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CONDITIONS AND RESTRICTIONS  
OF  
WOOD RANCH  
PLANNED DEVELOPMENT PROJECT

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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
WOOD RANCH

A Planned Development Project

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WOOD RANCH ("Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, by PONDEROSA INDUSTRIES, INC., a California corporation, and DAVIDON HOMES, a California limited partnership, (collectively "Declarant").

ARTICLE I  
INTENTION OF DECLARATION

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

1.1.1 Property Owned by Declarant: Declarant is the owner of all the real property and Improvements thereon located in the City of Danville, County of Contra Costa, State of California, described as follows:

Lots 1 through 50, inclusive, as shown on the subdivision map of Subdivision 6651 filed for record on April 29, 1986, in Book 302 of Maps at Page 1 and Lots 32 through 59, inclusive, Lots 77 through 81, inclusive, and that parcel shown as "Sycamore Creek Drainage Easement" as shown on the subdivision map of Subdivision 6562 filed for record on. April 29, 1986, in Book 302 of Maps at Page. 23 in the Official Records of the County of Contra Costa, State of California.

1.1.2 Nature of Project: Declarant intends, to develop the Subject Property and the Additional Property as a planned development project within the meaning of California Civil Code Section 1351(k) and in conformity with the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code, Section 1350 et seq.) to establish the planned development project, Declarant desires to impose on the Subject Property, and any property annexed thereto, these mutually beneficial restrictions, easements, assessments and liens under a comprehensive general plan of improvement and development for

the benefit of all of the Owners, the Lots and Common Area within the Subject Property and any property annexed thereto.

1.1.3 Phases of Project: The Subject Property and the Additional property are intended to be developed in two (2) or more Phases. The first Phase consists of the Subject Property. Declarant may but shall have no obligation to annex all or any portion of the Additional Property to the Subject property. After annexation, the property annexed shall constitute a part of the project and shall be subject to this Declaration.

1.2 APPLICABILITY OF RESTRICTIONS: Pursuant to California Civil code Sections 1353 and 1354, Declarant hereby declares that the Subject Property and all Improvements thereon are subject to the provisions of this Declaration. The Subject Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions stated in this Declaration. All such covenants, conditions and restrictions are declared to be in furtherance of the plan for the subdivision, improvement and sale of the Subject Property as a planned development project. All of the limitations, easements, uses, obligations, covenants, conditions, and restrictions stated in this Declaration shall run with the Subject Property and shall inure to the benefit of and be binding on all Owners and all other parties having or acquiring any right, title or interest in any part of the Subject Property. Upon the recordation of a Declaration of Annexation, the property described therein shall be apart of the Project and shall be subject to this Declaration.

ARTICLE II

DEFINITIONS

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

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

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

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

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

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

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

2.7 CITY: The term "City" shall mean the City of Danville, County of Contra Costa, State of California.

2.8 COMMON AREA: The term "Common Area" shall mean that parcel designated on the Map of Tract 6562 as "Sycamore Creek Drainage Easement and all Improvements thereon. The term "Common Area" shall mean those portions of the Additional Property described as Common Area in the Declaration of Annexation for a particular Phase, which are not owned or maintained by a public or quasi-public agency or utility company.

2.9 COUNTY: The term "County" shall mean the County of Contra Costa, State of California.

2.10 DECLARANT: The term "Declarant" shall mean Ponderosa Industries, Inc., a California corporation, ("Ponderosa") and/or Davidon Homes, a California limited partnership ("Davidon"). Each reference to "Declarant" shall refer to both Ponderosa and Davidon; provided, however, that Ponderosa may exercise *its* rights as a Declarant with respect to Lots owned by it independently of Davidon and Davidon may exercise its rights as a Declarant with respect to Lots owned by it independently of Ponderosa. The term "Declarant" shall also mean successors in interest of either Declarant, if (i) such successor(s) in interest acquires all or any portion of a Declarant's interest in the Subject Property and/or the Additional Property for the purpose of development and/or sale, and (ii) a certificate signed by a Declarant has been recorded in the County in which the successor(s) in interest of that Declarant assumes the rights and duties of the previous Declarant to the portion of the Subject Property and/or the Additional Property so acquired. There are two (2) Declarants; however, in the future, there may be more than two (2) Declarants.

2.11 DECLARATION: The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of Wood Ranch and any amendments hereto.

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

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

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

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

2.16 IMPROVEMENTS: The term "Improvements" shall mean buildings, facilities, streets, driveways, fences, walls and other structures and all landscaping constructed or to be constructed upon the Common Area.

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

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

2.19 LOT: The term "Lot" shall refer to a Separate Interest as defined in Civil Code Section 1351(1) and shall mean Lots 1 through 50, inclusive, as shown on the Map of Subdivision 6651 and Lots 32 through 59, inclusive, Lots 77 through 81, inclusive, and the parcel designated as "Sycamore Creek Drainage Easement" as shown on the Map of Subdivision 6562 and all, Improvements thereon. The term "Lot" shall also mean those portions of the Additional Property described as Lots in a Declaration of Annexation for a particular Phase.

2.20 MAP: The term "Map" shall mean the subdivision map of Subdivision 6651 recorded on April 29, 1986, in Book 302 of Maps at Page 1, et. seq., and/or the subdivision map of Subdivision 6562 recorded on April 29, 1986, in Book 302 of Maps at Page 23, et. seq., both in the Official Records of the County. The term "Map" shall also mean any recorded subdivision map described in a Declaration of Annexation.

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

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

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

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

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

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

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

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

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

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

2.31 RULES: The term "Rules" shall mean the rules adopted by the Association.

2.32 SUBJECT PROPERTY: The term "Subject Property" shall mean Lots 1 through 50, inclusive, as shown on the Map of Subdivision 6651 and Lots 32 through 59, inclusive, Lots 77 through 81, inclusive, and the parcel designated as "Sycamore Creek. Drainage Easement" as shown on the Map of Subdivision 6562 and all Improvements thereon.

## ARTICLE III

### OWNERSHIP AND EASEMENTS

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

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

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

3.4 OWNERSHIP OF PARTY FENCES: Any fence originally constructed and placed upon a common lot boundary line shall be a "party fence". Each Owner of a Lot upon which a party fence is situated shall own to the center of the party fence.

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

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

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

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

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

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

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

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

3.5.6 Association's Easements: There are hereby reserved to the Association and its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in the Project Documents.

3.5.7 Party Fences: Each Owner of a Lot containing a party fence and the Lot upon which such party fence is located shall have a reciprocal non-exclusive easement over and across

such portions of the contiguous Lot as is necessary to maintain such fence.

3.5.8 Easement to Governmental Entities: There is hereby reserved and granted a non-exclusive easement over the Common Area to all governmental and quasi-governmental entities, agencies and utilities and their agents for the purposes of performing their duties within the Project, including, but not by way of limitation, an easement to the Contra Costa County Flood Control and Water Conservation District for access to and maintenance of Sycamore Creek. Notwithstanding Section 845 of the California Civil Code or any other law, the Contra Costa County Flood Control and Water Conservation District shall have no responsibility to repair any damage to access roads, recreational facilities, landscaping or other improvements which might arise in the course of the maintenance of the Creek.

ARTICLE IV

LOTS AND RESIDENCES

4.1 USE AND OCCUPANCY OF LOTS AND RESIDENCES: Each Residence Shall be used-solely for residential purposes, except as specifically permitted by local ordinance and except the business of Declarant in completing; the development and sale of the Lots in the Project. Each Owner shall comply with all of the requirements of all governmental authorities, federal, state or local, and all laws, ordinances, rules and regulations applicable to his Lot and Residence.

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

4.2.1 There is a written rental or lease agreement specifying that (i) the tenant shall be subject to all provisions of the Project Documents and (ii) a failure to comply with any provision of the Project Documents shall constitute a default under the agreement;

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

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

4.3 ANIMALS: An Owner may keep a reasonable number of customarily uncaged household pets within his Lot. The Board shall specifically have the right to prohibit the maintenance of any pet which, after Notice and Hearing, is found to be a nuisance to other Owners.

4.4 NUISANCE: No Owner may permit or cause anything to be done or kept upon, in or about his Lot which might obstruct or interfere with the rights of other Owners or, which would be noxious, harmful or unreasonably offensive to other Owners. No weeds, rubbish or debris of any kind shall be placed or permitted to accumulate on any Lot. No nuisance shall be permitted to exist upon any Lot which might be harmful or detrimental to any other Lot, the Common Area or other occupants of the Project. Without limiting .any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on a Lot.

4.5 PARKING: Vehicles shall not be parked anywhere in the Project except wholly within garages, upon driveways and upon public streets unless posted for "No Parking" ("Parking Areas"). All Parking Areas shall be used solely for the parking and storage of motor vehicles used for personal transportation. No boat, trailer, camper, commercial vehicle, mobile home, other

recreational vehicle or any inoperable vehicle shall be parked or stored in any Parking Area. Residents within the Project may not park in any Parking Area designated as "guest parking". Garage doors shall remain closed, except when the Garage is in use. No part of the Common Area or public streets shall be used for repair, construction or reconstruction of any vehicle, boat or any other item or thing except in an emergency. As long as applicable ordinances and laws are observed, the Board or the City may cause the removal of any vehicle which is in violation of this Declaration.

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

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

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

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

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

4.6.5 Signs required by legal proceedings may be displayed.

4.7 STORAGE OF WASTE MATERIALS: All garbage, trash and accumulated waste material shall be placed in individual trash containers or receptacles. The containers may be placed where visible only on the day of the week that pick-up is to occur.

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

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

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

4.11 LANDSCAPING: All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed. Each Owner shall install permanent landscaping within his Lot within nine (9) months following the close of escrow for the purchase of his Lot or completion of the Residence on the Lot, whichever is later.

4.12 CLOTHES DRYING: No outside clotheslines or other outside clothes drying or airing facilities shall be maintained on any Lot unless the Architectural Committee finds such facilities to be totally isolated from the view to a six (6) foot tall person from any Lot or street within the Project.

4.13 DRAINAGE: There shall be no interference with the established drainage patterns or systems over or through any Lot within the Project so as to affect any other Lot or Common Area or any real property outside the Project unless adequate alternative provision is made for proper drainage and is approved by the Architectural Committee. The term "established drainage" shall mean the drainage swales, conduits, inlets and outlets which exist at the time overall grading of the Project is completed by Declarant.

4.14 ANTENNAS: No outside antenna, microwave or satellite dish, aerial, tower or other device for the transmission or reception of television, radio or other forms of sound or electromagnetic radiation shall be erected, constructed or placed on any Lot.

4.15 SOLAR PANELS: No solar collectors, panels or other devices shall be erected, constructed or placed on any Lot or Residence without the prior approval of Architectural Committee.

4.16 BASKETBALL STANDARDS: No basketball standards or fixed sports apparatus shall be attached to any Residence or garage nor may freestanding basketball standards be permanently placed or stored in the front yard of any Lot.

4.17 FURTHER SUBDIVISION: No Lot shall be further subdivided and no lot line shall be adjusted without the approval of the City and the Board.

4.18 MAINTENANCE OF LOTS AND RESIDENCES: Each Owner shall maintain and care for his Lot and all Improvements located in his Lot in a manner consistent with the standards established by Declarant's original construction and design, consistent with other first class residential subdivisions in the City and as required by the Project Documents. Special architectural design standards may be established in the Rules.

4.19 ALTERATIONS TO LOTS AND RESIDENCES: Owners may alter or remodel the interiors of their Residences, if the alterations do not impair the structural integrity of the Residence and if the Owner complies with all laws and ordinances regarding alterations and remodeling. No alterations, additions or other Improvements may be made to the exteriors of Residences and/or Lots without obtaining architectural approval in accordance with the provisions of Article XII and subject to the approval of the City. The costs of any alteration or addition shall be paid by the Owner who has obtained the approval.

4.20 CONSTRUCTION OF RESIDENCES: Except as originally constructed by Declarant, no construction of a Residence or any other structure shall occur on a Lot unless the approval of the Architectural Committee is first obtained pursuant to Article XII. It is intended that all construction and alterations are to be performed so as to maintain a uniform level of quality of workmanship and material, a harmony of external design, and low visibility with respect to existing structures, surrounding environment and topography. In furtherance of this intent, the following restrictions are minimum standards applicable to all Lots.

4.20.1 No Residence shall exceed two (2) stories in height above the ground;

4.20.2 The square footage area of a Residence shall not be less than two thousand (2000) square feet, exclusive of basements, attics, patios, decks, porches, balconies and garages;

4.20.3 At least a two (2) car garage must be constructed on the Lot;

4.20.4 No more than fifty percent (50%) of the total square footage of a Lot may be covered by any type of structure;

4.20.5 All fences and all setback lines for Residences and for front, rear and side yards must comply with City ordinances;

4.20.6 Solar equipment, if any, must be fully integrated into the design of the Residence and other Improvements;

4.20.7 Exterior lighting shall be carefully directed within the Owner's Lot so as not to allow excessive light intrusion into adjoining Lots or toward any off-site locations;

4.20.8 The Owner is solely responsible for obtaining all permits required by city ordinance and all necessary approvals of the City; and

4.20.9 A landscape plan detailing the landscaping to be placed upon the Lot must be submitted to the appropriate Architectural Committee for its approval prior to the installation of landscaping.

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

4.22 DAMAGE OR DESTRUCTION TO RESIDENCES AND/OR LOTS: If all or any portion of a Lot or Residence is damaged by fire or other casualty, the Owner shall either (i) restore the damaged Improvements or (ii) remove all damaged Improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration under (i) preceding must be performed so that the Improvements are in substantially the same condition in which they existed prior to the damage, unless the provisions of Article XII are complied with by the Owner. The Owner must commence such work within sixty (60) days after the damage occurs and must complete the work within one (1) year thereafter.

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

4.24 FENCES, HEDGES AND WALLS: Except as originally installed by Declarant, and approved by the City, only open wire fencing may be installed on the portions of a Lot which are immediately adjacent to open space parcels. No landscaping or fences installed on Lots 1,4,6,7, 13, 14, 19,24, 28, 33,44,48 or 50 of Tract 6651 or on Lots 48, 50, 55, 56 and 67 of Tract 6562 shall prevent adequate driver visibility from the streets within the Project.

4.25 APPROVAL OF CITY OF DANVILLE: Without the approval of the City Of Danville, no Owner may (i) construct an addition to or remodel a Residence, or (ii) construct or architecturally alter a swimming pool or accessory structure.

ARTICLE V  
COMMON AREA

5.1 USE OF COMMON AREA:

5.1.1 Classes of Common Area. It is intended that the Common Area in the Project-rail into one or more of the following two categories. The Association may choose to use Common Area in one category for purposes described in another category.

(a) Recreational. If annexed to the Project, Parcel H of Tract 6651 will be a recreational parcel and it is intended that this parcel shall be primarily devoted to landscaping and recreational facilities.

(b) Creek Area. That portion of Tract 6562 designated as "Sycamore Creek Drainage Easement" is subject to the restrictions set forth in Section 5.2.2 of this Declaration.

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

5.2 MAINTENANCE OF COMMON AREA:

5.2.1 Generally. The Association shall be responsible for maintenance, repair, replacement, painting and upkeep of Common Area, including, but not by way of limitation, all drainage systems, subdrain systems, grading and any emergency vehicle access ways or fire trails. The Association shall keep the Common Area and Improvements thereon in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Area in first class condition.

5.2.2 Easement Area (Sycamore Creek). As more particularly described in the Grant of Easement recorded on April 29, 1986, as Series No.86-63891, in the Official Records of the County, the Contra Costa County Flood Control and Water Conservation District ("District") has been granted certain rights to construct, maintain, and operate drainage, flood control and other facilities within the area described in the Grant of Easement ("Easement Area II"). The District's maintenance responsibilities relating to the Easement Area shall be limited to the following: (i) to maintain, repair and replace as may be necessary any drop structures and service roads situated in the Easement Area; and (ii) to clear debris and sediment from the Easement Area as necessary to maintain the natural capacity of the Easement Area and reduce future erosion in areas adjoining the Easement Area. The District's maintenance responsibilities shall not include the cleaning of debris or sediment from the Easement Area resulting from landslides, mudflows, or other earth movement originating outside the Easement Area. The Association shall be responsible for: (i) removing debris or sediment which is deposited in the Easement Area and which results from landslides, mudflows or other earth subsidence originating in areas outside the Easement Area; and (ii) cutting or otherwise controlling weeds and grass growing within the Easement Area as necessary to prevent the weeds and grass from becoming a fire hazard. Except as may be necessary to perform the maintenance obligations imposed by this Section or the Grant of Easement, the Association nor any Owner nor Invitee shall further encumber, enter upon or make any use of the Easement Area, including but not limited to the installation, placement or construction of structures, facilities, growth or vegetation of any nature whatsoever within, under or over the Easement Area, unless the Association and the District have first entered into a written agreement, in a form acceptable to the District, setting forth the terms and conditions of such encumbrance, entry or use.

### 5. 3 ALTERATIONS TO COMMON AREA:

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

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

5.4 LANDSCAPING: All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality as originally established by Declarant and in a condition comparable to that of other first class residential subdivisions in the City. The Association shall be responsible for all landscaping located on Common Area, assuring regular maintenance including irrigation, fertilization and weed abatement. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed. Drip irrigation systems shall be considered wherever practical. The Declarant shall provide the Association with "as built" irrigation plans for the Common Area.

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

5.5.1 Contracting to Restore: If fire or other casualty damage extends to any Common Area which is so insured, the Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The

insurance proceeds shall be paid to and held by the Association. The Board shall obtain such bids from responsible licensed contractors to restore the Common Area as the Board deems reasonable and, if the total funds available without a vote of Members, as described in Section 5.5.2, is sufficient to restore the damaged Common Area, the Board, on behalf of the Association, shall contract with the contractor whose bid the Board deems to be the most reasonable. The contractor shall provide a completion bond naming the Association and each affected Owner as beneficiaries. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid to the Reserve Account and held for the benefit of the Association.

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

5.5.3 Insufficient Funds: If the total funds available to restore the Common Area pursuant to Section 5.5.2 is insufficient to restore the Common Area, then a special meeting of the Members shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof. The Board shall then contract for the restoration of the Common Area as described above, making use of whatever funds are then available to it.

5.6 CONDEMNATION OF COMMON AREA: If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be deposited into the Current Operation Account until distributed. The Association shall distribute such funds proportionately to all Owners as their interests appear according to the respective fair market values of their Lots at the time of condemnation, as determined by an independent appraisal made by an independent real estate appraiser with a Member of the Appraisal Institute certificate or the equivalent, selected by the Board. The Association shall represent the interests of all Owners.

ARTICLE VI

FUNDS AND ASSESSMENTS

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

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

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

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

6.2 REGULAR ASSESSMENTS:

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

6.2.2 Budgeting: Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing: (i) estimated revenue and expenses on an accrual basis; (ii) the amount of the total cash reserves of the Association currently available for replacement or major repair of Common Area and for contingencies (iii) an itemized estimate of the remaining life of, and the methods of" funding to defray repair, replacement or additions to major components of the Common Area and (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area. For the first fiscal year, the budget shall be based upon the budget accepted by the Department of Real Estate of the State of California and shall be approved by the Board no later than the date on which Regular Assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy thereof to each Member, together with written notice of the amount of the Regular Assessment to be levied against the Owner's Lot, not less than forty-five (45) and not more than sixty (60) days prior to the beginning of the fiscal year. After a new Phase has been annexed, the Board shall approve a new budget for the remainder of the current fiscal year for use upon the commencement of Regular Assessments against Lots in the new Phase. The Board shall then determine whether to accept the budget provided by Declarant or revise such budget as the Board determines. Notice of the new Regular assessment to be levied against each Lot in the Project shall be delivered to the Owners and Declarant within five (5) days after the close of escrow for the first Lot sold in the new Phase.

6.2.3 Allocation of Assessments: The total amount in the budget shall be charged equally against all Lots as Regular

Assessments, subject to the limitations set forth in the Bylaws. After annexation of each Phase, the allocation and assessment of the charges in the budget shall be reallocated equally among all Lots in the Project, including those in the annexed Additional property.

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

6.2.5 Operation Account Surplus: At the end of each fiscal year, the Board shall determine whether there are funds remaining in the Operation Account after payment of all obligations for that fiscal year which are properly chargeable to the Operation Account. If there is such a surplus, it shall be refunded to all Lots in the same proportions as the Regular Assessments were originally paid. The portion of the surplus allocated to each Lot shall then be allocated among all Owners of that Lot during that fiscal year in proportion to the number of calendar months during which each Owner held title to the Lot. Any Owner who sells his Lot during any fiscal year in which a surplus results will not be entitled to share in the surplus unless he provides the Association with a written request which specifies his name, the address of his Lot, and his forwarding address. The only responsibility of the Association is to search its records for such written request.

6.2.6 Exemptions from Regular Assessment: Notwithstanding the provisions of Section 6.2, each Owner of a Lot which satisfies one or both of the following two exemptions shall be entitled to an exemption from the payment of a portion of the Regular Assessment levied against that Lot.

(a) Residences: An Owner of a Lot is exempt from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to the existence and use of the Residence on his Lot until the first to occur of the following events: (i) a notice of completion of construction of the Residence has been recorded; (ii) the Residence is occupied or otherwise used; or (iii) the structural components of the Residence which the Association is obligated to maintain are complete.

(b) Common Area: An Owner of a Lot is exempt from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to the existence and use of a common facility (including landscaping) that is not complete at the time Regular Assessments commence until (i) a notice of completion of the common facility is recorded; or (ii) the common facility has been placed into use, whichever first occurs.

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

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

6.5 ACCOUNTS:

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

6.5.2 Reserve Account: The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of capital Improvements for which reserves have been collected and held. No funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes.

6.5.3 Current Operation Account: All other costs may be paid from the Current Operation Account.

6.6 ENFORCEMENT OF ASSESSMENTS:

6.6.1 Establishment of Lien: There is a present lien, with power of sale, against each Lot to secure payment of all assessments (except Reimbursement Assessments) levied against the Lot pursuant to this Declaration, all Additional Charges and all sums which become due and payable in accordance with this Declaration after the date of recordation of a notice of assessment ("Notice"). Except for the transfer of a Lot pursuant to a foreclosure proceeding, the sale or transfer of a Lot shall not affect such a lien. The priority of all assessment liens shall be in inverse order so that, upon foreclosure of the lien for a particular assessment, any foreclosure sale will be subject to all assessment liens previously levied on such Lot. Any lien recorded shall be in favor of the, Association. Each Owner, including Declarant, hereby appoints the Association as his trustee and empowers the Association, as trustee, to enforce the lien and to fore- close the lien by the private power of sale provided in Section 1367 and in Division III, Part 4, Title XIV, Chapter 2, Article I of the Civil Code of the State of California as each may be revised, amended or altered from time to time, or by judicial foreclosure. Each Owner further grants to the Association, as trustee, the power and authority to sell the Lot of any defaulting Owner to the highest bidder to satisfy such lien. Each Owner hereby waives the benefit of any homestead or exemption laws of the State of California now or then in effect regarding any lien created pursuant to this Declaration.

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

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

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

6.6.3 Additional Charges: In addition to any other amounts due or any other relief or remedy obtained against an Owner who *is* delinquent in the payment of any assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. All Additional Charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Lot as a Reimbursement Assessment. additional Charges shall include, but not be limited to, the following:

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

(b) Late Charges: A late charge in an amount to be fixed the Board in accordance with Civil Code Section 1366 to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

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

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

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

#### 6.6.4 Certificate of Satisfaction of Lien:

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

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

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

be given in good faith or for value even though the Mortgagee has  
constructive or actual knowledge of the assessment lien  
provisions of this Declaration.

ARTICLE VII

MEMBERSHIP IN THE ASSOCIATION

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

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

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

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

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

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

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

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

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

ARTICLE VIII

DEVELOPMENT RIGHTS

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

8.2 RIGHTS OF ACCESS AND COMPLETION OF CONSTRUCTION: Until the third (3<sup>rd</sup>) anniversary of the original issuance of a Public Report for the most recent Phase, Declarant, its contractors and subcontractors shall have the right to:

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

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

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

8.4 MARKETING RIGHTS:

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

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

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

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

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

ARTICLE IX

RIGHTS OF MORTGAGEES

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

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

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

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

9.5 NOTICES TO ELIGIBLE HOLDERS: The Association shall give timely written notice of each of the following to each Eligible Holder:

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

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

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

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

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

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

9.7 INSPECTION OF BOOKS AND RECORDS: Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Project Documents and any amendments there to during normal business hours or under other reasonable circumstances.

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

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

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

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

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

(c) Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost;

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

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

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

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

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

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

ARTICLE X

AMENDMENT AND ENFORCEMENT

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

10.1.1 With respect to any action to be taken under this Section 10.1 which is also governed by provisions of Article VIII that require a specified vote of Owners and/or Mortgagees, the requirements of Article IX must be satisfied in addition to the requirements of this Section 10.1.

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

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

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

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

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

10.1.3 Other Provisions of Declaration: Any other provision of this Declaration maybe amended by the vote or written consent of record Owners constituting fifty-one percent (51%) of, each class of Members; provided however that any provision of this Declaration which relates to any condition of approval imposed upon the Project by the City may not be amended without the prior written approval of the City.

10.1.4 Approval By City: No Amendment which deals with any of the following matters shall be effective without the prior written consent of the City or the city Attorney:

(i) Any amendment, the design or purpose of which is to eliminate an obligation of the Association to manage, maintain and repair the Common Area or to lower the standards for maintaining and repairing the Common Area.

(ii) Amendments with regard to the fundamental purpose for which the project was created (such as a change from residential use to a different use).

(iii) Any amendment to Sections 3.5.8, 4.5, 4.11, 4.14, 4.24, 4.25, 5.1, 5.2, 5.4, 7.2, 10.1.4 or

10.2.5 (which were required as a condition of tentative map approval).

10.1.5 Recordation of Amendment: Any amendment shall be effective upon the recordation in the Official Records of the County of an instrument setting forth the terms of the amendment and a statement executed by the President and Secretary of the Association which certifies that the required percentage of Owners have approved the amendment.

## 10.2 ENFORCEMENT:

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

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

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

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

10.2.5 Enforcement by the City: The City is hereby made a third party beneficiary of this Declaration as to the Sections listed below and is granted the right but not the duty to enforce the provisions of these Sections: Sections 3.5.8, 4.5, 4.11, 4.14, 4.24, 4.25, 5.1, 5.2, 5.4, 7.2, 10.1.4 or 10.2.5.

10.2.6 Enforcement by the District: The District (as defined in Section 5.2.2) shall have the right, but not the obligation, to perform any work required by Section 5.2.2 or the Grant of Easement to be performed by the Association, if and only if the Association fails to perform such work after sixty (60) days notice from the District that such work is necessary. Upon demand, the Association shall reimburse the District for all costs, including costs of collection and attorney's fees, incurred by, the District in performing such work. If the Association fails to promptly reimburse the District, then the District shall have the right to prepare, record and foreclose alien against the Common Area or to pursue any other remedy permitted by law.

ARTICLE XI

ANNEXATION

11.1 RESTRICTION ON ANNEXATION: Property may be added to the Project by annexation only in accordance with the provisions of this Article.

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

11.3 PROCEDURE FOR ANNEXATION: In addition to any required approval by members, a final subdivision map(s) or final parcel map(s), and a Declaration of Annexation for the property to be annexed must be recorded. The Declaration of Annexation shall: (i) describe the portion of the Additional Property to be annexed; (ii) set forth the ownership of the Common Area; (iii) identify the Common Area as recreational parcels, as open space parcels or as creek area; (iv) set forth the allocation of Regular Assessments to be paid; (v) identify whether a Lot is subject to the jurisdiction of Architectural Committee 1. or Architectural Committee 2; and (vi) specify that all of the covenants, conditions and restrictions of this Declaration shall apply to the annexed Additional Property in the same manner as if it were originally covered by this Declaration. The Declaration of Annexation shall also provide that Declarant shall pay to the Association an amount equal to that portion of the Regular Assessment which would have been attributable to each Lot in that Phase and which would have been allocable to reserves for replacement and deferred maintenance of Common Area Improvements if and only if Declarant has rented or leased Lots in that Phase for a period of at least one (1) year prior to the conveyance of title to an Owner of a Lot in that Phase. The Declaration of Annexation may also (i) impose any additional covenants, conditions and restrictions on the Additional Property that are necessary to include the property in the project and to reflect differences in nature, if any, of

the Improvements to be constructed on the Additional Property and (ii) provide for a specified date on which assessments shall commence for Lots in that Phase, provided that the date specified may not be later than the first day of the first month following the month in which the first Lot in that Phase is conveyed to an Owner. Upon the recording of the Declaration of Annexation, notice of the recording shall be given to the Association. No Declaration of Annexation shall diminish the covenants, conditions or restrictions established by this Declaration nor shall it discriminate between the Owners in the Project. No Declaration of Annexation shall alter or change the general common plan or scheme created by this Declaration nor shall it affect the provisions hereof as covenants running with the land or as equitable servitudes.

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

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

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

ARTICLE XII

ARCHITECTURAL REVIEW

12.1 APPLICABILITY: Any Owner who wishes to make any alteration or addition which will affect the exterior of his Residence or Lot is required to obtain the approval of the appropriate Architectural Committee pursuant to this Article prior to making any such alteration or addition. Any Owner who makes an alteration or addition without the prior approval of the Board shall be deemed to be in violation of this Declaration; and the Board, upon its own motion, shall proceed as though the Owner gave the notice of completion as specified in Section 12.9.1. Nothing in this Article shall be deemed to relieve any Owner from obtaining all consents and permits and otherwise complying with all applicable State and local laws and ordinances. For purposes of this Declaration, the terms "alteration" and/or "addition" shall include all changes, repairs, replacements, modifications, alterations, and new construction performed upon the exterior of a Residence or Lot except for those activities in which exactly the same color and building material are used to repair, refinish or replace the structure so that it appears visually as it did before the alteration or addition.

12.2 ARCHITECTURAL COMMITTEES: All architectural review shall be performed by two (2) committees appointed by the Board in accordance with the provisions of this Section 12.2. One architectural committee shall be designated "Architectural Committee 1" and the other architectural committee shall be designated "Architectural Committee 2". Each Architectural Committee is referred to in this Article as the "Committee". There shall be no fewer than three (3) members and no more than five (5) members on each Committee, all of whom must be Owners or officers, directors, or employees of an Owner. Committee 1 shall initially have jurisdiction over those Lots designated as Lots 35 through 67, inclusive, of Tract 6562 on the Map and Committee 2 shall initially have jurisdiction over those Lots designated as Lots 1 through 50, inclusive, of Tract 6651 on the Map. Upon annexation of a subsequent Phase, the Declaration of Annexation for that Phase shall identify which Lots shall be subject to the jurisdiction of Committee 1 and which Lots shall be subject to the jurisdiction of Committee 2. Declarant Ponderosa reserves the right to appoint all members of Committee 1 and all replacements thereto until either (i) the fifth (5th) anniversary of the original issuance of the Public Report for the Project or (ii) the sale of ninety percent (90%) of all Lots

in the project, whichever first occurs; provided however, that the Board shall have the right to appoint one member of Committee 1 and otherwise complying with all applicable State and local laws and ordinances.

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

12.6 FORM OF APPROVALS AND DENIALS: All approvals and denials shall be in writing. Any denial of a proposal must state the reasons for the decision to be valid. Any proposal which has not been rejected in writing within thirty (30) days from the date of submission shall be deemed approved.

12.7 PROCEEDING WITH WORK: Upon approval of an alteration by the appropriate Committee, the Owner shall diligently proceed with the commencement and completion of all work 50 approved. Work must be commenced within one (1) year from the date of the approval. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed' revoked unless the appropriate Committee extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the appropriate Committee finds that there has been no change in the circumstances under which the original approval was granted.

12.8 FAILURE TO COMPLETE WORK: Completion of the work approved must occur in the twelve (12) month period following the commencement of the work unless the appropriate Committee determines that completion is impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If the Owner fails to complete the work within the one (1) year period, the appropriate Committee shall proceed in accordance with the provisions of Section 12.9.2, below.

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

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

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

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

12.11 WAIVER: Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval beginning on the date one (1) year following the date of the original issuance of the Public Report for the Project. Declarant Davidon reserves the right to appoint all members of Committee 2 and all replacements thereto until either (i) the fifth (5th) anniversary of the original issuance of the Public Report for the Project or (ii) the sale of ninety percent (90%) of all Lots in the Project, whichever first occurs; provided however, that the Board shall have the right to appoint one member of Committee 2 beginning on the date one (1) year following the date of the original issuance of the Public Report for the Project. The terms of office shall be for one (1) year unless lengthened by the Board at the time of appointment.

12.3 DUTIES: Each Committee shall consider and act upon proposals and/or plans submitted pursuant to this Article. Each Committee, from time to time and in its sole discretion, may adopt architectural rules, regulations and guidelines ("Architectural Standards") for the Lots subject to its jurisdiction. The Architectural Standards' shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used in the Project; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration.

12.4 APPLICATION FOR APPROVAL OF IMPROVEMENTS:

12.4.1 No alteration or addition shall be performed on a Lot until plans and specifications shall have been submitted to and approved in writing by the appropriate Committee and, if the proposal is for the construction of structural additions to the Residence or Lot, by the City of Danville.

12.4.2 Any Owner, except Declarant and its designated agents, who wants to perform any alteration shall notify the appropriate Committee in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the

appropriate Committee.

12.4.3 Any Owner who makes an alteration without the prior approval of the appropriate Committee shall be in violation of this Declaration and the Board may enforce these provisions as provided for in Section 12.10.

12.4.4 Nothing in this Article shall be deemed to relieve any owner from obtaining all consents and permits

12.12 APPEAL OF DECISION OF COMMITTEE. Should any Owner who alters his Lot dispute the jurisdiction or powers of the appropriate Committee or any requirement, rule, regulation or decision of the appropriate Committee (collectively referred to as "decision"), such Owner may file a petition with the Board within fifteen (15) days after the decision. The Board shall, within thirty (30) days after receipt of the petition, notify the Owner of the time, date and place of a hearing to review the decision of the appropriate Committee. The notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class, postage prepaid, addressed to the Member at the address given by the Member to the Board for the purpose of service of notices or to the address of the Member's Lot if no other address has been provided. After the hearing has taken place, the Board shall notify the Owner of its decision. The decision shall become effective not less than five (5) days after the date of the hearing. The determination of the Board shall be final.

12.13 ESTOPPEL CERTIFICATE: Within thirty (30) days after written demand is delivered to the appropriate Committee by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the appropriate Committee shall record an estoppel certificate, executed by the Chairman and any one (1) member, certifying that as of the date thereof, either: (a) the work completed complies with this Declaration or (b) the work completed does not comply. In the latter situation, the certificate shall also identify the particulars of the non-compliance. Any successor in interest of the Owner shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be

conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through any of them

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

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

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 TERM OF DECLARATION: This Declaration shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until a vote of the Owners determines that this Declaration shall terminate.

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

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

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

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

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

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

13.8 ENFORCEMENT OF BONDED OBLIGATIONS: When Common Area Improvements have not been completed prior to the issuance of the original Public Report to which the Common Area is subject and the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of

Declarant to complete the Improvements, the following provisions shall apply to initiating action to enforce the obligations of Declarant and the surety under the Bond.

13.8.1 Action by Board: 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 Improvements 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 a written extension for the completion of any Common Area Improvements, the Board shall consider and vote whether to take action if a notice of completion has not been filed within thirty (30) days after the expiration of the most recent extension.

13.8.2 Action by Members: If the Board decides not to act or fails to initiate action to enforce bonded obligations, then upon receipt by the Board of a petition for a special meeting signed by Members representing five percent (5%) or more of the total voting power of the Association, the Board shall call a special meeting of the Members. If the Board has failed to initiate action, the Members shall determine whether they wish to initiate action. If the Board has decided not to initiate action, the Members shall determine whether to override the Board's decision. The meeting shall be held not less than thirty-five (35) nor more than forty-five (45) days after receipt of the petition by the Board. At the meeting, the vote of fifty-one percent (51%) of the total 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. The Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

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