional Property. Reimbursement Assessments described in clause (b) may not be enforced by lien.

6.5 LIMITATIONS ON ASSESSMENTS: All Regular and Special Assessments levied by the Board must comply with the provisions of Section 1366 of the California Civil Code, including the written ballot limitations and special voting and quorum requirements.

6.6 ACCOUNTS:

6.6.1 Types of Accounts: Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a responsible financial institution, 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 replacement and deferred maintenance of major components which the Association is obligated to repair, restore, replace or maintain into the Reserve Account.

6.6.2 Reserve Account: Withdrawal of funds from the Reserve Account shall require the signatures of either two (2) Directors or one (1) Director and one (1) officer of the Association who is not a Director. The Association may expend

funds from the Reserve Account only for the purposes set forth in Section 1365.5 of the California Civil Code.

6.6.3 Current Operation Account: All other costs properly payable by the Association shall be paid from the Current Operation Account.

6.7 BUDGET, FINANCIAL STATEMENTS, REPORTS AND STUDIES:

6.7.1 Preparation and Distribution of Budget: The Board shall annually prepare, adopt and distribute a Budget in accordance with the requirements of Section 1365 of the California Civil Code. A summary of the Budget may be distributed in lieu of the entire Budget if the requirements set forth in Section 1365 of the California Civil Code are satisfied.

6.7.2 Annual Report: The Board shall annually prepare and distribute an annual report in accordance with the requirements of Section 1365 of the California Civil Code.

6.7.3 Quarterly Reconciliation: If then required by Section 1365 of the California Civil Code, at least quarterly, the Board shall: (i) cause a current reconciliation of the Association's Operating Account(s) to be made and review the same; (ii) cause a current reconciliation of the Association's Reserve Account to be made and review the same; (iii) review the current year's actual reserve revenues and expenses compared to the current year's Budget; (iv) review the most current account statements prepared by the financial institution where the Association has its Operation and Reserve Accounts; and (v) review an income and expense statement for the Association's Operation and Reserve Accounts.

6.7.4 Reserve Account Study: The Board shall (i) cause a study of the Reserve Account to be conducted, (ii) review the study annually and (iii) consider and implement necessary adjustments to the Board's analysis of the Reserve Account requirements as a result of that review in compliance with the provisions of Section 1365.5 of the California Civil Code.

6.7.5 Notice of Increased Assessments: The Board shall provide notice by first-class mail to the Owners of any increase in Regular Assessments or the levy of any Special Assessments in accordance with the provisions of Section 1366 of the California Civil Code.

6.7.6 Statement of Outstanding Charges: Within ten (10) days of a written request by an Owner, the Association shall provide to the Owner a written statement which sets forth the amounts of delinquent assessments, penalties, attorneys' fees and other charges against that Owner's Lot. A charge for the statement may be made by the Association, not to exceed the reasonable costs of preparation and reproduction of the statement.

6.7.7 Schedule of Monetary Penalties: If the Board adopts a policy imposing any monetary penalty on or charging any fee to any Owner for a violation of the Project Documents by that Owner or that Owner's Invitee, the Board shall adopt a schedule of the monetary penalties that may be assessed for those violations. The penalties must be consistent with the Project Documents. A copy of the schedule shall be personally delivered or mailed by first-class mail, postage prepaid, to each Owner by the Board. Each time the schedule is modified, the Board shall again deliver a copy to each Owner, either personally or by first-class mail, postage prepaid.

6.8 ENFORCEMENT OF ASSESSMENTS: If then required by Section 1365 of the California Civil Code, the Board shall distribute a statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Owners' Lots.

6.8.1 Procedures: 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, and such additional costs, fees, charges and expenditures ("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 or a trustee nominated by the Association may commence and maintain proceedings to establish and/or foreclose assessment liens. No action shall be brought to foreclose a lien until the lien is created by recording a Notice of Delinquent Assessment ("Notice"). Prior to recording a Notice, the Association shall: (i) notify the affected Owner in writing by certified mail of the fee and penalty procedures of the Association; (ii) provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the principal owed, any late charges, the method of calculation, and attorney's fees; and (iii) describe the collection practices used by the Association, including the right of the Association to recover reasonable costs of collection. The Notice must be authorized by the Board, signed by an authorized agent and recorded in the Official Records of the County. The Notice shall state the amount of the delinquent assessment(s), the Additional Charges incurred to date, a legal description of the Lot, the name(s) of the record Owner(s) thereof and the name and address of the

trustee, if any, authorized by the Association to enforce the lien by sale and shall be signed by the person authorized to do so by the Board, or if no one is specifically designated, by the President or Chief Financial Officer. No later than ten (10) days after recordation of the Notice, copies of the Notice shall be mailed to all record owners of the Lot in the manner set forth in Section 2924b of the California Civil Code. After the expiration of thirty (30) days following the recording of a Notice, the lien may be foreclosed as provided in Section 1367 of the Civil Code of the State of California.

6.8.2 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 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 action 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 the then current laws of the State of California 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;

(d) Interest: Interest on the delinquent assessment and Additional Charges at a rate fixed by the Board in accordance with the then current laws of the State of California; and

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

6.8.3 Satisfaction of Lien: All amounts paid by an Owner toward a delinquent assessment shall be credited first to reduce the principal amount of the debt. Upon payment or other satisfaction of a delinquent assessment for which a Notice was recorded, the Association shall record a certificate stating the satisfaction and release of the assessment lien.

6.8.4 Lien Eliminated By Foreclosure: If the Association has recorded a Notice of Delinquent Assessment and the lien is eliminated as a result of a foreclosure of a Mortgage or a transfer pursuant to the remedies provided in the Mortgage, the new Owner of the Lot shall pay to the Association a pro-rata share of the Regular Assessment for each month remaining in the Association's fiscal year after the date of the foreclosure or transfer pursuant to the remedies provided in the Mortgage.

6.8.5 Waiver of Homestead Protections: Each Owner, does hereby waive, to the extent permitted by law, the protections of any declared homestead or homestead exemption or redemption laws under the laws of California as applied to any action to enforce or collect assessments levied by the Association.

6.9 SUBORDINATION OF LIEN: Notwithstanding any provision to the contrary, the liens for assessments created pursuant to 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 Section, 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 VII  
MEMBERSHIP IN AND DUTIES OF THE ASSOCIATION

7.1 THE ORGANIZATION: The Association is a nonprofit mutual benefit corporation. Its affairs shall be governed by and it shall have the powers 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. Membership shall not be related to the use or non-use of the Common Area and may not be renounced. The rights, duties, privileges and obligations of all Members shall be as provided in the Project Documents.

7.2.2 Annexation: Upon the commencement of Regular Assessments in a subsequent Phase, the Owners of the Lots described in the Declaration of Annexation for that Phase shall become Members.

7.3 VOTING: Any action required by law or by the Project Documents to be approved by the Owners, the Members or each class of Members shall be approved, if at all, in accordance with the procedures set forth in the Bylaws.

7.4 RULES: The Board may propose, adopt, amend and repeal Rules appropriate for the management of the Project, which are consistent with the Project Documents. The Rules may also establish architectural controls and may govern the use of the Common Area by Owners or their Invitees. After adoption, a copy of the Rules shall be furnished to each Owner. Owners shall be responsible for distributing the Rules to their tenants.

7.5 TRANSFERS OF COMMON AREA: Subject to any applicable provision in the Bylaws, the Board shall have the power and right in the name of the Association and all of the Owners as their attorneys-in-fact to grant, convey, dedicate, mortgage, or otherwise transfer to any Owner or other person or entity, fee title, easements, exclusive use easements, security rights or other rights or licenses in, on, over or under the Common Area that, in the sole discretion of the Board, are in the best interests of the Association and its Members. Notwithstanding anything herein to the contrary, in no event shall the Board take any action

authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of that Owner's Lot without the prior written consent of that Owner.

7.6 INSURANCE: The Board shall make every reasonable effort to obtain and maintain the insurance policies as provided in this Section. If the Board is unable to purchase a policy or if the Board believes that the cost of the policy is unreasonable, the Board shall call a special meeting of Members to determine what action to take. The Board shall comply with any resolution concerning insurance coverage adopted at such a meeting.

7.6.1 General Provisions and Limitations: All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Underwriter: All policies (except earthquake insurance) shall be written with a company legally qualified to do business in the State of California and (i) holding a "B" or better general policyholder's rating and a "6" or better financial performance index rating as established by Best's Insurance Reports, (ii) reinsured by a company described in (i), above, or (iii) if such a company is not available, the best rating possible or its equivalent.

(b) Named Insured: Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Owners. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

(c) Authority to Negotiate: Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

(d) Contribution: In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners or their Mortgagees.

(e) General Provisions: To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Board, the manager, the Owners and their respective servants, agents and guests;

(ii) That the policy will be primary, even if an Owner has other insurance which covers the same loss;



(iii) That no policy may be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;

(iv) An agreed amount endorsement, if the policy contains a coinsurance clause;

(v) A guaranteed replacement cost or replacement cost endorsement; and

(vi) An inflation guard endorsement.

(f) Term: The period of each policy shall not exceed three (3) years. Any policy for a term greater than one (1) year must permit short rate cancellation by the insureds.

(g) Deductible: The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

7.6.2 Types of Coverage: Unless the Association determines otherwise pursuant to Section 7.6, the Board shall obtain at least the following insurance policies in the amounts specified:

(a) Property Insurance: A Special Form or "All-Risk" policy of property insurance for all insurable Common Area Improvements, including fixtures and building service equipment, against loss or damage by fire or other casualty, in an amount equal to the full replacement cost (without respect to depreciation) of the Common Area, and exclusive of land, foundations, excavation and other items normally excluded from coverage. A replacement cost endorsement shall be part of the policy.

(b) Liability Insurance: A combined single limit policy of liability insurance in an amount not less than Three Million Dollars (\$3,000,000.00) covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Owners against any liability to the public or to any Owner incident to the use of or resulting from any accident or intentional or unintentional act of an Owner or a third party occurring in or about any Common Area. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(c) Worker's Compensation: Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any



governmental body or authority having jurisdiction over the Project.

(d) Fidelity Bond: A fidelity bond naming the Board, the Owners, the Association and such other persons as the Board may designate as obligees, in an amount equal to at least one-fourth (1/4) of the total sum budgeted for the Current Operation Account and Reserve Account for the current fiscal year. The fidelity bond shall contain a waiver of any defense based on the exclusion of persons serving without compensation.

(e) Directors and Officers: Errors and omissions insurance covering individual liability of Directors and officers for their negligent acts or omissions while acting in their capacities as Directors and officers in an amount equal to at least the minimum amount specified in Section 1365.7(a)(4) of the California Civil Code.

(f) Other Insurance: Other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

(g) Insurance by Owner: Each Owner, at that Owner's sole cost and expense, shall obtain insurance coverage which the Owner considers necessary or desirable to protect that Owner and that Owner's Lot, Residence and personal property; provided, however, that no Owner shall be entitled to maintain insurance coverage in a manner so as to decrease the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time.

7.6.3 Annual Review: The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Project is situated.

7.6.4 Annual Notice to Members: The Association shall provide a summary of the Association's property damage, general liability, earthquake and flood insurance policies as required by Section 1365 of the California Civil Code.

ARTICLE VIII  
DEVELOPMENT 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 and the marketing, sale, lease, rental and/or 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 three (3) years after all of the Additional Property has been annexed to the Project, Declarant, its contractors and subcontractors shall have the right to: (i) obtain reasonable access over and across the Common Area of the Project and/or do within any Lot owned or controlled by it whatever is reasonably necessary or advisable in connection with the completion of the Project; and (ii) erect, construct and maintain on the Common Area of the Project and/or within any Lot owned or controlled 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, rental or otherwise. Each Owner acknowledges that: (a) the construction of the Project may occur over an extended period of time; (b) the Owner's quiet use and enjoyment of the Owner's Lot may be disturbed as a result of the noise, dust, vibrations and other nuisances associated with construction activities; and (c) the nuisances will continue until the completion of the construction of the entire Project.

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 Residences or 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 all governmental consents required by law.

8.4 MARKETING RIGHTS: Declarant shall have the right to: (i) maintain model homes, signs, banners, flags, inflatable balloons, blimps, sales offices, leasing offices, rental offices, storage areas, parking lots and related facilities in any Lots owned or controlled by Declarant or Common Area within the Project as are necessary or reasonable, in the opinion of Declarant, for the sale, lease, rental or other disposition of the Lots; (ii) make reasonable use of the Common Area and facilities for the sale, lease, rental or other disposition of Lots; (iii) use any Lots owned or controlled by Declarant in accordance with any promotional programs established from time to time by Declarant; and

(iv) conduct its business of disposing of Lots by sale, lease, rental or otherwise; provided, however, Declarant shall pay the Association reasonable rent for the use of any Common Area facilities, if Declarant's use of those Common Area facilities materially interferes with the full use and enjoyment of the Common Area facilities by Owners.

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. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an annexation to establish additional licenses, easements, reservations, restrictions and rights-of-way for itself, utility companies or others as reasonably necessary for the proper development and disposition of property owned by Declarant.

8.6 AMENDMENT: The provisions of this Article may not be amended without the written consent of Declarant until three (3) years after all of the Additional Property has been annexed to the Project.

ARTICLE IX  
RIGHTS 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 Mortgagees specified herein.

9.2 INSPECTION OF BOOKS AND RECORDS: Upon request, any Owner or First Mortgagee shall be entitled to inspect and copy the books, records and financial statements of the Association, the Project Documents and any amendments thereto during normal business hours.

9.3 FINANCIAL STATEMENTS FOR MORTGAGEES: 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. The audited financial statement shall be available within one hundred twenty (120) days of the end of the Association's fiscal year. The Association shall provide a copy of the audited financial statement to any Mortgagee who makes a written request for it. If the Project contains fifty (50) or fewer Lots and if an audited financial statement is not available, any Mortgagee who desires to have an audited financial statement of the Association may cause an audited financial statement to be prepared at the Mortgagee's expense.

9.4 MORTGAGE PROTECTION: A breach of any of the conditions or the enforcement of any lien provisions 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; but all of the covenants, conditions and restrictions 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 X  
AMENDMENT AND ENFORCEMENT

10.1 AMENDMENTS: Prior to the conveyance of the first Lot to an Owner other than a Declarant, any Project Document may be amended by Declarant alone. After the conveyance of the first Lot, the Project Documents may be amended by the approval of each class of Members; provided however, that no provision of this Declaration which provides for a vote of more than fifty-one percent (51%) may be amended by a vote less than the percentage specified in the Section to be amended. Any amendment to this Declaration shall be effective upon the recordation in the Official Records of the County of an instrument executed by the President and Secretary of the Association which sets forth the terms of the amendment and a statement which certifies that the required percentage of Members have approved the amendment.

10.2 ENFORCEMENT:

10.2.1 Rights to Enforce: The Association 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, temporarily suspend an Owner's use of the recreation facilities or voting rights and/or levy a fine against an Owner in a standard amount to be determined by the Board from time to time. No determination of whether a violation has occurred shall be made until Notice and Hearing has been provided to the Owner pursuant to the Bylaws. If 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 the Owner's Lot and Residence, 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.

10.2.2 Violation of Law: The Association may treat any Owner's violation of any state, municipal or local law, ordinance or regulation, which creates a nuisance to the other Owners in the Project or to the Association, in the same manner as

10.1

08/27/97

a violation of the Project Documents by making such violation subject to any or all of the enforcement procedures set forth in this Declaration, as long as the Association complies with the Notice and Hearing requirements.

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

10.2.4 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.

10.3 NOTICES TO MEMBERS OF LEGAL PROCEEDINGS: Prior to filing any civil action against Declarant or other developer of the Project for alleged damage to (i) the Common Area, (ii) all or portions of the Lots which the Association is required to maintain, or (iii) the Lots which arises from or is integrally related to alleged damage to the Common Area or all or portions of the Lots which the Association is required to maintain, the Board shall provide written notice to each Member specifying each of the following:

(a) That a meeting will take place to discuss problems that may lead to the filing of a civil action;

(b) The options, including civil actions, that are available to address the problems; and

(c) The time and place of the meeting.

If the Association has reason to believe that the applicable statute of limitations will expire before the Association is able to give notice, hold the meeting and file the civil action, the Association may file the civil action first and then give the notice within thirty (30) days after filing of the action.

10.4 CONDITIONS TO CERTAIN LEGAL PROCEEDINGS: Before the Association commences an action for damages against Declarant based upon a claim for defects in the design or construction of the Project, all of the following requirements shall be met, except as otherwise provided in this Section:

10.4.1 Association's Notice: The Association shall give written notice to Declarant (Association's Notice) which shall include all of the following:

(a) A preliminary list of defects;

(b) A summary of the results of any survey or questionnaire distributed to Owners to determine the nature and extent of defects; and

(c) A summary of the results of any testing conducted to determine the nature and extent of defects or the actual test results.

10.4.2 Notice Tolls Limitations on Actions: Upon delivery of the Association's Notice to Declarant, a period of time, not to exceed ninety (90) days unless the Association and Declarant agree to a longer period of time, shall commence during which the Association and Declarant shall attempt to settle the dispute or attempt to agree to submit it to alternative dispute resolution. Except as provided in this Section, and notwithstanding any other provision of law, the mailing of the Association's Notice shall toll all statutory and contractual limitations on actions against all parties who may be responsible for the damages claimed, whether named in the notice or not, including claims for indemnity applicable to the claim, for a period of one hundred fifty (150) days or a longer period agreed to in writing by the Association and Declarant. At any time, Declarant may give written notice to cancel the tolling of the statute of limitations provided in this Section. Upon delivery of this written cancellation notice, the Association shall be relieved of any further obligations to satisfy the requirements of this Section 10.4. The tolling of all applicable statutes of limitations shall cease sixty (60) days after the written notice of cancellation by Declarant is delivered to the Association.

10.4.3 Meetings: Within twenty-five (25) days after the delivery date of the Association's Notice, Declarant may request in writing to meet and confer with the Board and to inspect the Project and conduct testing, including testing that may cause physical damage to any property in the Project in order to evaluate the claim. If Declarant does not make a timely request to meet and confer with the Board or to conduct inspection and testing, the Association shall be relieved of any further obligations to satisfy the requirements of this Section 10.4. Unless Declarant and the Association agree otherwise, the meeting shall take place not later than ten (10) days from the date of Declarant's written request at a mutually agreeable time and place. The meeting shall be subject to the provisions of Civil Code Section 1363.05(b). The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the Association and Declarant consent to their admission. The meeting shall be for the purpose of discussing all of the following:

- (a) The nature and extent of the claimed defects;
- (b) Proposed methods of repair to the extent there is sufficient information;
- (c) Proposals for submitting the dispute to alternative dispute resolution; and

(d) Requests from Declarant to inspect the Project and conduct testing.

If Declarant makes a request in writing to meet and confer with the Board pursuant to this Section, Declarant shall deliver the Association's Notice to any insurer that has issued a policy to Declarant which imposes upon the insurer a duty to defend or indemnify Declarant for losses resulting from the defects identified in the Association's Notice. Upon receipt, the notice by Declarant shall impose upon the insurer any obligation which would be imposed under the terms of the policy if the insured had been served with a summons and complaint for damages. Declarant shall inform the Association when Declarant delivers the notice to each insurer pursuant to this subsection.

10.4.4 Inspections and Testing: If the Association conducted inspection and testing prior to the date it sent the Association's Notice, the Association shall make available for inspection and testing at least those areas inspected or tested by the Association at the earliest practicable date. The inspection and testing shall be completed within fifteen (15) days from the date the Association makes these areas available for inspection and testing, unless the Association and Declarant agree to a longer period. If Declarant does not timely complete the inspection and testing, the Association shall be relieved of any further obligation to satisfy the requirements of this Section 10.4. The manner in which the inspection and testing shall be conducted, and the extent of any inspection and testing to be conducted beyond that which was conducted by the Association prior to sending the Association's Notice, shall be determined by agreement of the Association and Declarant. Declarant shall pay all costs of inspection and testing that are requested by Declarant, restore the property to the condition which existed immediately prior to the testing and indemnify the Association and Owners for any damage resulting from the testing. Interior inspections of Residences shall be conducted in accordance with the Project Documents, unless otherwise agreed to by the affected Owner. The results of the inspection and testing shall not be inadmissible in evidence in any civil action solely because the inspection and testing was conducted pursuant to this subsection.

10.4.5 Settlement Offer: Within thirty (30) days of the completion of inspection and testing pursuant to Section 10.4.4 or, if no inspection and testing is conducted, within thirty (30) days of the meeting held pursuant to Section 10.4.3, Declarant shall submit all of the following to the Association:

(a) A request to meet with the Board to discuss a written settlement offer;

(b) A written settlement offer, which may include an offer to submit the dispute to alternative dispute resolution,



and a concise explanation of the specific reasons for the terms of the offer;

(c) A statement that Declarant has access to sufficient funds to satisfy the conditions of the settlement offer; and

(d) A summary of the results of testing conducted for the purpose of determining the nature and extent of defects, if testing has been conducted; provided however, if the Association provided Declarant with actual test results in the Association's Notice, Declarant shall provide the Association with actual test results.

If Declarant does not timely submit the items required by this subsection, the Association shall be relieved of any further obligations to satisfy the requirements of this Section 10.4. No less than ten (10) days after Declarant submits the items required by this subsection, Declarant and the Board shall meet and confer about the settlement offer, including any offer to submit the dispute to alternative dispute resolution.

10.4.6 Time Periods and Notices: At any time after delivery of the Association's Notice, the Association and Declarant may agree in writing to modify or excuse any of the time periods or other obligations imposed by this Section 10.4. Except for the notice required pursuant to Section 10.4.7, all notices, requests, statements or other communication required pursuant to this Section 10.4 shall be delivered by one of the following:

(a) By first-class registered or certified mail, return receipt requested; or

(b) In any manner in which it is permissible to serve a summons pursuant to Section 415.10 or 415.20 of the Code of Civil Procedure.

10.4.7 Rejection of Settlement Offer: If the Board rejects a settlement offer presented pursuant to Section 10.4.5, the Board shall hold a meeting open to each Member. The meeting shall be held no less than fifteen (15) days before the Association commences an action for damages against Declarant. No less than fifteen (15) days before the date of the meeting, a written notice shall be sent to each Member specifying all of the following:

(a) That a meeting will take place to discuss problems that may lead to the filing of a civil action;

(b) The time and place of the meeting;

(c) The options, including the filing of a civil action, that are available to address the problems;

(d) The complete text of any written settlement offer and a concise explanation of the specific reasons for the terms of the offer submitted to the Board by Declarant and of any offer by Declarant to submit the dispute to alternative dispute resolution; and

(e) The preliminary list of defects contained in the Association's Notice and a list of any other documents with the Association's Notice with information as to where and when Members may inspect those documents.

Declarant shall pay all expenses attributable to sending the settlement offer and any offer for alternative dispute resolution to all Members and an amount not to exceed three dollars (\$3.00) per Member to defray the expenses of holding the meeting. The discussions at the meeting, the contents of the notice and the items required to be specified in the notice are privileged communications and are not admissible in evidence in any civil action, unless the Association consents to their admission.

10.4.8 Association Relieved of Obligations: If the Association is relieved of its obligations to satisfy the requirements of this Section 10.4 before all requirements have been satisfied, the Association may commence an action for damages against Declarant thirty (30) days after sending a written notice to each Member specifying all of the following:

(a) The preliminary list of defects contained in the Association's Notice and a list of any other documents with the Association's Notice with information as to where and when Members may inspect those documents;

(b) The options, including the filing of a civil action, that are available to address the problems; and

(c) A statement that if five percent (5%) of the Members request a special meeting of Members to discuss the matter within fifteen (15) days of the date the notice is mailed or delivered to the Members, a meeting of the Members shall be held.

10.4.9 Failure to Comply: The only method of seeking judicial relief for the failure of the Association to comply with this Section 10.4 shall be the assertion, as provided for in this subsection, of a procedural deficiency to an action for damages by the Association against Declarant after such an action has been filed. A verified application asserting such a procedural deficiency shall be filed with the court no later than ninety (90) days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist. Upon the verified application of the Association or Declarant alleging substantial noncompliance with this Section 10.4, the court shall schedule a hearing within twenty-one (21) days of the application to determine whether the Association or Declarant has substantially

complied with this Section. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court.

(a) If the court finds that the Association did not substantially comply with this Section, the court shall stay the action for up to ninety (90) days to allow the Association to establish substantial compliance. The court shall set a hearing within ninety (90) days to determine substantial compliance by the Association. At any time, the court may extend the period of the stay upon application of the Association if good cause is shown. If, within the time set by the court pursuant to this Section, the Association has not established that it has substantially complied with this Section, the court shall determine if, in the interest of justice, the action should be dismissed without prejudice or if another remedy should be fashioned. Under no circumstances shall the court dismiss the action with prejudice as a result of the Association's failure to substantially comply with this Section. In determining the appropriate remedy, the court shall consider the extent to which Declarant has complied with this Section. If the alleged noncompliance of either Declarant or the Association resulted from the unreasonable withholding of consent for inspection or testing by an Owner, it shall not be considered substantial noncompliance provided that the party alleged to be out of compliance did not encourage the withholding of consent.

If the Court finds that Declarant did not pay (i) all of the costs of inspection and testing or (ii) its required share of the costs of holding the meeting and of all expenses attributable to sending the settlement offer, all as required above, the court shall order Declarant to pay any deficiencies within thirty (30) days, with interest, and any additional remedy which the court determines, in the interest of justice, should be fashioned.

10.5 OPTIONAL LEGAL PROCEEDINGS: The Association is authorized to perform any act reasonably necessary to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation or arbitration proceedings. The Board is also authorized to do all of the following:

Provide, or in good faith attempt to provide, one hundred (120) days advance notice of (a) the Board's intent to initiate the prosecution of any civil action and (b) the nature and basis of the claim. If notice is given, it shall be given to every Member and every entity or person who is a prospective party to the action. Notice can be given more than one hundred twenty (120) days prior to the expiration of any pertinent statute of limitations and without prejudice to the Association's right to enforce the Project Documents. Notice need not be given prior to the filing of an action in small claims court or an action solely to enforce assessment obligations;

Endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of Section 1354(b) of the Civil Code prior to initiating the prosecution of a civil action solely for declaratory relief or injunctive relief (a) to enforce the Project Documents or (b) in connection with a claim for monetary damages of five thousand dollars (\$5,000.00) or less;

Make a reasonable effort, in good faith, to meet and confer with every person who is a party about (a) appropriate processes for resolving the civil action, including available alternative dispute resolution proceedings; (b) appropriate processes for avoiding or reducing costs or losses by the parties associated with the action; (c) providing an opportunity to cure any alleged defect in Common Area which is the basis for the action; and (d) providing for the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution procedure;

Consider diverting the prosecution or defense of any civil action to alternative dispute resolution proceedings such as mediation or arbitration; and

Agree to participate, and participate fully and in good faith, in the resolution of any civil action through any alternative dispute resolution proceedings, including but not limited to mediation or arbitration and pay costs reasonably incurred by the Association on account of those alternative dispute resolution proceedings.

ARTICLE XI  
ARCHITECTURAL AND LANDSCAPING CONTROL

11.1 APPLICABILITY: Except as otherwise provided in this Declaration, proposals for Alterations shall be subject to the provisions of this Article and may not be made until approved in accordance with the provisions of this Article.

11.1.1 Exemptions: The provisions of this Declaration requiring architectural approvals shall not apply to the original construction of any Improvements on a Lot by Declarant, its agents, contractors or employees. This subsection may not be amended or eliminated without the consent of Declarant until all of the Lots in the Project owned by Declarant have been conveyed.

11.1.2 Approval from Community Association: The Community Declaration imposes architectural control over original construction and subsequent modifications. The Community Declaration allows the Modifications Committee established by the Community Declaration to delegate its responsibilities over the Project to the Association. If the Modifications Committee makes such a delegation to the Association, then any approval obtained pursuant to this Article will be deemed to be approval under the Community Declaration as well. However, if no such delegation exists, every Alteration is subject to approval by the Association pursuant to this Article and by the Community Association pursuant to the Community Declaration. If approvals of both Associations are required, an Owner must first obtain approval of the Association pursuant to this Article. If the proposal is approved by the Association pursuant to this Article, the Owner may then apply for approval to the Community Association, and the Association shall cooperate with the Owner in obtaining approval under the Community Declaration.

11.2 RESERVATION TO DECLARANT: Notwithstanding the power of the Board to appoint committees, Declarant hereby reserves to itself the right to appoint an Architectural Committee in accordance with the provisions of this Article. When there is no longer any Member appointed by Declarant on the Committee, the Board may decide to dissolve the Committee and undertake the Committee's responsibilities.

11.3 MEMBERS: The Architectural Committee ("Committee") shall consist of a chairman and two (2) additional members. Persons appointed to the Committee by the Board shall be Members of the Association. Persons appointed to the Committee by the Declarant need not be Members of the Association. All members shall serve until the expiration of the term for which they were appointed, if specified by the Board, or until they resign or are replaced. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the Public Report for the first Phase of the Project. After the date which is one (1) year from the date of issuance of

the Public Report for the first Phase of the Project and until the conveyance of ninety percent (90%) of the total of all Lots in the Project and all Lots proposed for the Additional Property or the fifth (5th) anniversary of the issuance of the Public Report for the first Phase of the Project, whichever first occurs, the Board shall have the power to appoint one member of the Committee and Declarant may appoint the remaining members of the Committee. Thereafter, the Board shall appoint all of the members of the Committee or dissolve the Committee as provided in Section 11.2, above. Upon the conveyance of one hundred percent (100%) of all Lots, the term of any remaining members appointed by Declarant shall terminate and replacement members shall be appointed by the Board. The Board may appoint a replacement for any member of the Committee originally appointed by the Board who resigns or otherwise fails to act. Declarant may appoint a replacement for any member of the Committee originally appointed by Declarant who resigns or otherwise fails to act, unless such member resigns in order to enable the Board to appoint a member as required by this Section. If Declarant fails to appoint a replacement it is authorized to appoint within fifteen (15) days after receiving notice of the vacancy, the Board shall appoint the replacement.

11.4 DUTIES: The Committee shall consider and act upon proposals and/or plans submitted pursuant to this Article. The Committee, from time to time and in its sole discretion, may adopt 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 constitute Rules.

11.5 APPLICATION FOR APPROVAL OF IMPROVEMENTS: Any Owner, except Declarant and its designated agents, who wants to perform any Alteration for which approval is required shall notify the Committee 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 Committee.

11.6 BASIS FOR APPROVAL OF IMPROVEMENTS: The Committee may approve the proposal only if the Committee 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 will be consistent with the standards of the Project and the provisions of this Declaration as to harmony of exterior design, visibility with respect to existing structures and environment, and location with respect to topography and finished grade elevation.

11.7 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 sixty (60) days from the date of submission shall be deemed approved.

11.8 PROCEEDING WITH WORK: Upon approval of the Committee, 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 Committee extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the Committee finds that there has been no change in the circumstances under which the original approval was granted.

11.9 FAILURE TO COMPLETE WORK: Completion of the work approved must occur within eighteen (18) months following the approval of the work unless the Committee 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 Owner's control. If the Owner fails to complete the work within the eighteen (18) month period, the Committee may notify the Owner in writing of the non-compliance and shall proceed in accordance with the provisions of Section 11.11, below.

11.10 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:

11.10.1 Notice of Completion: 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 Committee.

11.10.2 Inspection: Within sixty (60) days after the Committee's receipt of the Owner's notice of completion, or, if the Owner fails to give a written notice of completion to the Committee within the completion period specified in Section 11.9, above, a designee of the Committee shall inspect the work performed and determine whether it was performed and completed in substantial compliance with the approval granted. If the Committee finds that the work was not performed or completed in substantial compliance with the approval granted or if the Committee finds that the approval required was not obtained, the Committee 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.

11.11 FAILURE TO REMEDY THE NON-COMPLIANCE: If the Committee has determined that an Owner has not constructed an Improvement



consistent with the specifications of the approval granted or within the time permitted for completion 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 Committee shall notify the Board, and 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.

11.12 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.

11.13 APPEAL OF DECISION OF COMMITTEE: This Section does not apply if the Board has dissolved the Committee or during the period of time that a majority of the Members of the Architectural Committee have been appointed by Declarant. If the Owner who applied or who the Committee determined should have applied for approval of an Alteration on a Lot or Residence disputes the jurisdiction or powers of the Committee or any requirement, rule, regulation or decision of the Committee applicable to the denial or conditional approval of the Owner's application (collectively referred to as "decision"), that Owner may appeal such decision to the Board. The Board shall notify the Owner of the time, date and place of a hearing to review the decision of the Committee. The notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class, postage prepaid, addressed to the Owner at the address given by the Owner to the Board for the purpose of service of notices or to the address of the Owner's Lot if no other address has been provided. After the hearing has taken place, the Board shall notify the Owner of its decision. The decision shall become effective not less than five (5) days after the date of the hearing. The determination of the Board shall be final.

11.14 LIABILITY: If members of the Architectural Committee have acted in good faith, neither the Committee nor any member 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.

11.15 EVIDENCE OF APPROVAL OR DISAPPROVAL: After a determination of compliance is made pursuant to Section 11.10, the Board may issue a written Notice of Architectural Determination. The Notice of Architectural Determination shall be executed by any two (2) Directors and shall certify that as of the date of the Notice either (i) the work completed complies with the provisions of this Declaration and the approval(s) issued by the Architectural Committee ("Notice of Approval") or (ii) the work completed does not comply with the provisions of this Declaration or the approval(s) issued by the Architectural Committee ("Notice of Disapproval"). A Notice of Disapproval shall also identify the particulars of the non-compliance. Any successor in interest of the Owner shall be entitled to rely on a Notice of Architectural Determination with respect to the matters set forth. Each Owner shall disclose to the Owner's subsequent purchaser any Notice of Disapproval unless the Owner has a subsequently issued Notice of Approval which covers the same Alteration. The Notice of Architectural Determination shall be conclusive as between the Association, the Architectural Committee, Declarant and all Owners and such persons deriving any interest through any of them. Any Owner may make a written request that the Board prepare and execute a Notice of Architectural Determination, and the Board shall do so within sixty (60) days of its receipt of the request.

ARTICLE XII  
ANNEXATION

12.1 PROPERTY WHICH MAY BE ANNEXED: Property may be added to the Project by annexation only in accordance with the provisions of this Article.

12.1.1 Additional Property: All or any portion of the Additional Property may be added to the Project as one or more subsequent Phases without the approval of the Association or any Owner.

12.1.2 Other Property: Property other than the Additional Property may be annexed to the Project only with the approval of two-thirds (2/3) of each class of Members.

12.2 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) describe any Common Area within the Additional Property to be annexed; (iii) set forth the ownership of any such Common Area; 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 if and only if at the time of the first conveyance of a Lot in a Phase Declarant has rented or leased Lots in that Phase for a period of at least one (1) year after the most recent review of a budget for that Phase by the Department of Real Estate, Declarant shall pay to the Association the following amount: 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 had Regular Assessments in that Phase commenced at the time of the most recent review of a budget for that Phase. Such amount, if any, shall be paid to the Association prior to or concurrently with the first conveyance of a Lot in that Phase. The Declaration of Annexation may also (i) impose any additional covenants, conditions and restrictions on the Additional Property that are necessary to include the property in the Project and to reflect differences in nature, if any, of the Improvements to be constructed on the Additional Property 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. 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.

12.3 EFFECT OF ANNEXATION: After complying with the procedures for annexation and upon the commencement of assessments for Lots in the annexed Phase, 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 a proportionate share of the total expenses of the Project.

12.4 DEANNEXATION AND AMENDMENT: Declarant has the right, at its sole option, to (i) amend a Declaration of Annexation by executing and recording an amendment of the Declaration of Annexation provided that the amendment is consistent with this Article, or (ii) remove from the Project any property described in a recorded Declaration of Annexation for a Phase by executing and recording a rescission of the Declaration of Annexation, as long as all of the following conditions are satisfied at the time of the execution and recordation of the amendment or rescission: (a) no Lot in that Phase has been conveyed to an Owner; (b) no Common Area in that Phase has been conveyed to the Association; and (c) assessments have not commenced for any Lot in the annexed property.

12.5 AMENDMENT: This Article may not be amended without the written consent of Declarant unless all of the Additional Property has been annexed to the Project.

ARTICLE XIII  
MISCELLANEOUS 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 two-thirds (2/3) of the Owners approve a termination of 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 pursuant to the provisions of the Davis-Stirling Common Interest Development Act, Section 1350 et seq. of the California Civil Code.

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 PROJECT 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.

13.8 BONDED OBLIGATIONS: When Common Area Improvements have not been completed prior to the issuance of the original Public Report to which the Common Area is subject and the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of Declarant to complete the Improvements, the following provisions shall apply.

13.8.1 Improvements Complete: If all Improvements in the planned construction statement appended to the Bond are covered by one or more recorded notices of completion, the Board shall execute whatever documents are required by the surety to release the Bond.

13.8.2 Improvements Not Complete: If a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the planned construction statement appended to the Bond, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond. If the Association has given a written extension for the completion of any Common Area Improvements, the Board shall consider and vote whether to take action if a notice of completion has not been filed within thirty (30) days after the expiration of the most recent extension.

13.8.3 Action by Members: If the Board decides not to act or fails to initiate action to enforce bonded obligations, then upon receipt by the Board of a petition for a special meeting signed by Members entitled to cast five percent (5%) or more of the total number of votes which may be cast by the Members, the Board shall call a special meeting of the Members. If the Board has failed to initiate action, the Members shall determine whether they wish to initiate action. If the Board has decided not to initiate action, the Members shall determine whether to override the Board's decision. The meeting shall be held not less than thirty-five (35) nor more than forty-five (45) days after receipt of the petition by the Board. At the meeting, the approval of the Members, excluding the vote of Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association. The Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

13.8.4 Release of Bond: On satisfaction of the Declarant's obligation to complete the Common Area Improvements, the Association shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents as may be reasonably necessary to effect the release of the Bond. The Association shall not condition its approval on the satisfaction of any condition other than completion of the Common Area Improvements. If the Association breaches any of the foregoing obligations, it shall be liable to the Declarant for any damages incurred thereby, including reasonable attorney's fees. Any dispute between the Declarant and the Association regarding the completion of Common Area Improvements shall be submitted to binding arbitration under the commercial rules of the American Arbitration Association and the prevailing party shall be entitled to recover costs, including reasonable attorney's fees.

13.9 REQUIRED ACTIONS OF ASSOCIATION: The Association shall at all times take all reasonable actions necessary for the Association to comply with the terms of this Declaration or to otherwise carry out the intent of this Declaration.

13.10 SUCCESSOR STATUTES: Any reference in the Project documents to a statute shall be deemed a reference to any amended or successor statute.

13.11 CONFLICT: In the event of a conflict, the provisions of this Declaration shall prevail over the Bylaws and the Rules.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the 28th day of August, 1997.

DECLARANT: PONDEROSA HOMES, INC., a California corporation

By: [Signature]  
Name: Len Fryer  
Title: Vice President

State of California )  
County of Alameda ) ss.

On August 28, 1997, before me, Natalie Kite Endicott, personally appeared Len Fryer, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person (x) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(~~ies~~), and that by his/her/their signature (s) on the instrument, the person (x) or the entity upon behalf of which the person (x) acted, executed the instrument.

WITNESS my hand and official seal.

Natalie Kite Endicott  
Notary Public

