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**DECLARATION**

**" OF**

**MAR WOOD CIRCLE**

**TOWNHOMES**

(PLANNED DEVELOPMENT)

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EXHIBIT "A" DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

CONSENT OF LIENHOLDER AND SUBORDINATION OF LIEN

DECLARATION

OF

MAR WOOD CIRCLE TOWNHOMES

(PLANNED DEVELOPMENT)

THIS DECLARATION is made on the date hereinafter set forth by MARWOOD CIRCLE PARTNERS, (herein referred to as "Declarant"):

SECTION I: RECITALS

1.01. Description of Real Property. Declarant is the owner of that certain real property located in the County of Sono! State of California, which is more particularly described on Exhibit "A" attached hereto and incorporated herein.

1.02. Single Phase. Declarant has improved or intends to improve the Project by subdividing and constructing it into twenty-six (26) residential lots improved with dwellings ("Lots") and one (1) common area Lot with improvements ("Common Area").

1.03. Ownership Interests. Each owner shall receive fee title to his Lot, a membership in the Marwood Circle Homeowners Association ("Association"), which shall hold title to the Common Area, a non-exclusive easement for use, enjoyment, ingress and egress over the Common Area, and such other interests as are provided herein.

1.04. Common Plan for Project. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project and the interests therein conveyed and to establish thereon a Planned Development.

NOW, THEREFORE, Declarant hereby declares that the real property described on Exhibit "A" shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and the Project, and every part thereof, in accordance with the plan for improvement of

the Property and the division thereof into Lots. Pursuant to California Civil Code Sections 1353 and 1354, all of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land, be enforceable as equitable servitudes, and shall be binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Property or the Project.

## SECTION 2: DEFINITIONS

In addition to other definitions provided for herein, the following terms shall have the following meanings:

2.01. "Articles" shall mean the Articles of Incorporation of Marwood Circle Homeowners Association, and any amendments thereto.

2.02. "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Property which is to be paid by each Lot Owner as determined by the Association.

2.03. "Association" shall mean the Marwood Circle Homeowners Association, a California non-profit mutual benefit corporation, the members of which shall be the Owners of Lots in the Project, their successors and assigns.

2.04. "Association Rules" shall mean rules which may be adopted by the Association.

2.05. "Board" or "Board of Directors" shall mean the governing body of the Association.

2.06. "Bylaws" shall mean the Bylaws of Marwood Circle Homeowners Association, and any amendments thereto.

2.07. "City" shall mean the City of Santa Rosa, its officers, agents and employees.

2.08. "Common Area" shall mean Lot 27 as shown on the Map and all improvements erected thereon. The Common Area shall not include the residential Lots. Title to the Common Area shall be held by the Association for the use, enjoyment and benefit of the Members. The Common Area includes any Exclusive Use Common Areas as hereinafter defined.

2.09. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Property and any reasonable reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Project Documents.

2.10. "Declarant" shall mean MARWOOD CIRCLE PARTNERS, its successors and assigns, if such successors and assigns are assigned the rights of Declarant pursuant to Section 16.10 hereof or if such successor or assign is a mortgagee acquiring Declarant's interest in the Project by foreclosure or by deed in lieu of foreclosure.

2.11. "Declaration" shall mean this Declaration, and any amendments, modifications or supplements thereto.

2.12. "Eligible First Mortgagee" shall mean a First Mortgagee who has requested notice by sending a written request to the Association, stating both its name and address and the Lot number or address of the Lot it has the mortgage on.

2.13. "Exclusive Use Common Area" shall mean that portion of the Common Area designated for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests for the uses and purposes described in Section 3.03.

2.14. "Final Public Report" shall mean the final public report issued by the California Department of Real Estate or any successor state agency pursuant to the California Subdivided Lands Act (Business & Professions Code Section 11000 et seq.) as it may be amended from time to time.

2.15. "Improvements" shall mean all structures and improvements on the Property, including, but not limited to, buildings, paving, fences, signs, barbecue facilities and landscaping.

2.16. "Lot" shall mean any parcel of land shown on the Map, with the exception of the Common Area.

2.17. "Map" shall mean that subdivision map entitled "Marwood Circle P.U.D." recorded on August 14, 19 91, in Book 481 of Maps, Page 1-4, in the Official Records of Sonoma, County.

2.18. "Member" shall mean a person or entity entitled to membership in the Association as provided herein. Each Owner or Co-Owner shall be a member.

2.19. "Mortgage" shall mean a mortgage or deed of trust encumbering a Lot or other portion of the Project. "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a mortgage. "First Mortgage" or "First Mortgagee" is one having priority over all other Mortgages or holders of Mortgages encumbering the same Lot or other portion of the Project. A "First Mortgagee" shall include any holder (including FHLMC and FNMA), insurer (including FHA), or guarantor (including V A) of a First Mortgage on a Lot or other portion of the Project. "FHA" shall mean the United States Department of Housing and Urban Development, Federal Housing Administration. "V A" shall mean the United States Department of Housing and Urban Development, Veterans Administration. "FHLMC" shall mean the Federal Home Loan Mortgage Corporation. "FNMA" shall mean the Federal National Mortgage Association.

2.20. "Owner" or "Owners" shall mean the record holder or holders of title, if more than one, of a fee simple title to any Lot in the Project. This shall not include contract sellers or persons or entities having any interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale (or a recorded memorandum of such contract) to a purchaser who resides in the Unit, then such purchaser, rather than the fee Owner, shall be considered the "Owner" as long as such purchaser resides in the Unit as a contract purchaser.

2.21. "Project" or "Property" shall mean the entire real property described on Exhibit "A" attached hereto, including all Improvements erected or to be erected thereon or on such additional properties which may be brought within the jurisdiction of the Association.

2.22. "Project Documents" shall mean and include this Declaration, as amended from time to time, the exhibits, if any, attached hereto, together with the other basic documents used to create and govern the Project, including the Map, Articles and Bylaws (but excluding unrecorded rules and regulations adopted by the Board or the Association).

2.23. "Unit" shall mean a dwelling structure on a Lot.

### SECTION 3: PROPERTY RIGHTS

3.01. Common Area. The Common Area shall be owned by the Association for the use and benefit of the Members. It shall be conveyed to the Association free of money encumbrances prior to or concurrently with the close of escrow of the sale of the first lot. The Common Area shall be maintained by the Association as provided in Section 5.01. When the Common Area is conveyed by Declarant to the Association, an easement shall be deemed automatically reserved over the Common Area in favor of Declarant for common driveway purposes, drainage and encroachment purposes and for ingress to and egress from the Common Areas for the purpose of completing Improvements thereon or for the performance of necessary repair work, and for entry onto adjacent property in connection with the development of any additional phases of the overall Project. Said easement shall continue for the period of time provided for annexation, plus a reasonable period of time thereafter (not to exceed an additional two (2) years) to complete construction of said improvements. Said easement shall automatically terminate four (4) years after the recordation of this Declaration.

3.02. Exclusive Use Common Areas. The following described portions of the Common Area, referred to as "Exclusive Use Common Areas," are hereby set aside and allocated for the exclusive use of the Owner of the Lot to which they are attached or hereafter assigned by the Board:

Walkways from roadway sidewalk to each unit;

Front yard area;

Internal and external telephone wiring designed to serve a single Lot, but located outside the boundaries of the lot are Exclusive Use Common Areas allocated exclusively to that Lot.

Except as expressly provided herein, no other portion of the Common Area is "Exclusive Use Common Area".

3.03. Partition Prohibited. The common areas shall remain undivided as set forth above. Except as provided by California Civil Code Section 1359, no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the project. Judicial partition by sale of a single lot owned by two (2) or more persons and division of the sale proceeds is not prohibited hereby, but partition of title to a single lot is prohibited.

3.04. Annexation of Additional Property. Additional property may be annexed to and become subject to this Declaration by any of the following methods set forth in this Section. Upon annexation, additional parcels shall become subject to this Declaration without the necessity of amending individual sections thereof.

a. Annexation Pursuant to Approval: Upon approval in writing of the Association, pursuant to vote or written consent of sixty-six and two-thirds percent (66-2/3%) of the total votes residing in members other than the Declarant, the Association and the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation. Said Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property, as are consistent with the scheme of this Declaration. Said Declaration shall include designation of Lots and/or Common Areas for the purpose of this Declaration.

b. Effect of Annexation: Assessments collected from owners in the property may be expended by the Association without regard to the particular phase from which such assessments came. All Owners shall have ingress and egress and rights to use all portions of the Common Area throughout the Property, subject to the provisions of this Declaration, the Bylaws of the Association and the Rules and Regulations of the Association in effect from time to time.

c. Quality of Construction: Future improvements to the Project will be consistent with initial improvements in terms of quality of construction.

3.05. Easements. In addition to any and all other easements contained in this Declaration, the Properties shall be subject to the following easements:

a. Owners' Easements. Every Owner shall have a right and easement of enjoyment in and to the Common Area, including ingress and egress to and from his Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(1) Section 9 of this Declaration authorizes the Board to impose monetary penalties, temporary suspensions of an Owner's rights as a member of the Association or other appropriate discipline for failure to comply with the Project Documents provided that the established procedures are followed for notice and hearing which satisfy the minimum requirements of Corporations Code Section 7341 and are followed with respect to the accused member before a decision to impose discipline is reached.

(2) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the members agreeing to such dedication or transfer has been recorded, provided, however, that no such dedication shall impair the ingress and egress to any individual Lot.

b. Future Exclusive Use Common Areas. The Association may grant an Owner an easement on the Common Area adjacent to the Owner's Lot for the

purpose of maintaining a fenced patio area, air conditioning and heating units, a fireplace structure and any other amenity or utility incidental to the use of the Lot.

c. Easements for Utilities and Maintenance. Easements over and under the Property for the installation, repair and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities, heating facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping as shown on the recorded map of the property, and as may be hereafter required or needed to service the Property, are hereby reserved by Declarant and its successors and assigns, including the Association, together with the right to grant and transfer the same.

Each Owner is entitled to reasonable access to the Common Areas for the purpose of maintaining the internal and external telephone wiring made part of the Exclusive Use Common Areas of a Lot. The access shall be subject to the consent of the Board, whose approval shall not be unreasonably withheld, and which may include the Board's approval of telephone wiring upon the exterior of the Common Areas, and other conditions as the Board determines reasonable.

d. Encroachment Easements. Each Lot within the Property is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots or Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

e. Entry For Repairs. The Board may authorize its agents and employees to enter upon any Lot and or Exclusive Use Common Area when necessary in connection with any maintenance, landscaping or construction for which the Association is responsible, to effect emergency repairs or to effect necessary repairs which the Lot Owner has failed to perform as required by this Declaration. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association. Except in case of an emergency, twenty-four (24) hour advance notice shall be given to the Owner or occupant.

f. Association Easement for Front Yard Maintenance. The term "front yard area" herein shall mean and refer to that portion of each Lot which is generally visible from any street within the development and would commonly be referred to as a front yard or side yard. Front yard area shall not include those portions of a lot which are covered by structural improvements or which are enclosed for the private use of an owner. The precise area of each Lot which constitutes front yard area shall be determined by actual location of the unit and any fence improvements constructed thereon. The Association shall have an easement in and across every front yard area within the development for the purpose of planting, replanting, watering, cutting, removing or otherwise caring for the landscaping in the front yard area of each Lot. The Association shall also have an easement in and across

such other portions of each Lot as may be reasonably necessary to perform its obligations under this Declaration.

3.06. Party Walls. If at any time there are party walls in this development, the following provisions shall apply:

a. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

b. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

c. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it; and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

d. Weatherproofing. Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

e. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

f. Arbitration. If any dispute arises concerning a party wall, or under the provisions of this Section, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all arbitrators.

#### SECTION 4: USE RESTRICTIONS

4.01. Use of Lots. No Lot, or any portion thereof, shall be occupied and used except for single family residential purposes by the Owners, their contract purchasers, lessees, tenants, or social guests. No trade or business or commercial activity shall be carried on or conducted upon any Lot, except that Declarant, its successors or assigns, may use any Lot in the Project owned by Declarant for a model home site and display and sales office during construction and until the last Lot is sold by Declarant, or until three (3) years from the date of closing of the first sale of a Lot in the Project, whichever occurs first. The provisions of this Section shall not prohibit home occupations so long as they are merely incidental to the use of the Lot as a dwelling, are permitted by local law, are conducted in such a manner as not to adversely affect other Owners' use and enjoyment of the Project, and have received

prior written approval of the Board. No health care facilities operating a business or charity of any kind shall be permitted in the Project.

4.02. Garages and Parking. Each Owner shall keep his garage area in a neat and orderly condition with any storage areas completely enclosed. Garage doors shall be kept closed when not in use. Garages shall not be used for storing or parking campers, trailers, boats or recreational vehicles, or for any purpose which would prevent Owner from parking his passenger vehicles in his garage. Each Owner shall be entitled to the exclusive use of the driveway serving his garage and shall keep said driveway clean and free of debris. In addition, there are parking spaces located on the Common Area as shown on the Map, which shall be unassigned and available for use by Owners, tenants, guests and invitees. The Board has the right to assign the exclusive use of certain parking spaces to Owners and charge fees therefore in accordance with Rules to be adopted by the Board.

4.03. Vehicle Restrictions. No trailer, recreational vehicle, camper, mobile home, commercial vehicle, truck (other than a standard size pickup truck), inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the Property, other than temporarily, not to exceed twenty-four (24) hours. Commercial vehicles shall not include sedans or standard size pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Property. No off-road unlicensed motor vehicles shall be operated upon the Property.

4.04. Signs. No sign of any kind shall be displayed to the public view on or from any Lot or any portion of the Property without the approval of the Association, except as follows:

- a. One (1) sign of customary and reasonable dimensions advertising a Lot for sale, lease, rent or exchange displayed from a Lot; and
- b. Such signs as may be used by Declarant or its assignees in connection with the development of the project and sale of Lots; and
- c. Such other signs or notices as are required by law or as are otherwise necessary to perfect a right provided for in law.

4.05. Animals. No animals, reptiles, rodents, birds, fish, livestock, or poultry shall be raised, bred, or kept on any Lot or portion of the Property; except that no more than two (2) usual and ordinary household pets such as dogs, cats, fish or birds inside bird cages may be kept, provided that they are not kept, bred, or maintained for any commercial purposes, and they are kept under reasonable control at all times. No pet weighing more than twenty-five (25) pounds shall be kept on the property. Notwithstanding the foregoing, no pets may be kept on the Property which result in an annoyance or nuisance to other Owners. No pets shall be allowed on the Common Area except as may be permitted by rules of the Board. No dog shall enter the Common Area except while on a leash which is held by a person capable of controlling it. Owners shall prevent their pets from soiling any portions of the Common Area and shall promptly clean up any mess left by their pets. Owners shall be fully responsible for any damage caused by their pets.

4.06. Garbage; Storage of Materials. All garbage and trash shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. It shall be placed and kept in covered sanitary containers where it is not visible from any neighboring Lot except for twelve (12) hour period of time prior to and after collection by the city-franchised garbage collector. All woodpiles or storage piles shall be kept screened and concealed from view of other Lots, streets and Common Areas. Garbage and trash shall be placed for pick up when and as required by the disposal service and any Rules adopted by the Association.

4.07. Antennae; Roof Projections. Except for any antennae, chimneys, vent stacks or other items or equipment upon or projecting from the roof which are installed by Declarant as part of the initial improvements, no such item or equipment shall be erected or maintained upon the outside of any building on the properties unless the same has been approved by the Board. No alteration to or modification of a central television antenna system or cable television system, whichever is applicable, as developed by Declarant and as maintained by the Association, shall be permitted, and no Owner may be permitted to construct and/or use his own external radio and/or television transmitting or receiving antenna, without the written consent of the Board. All fees for the use of any cable television system shall be borne by the respective Lot Owners, and not by the Association.

4.08. Right to Lease. No Owner shall be permitted to lease or rent his Lot for transient or hotel purposes, which shall include, but not be limited to rental for any period less than thirty (30) days. All leases must be in writing and be expressly subject to the Project Documents and the breach of any provision shall be a default under the Lease or Rental Agreement. Subject to the foregoing restrictions, the Owners of Lots shall have the right to lease the same, provided that the Board is notified of the name of the tenant and the duration of the Lease. The Owner shall provide the Lessee with a copy of the Articles, Bylaws, Declaration and any Rules and Regulations of the Association.

4.09. Architectural Approval. No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, improvement, or structure of any kind shall be commenced, installed, erected, painted or maintained upon the Property, nor shall any alteration or improvement of any kind be made thereto, or to the exterior of any Unit, until the same has been approved in writing by the Board. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Unit, or to paint the interior of his Unit any color desired.

No landscaping on a Lot or on the Exclusive Use Common Area visible from the street or from the Common Area shall be undertaken by any Owner until plans and specifications showing the nature, kind, shape, and location of the materials have been submitted to and approved in writing by the Board.

Failure of the Board to act within thirty (30) days after the plans have been submitted to it shall constitute approval.

4.10. Governmental Approval. Before commencement of any alteration or improvements approved by the Board, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Board does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

4.11. Alteration of Front Yard Landscaping. Unless there has been prior written approval by the Board, no owner shall make or permit any alteration of the front yard area of his Lot and shall, specifically, not create any excavation or fill, change the drainage, destroy or remove any tree, shrub or other vegetation, or plant any tree, shrub or other vegetation upon or within any portion of any front yard area.

4.12. Window Coverings. Windows shall be covered only by drapes, shades or shutters and shall not be painted or covered by foil, cardboard or similar materials. All window coverings visible from outside such Unit shall be of a material, design and color which, in the reasonable opinion of the Board, is compatible with the exterior design and coloration of adjacent portions of the Project.

4.13. Clotheslines. No exterior clotheslines or other outside clothes drying or airing facility shall be erected or maintained on the properties in any location where the same would be visible from any street or neighboring lot. No draping of towels, carpets or laundry over railings or fence shall be permitted. Further, no clothes washers, clothes dryers, refrigerators or freezers may be kept, stored or operated on any balcony, patio, porch or other exterior area.

4.14. Power Equipment and Car Maintenance. No power equipment, work shops or car maintenance of any nature (other than emergency repairs within an Owner's enclosed garage) shall be permitted on the Property without the prior written approval of the Board. In deciding to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections.

4.15. Drainage. No Owner shall do any act or construct any improvement which would interfere with the natural or established drainage systems or patterns within the Project without the approval of the Board. Specifically, no Owner shall alter the pipe drain system in the rear of each Lot such that the drainage capacity available to upstream neighbors is reduced;

4.16. Liability of Owners for Damage to Common Area. The Owner of each Lot shall be liable to the Association for all damages to the Common Area and/or improvements thereon caused by such Owner or any occupant of his Unit or guest, except for that portion of said damage, if any, fully covered by insurance of the Association. Liability of an Owner shall be established only after notice to the Owner and hearing before the Board.

4.17. Recreational Facilities.

a. Every member of the Association shall have a right to use the recreational facilities situated on the Common Area, subject to the following provisions:

(1) The right of the Association to charge reasonable fees for the use of any recreational facility by non-members;

(2) The right of the Association to charge reasonable fees for the exclusive use of parking spaces located on the Common Area; and

(3) The right of the Association to deny use after hearing for infringement of rules or nonpayment of dues.

b. Any Owner may delegate, in accordance with the Bylaws, rights of enjoyment to the recreational facilities to family members, tenants or contract purchasers who reside on the Property.

4.18. Sports Fixtures. No basketball standards, hoops or backboards or other fixed sports apparatus shall be attached to any Unit or erected on any Lot, unless approved in writing by the Board.

4.19. Nuisances. No noxious, illegal, or seriously offensive activities shall be carried on within any lot, or in any other part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each Owner's Lot or Common Area, or which shall in any way increase the rate of insurance for the Project or for any other lot, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

4.20. Compliance with Project Documents. Each Owner, contract purchaser, lessee, tenant, guest, invitee or other occupant of a Lot or user of the Common Area shall comply with the provisions of the Project Documents and any Rules adopted by the Board.

## SECTION 5: MAINTENANCE OBLIGATIONS

5.01. Association Maintenance Obligations. The Association shall be responsible for maintaining the following in good condition and repair:

a. Common Area Improvements. The Association shall maintain or provide for the maintenance of all Common Area improvements, including but not limited to the private driveway, parking areas, fences located on common area perimeter and sound barrier fence on Marlow Road, barbecue pit and picnic area located within the Common Area.

b. Landscaping. The Association shall provide gardening services to maintain and replace as necessary, all the landscaping within the Common Area and the open areas of individual Units up to the exterior walls or fences of the Units. Maintenance shall include regular fertilization, irrigation and other garden management practices necessary to promote a healthy, weed-free environment for optimum plant growth. The irrigation system originally installed on the Common Area in connection with the landscaping improvements shall also be operated and maintained by the Association. The irrigation system shall remain on at all times during the non-rainfall season to maintain soil moisture balance. This operational procedure for this irrigation system will eliminate any possibility of ground displacement in expansive soil areas.

c. Exterior Surfaces. In order to preserve the exterior harmony and appearance of the Project, the Association shall perform all maintenance, repair, painting or staining of the exterior wall surfaces and exterior trim of each Unit within the Project, including; roofs and siding, as often as the Board deems appropriate.

d. Gutters and Downspouts. All gutters and downspouts shall be maintained and replaced as necessary by the Association.

If any of the maintenance or repair work referred to above is necessitated by the willful or negligent acts of the Owner, his family, guests or invitees, the costs of such special restoration or repairs shall be chargeable to the Owner as provided in Section 8.06.

5.02. Owners' Maintenance Obligations. Except for the landscaping and limited exterior maintenance to be performed by the Association as specified above, each Owner shall be responsible for maintenance and repair of his Unit and Lot, including specifically:

a. Glass. All windows and sliding glass doors shall be cleaned (outside as well as inside), repaired and replaced by the individual Owners unless covered by an insurance policy obtained by the Association.

b. Appliances and Equipment. Each Owner shall be responsible for maintaining, repairing and replacing all appliances within his Unit, including air conditioning and heating equipment, water heaters, plumbing and lighting fixtures, or other mechanical equipment servicing his particular Unit, including the garage door and garage door opener.

c. Utility Connections. Utility lines and connections, including sewer, electrical, plumbing and gas lines, which are located within a Unit and provide service to the Unit, shall be maintained and repaired by the Owner of the Unit in question and/or the utility company involved, rather than by the Association.

If an Owner of any Lot fails to maintain the premises and improvements situated thereon in a manner satisfactory to the Board, after approval by two-thirds (2/3) vote of the Board, the Association shall have the right and power, through its agents and employees, to enter upon and maintain, or provide for the maintenance of, any Lot and unit, and to repair, maintain, and restore the Lot, and any other improvements erected thereon, which is not maintained by the Owner thereof in accordance with the requirements of these restrictions. Cost of any such repair or maintenance shall be charged to the Owner through an Individual Charge as provided in Section 8.06 hereof.

## SECTION 6: ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING

6.01. Association to Manage Project. The management of the Project shall be vested in the Association in accordance with the Project Documents, and all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project.

6.02. Membership. Each Owner shall be a member of the Association, and shall remain a member thereof until such time as ownership ceases for any reason, at which time such membership in the Association shall automatically cease.

6.0.3. Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such lot. A Mortgagee does not have membership rights until it becomes an Owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. Any person or entity acquiring fee title or equitable title to a lot, whether by reason of a deed from the Owner or through a foreclosure, shall within fifteen (15) days of acquiring such title inform the Association in writing of the date such title transferred and the name or names in which title is held.

6.04. Classes of Membership and Voting. The Association shall have two (2) classes of voting members:

Class A. Class A members shall be all Owners except Declarant and shall be entitled to one (1) vote for each lot owned. When more than one (O) person or entity owns a Lot, all such persons and entities shall be members and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned.

6.05. Termination of Class B Membership. The Class B membership shall be irreversibly converted to Class A membership on the occurrence of whichever of the following is first in time:

(a) When the total outstanding votes held by Class A members equal the total outstanding votes held by Class B members, or

(b) On the second anniversary of the original issuance of the Final Public Report for the Project.

6.06. Approval of Members Other Than Declarant. With the exception of actions authorized for the Enforcement of Bonded Obligations, no action which requires the approval of a prescribed majority of the voting power of members of the Association other than the Declarant shall preclude the Declarant from casting votes attributable to subdivision interests which he owns.

Where a two-class voting structure is still in effect, any action requiring the approval by the vote or written assent of a prescribed majority of the Class A voting power shall also require the vote or written assent of a bare majority of the Class B voting power.

Where a single-class voting structure exists, after the conversion of Class B to Class A membership, approval of any action by the vote or written assent of a prescribed majority of the total voting power of Owners other than the Declarant shall also require the approval by vote or written assent of a bare majority of the total voting power of the Association.

6.07. Inspection of Books. All members shall have reasonable access to inspect the books, records and financial statements of the Association, including

annual audited financial statements when such are prepared, pursuant to this Declaration and subject to the same.

6.08. Commencement of Voting Rights. Voting rights attributable to Lots shall not vest until assessments against those Lots have been levied by the Association.

6.09. Co-Owner Votes. The vote for each Lot may not be cast on a fractional basis. If the Co-Owners of a Lot are unable to agree among themselves as to how their vote shall be cast, they shall forfeit the vote on the matter in question. If only one (1) Owner exercises the vote of a particular Lot, *it* shall be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. If more than one Co-Owner exercises the vote for a particular Lot, their votes shall not be counted and shall be deemed void.

6.10. Membership Meetings. Regular and special meetings of members and of the Board shall be held with the frequency at the time and place and in accordance with the provisions of the Bylaws.

6.11. Notice and Place of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days but not more than ninety (90) days before such meeting to each first mortgagee requesting notice and to each member, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Meetings shall be held within the Project or at a meeting place as close thereto as possible.

6.12. Board of Directors. The affairs of the Association shall be managed by a Board of Directors, which shall be established, and which shall conduct regular and special meetings according to the provisions of the Bylaws.

## SECTION 7: POWERS, DUTIES AND LIMITATIONS OF THE ASSOCIATION

7.01. Powers and Duties of Association. In addition to the powers and duties enumerated in its Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following powers and duties:

a. Delegation of Authority and Powers. To delegate its authority and powers to committees, officers or employees of the Association, or to a management agent employed by the Association, as expressly authorized by the Project Documents, provided that the Board shall not delegate its responsibility:

1. To make expenditures for capital additions or improvements chargeable against the reserve funds;

2. To conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Declaration, Bylaws or Rules and Regulations promulgated by the Board;

3. To make a decision to levy monetary fines, impose Special Assessments against individual Lots, temporarily suspend an Owner's rights as a member of the Association or otherwise impose discipline;

4. To make a decision to levy Regular or Special Assessments; or

5. To make a decision to bring suit, record a claim of lien or institute foreclosure proceedings for default in payment of assessments.

b. Management Agent. To employ a management agent and to contract with independent contractors to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a firm or person appointed as a managing agent or any other contract providing for services of the developer, sponsor or builder shall not exceed a one (1) year term renewable by the parties for successive one (1) year periods and shall provide for the right of the Association to terminate the same at the first annual meeting of the members of the Association, to terminate the same for cause on thirty (30) days written notice, and either party may terminate without cause and without payment of a termination fee on sixty (60) days written notice. "-

c. Maintenance. To maintain the Project as required by the provisions of this Declaration.

d. Supervision. To supervise all officers, agents and employees of the Association and see that their duties are properly performed.

e. Assessments, Liens, and Fines. To levy and collect assessments and as provided in the Project Documents, impose fines or take disciplinary action against any Owner for failure to pay assessments or for violation of any provision of the Project Documents. Penalties may include, but are not limited to: fines, temporary suspension of voting rights, rights to use of the facilities on the Common Area, or other appropriate discipline for failure to comply with the governing instruments, provided that the accused member is given notice and the opportunity to be heard by the Board with respect to the alleged violations before a decision to impose discipline is reached. Such notice and hearing procedures shall satisfy the minimum requirements of Corporations Code Section 7341, which are set forth in Section 12 of the Bylaws.

f. Enforcement of Project Documents. To enforce applicable provisions of the Project Documents for the ownership, management and, control of the Project.

g. Adoption of Rules. To adopt, amend, enforce and repeal reasonable rules consistent with this Declaration relating to the use of the Common Area and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Property and other Owners. A copy of the Association Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Common Area.

h. Records. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual

meeting of the members, or at any special meeting when such statement is requested in writing by five percent (5%) or more of the total voting power of the Association; keep adequate and correct books and records of account, minutes of proceedings of its members, Board and committees, and a record of its members giving their names and addresses and classes of membership.

i. Water and Other Utilities. To acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other utility services as necessary for the Common Area.

j. Granting of Easements. To grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.

k. Exercise of Easements. To exercise all easement rights as granted to it in this Declaration for the purpose of performing the maintenance authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of their responsibilities, the Association's agents or employees.

l. Contracts. To contract for goods and/or services for the Common Area facilities and interests or for the Association, subject to limitations elsewhere set forth in the Project Documents.

m. Limit Number of Guests. To limit the number of an Owner's guests who may use any facilities on the Common Area, provided that all limitations apply equally to all Owners, unless imposed for disciplinary reasons after appropriate notice and hearing.

n. Title to Common Area. To accept title to the Common Area conveyed to it by Declarant.

o. Acquisition and Disposition of Property. To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of Property shall be by document approved by two-thirds (2/3rds) of the total voting power of the Association which shall include two-thirds (2/3rds) of the members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3rds) of the voting power of each class of members.

p. Budgets. To prepare, or cause to be prepared, budgets and financial statements for the Association as prescribed in this Declaration.

q. Legal and Accounting. To obtain and pay the cost of legal, accounting and other professional services necessary or proper for the maintenance and operation of the Project and the enforcement of the Project Documents.

r. Emergency Repair. To enter upon any privately owned Lot as necessary in connection with construction, maintenance or emergency repair for the benefit of the common area or the owners in common.

s. Election of the Board of Directors. To elect the members of the Board.

t. Other Powers. In addition to the powers contained herein, the Association may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code Section 7140.

u. Filling Vacancies. To fill vacancies on the Board, except for a vacancy created by the removal of a Board member.

v. Appointment of Trustee. The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce assessment liens by sale as provided in Section 9.02 herein and Civil Code Section 1367(b).

7.02. Property Taxes and Assessments. Each Owner shall be obligated to pay any taxes or assessments levied by the County Assessor against his Lot and personal property. To the extent not assessed to or paid directly by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Common Area or other property owned by the Association.

The Association shall prepare and file annual tax returns with the federal government and the State of California and make such elections as may be necessary to reduce or eliminate the tax liability of the Association.

7.03. Insurance. The Association shall maintain casualty, liability and other insurance on behalf of the Association as required by the provisions of this Declaration.

7.04. Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against the Common Area, and assess the cost thereof to the Owners responsible for the existence of said lien.

7.05. Payment of Expenses. The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the Property of the Association.

7.06. Prohibited Acts. The Association, through its Board, shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant:

a. Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year with the following exceptions:

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

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

(iii) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.

(iv) Lease agreements for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(v) Agreements for cable television services and equipment of not to exceed five (5) years duration provided that the supplier is not an entity in which the subdivider has a direct or indirect ownership interest of ten percent (10%) or more.

(vi) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which the Subdivider has a direct or indirect ownership interest of ten percent (10%) or more.

b~ Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

c. Selling during any fiscal year Property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

d. Paying compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

e. Filling of a vacancy on the Board created by the removal of a Director.

7.07. Action Requiring Consent. The Board shall take the following actions only upon obtaining consents of members as follows:

(1) The Consent of three fourths (3/4) of the voting power of the Association residing in members other than the Declarant so long as the Declarant holds or directly controls at least twenty-five percent (25%) of the voting power of the Association, and after the Declarant no longer controls twenty-five percent (25%) or more, the consent of two-thirds (2/3) of the voting power of all members shall be necessary to do the following:

(i) Borrow money, and only with the assent (by vote or written consent) of three-fourths (3/4) of members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(ii) Dedicate, sell or transfer all of or any part of any interest it may have in the Common Area to any public agency, authority, or utility for such

purposes and subject to such conditions as may be agreed to by the members; provided that no such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of the members agreeing to such dedication, sale or transfer, and any sale of all or substantially all of the corporation's assets must be in compliance with Section 7.07(2)(i) below.

(iii) To the extent permitted by law, participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as this Association or annex additional residential property in addition to the property described on Exhibit A hereto, provided that any merger, consolidation or such annexation shall have the assent by vote of three-fourths (<3/4) of members in good standing voting in person or by proxy or by the written consent of such members, excluding Declarant.

(2) Except as otherwise provided, the consent of one hundred percent (100%) of the members shall be required so long; as there is any lot, parcel, area, apartment or unit for which the Association is obligated to provide management, maintenance, preservation or control for the Association to do the following:

- (i) Transfer all or substantially all of its assets; or
- (ii) File a certificate of dissolution.

7.08. Board of Director's Review of Fiscal Matters. The Board of the Association shall do the following not less frequently than quarterly:

- a. Cause a current reconciliation of the Association's operating accounts to be made and review the same.
- b. Cause a current reconciliation of the Association's reserve accounts to be made and review the same.
- c. Review the current year's actual reserve revenues and expenses compared to the current year's budget.
- d. Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.
- e. Review an income and expense statement for the Association's operating and reserve accounts.

7.09. Commencement of Association's Duties and Powers. Until incorporation of the Association, all duties and powers of the Association as described herein, including all rights of consent and approval, shall be and remain the duties and powers of Declarant. From and after the date of incorporation of the Association, the Association shall assume all duties and powers, and Declarant shall be relieved of any further liability therefore.

7.10. Indemnification of City. In consideration of and as a condition of approval of the subdivision development, Declarant on behalf of itself and its successors and assigns and the Association created herein, does hereby release, discharge, hold and save harmless the City of Santa Rosa, its officers and employees,

from any and all liability, claims or demands arising out of the inadequate or negligent maintenance of Common Areas of the subdivision or improvements thereto.

Should the City be joined or named as a party in any legal proceedings or in any other action related to the maintenance responsibilities of the Association or the individual members thereof, Declarant, its successors and assigns, and the Association do hereby agree to indemnify, hold harmless and defend or settle any and all claims or actions against the City, and to pay any and all claims, damages, judgments or other liability legally imposed upon the City arising out of any such proceeding, and will pay all costs and expenses, including attorneys' fees and reasonable defense costs, incurred in connection therewith.

## SECTION 8: ASSESSMENTS

8.01. Agreement to Pay; Personal Obligation. Declarant, and his successor in interest, if any, for each Lot owned by it, and each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association:

(1) Regular Annual Assessments;

(2) Special Assessments for capital improvements or unusual expenses to be established and collected as hereinafter provided (collectively "Assessments"); and

(3) Individual Charges levied against an individual owner, to be established and collected as provided in this Declaration and in the other Project Documents.

All Assessments and Individual Charges, together with any late charges, interest, collection costs and reasonable attorneys' fees incurred in collecting delinquent Assessments and Individual Charges, shall be the personal obligation of the Owner of such Lot at the time when the Assessments or Individual Charges fell due. If more than one (1) person or entity was the Owner of a Lot at the time the Assessments or Individual Charges fell due, the personal obligation to pay each Assessment and Individual Charge shall be joint and several. The personal obligation for delinquent Assessments and Individual Charges shall not pass to any transferee unless expressly assumed by him. No Owner may exempt himself from liability for his Assessments or Individual Charges obligation by waiver of the use or enjoyment of any of the Project.

8.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for paying the costs of and creating reserves for the costs of landscaping, gardening, street maintenance and repair, and other obligations which the Association is authorized or obligated to perform as described in this Declaration.

8.03. Assessments of Vacant Lots. Notwithstanding the foregoing, Declarant and any other Owner of a Lot which does not include a structural improvement for human occupancy shall be exempted from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the structural improvement. The exemption shall include, but shall not necessarily be limited to:

- (1) Roof reDlacement;
- (2) Exterior maintenance;
- (3) Walkway and parking area lighting;
- (4.) Refuse disposal, if any;
- (5) Cable television;
- (6) Domestic water supplied to living units, if any; and
- (7) Insurance on uncompleted Units.

a. Any exemption from the payment of assessments shall be in effect only until the earliest of the following events:

(1) A notice of completion of the structural improvements has been recorded.

(2) A certificate of occupancy has been filed.

(3) Completion of all elements of the residential structures which the Association is obliged to maintain has been accomplished.

b. The Declarant and any other owner of a Lot may be exempted from the payment of that portion of any Assessment which *is* for the purpose of defraying expenses and reserves directly attributable to the *existence* and use of a common facility that is not complete at the time assessments commence. Any exemption from the payment of Assessments shall be in effect only until the earliest of the following events:

(1) A notice of completion of the common facility has been recorded; or

(2) The common facility has been placed into use.

8.04. Regular Annual Assessments. The purpose of Regular Annual Assessments is to defray expenses attributable to the ownership, operation and furnishing of common interests by the Association.

Until January 1 of the year immediately following the first conveyance of a Lot to an Owner, the Regular Annual Assessment for each Lot shall be prescribed by the Board. Thereafter, the Board may not, without the vote or written assent of a majority of the owners constituting a quorum casting a majority of votes at a meeting or election, impose a Regular Annual Assessment which is more than twenty percent (20%) greater than the Regular Annual Assessment for the immediately preceding fiscal year; provided, however, that the power of the Board shall not be limited with respect to Regular Assessment increases in the case of emergency situations, which is any of the following:

a. An extraordinary expense required by court order;

b. An extraordinary expense necessary to repair or maintain the project, or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered;

c. An extraordinary expense necessary to repair or maintain the project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget under Civil Code Section 1365. However, prior to the imposition or collection of an assessment under this section, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

A quorum is defined as more than fifty percent (50%) of the owners (including the subdivider) of an association.

Any meeting or election of the Association for purposes of complying with this Section or Section 8.05 shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

If Civil Code Section 1366(b) is hereafter amended, this Section shall automatically be amended in the same manner, and if repealed, the Assessment increase restrictions imposed by this Section shall be according to law.

Not less than ninety (90) days before the beginning of each fiscal year, the Board shall prepare or cause to be prepared, and distribute to each Owner, a proposed pro forma operating statement (budgeted for the forthcoming fiscal year. Any Owner or Mortgagee may make written comments to the Board with respect to said pro forma operating statement. The pro forma operating statement shall be prepared consistently with the prior fiscal year's operating statement and shall include adequate reserves for contingencies and for maintenance, repair and replacement of the Common Area improvements, Lots and Association personal property likely to need maintenance, repair or replacement in the future.

Not more than ninety (90) days nor less than forty-five (45) days before the beginning of each fiscal year, the Board shall meet for the purpose of establishing the Regular Assessment for the forthcoming fiscal year. At such meeting the Board shall review the proposed pro forma operating statement or budget, any written comments received and any other information available to it and, after making any adjustments that the Board deems appropriate, shall establish the Regular Assessment for the forthcoming fiscal year.

Not less than forty-five (45) days and not more than sixty (60) days before the beginning of each fiscal year the Board shall distribute to each Owner a final copy of the pro forma operating statement or budget for the forthcoming fiscal year. Regular Assessments shall be payable in equal monthly installments, due on the first day of each month, unless the Board adopts some other basis for collection.

8.05. Special Assessments. The Board may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for extraordinary expenses incurred by the Association. The power of the Board shall not be limited with respect to Special Assessments imposed for the

purposes set forth in Section 8.04(a), (b) and (c) above. Notwithstanding the foregoing, if the special assessment exceeds in the aggregate five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the vote or written consent of a quorum, casting a majority of the votes at a meeting or election of the Association shall be required to approve such assessment.

8.06. Individual Charges. Individual Charges may be levied against a Member as follows:

a. As a monetary penalty imposed by the Association as a disciplinary measure for the failure of a Member to comply with the Project Documents, or

b. As a means of reimbursing the Association for costs incurred by the Association for the repair of damage to Common Areas and facilities for which the Member was responsible, or to otherwise bring the Member and his Lot into compliance with the Project Documents. Such Individual Charges (other than reasonable late charges, interest, costs of collection and reasonable attorneys' fees related to the collection of Assessments) are not enforceable through the lien provisions of the Project Documents. All Individual Charges shall comply with California Civil Code Section 1366(c) to the extent that it is applicable.

8.07. Equal Division of Regular and Special Assessments. Regular and Special Assessments shall be levied against each Lot and its Owner equally, based on a fraction, the numerator of which is one and the denominator of which is the total number of Lots in the Project.

8.08. Commencement of Assessments and Individual Charges. The right to levy Special Assessments and Individual Charges shall commence as to all Lots on the close of escrow for the first sale of a Lot in the Project. Regular assessments shall commence as to all Lots on the first day of the month following the first conveyance of a Lot under authority of a Public Report. Thereafter, Regular Assessments shall be levied on the first day of the first month.

8.09. Delinquent Assessments. Regular and Special Assessments levied pursuant to this Declaration are delinquent fifteen (15) days after the date they become due.

8.10. Creation of the Assessment Lien. Each Assessment or installment, together with any late charge (not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, or such greater amount as may be allowed by law), interest, collection costs and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each Assessment is made, the lien to become effective upon recordation of a Notice of Delinquent Assessment. All late charges, interest charges and costs of collection shall comply with California Civil Code Section 1366(c) to the extent that it is applicable.

## SECTION 9: ENFORCEMENT OF RESTRICTIONS

9.01. General. The Association or any Owner shall have the right but not the obligation to enforce compliance with the Project Documents in any manner

provided by law or in equity, including without limitation, the right to enforce the Project Documents by bringing an action for damages, an action to enjoin the violation or to specifically enforce the provisions of the Project Documents, to enforce the liens provided for herein (except that no Owner shall have the right to enforce independently of the Association any Assessment, Individual Charge or Assessment lien created herein) and any statutory lien provided by law, including the foreclosure of any such lien and the appointment of a receiver for an Owner and the right to take possession of the Lot in the manner provided by law. In the event the Association or any Owner shall employ an attorney to enforce the provisions of the Project Documents against any Owner, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other amounts due as provided for herein. All sums payable hereunder by an Owner shall bear interest at the *maximum* rate permitted by law from the due date, or if advanced or incurred by the Association or any other Owner pursuant to authorization contained in the Project Documents, commencing fifteen (15) days after repayment is demanded. All enforcement powers of the Association shall be cumulative. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall at all times comply with all applicable governmental regulations.

9.02. Specific Enforcement Rights. In amplification of, and not in limitation of, the general rights specified in Section 9.01 above, the City of Santa Rosa and/or the Association, or its authorized representative, shall have the following rights:

a. Right of City to Compel Maintenance of Common Area. In consideration of the approval by the City of Santa Rosa of the development of the real property to which this Declaration relates, Declarant hereby covenants and agrees, and each Owner of any Lot covered by this Declaration of protective restrictions, by the acceptance of any deed thereto, whether or not this agreement shall be so expressed in said deed, and all heirs, executors, administrators, assigns and successors in interest of each such Lot Owner is deemed a covenant and agree as follows:

(1) City May Compel Performance. In the event the Association fails to provide for the maintenance of the Common Area to that end that the same shall at all times present a neat, clean and well kept appearance, the City shall have the right, but not the duty, to compel such maintenance in the manner hereinafter provided:

After due notice and a public hearing, the City Council shall authorize and direct the giving of sixty (60) days written notice to the Association to correct such failure to maintain said Common Area. In the event the Association shall fail to take steps satisfactory to the City to correct such failure within said sixty (60) day period, the City shall have the right to do any of the following:

(1) Do or perform any act the Association is authorized to do or perform under the provisions of this Declaration of protective restrictions which shall be necessary to maintain the Common Area, including but not limited to the performance of the necessary maintenance and the levy and collection of the cost of doing such maintenance in accordance with the assessment procedures set forth in this Declaration.

(iii) Take such legal steps as may be necessary to compel performance by the Association.

(2) Costs of Enforcement. In the event the City shall exercise any of the remedies afforded to it under the preceding section, any sums recovered from any suit or foreclosure sale or judicial foreclosure proceedings shall be applied first to cover the City's costs of suit or foreclosure, including but not limited to filing fees, title company charges, miscellaneous foreclosure costs and reasonable attorneys' fees. The balance of any sums so recovered shall then be applied against any amount which is then lawfully owed to the City or other public entities. All remaining sums shall be paid to the Owner of the property foreclosed upon as his or her interest may appear.

Failure of the City to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

b. Enforcement by Sanctions.

(1) Limitation. The Association shall have no power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his Lot on account of a failure by the Owner to comply with provisions of the Project Documents or of duly enacted rules of operation for common areas and facilities except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments duly levied by the Association.

(2) Disciplinary Action. The Association may impose monetary penalties, temporary suspensions of a reasonable duration (not to exceed thirty (30) days per violation) of an Owner's rights as a Member of the Association or other appropriate discipline for failure to comply with the Project Documents. Notwithstanding the foregoing, the Association shall have no right to interfere with an Owner's right of ingress to or egress from his Lot.

Before disciplinary action authorized under this Section may be imposed by the Association, the Owner against whom such action is proposed to be taken shall be given notice and the opportunity to be heard in accordance with Section 7341 of the Corporations Code, as set forth in Section 12 of the Bylaws.

b. Suit to Collect Delinquent Assessments or Individual Charges.

A suit to recover a money judgment for unpaid Assessments or unpaid Individual Charges, together with late charges, interest, costs and reasonable, attorneys' fees shall be maintainable by the Association. In the case of unpaid Assessments, such suit shall be maintainable without foreclosing or waiving the lien securing such unpaid assessments.

c. Enforcement of Lien. If there is a delinquency in the payment of any Assessment or Assessment installment on a Lot, any amounts that are delinquent, together with the late charges, costs of collection, reasonable attorneys' fees, and interest on all of the foregoing sums (at the maximum rate permitted by law) shall be a lien against that Lot upon the recordation in the office of the County Recorder of a Notice of Delinquent Assessment as provided in California Civil Code Section 1367. Each Owner, including Declarant, hereby appoints the person or entity

designated by the Association as the "trustee" in the Notice of Delinquent Assessment, or such substitute trustee as is designated pursuant to California Civil Code Section 2934(a), as his trustee, and each Owner empowers such trustee to enforce the lien and to foreclose the lien by the private power of sale provided in Section 1367(d) of the California Civil Code, as that statute may be revised, amended or altered from time to time, or by judicial foreclosure. Each Owner further grants to such trustee the power and authority to sell the Lot of any defaulting Owner to the highest bidder to satisfy such lien. The Notice of Delinquent Assessment shall be signed by an authorized representative of the Association and shall state the amount of the delinquent Assessment and other sums imposed in accordance with California Civil Code Section 1367, a description of the Lot assessed, the name of the record Owner(s), and the name and address of the trustee authorized by the Association to enforce the lien.

The Notice of Delinquent Assessment shall not be recorded unless and until the Board or its authorized representative has delivered to the delinquent Owner, not less than fifteen (15) days before the recordation of the Notice of Delinquent Assessment, a written demand for payment, and unless the delinquency has not been cured within said fifteen (15) day period.

Not less than fifteen (15) days after the recording of the Notice of Delinquent Assessment, the Board or its authorized representative may cause the Lot with respect to which a Notice of Delinquent Assessment has been recorded to be sold in the same manner as a sale is conducted under California Civil Code Sections 2924- 2924h, or through judicial foreclosure. However, as a condition precedent to the holding of any such sale under Section 2924-2924h appropriate publication shall be made. In connection with any sale under Section 2924-2924h, the Board is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. If a delinquency including Assessments and other proper charges is cured after recordation of the Notice of Delinquent Assessment but before sale, or before completing a judicial foreclosure, the Board or its authorized representative shall cause to be recorded in the office of the County Recorder a certificate setting forth the satisfaction of such claim and release of such lien. The Association, acting on behalf of the Owner, shall have the power to bid upon the Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot.

d. Transfer by Sale or Foreclosure. The sale or transfer of any Lot shall not affect the Assessment lien, nor the right of the Association to impose a lien for Assessments which became due prior to such sale or transfer. However, the sale or transfer of any Lot pursuant to the exercise of a power of sale or judicial foreclosure involving a default under a First Mortgage shall extinguish the lien and right to lien for Assessments (including attorney's fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No amendment of the preceding sentence may be made without the consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the consent of the Eligible First Mortgagees comprising fifty-one percent (51%) of the Lots subject to First Mortgages. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from Owners of all Lots including such acquirer, his successors or assigns.

No transfer of the Lot as the result of a foreclosure or exercise of a power of sale shall relieve the new Owner, whether it be the former beneficiary of the First Mortgage or another person, from liability for any unpaid Assessments or Individual Charges against the Lot through and including the date of transfer. The new Owner shall be entitled to a statement from the Association dated as of the date of transfer, setting forth the amount of unpaid Assessments against the new Owner due the Association and the Lot so transferred shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement, provided, however, the new Owner shall be liable for any such Assessment that becomes due after the date of the transfer.

e. Waiver of Homestead Benefits. Each Owner to the extent permitted by law, waives, to the extent of any liens created pursuant to the Project Documents, the benefit of any homestead or exemption laws of California in effect at the time any Assessment becomes due.

#### SECTION 10: BUDGETS, FINANCIAL STATEMENTS AND BANK ACCOUNTS

10.01. Budgets, Financial Statements. The following financial and related information shall be regularly prepared and distributed by the Board to all members of the Association:

a. Budget. A pro forma operating budget for the immediately ensuing fiscal year consisting of at least the following information shall be distributed not less than 45 days and not more than 60 days prior to the beginning of the fiscal year:

(1) Estimated revenue and expenses of the Association on an accrual basis.

(2) The amount of the total cash reserves of the Association currently available for replacement or major repair of common facilities and for contingencies.

(3) An estimate of the current replacement costs of the estimated remaining life of, and the methods of funding used to defray the future repair, replacement or additions to, those major components of the common areas and facilities which the Association is obligated to maintain.

(4) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement, or additions to major components of the common areas and facilities for which the Association is responsible.

In lieu of the distribution of the financial statements required above, the Board may elect to distribute a summary of the financial statements to all its members with a written notice that the financial statements are available at the business office of the Association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the Association. If any member requests copies of the financial statements to be mailed to the member, the Association shall provide the copies to the member by first class United States mail at the expense of the Association and delivered within five (5)

days. The written notice that is distributed to each of the Association members shall be in at least ten (10) point bold type on the front page of the summary of the statements.

b. Balance Sheet. A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing of the first sale of a Lot in the Project, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the Lot number and the name of the entity assessed;

c. Report. A report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:

- (i) A balance sheet as of the last day of the fiscal year.
- (ii) An operating (income) statement for the fiscal year.
- (iii) A statement of any changes in financial position for the fiscal year.

For any fiscal year in which the gross income to the Association exceeds seventy-five thousand dollars (\$75,000.00) a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

If the report referred to above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review.

d. Statement of Enforcement Policies. In addition to financial statements, the Board shall annually distribute within sixty (60) days prior to the beginning of the fiscal year, a statement of the Association's policies and practices in enforcing its remedies against members for defaults- in the payment of regular and special assessments including the recording and foreclosing of liens against members' Lots.

10.02. Bank Accounts. The Association shall deposit all funds collected from Owners pursuant to the Section herein entitled "Assessments" and all other amounts collected by the Association as follows:

a. General. All funds shall be deposited in a separate bank account ("General Account") with a bank located in California. The Association shall keep accurate books and records regarding such account. Funds deposited in such account may be used by the Association only for the purposes for which such funds have been collected.

b. Reserve. Funds which the Association shall collect for reserves for capital expenditures relating to the repair and maintenance of the Lots and Common Area, and for such other contingencies as are required for good business practice shall, within ten (10) days after deposit in the General Account, be deposited into an interest bearing account with a bank or savings and loan association selected

by the Association, or invested in Treasury Bills or Certificates of Deposit or otherwise prudently invested, which shall collectively be referred to as the "Reserve Account". Funds deposited into the Reserve Account shall be held in trust and may be used by the Association only for the purposes for which such amounts have been collected. Withdrawal of funds from the Association's reserve account shall require the signatures of either two (2) members of the governing body or one (1) member of the governing body and an officer of the Association who is not also a member of the governing body.

## SECTION 11: INSPECTION OF BOOKS AND RECORDS

11.01. Inspection by Members. The membership register (including mailing addresses and telephone numbers), books of account and minutes of meetings of the members, of the Board and of committees of the Board shall be made available for inspection and copying by any member of the Association, or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association or at such other place within the Project as the Board shall prescribe.

11.02. Rules for Inspection by Members. The Board shall establish reasonable rules with respect to:

- a. Notice to be given to the custodian of the records by the member desiring to make the inspection;
- b. Hours and days of the week when such an inspection may be made;
- c. Payment of the cost of reproducing copies of documents requested by a member.

11.03. Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents.

## SECTION 12: INSURANCE, DESTRUCTION, CONDEMNATION

12.01. Insurance. In addition to other insurance required to be maintained by the Project Documents, the Association, through its Board, shall obtain from generally accepted insurance carriers, and maintain in effect at all times, the following insurance at common expense:

- a. Liability Insurance. The Association shall obtain and maintain comprehensive public liability insurance insuring the Association, the Board, the Declarant, Owners, occupants of Lots, their respective family members, guests, invitees, and the agents and employees of each, against any liability incident to the ownership, use or maintenance of the Common Area, maintenance of the Lots and other maintenance obligations, including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

The limits of such insurance shall not be less than one million dollars (\$1,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance may include protection against liability for nonowned and hired automobiles, liability for property of others, and such other risks as are customarily covered with respect to projects similar in construction, location and use. Such policy shall provide for a reasonable deductible.

The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain the liability insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each member and any Mortgagee entitled to notice that the liability insurance will not be obtained or renewed.

b. Fire, Casualty, Earthquake and Extended Coverage Insurance.

The Association shall also obtain and maintain a policy of fire, casualty and extended coverage insurance, and may, but is not required to obtain earthquake insurance, for the full insurable replacement value (without deduction for depreciation) of all of the improvements within the Project (including without limitation the Common Area and all Lots). Such policy shall provide for a reasonable deductible. The form, content, term of policy, its endorsements and the issuing company shall meet the reasonable standards of all First Mortgagees and shall be consistent with good sound insurance coverage for properties *similar* in construction, location and use. The policy shall name as insured the Association for the benefit of the Owners and Declarant, as long as Declarant is the Owner of any Lot, and all Mortgagees as their respective interests shall appear, and may contain a loss payable endorsement in favor of any trustee described in Section 12.01(d) below.

c. Individual Fire Insurance Limited. Except as provided in this

Section, no Owner shall separately insure his Lot against loss by fire or other casualty covered by any insurance carried under Section 9.01 (b). If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under policies described above that results from the existence of such other insurance shall be chargeable to the Owner who acquired other insurance, and such Owner shall be liable to the Association to the extent of any such diminution. An Owner may insure his personal property against loss. In addition, any improvements made by an Owner to his Lot may be separately insured by the Owner, but the insurance is to be limited to the nature of coverage commonly known as "tenant's improvements". All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, Declarant and the First Mortgagee of such Lot.

Each Buyer of a Lot shall pay the portion of the premium(s) attributable to the Buyer's Lot (prorated to the date of close of escrow) for the policy or policies purchased by Declarant for the Association.

d. Trustee. All fire, casualty, earthquake, and extended coverage insurance proceeds payable under Section 12.01(b) above for losses to real property and improvements may be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees, and others, as their respective interests shall appear. *Said* trustee shall be a commercial bank, savings and loan or trust company in the county in which the Project is located that agrees in writing to accept such trust.

e. Other Insurance. The Board shall purchase and maintain worker's compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association. The Board also shall purchase and maintain fidelity bonds or insurance (which shall be in an amount not less than one hundred fifty percent (150%) of each year's estimated annual operating expenses and reserves and shall contain an endorsement of coverage of any person who may serve without compensation) sufficient to meet the requirements of any First Mortgagee. The Board shall also purchase and maintain insurance on personal property owned by the Association, and any other insurance that it deems necessary, that is reasonably required by any First Mortgagee or that is customarily obtained for projects similar in construction, location and use.

f. Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Sections 12.01(a)(b) and (e). The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

g. Officer and Director Insurance. The Association shall purchase and maintain insurance on behalf of any Director, Officer, member of a committee of the Association (collectively the "agents") against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Association would have the power to indemnify the agent against such liability under applicable law.

h. Waiver of Subrogation. All insurance carried by the Association, or the Owners, shall contain provisions whereby the insurer waives rights of subrogation as to the Association, Directors, Officers, Declarant, Owners, occupants of Lots, their family, guests, agents and employees.

i. Notice of Cancellation. All insurance carried by the Association shall require the insurer to notify any First Mortgagee requesting such notice at least fifteen (15) days prior to the effective date of any reduction or cancellation of the policy.

j. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is adequate.

k. Payment of Premiums. Premiums on insurance maintained by the Association shall be a common expense funded by Assessments levied by the Association.

## 12.02. Destruction.

a. Minor Destruction Affecting Common Area. Notwithstanding Section 12.02(b), the Board shall have the duty to repair and reconstruct the Common Area without the consent of Members and irrespective of the amount of available insurance proceeds or other funds, in all instances of partial destruction where the estimated cost of repair and reconstruction does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The Board may levy a Special Assessment for the cost of such repair and reconstruction to the extent insurance proceeds or other funds are unavailable.

b. Major Destruction Affecting Common Area.

(i) Destruction; Proceeds Exceed 85% of Reconstruction

Costs. If there is a total or partial destruction of the Common Area, and if the available proceeds of the insurance carried pursuant to Section 12.01 or other available funds are sufficient to cover not less than eighty-five percent (85%) of the costs of repair and reconstruction, the Common Area shall be promptly rebuilt unless, within forty-five (45) days from the date of destruction, Members then holding at least seventy-five percent (75%) of the voting power of each class determine that repair and reconstruction shall not take place.

(ii) Destruction; Proceeds Less than 85% of Reconstruction Costs. If the proceeds of insurance carried pursuant to Section 12.01 or other available funds are less than eighty-five percent (85%) of the costs of repair and reconstruction, repair and reconstruction shall not take place unless, within forty-five (45) days from the date of destruction Members then holding at least a majority of the voting power of Members of each class determine that repair and reconstruction shall take place.

(iii) Special Assessment to Rebuild. If the determination is made to rebuild pursuant to the above Sections, the Association may levy a Special Assessment against all Lot Owners to cover the cost of rebuilding not covered by insurance proceeds or other funds.

(iv) Rebuilding Contract. If the determination is made to rebuild, the Board shall obtain bids from at least three (3) reputable contractors, and shall award the repair and reconstruction work to the most reasonable bidder. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps reasonably necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

(v) Rebuilding Not Authorized. If the determination is made not to rebuild, then any insurance proceeds and any other funds held for rebuilding of the Common Area shall, subject to Corporations Code Section 8724, be distributed among the Lots on the same basis as their Regular Assessment obligation, and between the Owner and his Mortgagee(s) as their interests shall appear.

c. Destruction Affecting Lots

(i) Duty to Rebuild. If there is a total or partial destruction of a Lot, the affected Lot shall be promptly rebuilt by the Association unless the Association is relieved of the obligation to rebuild by the approval of Members holding at least seventy-five percent (75%) of the voting power of the Members of each class, including all Owners of Lots within the attached group of Lots (connected by common walls) and including the affected Lot.

(ii) Rebuilding Procedure. All insurance proceeds shall be paid to the Board as trustee or to any insurance trustee provided for in section 9.01(d), to be held for the benefit of the Owner and Mortgagee(s) of the affected Lot as their interests shall appear.

If the Lot is to be rebuilt, the Board may levy a special Assessment against all Lot Owners to cover the cost of rebuilding not covered by insurance proceeds or other funds.

The Lot shall be rebuilt or repaired in substantial conformity to the exterior appearance, design and structural integrity of the Lot prior to the date of destruction. Notwithstanding the foregoing, any Owner of an affected Lot may apply to the Board for reconstruction of his Lot in a manner which will provide for an exterior appearance and/or design which is different from that which existed prior to the date of the destruction. Application for such approval shall be made in writing, together with full and complete plans, specifications, maps and working drawings showing the proposed reconstruction and the end result thereof. The Board shall grant such approval only if it finds that the reconstructed Lot will be compatible in exterior appearance and/or design with the other Lots in the Project, provides the structural support required to fulfill the Owners party wall and roof support obligations and will not impose an unreasonable maintenance burden on the Association. Failure of the Board to approve or reject any such proposed change within sixty (60) days after the date of submission thereof shall be conclusively deemed an approval thereof. If the Board approves such proposed change, the Owner, within fifteen (15) days thereafter, shall deposit with the Association, or any insurance trustee, cash or other acceptable security in an amount sufficient to pay the difference between the cost of rebuilding the Lot as it was prior to destruction and the cost of rebuilding it as proposed.

When the amount held by the Association or insurance trustee is sufficient to pay the costs of repair and reconstruction, the Board shall obtain bids from at least three (.3) reputable contractors, and shall award the repair and reconstruction work to the most reasonable bidder. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of the authorized reconstruction at the earliest possible date.

(iii) Lot Not to be Rebuilt. If the determination is made not to rebuild a Lot (subject to any agreement among the Owner and Mortgagee(s) of the affected Lot, the Association, and other Owners of Lots relieving the Association from the obligation to rebuild it), the insurance proceeds and other funds held for rebuilding the Lot, together with any portion of the reserve funds of the Association reserved for the Lot, shall be distributed to the Owner of the affected Lot and his Mortgagee(s) as their interests shall appear.

t 2.03. Condemnation.

a. Condemnation Affecting Common Area

(i) Sale in Lieu. If an action for condemnation of all or a portion of the Common Area is proposed or threatened by any entity having the right of eminent domain, then on the unanimous written consent of all of the Owners and subject to the rights of all Mortgagees, the Common Area, or a portion of it, may be sold by the Board. Subject to Corporations Code Section 8724, the proceeds of the sale shall be distributed among the Lots on the same basis as their Regular Assessment obligations and between the Lot Owners and their Mortgagees as their respective interests shall appear.

(ii) Award. If the Common Area, or a portion of it, is not sold, but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees. If the judgment of condemnation does not apportion the award, then the award shall be distributed as provided above.

b. Condemnation Affecting Lots. If an action for condemnation of all or a portion of, or otherwise affecting a Lot is proposed or threatened, the Owner and the Mortgagees of the affected Lot, as their respective interests shall appear, shall be entitled to the proceeds of any sale or award relating to the affected Lot.

If any Lot is rendered irreparably uninhabitable as a result of such a taking, the Lot shall be deemed deleted from the Project and the Owners and Mortgagees of the affected Lot, upon receiving the award and any portion of the reserve funds of the Association reserved for the Lot, shall be released from the applicability of the Project Documents and deemed divested of any interest in the Common Area.

### SECTION 13. MORTGAGEE PROTECTIONS

13.01. Mortgages Permitted. Any Owner may encumber his Lot with Mortgages.

13.02. Priority of Mortgage. Notwithstanding any other provision of this Declaration, it is hereby provided that a breach of any of the conditions contained in the Project Documents by any Owner or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said Lot or any part thereof. Any lien which the Association may have on any Lot in the Project for the payment of common expense assessments attributable to such Lot will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such common expense assessments became due.

13.03. Payment of Taxes or Premiums by Mortgagees. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee which requests the same to be executed by the Association.

13.04. Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

13.05. Mortgagee's Rights. A First Mortgagee's rights shall include, but not be limited to, the following:

a. Attend Meetings. Any First Mortgagee, upon written request, shall receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

b. Furnish Information. Any Mortgagee may furnish information to the Board concerning the status of any Mortgage.

c. Inspect Books and Records. The Association shall make available to Owners, prospective purchasers and First Mortgagees current copies of the Project Documents and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours.

In addition, if the project contains fifty (50) or more units, the Association must provide an audited financial statement for the immediately preceding fiscal year if the First Mortgagee submits a written request for it. Said financial statement shall be furnished by the Association within a reasonable time following such request. If the project contains fewer than fifty (50) units and there is no audited financial statement available, any First Mortgagee should be allowed to have an audited financial statement prepared at its own expense.

13.06. No Restrictions on Owner's Right to Ingress and Egress. There shall be no restriction upon any Owner's right of ingress and egress to his Lot, which right shall be perpetual and appurtenant to his Lot ownership.

13.07. Notices to Mortgagees. Upon written request to the Association, any First Mortgagee shall be entitled to timely written notice of the following:

change in: a. Any proposed amendment to the Project Documents effecting a

(i) The boundaries of any Lot or the exclusive use rights appurtenant thereto, if any;

(ii) The interests in the general or exclusive use Common Areas, if any, appurtenant to any Lot or the liability for common expenses appurtenant thereto;

(iii) The number of votes in the Association appurtenant to any Lot; or

(iv) The purposes to which any Lot or the Common Area are restricted.

b. Any proposed termination of the legal status of the Project as a planned development.

c. Any condemnation or casualty loss which affects either a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such requesting party.

d. Any sixty (60) day delinquency in the payment of Assessments or Individual Charges owed by an Owner subject to a First Mortgage held, insured or guaranteed by such requesting party.

e. Any default in the performance by the affected Owner of any obligation under the Project Documents which is not cured within sixty (60) days.

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

g. Any proposed action which requires the consent of a specified percentage of First Mortgagees as specified in section 13.08.

13.08. FNMA, FHLMC, FHA, V.A. Mortgages.

a. Conditions When This Section Applicable. The provisions of this Section 13.08 shall apply if any of the following conditions exist pertaining to First Mortgages on any of the Lots:

(1) Any First Mortgage is sold or transferred to FNMA;

(2) Any First Mortgage is sold or transferred to FHLMC; or

(3) Any First Mortgage is FHA insured or a Veterans Administration ("V A") mortgage.

b. Approval of Material Amendments. The approval of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51 %) or more of the Eligible First Mortgagees (based upon one vote for each first mortgage owned) must be obtained for amendments of a material nature to the Project Documents. A change to any of the following would be considered as material:

(1) Voting rights;

(2) Assessments, assessment liens, or subordination of assessment liens;

(3) Reserves for maintenance, repair and replacement of common areas or any other portions of the Project which the Association has a duty to maintain, repair and replace.

(4) Responsibility for maintenance and repairs;

(5) Reallocation of interests in the general or exclusive use common areas, if any, or rights to their use;

(6) Boundaries of any Lot;

(7) Convertibility of Lots into common areas or vice-versa;

(8) Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project:

(9) Insurance or fidelity bonds;

(10) Leasing of lots;

(11) Imposition of any right of first refusal or similar restriction on a Lot Owner's right to sell, transfer or convey his Lot;

(12) A decision by the Owner's Association to establish self management when professional management has been required previously by a First Mortgagee;

(13) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;

(14) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or

(15) Any provisions that expressly benefit First Mortgagees, insurers or guarantors.

An addition or amendment to the Project Documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

If an addition or amendment is not considered as a material change, approval will be implied when a First Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is submitted.

c. Termination of Legal Status. Except as provided above, any election to terminate the legal status of the Project as a planned development must be approved by at least sixty-seven percent (67%) of the voting power of the Association and sixty-seven percent (67%) of the Eligible First Mortgagees (based upon one (1) vote for each first mortgage owned).

d. Reallocation of Interests in the Common Area. No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Project shall be effected without the approval of fifty-one percent (51 %) of the Eligible First Mortgagees (based upon one (1) vote for each first mortgage owned).

e. Restriction on Certain Changes. Unless at least sixty-six and two-thirds percent (66-2/3%) of the First Mortgagees (based on one vote for each First Mortgage owned) or sixty-six and two-thirds percent (66-2/3%) of the Owners other than Declarant have given their prior written approval, the Association shall not:

(i) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause); or

(2) Change the method of determining the Assessments, or other charges which may be levied against a Lot Owner; or

(3) By act or omission change, waiver or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of the Common Area party walks or common fences and driveways, or the upkeep of lawns and plantings in the Project; or

(4) Fail to maintain fire and extended coverage on insurable Common Area and other portions of the Project which the Association has a duty to insure on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or

(5) Use hazard insurance proceeds for losses to any Common Area or other Project improvements for other than the repair, replacement or reconstruction of such Common Area or improvements.

f. No Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey his Lot shall not be subject to any "right of first refusal" or similar restriction.

g. Foreclosure Eliminates Unpaid Assessments. Each holder of a first mortgage lien on a Lot who comes into possession of the Lot by virtue of foreclosure of the mortgage or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid Assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessments or charges to all Project Lots, including the mortgaged Lot.

h. Mortgage Priority in Case of Distribution. No provision in any Project Document will entitle a Lot Owner or other party to priority over any rights of the First Mortgagee of the Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of the Lot and/or Common Area.

i. Working Capital Fund. If required by VA as a condition of qualifying the Project for any mortgage purchase, guarantee or other related program, a working capital fund shall be established for the Project by the contribution to such fund, by the Owners and Declarant, of a sum not to exceed the amount of two (2) months Regular Assessments for each Lot owned. Any amounts paid into this fund should not be considered as advance payments of regular assessments. Each Lot's share of the working capital fund should be collected at the time the sale of the Lot is closed and then should be transferred to the Association for deposit to a segregated fund. Within sixty (60) days after closing has been held for the first Lot, Declarant shall pay each unsold lot's share of the working capital fund to the Association. The Declarant shall then reimburse itself for this payment from the funds collected at closing when the unsold Lots are sold.

j. Leasing Restrictions. No Owner shall be permitted to lease his Lot for transient or hotel purposes. No Owner may lease less than the entire Lot. Any lease or rental agreement must be in writing and be subject to the provisions of the Project Documents. No Lot may be leased or rented for less than thirty (30) days.

k. Taxes Relate Only to Individual Lots. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Lots and not to the Project as a whole.

13.09. FHA/VA Approval. During any period of time that a mortgage on any portion of the Project is held, insured or guaranteed by FHA or VA, and as long as there is a Class B Membership, the following actions shall require the prior approval of FHA or V A: amendment of the Project Documents, annexation of additional property, dedication or mortgaging of the Common Area, merger or consolidation of the Association with another corporation.

13.10. Compliance with FHA/VA, FHLMC or FNMA Requirements. Declarant intends that the Project shall comply with all of the requirements of the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA"). All casualty and liability insurance covering any portion of the Project encumbered by a Mortgage insured by FHA, guaranteed by VA, or held by FHLMC or FNMA, shall therefore conform to the applicable FHA/VA, FHLMC or FNMA requirements. Declarant and all Lot Owners also agree that in the event the Project or the Project Documents do not comply with the applicable FHA/VA, FHLMC or FNMA requirements, the Board and each Owner shall take any action or adopt any resolutions required by Declarant or any First Mortgagee to conform such Project Documents, or the Project, to the FHA/VA, FHLMC or FNMA requirements, subject to the review and approval of the California Department of Real Estate, in accordance with applicable law, as long as the Department of Real Estate retains jurisdiction.

13.11. Additional FHA Provisions. Declarant desires that loans secured by mortgages encumbering Lots within the development qualify for mortgage insurance by FHA.

All Owners, tenants and occupants of Lots in the development covenant and agree that the administration of the development shall be in accordance with the terms and provisions of the Regulatory Agreement required by FHA and that such terms and provisions of said Regulatory Agreement shall be fully complied with.

To the extent any matters in this Declaration or in the Articles or the Bylaws are in any way inconsistent with any matters in said Regulatory Agreement, then any such inconsistent matters in said Regulatory Agreement shall prevail. The right to lease Units in the development shall be subject to all terms and provisions of said Regulatory Agreement.

In the event of any conflict between any of the provisions of this Section and any other provisions of this Declaration, the provisions of this Section shall control.

Any provision of this Declaration which confers a power or right upon the FHA or the Federal Housing Commissioner and all of the provisions of the Regulatory Agreement shall be inapplicable whenever there are no units where FHA insures the mortgage held by any First Mortgagee.

Whenever a notice is required to be sent to a Mortgagee holding an FHA insured mortgage or the approval of FHA is required, the notice or the request for

approval shall be sent to the supervisor of the FHA office in which the project is located!. If FHA does not respond to a request within twenty (20) days after the notice is mailed or delivered, then FHA shall be deemed to have approved the request.

13.12. Waivers. A Mortgagee may waive any requirement contained in this Declaration as they pertain to such Mortgagee, provided that such waiver shall be in writing.

13.13. Conflicts. In the event of a conflict between any of the provisions of this Section 13 and any other provisions of this Declaration, the provisions of this Section 13 shall control.

#### SECTION 14: ENFORCEMENT OF BONDED OBLIGATIONS

If any Common Area improvements in the Project have not been completed prior to the issuance of the Final Public Report and the Association is obliged under a bond or other arrangement ("Bond") to secure performance of the commitment of Declarant to complete such improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

A special meeting of Members for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question, shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of the voting power of the Association residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

#### SECTION 15: AMENDMENTS

15.01. Prior to First Conveyance. Prior to close of escrow on the sale of the first Lot, Declarant may amend or revoke this Declaration subject to the requirements of Business and Professions Code Section 11012 and 11018.7.

15.02. After First Conveyance. After sale of the first Lot, this Declaration may be amended or revoked only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the voting power of each class of members of the Association. If only one (1) class of membership exists at the time an amendment is proposed, then it must be approved by at least a bare majority of the total voting power of the Association, which shall include at least a bare majority of the votes of Members other than Declarant. The percentage of the voting power

necessary to amend a specific clause or provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision.

15.03. Recordation. Any amendment must be recorded and shall become effective only upon being recorded in the Recorder's Office of Sonoma County.

15.04. Unanimous Consent for Specific Amendments. The consent of all Owners shall be required for any amendment of Project Documents effecting a change in:

- (1) The boundaries of any Lot;
- (2) The undivided interest in the common elements pertaining to the Lot or the liability for Common Expenses pertaining thereto;
- (3) The number of votes in the Owners Association appertaining to the Lot; or
- (4) The fundamental purposes to which any Lot or the common elements are restricted.

15.05. FHA Requirements. Notwithstanding any provision of this Section to the contrary, all requirements of Section 13.09 entitled "FHA/VA Approval" must be met in order to effectuate any amendment or revocation pursuant to this Section.

## SECTION 16: GENERAL PROVISIONS

16.01. Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be binding on the Association and the Owners of any Lots, their legal representatives, heirs, grantees, tenants, successors and assigns, subject to this Declaration, for a term of thirty (30) years from the date this Declaration is recorded. Thereafter, they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

16.02. Owners' Compliance. Each Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration) the Project Documents and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, for injunctive relief, or to enforce such provisions, decisions or resolutions.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Project Documents shall be deemed to be binding on all Owners of Lots, their successors and assigns.

16.03. Notices. Any notice permitted or required by the Project Documents may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Lot of such person if no address has been given to the Secretary.

16.04. Notice of Transfer. No later than fifteen (15) days after the sale or transfer of any Lot under circumstances whereby the transferee becomes the Owner thereof, the transferee shall notify the Association in writing of such sale or transfer. Such notice shall set forth: (i) the Lot involved; (ii) the name and address of the transferee and transferor; and (iii) the date of sale. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and any action taken by the transferor as an Owner may be recognized by the Association. Prior to receipt of any such notification by the Association, any and all communications required or permitted to be given by the Association shall be deemed duly given' and made to the transferee if duly and timely made and given to said transferor.

16.05. Delivery of Project Documents to Transferee. Prior to the transfer of title to a Lot, the transferor shall provide to the prospective transferee a copy of the Project Documents and such other documents and information as are required by California Civil Code Section 1368.

16.06. Easements Reserved and Granted. Any easements appurtenant to a Lot referred to in this Declaration shall be deemed reserved and/or granted by reference to this Declaration in a deed to said Lot.

16.07. Termination of any Responsibility of Declarant. If Declarant shall convey all of its right, title and interest in and to the Property to any partnership, individual or corporation, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or corporation shall be obligated to perform all such duties and obligations of the Declarant.

16.08. Mergers and Consolidations. To the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit organizations organized for the same purposes as this Association, provided that any such merger or consolidation shall have the written consent of all of the members or the assent by vote of two-thirds (2/3) of the members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be given to all members at least thirty (30) days in advance, and must comply with the annexation provisions of Section 3.04, incorporated herein by reference.

16.09. Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of a planned unit development subdivision and incidental Improvements upon the Property, the completion of that work and the sale, rental or other disposal of Lots is essential to the establishment and welfare of said Property as a residential community. In order that said work may be completed and said Property be established as a fully occupied residential community, as rapidly as possible, nothing in this Declaration shall be understood or construed to:

a. Prevent Declarant, its contractors, or subcontractors from doing on the Property or any Lot, whatever is reasonably necessary or advisable in connection with the completion of said work; or

b. Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Property (except upon Lots owned by others), such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Property as a residential community and disposing of the same in parcels by sale, lease, or otherwise; or

c. Prevent Declarant from conducting on any part of the Property (except upon Lots owned by others), its business of completing said work and of establishing a plan of ownership and of disposing of said Property in Lots by sale, lease or otherwise; or

d. Prevent Declarant from maintaining such sign or signs on any of the Property (except upon Lots owned by others), as may be necessary for the sale, lease or disposition thereof, provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his Lot or the Common Area.

The foregoing limitations of the application of the restrictions to Declarant shall terminate upon the sale of Declarant's entire interest in the Project, or three (3) years after the close of the first escrow, whichever occurs first.

As long as Declarant owns one (1) or more Lots, Declarant shall be subject to the provisions of this Declaration. Any action taken by Declarant pursuant to any provision of this Section will not unreasonably interfere with the Owners' rights and use of the project.

16.10. Successor. The rights of Declarant in this Declaration may be assigned by Declarant to any successor to all or any part of any Declarant's interest in the Project, as developer, by an express assignment incorporated in a recorded deed that transfers any such interest to a successor or to a Mortgagee acquiring Declarant's interest in the Project by foreclosure or by deed in lieu of foreclosure.

16.11. Fair Housing. No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing or mortgaging or occupancy of his Unit or Lot to any person of a specified race, sex, marital status, color, religion, ancestry, physical handicap or national origin.

16.13. Severability. Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Project is located, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

16.14. Conflict with Project Documents. If there is a conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order: Articles, Bylaws; and Rules and Regulations of the Association.

16.15. Successor Provisions. Reference to any specific Code Sections in the Project Documents shall include any successor provisions in the event they are hereafter revised, amended or altered.

16.16. Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

16.17. Gender. All references to the masculine gender in the Project Documents shall include the feminine and neuter gender.

IN WITNESS WHEREOF, Declarant has executed this Declaration.

DATED: /June 21/, 1991.

MARWOOD CIRCLE PARTNERS

By: /signature/

AL PETRIE, General Partner

By: Bomike Development Partnership,  
General Partner

By: /signature/

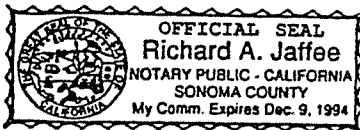
BRIAN HALLORAN, Managing Partner

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STATE OF CALIFORNIA )  
COUNTY OF SONOMA ) ss

On JUNE 21, 1991, before me, the undersigned, a Notary Public in and for said County and State, personally appeared AL PETRIE, personally known to me (or proved to me on the basis of satisfactory evidence) to be one of the general partners of MARWOOD CIRCLE PARTNERS, the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.

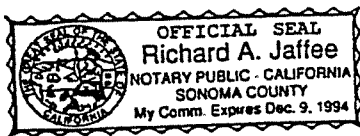


*[Handwritten Signature]*  
NOTARY PUBLIC

STATE OF CALIFORNIA )  
COUNTY OF SONOMA ) ss

On JUNE 21, 1991, before me, the undersigned, a Notary Public in and for said County and State, personally appeared BRIAN HALLORAN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the managing partner of one of the general partners of MARWOOD CIRCLE PARTNERS, the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.



*[Handwritten Signature]*  
NOTARY PUBLIC

EXHIBIT "A"

DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

That certain real property situated in Sonoma County, California, described as follows:

Lots 1 through 27 inclusive, as shown on the Map entitled "Marwood Circle P.U.D." filed for record Book 481 of Maps, Page 1-4, in Sonoma County Records.

Lots 1 through 27, inclusive, as shown on the Map entitled "Marwood Circle P.U.D.," filed for record August 14, 19 91, in Book 481 of Maps, Page 1-4, Sonoma County Records.