Recording requested by:

FIRST AMERICAN TITLE INSURANCE CO.

11/06/89 3

When recorded return to:

STEPHEN N. COOL
Attorney at Law
1577 El Camino Real
Arroyo Grande, CA 93420

DOC. NO. 75101
OFFICIAL RECORDS
SAN LUIS OBISPO CO., CA

NOV 0 6 1989

FRANCIS M. COONEY
County Clerk-Recorder
TIME 11 :45 AM

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OAK GLEN

A Condominium Development

TRACT NO. 999

CITY OF ATASCADERO, COUNTY OF SAN LUIS OBISPO, CALIFORNIA

(REPEALING AND REPLACING "ENABLING DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP" RECORDED OCTOBER 15, 1982, IN VOLUME 2432, PAGES 701/731, OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

OAK GLEN

A CONDOMINIUM DEVELOPMENT

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, dated OCTOBER 11, 1989, is made by JOHN R. MADRID and VALERIE L. INGELS, hereinafter collectively referred to as "Declarant."

RECITALS:

A. Declarant is the owner of the real property (hereinafter called "the subject property") in the City of Atascadero, County of San Luis Obispo, State of California, described as Units 1-44, inclusive, of Tract No. 999, a map of which was filed for record on OCTOBER 15, 1982, in Book 11, Page 10, of Maps in the office of the San Luis Obispo County Recorder.

B. The subject property has been improved by constructing thereon a residential condominium project consisting of forty-four (44) condominium units under the Common Interest and Development Act, and intends to establish a plan providing for separate title to each condominium unit (as herein defined) within the project, each unit to have an undivided 1/44th interest in all of the remaining property hereinafter defined as "Common Area."

C. Each unit shall have appurtenant to it a membership in the OAK GLEN CONDOMINIUM ASSOCIATION, INC., a California nonprofit Corporation.

D. It is the intention of Declarant to sell and convey condominium units to owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such owners which are set forth in this Declaration and which are intended to be in furtherance of a general, plan for the subdivision, development, sale and use of the properties as a condominium project.

E. This Declaration repeals and replaces the Declaration recorded October 15, 1982, as Document No. 43064 in Volume 2438, Pages 701/731.

DECLARATION

NOW, THEREFORE, Declarant hereby declares:

(a) That the subject property shall be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied and improved only upon and subject to the following covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes, all of which are hereby declared, established, expressed and agreed to be in furtherance of a plan for the subdivision of the property and sale of units within the property; to be for the benefit and protection of the subject property; to be for the benefit of the owners; to run with the land and be binding upon all parties to inure to the benefit of every portion of the property; and to inure to the benefit of and be binding upon each owner, and each successor in interest of Declarant and of each owner.

(b) That each conveyance, transfer, sale, assignment, lease or sublease made by Declarant of any condominium unit shall be deemed to incorporate by reference all of the provisions of this Declaration, (including but not limited to, the covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes herein provided for); and

(c) That this Declaration shall be enforceable to Declarant, each owner, and each successor in interest and assignee of Declarant and each other, and also by the Association, its Board of Directors, and each person, firm, corporation or other entity duly authorized by the Association or its Board of Directors.

The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes upon which the subject property shall be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied and improved are the following:

ARTICLE I

DEFINITIONS

The following words and expressions, when used in this Declaration and in any amendment thereto, shall have the respective meanings set forth below:

1. "Assessment" means an assessment made or assessed against an owner and his unit in accordance with the provisions of this Declaration.

2. "Association" shall mean and refer to the OAK GLEN CONDOMINIUM ASSOCIATION, INC., a California nonprofit corporation, or its successors in interest.

3. "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

4. "Building" means a building located on the subject property.

5. "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

6. "Common Area" means that area designated on the map, and excepting the individual condominium units. The Common area includes, without limitation: Land, buildings, stairways, driveways, parking areas, landscaping, irrigation systems, utilities, drainage areas, walls, fences, indoor and outdoor lighting and trash enclosures.

7. "Common Expenses" means and includes the actual and estimated expenses of operating the common area and facilities, any reasonable reserve for such purposes as found and determined by the Board, all sums designated common expenses by or pursuant to the condominium documents, and general and special assessments payable to the planned unit development as provided in the master declaration.

8. "Condominium" means an estate in real property as defined in Civil Code Sec. 1351(f), consisting of title to a unit and an individual interest in the common area. The ownership of each condominium shall include (a) the ownership of a unit and all elements thereof, (b) an undivided one forty-fourth (1/44th) interest in the Common Area, (c) membership in the Association, and (d) a non-exclusive easement for ingress, egress and use over the Common Area.

9. "Condominium Documents" means this Declaration and any amendments thereto, the Articles and Bylaws of the Association, and rules and regulations adopted thereunder, the recorded map of Tract No. 999 and the Condominium Plan.

10. "Condominium Plan" means those portions of the recorded map of Tract No. 999, constituting the narrative and diagrammatic floor plans of the units built on the subject property which identify and describe each unit and the elements comprising each unit. The definitions contained in this Declaration shall apply to the Condominium Plan.

11. "Declarant" shall mean and refer to the Declarants executing this Declaration and their successors and assigns.

12. "Declaration" shall mean this Declaration, or any amendment to it.

13. "Mortgage" means any security device encumbering all or any portion of the subject property, including any deed of trust.

14. "Mortgagee" means the record owner of the secured interest under any mortgage.

15. "Owner" or "Owners" shall mean and refer to the record holder or holders of title, if more than one, of a condominium in the project. This shall include any person having a beneficial fee simple title to any unit, but shall exclude persons or entities having any interest merely as a security for the performance of any obligation.

16. "Personal Property of the Association" means all tangible and intangible personal property acquired, owned, held or controlled by the Association for the use, benefit and enjoyment of all owners.

17. "Unit" shall mean and refer to all of the elements of a condominium, as herein defined, which are not owned in common with the owners of other condominiums in the project.

ARTICLE II

DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND

CREATION OF PROPERTY RIGHTS

1. Division of Property: The subject property is hereby divided into the following separate freehold estates:

(a) Units : Each of the units as separately shown, numbered and designated in the condominium plans consist of the spaces bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, and doors of each element of each unit. Each unit includes both the portions of the buildings so described and the airspaces so encompassed. Each numbered unit is composed of elements each bearing that corresponding number, and the exclusive right to use the parking and storage spaces assigned to them as referenced to in Article III, Section 6.

The unit does not include those areas and those things which are defined as "Common Area" in Article I. Each unit is subject to such encroachments as are contained in the building, whether the same now exist or may be later caused or created in any manner referred to in Article VII, Paragraph 2. In interpreting deeds and plans, the then-existing physical boundaries of a unit, whether or not it is in its location as shown on the original plans thereof shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed, and those of the building.

(b). Common Areas: The remaining portion of the property referred to herein as "common area" shall include, without limitation, all of the elements set forth in Article I, Paragraph 6. Each unit owner shall have, as appurtenant to his unit, a one-forty-fourth (1/44th) undivided interest in the common area. The common interest appurtenant to each unit is declared to be permanent in character and cannot be altered without the consent of all the unit owners affected. Such common interest cannot be separated from the unit to which it is appurtenant. Each unit owner may use the Common Areas in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other unit owners.

(c). Undivided Interests: The foregoing undivided interests are hereby established and are to be conveyed with the respective units as indicated above, cannot be changed (except as set forth herein), and Declarant covenants and agrees that the undivided interests in the Common Area and the fee title to the respective units conveyed therewith shall not be separated or separately conveyed, and each such undivided interest shall be deemed to be conveyed or encumbered with its respective unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the unit.

2. Partition Prohibited: The Common Area shall remain undivided as set forth above. Except as provided by California Civil Code Sec. 1359, no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the condominium project.

ARTICLE III

USE RESTRICTIONS

In addition to all of the covenants contained herein, the use and occupancy of the property and each unit therein is subject to the following:

1. Residential Use: No unit shall be occupied or used except for single family residential purposes by the owners, their tenants, and social guests, and no trade or business shall be conducted therein (except for uses reserved to Declarant under Article IX, Section 5, of this Declaration).

2. Common Area: The common area shall be used only for the purposes set forth in the plan documents.

3. Maintenance: All units and structures, including private yards and landscaping not otherwise maintained by the Association, shall at all times be maintained by the owner or occupant in good condition and repair, and in a clean, neat and orderly condition.

4. No Mineral Exploration: No property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance or other mineral of any kind to a depth of five hundred feet (500'). No machinery or equipment of any kind shall be placed, operated or maintained upon any unit, except such machinery or equipment as is usual and customary in connection with the use and maintenance of a unit.

5. Nuisances: No noxious, illegal or offensive activities shall be carried on within any unit or on any part of the property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance or which may in any way interfere with the quiet enjoyment of each of the owners of his respective unit, or which shall in any way increase the rate of insurance for the project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

6. Vehicle Parking Restrictions: All common area parking spaces, except those restricted and marked according to the unit and building, shall remain permanently available for guest parking. Parking space shall be used for parking of permitted vehicles only and not for the permanent parking or storage of boats, trailers or non-mobile vehicles of any description, nor for the conversion into habitable space such as, by way of definition only, a hobby shop or recreation room. Owners are to use their marked spaces for parking of their vehicles so that common area parking will be available for guest parking. The Association may establish rules and regulations from time to time for the parking of vehicles in the common areas. The owner or owners of a unit (or their tenants in the case of a leased unit) shall not be permitted to have more than three (3) motor vehicles which are parked or regularly operated within the project. No owner shall construct, repair, service or maintain any motor vehicle on any portion of the Common Area, except for emergency repairs thereto. No vehicles shall be washed in any location on the project.

7. Signs: No signs shall be displayed to the public view on any unit or on any portion of the property except such signs and in such locations as are approved by the Board and except for the placement of signs of reasonable dimensions advertising the lot for sale or rent per Civil Code Sec. 712.

8. Animals: No animals or birds of any kind shall be raised, bred, or kept in any unit or on any portion of the property; except that each unit owner may keep one (1) small dog or cat, provided that they are not kept, bred or maintained for any commercial purposes, and they are kept under reasonable control at all times. No pets may be kept on the property which result in an annoyance or are obnoxious to other owners. . No pets shall be allowed in the common area except as may be permitted by rules of the Board. No dog whose barking disturbs other owners shall be permitted to remain on the property. Owners shall prevent their pets from soiling all portions of the common area where other persons customarily walk and shall promptly clean up any mess left by their pets.

9. Garbage and Refuse Disposal: All rubbish, trash and garbage shall be regularly removed to the common trash disposal area. Trash, garbage and other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, woodpiles, or storage piles shall be kept screened and concealed from view of other units, streets and common area.

10. Radio and Television Antennas: No alteration to or modification of a central radio and/or television antenna system or cable television system, whichever is applicable, as developed by Declarant and as maintained by the Association shall be permitted, and no owner may construct any external radio and/or television antenna without the consent of the Board.

11. Right to Lease: The respective units shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as (1) rental for any period less than thirty (30) days, or (2) any rental if the occupants of the unit are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen. Subject to the foregoing restrictions, the owners of the respective units shall have the absolute right to lease same provided that the lease is made subject to the covenants, conditions, restrictions, limitations and uses contained in this Declaration and Articles and Bylaws.

12. Architectural Control:

A. No building, fence, wall, obstruction, outside or exterior wiring, balcony, screen, patio cover, tent, awning, carport, carport cover, improvement, or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the property, nor shall any alteration or improvement of any kind be made thereto, until the same has been approved in writing by the Board, or by an architectural control committee appointed by the Board. Plans and specifications showing the nature, kind, shape, color size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or to the architectural control committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Board or the committee, or to rebuild in accordance with plans and specifications previously approved by the Board or by the committee.

Notwithstanding the previous paragraph, owners may construct wood fences around private patio areas without prior approval by the architectural control committee, as long as such fences do not exceed five feet (5') in height, are of normal fence construction, are painted the same color as the project buildings, and do not encroach onto the common area.

No landscaping of patios or yards visible from the street or from the common area not involving the use of natural plants, grass, trees, or shrubs, and which does involve the use of synthetic materials, or of concrete, rock, or similar materials, shall be undertaken by any owner until plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by the Board or by an architectural control committee appointed by the Board.

B. The architectural control committee shall consist of three (3) members. Declarant may appoint all of the original members of the committee and all replacements until the first anniversary of the issuance of the original final public report for the first phase of the project. The Declarant reserves to itself the power to appoint a majority of the members to the committee until ninety percent (90%) of all the units in the project have been sold or until the first anniversary of the issuance of the final public report, whichever occurs first. Thereafter, the Board shall have the power to appoint all of the members of the architectural control committee. Members appointed to the architectural control committee by the Board shall be from the membership of the Associationn. Members appointed to the architectural control committee by the Declarant need not be members of the Association. A majority of the architectural control committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the committee, and thereafter the Board shall appoint such a successor. Neither the members of the committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. In the event the committee fails to approve or disapprove plans and specifications within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

B. Neither Declarant, the Association, nor the members thereof, shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications, which have been submitted to the Board. Every person who submits plans or specifications to the Board for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against Declarant, the Association, or any of the members thereof to recover any such damages.

13. <u>Drapes</u>: All drapes, curtains and other window coverings visible from the street or common area shall be subject to approval by the Board or its authorized committee.

14. <u>Clothes Lines</u>: No visible exterior clothes lines shall be erected or maintained; and there shall be no outside laundering or drying of clothes.

15. <u>Power Equipment and Car Maintenance</u>: No power equipment, hobby shops, or car maintenance (other than emergency work) shall be permitted on the property without prior written approval of the Board.

Approval shall not be unreasonably withheld, and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

16. Liability of Owners for Damage to Common Area: The owner of each unit shall be liable to the Association for all damages to the Common Area or improvements thereon caused by such owner or any occupant of his unit or guest except for that portion of the damage, if any, which is fully covered by insurance.

17. Yard Drainage: No owner shall alter or change any boundary fences or erect any structure which will obstruct or impede the natural flow of drainage waters through the respective yard areas of the units.

18. Alteration of Common Area: No modification or alteration of or addition to any portion of the Common Area or common facilities from their respective existing state on the date of first conveyance of a unit shall be made or done, except upon strict compliance with, and within the restrictions and limitations of the following provisions:

A. No owner shall, either at his own expense or otherwise, make or suffer any such modification, alteration or addition, or remove any planting, structure or furnishings, without the prior written approval of the Association.

B. The Association may at any time, and from time to time:

(1) Reconstruct or replace any improvement upon the Common Area in accordance with the original design, finish or standard of construction of such improvement, or, if not in accordance with such original design, finish or standard of construction, with the approval (by vote or written consent) of owners entitled to vote and holding in the aggregate at least a majority of the voting power of each class of membership of the Association.

(2) Replace and/or plant trees, shrubs and ground cover upon any portion of the Common Area; and

(3) Place and maintain upon the Common Area and common facilities such signs as the Association may deem necessary or

appropriate for identification, regulation of traffic and parking, regulation of the Common Area, and for the health, welfare and safety of the owners.

19. Common Area Obstructions: The Common Area shall be used only for the purposes intended, and no vehicles or other personal property belonging to any owner shall be left, stored or parked thereon except in any area that may be specifically designated for that purpose by the Association. The Association shall have the power to remove any such personal property from the Common Area, including having towed away any vehicles left parked in any Common Area driveway or restricted parking area, and to charge the cost thereof to the owner of such property.

ARTICLE IV

ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

1. Association to Manage Common Area: The management of the common area shall be vested in the Association in accordance with its Bylaws. The owners of all the condominiums covenant and agree that the administration of the project shall be in accordance with the provisions of this Declaration and the Bylaws and rules of the Association.

2. Membership: Every person or entity who becomes a record owner of a fee or undivided fee interest in any condominium, and including Declarant as to each unit owned, shall be a member of the Association. If a unit is sold under a recorded contract of sale to a purchaser who resides in the unit, the resident purchaser, rather than the fee owner, will be considered "Owner." Membership shall be appurtenant to and may not be separated from ownership of any unit.

3. Transferred Membership: Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the unit to which it is appurtenant, and then only to the purchaser, in the case of a sale. A mortgagee does not have membership rights until it becomes an owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void.

4. Membership Class and Voting Rights: The Association shall have the following two classes of voting members:

A. Class A Membership: Class A members shall be all owners with the exception of Declarant. Each Class A member shall be entitled to one (1) vote for each unit owned by him. When more than one person holds an interest in any unit, all such persons shall be members and the single vote for each unit shall be exercised as they among themselves agree, but in no event shall more than one vote be cast with respect to any one unit.

B. Class B Membership: The Class B member shall be Declarant, who shall be entitled to three (3) votes for each unit owned by them. The Class B membership shall cease and shall be irreversibly converted to Class A membership with respect to each unit then owned by Declarant on the occurrence of the earliest to occur of the following:

(1) When the total voting power outstanding in the Class A members equals or exceeds the total number of votes outstanding in the Class B members;

(2) On the second anniversary from the original issuance of the subdivision report of the California Department of Real Estate applicable to the project.

Except for provisions on enforcement of bonded obligations, whenever a prescribed majority of the voting power of members of the Association other than the subdivider is required by the terms of this Declaration for any purpose, the vote or written assent of a bare majority of Class B voting power, as well as that of a prescribed majority of Class A voting power, shall be required for action; after conversion of Class B to Class A shares, the vote or written assent of a bare majority of the total voting power of the Association as well as that of a prescribed majority of votes of members other than Declarant is required. So long as a majority of the voting power of the Association resides in Declarant, or so long as there are two classes of membership, at least twenty percent (20%) of the Board shall be elected solely by votes of owners other than Declarant.

All voting rights shall vest at such time as assessments against those interests have been levied by the Association.

5. Liability of Board Members or Manager: No member of the Board, nor any agent, representative, or employee of the Association, shall be personally liable to any owner or to any other party for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association; provided that such board member or other person has, upon the basis of such information as may be possessed by him, acted in good faith.

6. Bylaws: Except as hereby provided, all matters relating to membership and voting rights in the Association, and operation of the Association, shall be provided in the Bylaws.

ARTICLE V

MAINTENANCE AND ASSESSMENTS

1. Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each unit owned within the project, hereby covenants, and each owner of any unit by acceptance of a deed for it, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association: (A) Annual assessments or charges, and (B) special assessments as herein provided. These assessments shall be established and collected as provided in this Declaration. The annual and special assessments, together with interest, costs, late payment charges, and reasonable attorney's fees incurred in any collection effort, shall be a charge on the unit and shall be a continuing lien upon the unit against which each such assessment is made. The lien shall become effective upon recordation of a notice of assessment as herein provided.

Each such assessment, together with interest, costs, and reasonable attorney's fees, incurred in any collection effort, shall also be the personal obligation of the person who was the owner of such unit at the time when the assessment fell due. No owner of a unit may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common area or by the abandonment of his unit.

2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of all the residents in the entire project, for the improvement and maintenance of the common area for the common good of the project, and to carry out the obligations of the Association as stated in this Declaration.

3. Annual Assessment; Reserve Funds: Until January 1 of the year immediately following the conveyance of the first unit to an owner the monthly assessment for each unit shall be $132.55.

Thereafter, the Board shall determine the annual assessments due, but may not, without the vote or written consent of a majority of owners constituting a quorum casting a majority of votes at a meeting or election of the Association, impose a regular annual assessment which is more than twenty percent (20%) greater than the regular annual assessment for the immediately preceding fiscal year, except for extraordinary expenses as defined in Section 4A of this Article.

As part of the regular annual assessments for maintenance authorized above, the Board of Directors shall annually fix the amount to be contributed prorata by each member to reserve funds for the purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair or replacement of improvements, including fixtures and personal property related thereto. Such determination shall be made after consideration of the need for additional funds and of the Association's capital position. The Board shall maintain a separate trust account for those funds. The Board shall fix the method of payment of such assessments. Separate records shall be maintained for all funds deposited to the Reserve Trust Account.

Amounts received by the Association as contributions, assessments or dues from the owners shall be held in trust accounts as follows:

A. Repair, maintenance, and operation trust account, for current expenses;

B. Reserve trust account, for replacement reserves.

Repair, maintenance and operation trust funds shall be used solely for reconstruction, repair or replacement of improvements, including fixtures and personal property, and operating expenses.

4. Special Assessments: If at any time during the course of a fiscal year the Board shall deem the amount of the annual assessment to be inadequate, the Board shall have the power, at a regular or special meeting, to increase the assessment for the balance of the fiscal year. Every special assessment shall be levied upon the same basis as that prescribed for the levy of regular assessments, except where the special assessment is a remedy utilized to reimburse the Association for costs incurred in bringing the member into compliance with this Declaration. However, a monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with this Declaration, or as a means of reimbursing the Association for costs incurred in the repair of damage to the common

area for which the member was allegedly responsible, or in bringing the member and his lot into compliance with this Declaration, shall not be an assessment which may become a lien against their lot enforceable by a sale thereof per Civil Code 2924 et seq; this exception shall not apply to charges imposed against an owner as late payment penalties for delinquent assessments and/or charges to reimburse the Association for loss of interest and for attorney's fees or costs reasonably incurred in efforts to collect delinquent assessments.

In any fiscal year, the governing body of the Association may not, without the vote or written assent of a majority of owners constituting a quorum casting a majority of votes at a meeting or election of the Association, levy special assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except extraordinary expenses.

4A. Extraordinary Expenses:

(a) An extraordinary expense required by order of a court.

(b) An extraordinary expense necessary to repair or maintain the common area or other improvements for which the association is responsible where a threat to personal safety on the property is discovered.

(c) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the proforma operating budget. However, prior to the imposition or collection of an assessment under this section, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

5. Notice and Quorum for Any Action Authorized Under Paragraphs 3 and 4: Any action authorized under Paragraphs 3 and 4 of this

Article which requires a vote of the membership shall be taken at a meeting called for that purpose, written notice of which shall be personally delivered or mailed, postage prepaid, to all members not less than ten (10) nor more than ninety (90) days in advance of the meeting specifying the place, day and hour of the meeting, and, in the case of a special meeting, the nature of the business to be undertaken. If more than 50% of members are present and the proposed action is favored by a majority vote of the members present at such meeting, but such vote is less than the requisite majority of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers.

6. Division of Assessments: All assessments, both regular and special, shall be charged and divided among the owners equally.

7. Date of Commencement of Annual Assessment and Limited Exception; Due Dates: The regular assessments provided for herein shall commence as to all units on the first day of the month following the conveyance of the first unit to an individual owner. Subject to the provisions of Paragraph 3 of this Article, the Board of Directors shall determine and fix the amount of the annual assessment against each unit and send written notice thereof to every owner at least sixty (60) days in advance of each annual assessment period. The due dates shall be established by the Board of Directors. The Association shall, upon demand, for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. Such a certificate shall be conclusive evidence of such payment.

8. Late Payment of Assessments: Any assessment not paid within fifteen (15) days after the due date shall be subject to a ten percent (10%) late payment charge.

9. Transfer of Unit by Sale or Foreclosure: Sale or transfer of any unit shall not affect the assessment lien. However, liens for regular and special assessments shall be subordinate to the lien of any first mortgage or deed of trust against that unit, and the sale or transfer of any unit as the result of the exercise of a power of sale

or judicial foreclosure involving default under such first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such unit from liability for any assessment thereafter becoming due or from the lien for those assessments.

In any transfer of a unit the grantor shall remain liable to the Association for all unpaid assessments against the unit up to the date of transfer. The grantee shall be entitled to a statement from the Association dated as of the date of transfer setting forth the amount of the unpaid assessments against the grantor due to the Association, and the unit so transferred shall not be subject to a lien for unpaid assessments in excess of the amount set forth in the statement, but the grantee shall be liable for any such assessments that become due after the date of transfer.

10. Priorities; Enforcement; Remedies: No action shall be brought to foreclose the lien or to proceed under the power of sale less than thirty (30) days after the date that a Notice of Delinquent Assessment, executed by a duly authorized representative of the Association, is recorded with the San Luis Obispo County Recorder. This notice shall state the amount claimed (which may include interest and costs of collection, including reasonable attorney's fees), a legal description of the unit being assessed, the name of the record owner or reputed owner thereof and the name and address of the Association as claimant. A copy of said notice shall be deposited in the United States mail, certified or registered, with postage thereon fully prepaid, to the owner of the unit.

When a Notice of Assessment has been recorded in the records of the San Luis Obispo County Recorder's office, such assessment shall constitute a lien on each respective unit prior and superior to all other liens except (A) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (B) the lien or charge of any first mortgage or deed of trust then of record made in good faith and for value.

An assessment lien may be enforced in any manner permitted by law, including sale by the court, sale by trustee designated in the notice of delinquent assessment, or sale by a substituted trustee. Any such sale shall be conducted in accordance with the provisions of Sections 2924-2924h of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

The Association, acting on its own behalf, shall have the power to bid for the unit at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. During the period a lot is owned by the Association following foreclosure:

A. No right to vote shall be exercised on behalf of the unit;

B. No assessment shall be assessed or levied on the unit; and

C. Each other unit shall be charged, in addition to its usual assessment, its proportionate share of the assessment that would have been charged to such unit had it not been acquired by the Association as a result of foreclosure.

After acquiring title to the unit at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the unit which deed shall be binding upon the owners, successors, and all other parties.

The Board may temporarily suspend the voting rights of a member who is in default in payment of any assessment, after notice and hearing as prescribed in Corporations Code Sec. 7341. In any such action the member shall be entitled to fifteen (15) days prior written notice of the suspension and the reasons therefor; and, in addition, must be given an opportunity to be heard (either orally or in writing) with respect to the alleged violation not less than five (5) days before the effective date of the action.

ARTICLE VI

DUTIES AND POWERS OF THE ASSOCIATION

1. Duties: In addition to the duties enumerated in its Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

A. Property Acceptance: Accept deliver and take possession of all unencumbered real and personal propertyin the common area subject to its rights and duties as contained herein.

B. Maintenance: The Association shall maintain, repair, replace, restore, operate and manage all of the common area and facilities, equipment and landscaping thereon, all property that may be acquired by the Association, and all buildings on the lots. Maintenance shall include (without limitation): (1) Repairing and maintaining all of the common area exterior surfaces, landscaping, fireplace chimneys, improvements, and driveway areas, except for any private yard areas maintained by the owners, and (2) the exteriors, painting, and roofs of each building on each unit (excluding window glass). The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an owner, or his guests, tenants or invitees, the cost of which is not covered by insurance.

C. Insurance: The Association shall maintain such policy or policies of insurance as are required by this Declaration.

D. Discharge of Liens: The Association shall discharge by payment, if necessary, of any lien against the common area, and may assess the costs thereof to the member or members responsible for the existence of the lien, after notice and hearing under Corporations Code Sec. 7341 pursuant to the procedure in Article V, Section 10-C.

E. Assessments: The Association shall fix, levy, collect and enforce assessments as set forth in Article IV of this Declaration.

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

G. Financial Statements: The Association shall cause financial statements for the Association to be prepared and copies shall be distributed to owners as prescribed in the Bylaws.

H. Enforcement: The Association shall enforce this Declaration.

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

A. Easements: The Association shall have the authority to grant easements where necessary for utilities over the common area to serve the common and open space areas and the units.

B. Manager: The Association shall have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the members of the Association, and to terminate the same for cause on five (5) days' written notice.

C. Adoption of Rules: The Association may adopt reasonable rules not inconsistent with this Declaration relating to the use of the common area and all facilities thereon, and the conduct of owners and their tenants and guests with respect to the property and other owners.

D. Access: For the purpose of performing the maintenance authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of Directors of their respective responsibilities, the Association's agents or employees shall have the right after reasonable notice to the owner thereof (except in emergencies) to enter any unit or to enter any portion of the common area at reasonable hours.

E. Assessments: The Association shall have the power to levy and collect assessments in accordance with the provisions of Article V of this Declaration.

F. Enforcement: The Association shall have the authority to enforce this Declaration as per Article IX hereof.

G. Acquisition of Property: The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.

H. Loans: The Association shall have the power to borrow money, and only with the assent (by vote or written consent) of three-fourths (3/4) of the voting power of the Association residing in members other than Declarant, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to rights of mortgagees as prescribed in Article IX, Section 3.

I. Dedication: The Association shall have the power to dedicate, sell or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by three-fourths (3/4) of the voting power of the Association residing in members other than Declarant, agreeing to such dedication, sale or transfer and recorded in the records of the San Luis Obispo County Recorder's office.

J. Contracts: The Association shall have the power to contract for goods and/or services for the common area, facilities and interests of the Association, subject to limitations elsewhere set forth in this Declaration or in the Bylaws.

K. Delegation: The Association shall have the power to delegate its authority and powers to committees, officers, or employees of the Association.

L. <u>Officers</u>: Elect officers prescribed in the Bylaws.

The powers and duties of the Association shall be as limited under Article VI, Section 1 of the Bylaws.

ARTICLE VII

OTHER EASEMENTS

1. Utility Easements: All of the subject property shall be subject to all existing easements for the installation, maintenance, repair, and replacement of utilities, including, but not limited to, easements for sewer, water, electricity, gas, telephone, cable television and community antenna services. In addition, each of the units is and shall be subject to the following easements:

A. If any connection, line, pipe, conduit or other facility to a unit traverses any unit other than the unit served by such facility, the owner of the unit so served shall have the right to enter, or to authorize the utility company to enter, upon each of the units so traversed for the purpose of maintaining, servicing, repairing or replacing such facility; and

B. If any connection, line, pipe, conduit or other facility serves more than one unit, the owner of each such unit shall have the equal right to receive, utilize and enjoy the service provided by such facility, provided he pays the established charge for such service.

2. Units: Each unit and the common area shall be subject to minor encroachments due to (i) engineering errors, (ii) errors in original construction of any building or the reconstruction thereof in substantial accordance with the original plans, and (iii) the settlement or shifting of any building. An easement for the maintenance of such encroachments shall and does exist, except that no such easement shall exist in favor of any owner if the encroachment occurred by reason of his own willful conduct. Each of the easements hereinabove provided for shall be deemed to have been established upon the recordation of this Declaration and shall be appurtenant to the unit which is benefited thereby and shall burden the servient unit.

ARTICLE VIII

INSURANCE, DESTRUCTION AND CONDEMNATION

1. Insurance:

A. In the event of damage to or destruction of any unit, the same shall be reconstructed as soon as reasonably practicable, and substantially in accord with the original plans and specifications therefor.

Each unit owner appoints the Association, or any insurance trustee to be designated by the Association, as attorney in fact for the purpose of purchasing and maintaining the Association's insurance, including: The collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any insurance trustee shall be required to receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for unit owners and their first mortgage holders, as their interests may appear.

B. The Association shall obtain and continue in effect a master policy of insurance covering all of the personal property and supplies of the Association, and all of the real property and improvements of the project, including the common area and all fixtures and building service equipment therein, and the units and any fixtures, equipment, or property therein covered by a first mortgage on the unit, and protecting the interests of the Association and its members; including, without limitation, fire and extended coverage and special form and insuring one hundred percent (100%) of current replacement cost of all improvements in the project, including the units, comprehensive general liability insurance insuring the Association and each owner for his liability for the common area, and a fidelity bond covering officers, directors and employees in an amount to be determined by the Board, but in no event less than a sum equal to three (3) months' aggregate assessments on all units plus reserve funds.

All insurance shall contain "severability of interest provision", "cross liability endorsement" and waiver of subrogation as to the Association, officers, directors, members, guests, agents and employees.

The master policy shall be issued in the name of the Association for the use and benefit of the owners.

The minimum limits on the liability insurance policy shall be $1,000,000 single limit and shall include personal injury, bodily injury, property damage and liability for non-owned automobiles.

Insurance premiums for the master policy shall be a common expense to be included in the monthly assessments levied by the Association.

C. It is the responsibility of each owner to insure his personal property (if he desires) and the improvements and betterments added to his unit since the time of the original sale, together with additional living expense coverage and public liability insurance for the interior of his unit.

D. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs and replacement of the property which might be damaged or destroyed.

2. Damage or Destruction: If any of the project improvements are materially damaged or destroyed by fire or other casualty (materially damaged is defined for the purposes of this section as any damage for which the cost of repair or reconstruction is more than fifty percent (50%) of the full replacement value of the improvements), the project shall be repaired or reconstructed in accordance with the original as-built plans and specifications unless the owners vote not to undertake such repair or reconstruction in a special election held in accordance with the following procedures:

A. In the event any portion of the project improvements are materially damaged (as defined above) or destroyed, a special election shall be held, after not less than thirty (30) days' written notice to all owners, and their first mortgagees of record, at a suitable location on the property, or as close thereto as practicable, which location shall be specified in such notice.

B. The project shall be repaired or reconstructed in accordance with the original as-built plans and specifications as hereinafter provided, unless: (1) in such special election at least sixty-seven percent (67%) of the total voting power of the Association residing in members other than the Declarant votes against such repair or reconstruction; or (2) the available insurance proceeds plus reserves of the Association are inadequate to pay the cost of repair or reconstruction and a special assessment in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year is required to provide such funds, and such assessment fails to pass by majority vote.

C. In the event the requisite number of votes are not cast against such repair or reconstruction, and if a special assessment in excess of five percent (5%) (if required) passes, all of the insurance proceeds payable on account of such damage or destruction shall be made available for such repair or reconstruction and shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "Depository"). The Depository shall be appointed by the Association. Such funds shall be disbursed in accordance with the normal construction loan practices for the Depository, which are reasonably acceptable to the Association. The restoration or reconstruction shall be substantially in accordance with the original as-built plans and specifications for the building, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or in accordance with such other plans and specifications as may be approved by the Association, and the respective first mortgagees.

D. The Association shall designate a construction consultant (the "Construction Consultant"), general contractor (the "General Contractor"), and architect (the "Architect") for the repair or reconstruction contemplated by this paragraph. In the event of a dispute regarding the selection of the Construction Consultant, the General Contractor and the Architect, the selection of such individuals or firms shall be submitted to and be subject to the rules of the American Arbitration Association.

E. The insurance proceeds payable on account of such damage or destruction shall be deposited with the Depository and shall be disbursed in accordance with the normal construction loan practices of the Depository and upon the certification of the Construction Consultant, General Contractor and Architect dated not more than ten (10) days prior to any such request for disbursement, setting forth the following:

(1) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

That such disbursement request represents monies which either have been paid by or on behalf of the Construction Consultant, the General Contractor or the Architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;

(2) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(3) That the amount held by the Depository will, after payment of the amount requested in the pending disbursement request, be sufficient to pay in full the cost of such repair or reconstruction.

(4) In the event the insurance proceeds available for repair or reconstruction are less than the total cost of such repair or reconstruction the Association may use sums from its account or if necessary from levying special assessments on the members to restore or rebuild the areas affected, provided that any assessment that exceeds five percent (5%) of the budgeted gross expenses of the

Association for that fiscal year shall require the vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant, and provided, further, if such special assessment fails to be approved by the requisite majority,, and the project cannot be repaired or reconstructed without the funds from such special assessment, the provisions of paragraph (5) below, shall apply, and if the first lenders are unable or unwilling to supply the necessary funds, the provisions of paragraph (7) below, shall apply.

(5) In the event any portion of the common area has been damaged or destroyed and that portion of the insurance proceeds applicable to the damage or destruction is unsufficient to reconstruct or repair the damaged or destroyed portion, the Association shall supply the excess funds required to restore or rebuild the affected area, as provided in (4) above; provided, however, that in the event the Association and the members refuse or are unable to supply such excess funds, the first lenders of the units affected shall have the option of supplying such excess funds or of applying that portion of the insurance proceeds allowable to that damaged or destroyed area to the debt secured by such mortgagee's mortgages or deeds of trust, as provided in paragraph (8) below.

(6) All such funds to be supplied by the Association, or individual owners, shall be deposited with the Depository and shall be disbursed pursuant to the provisions of this Section. In the event that there is any dispute over the allocation of insurance proceeds or the amount of funds in excess of the insurance proceeds which any party must deposit with the Depository such dispute shall be submitted to and be subject to the rules of the American Arbitration Association.

(7) In the event the owners elect not to repair or reconstruct a building or elect not to approve a special assessment to provide funds for rebuilding as provided above, the provisions of Civil Code Sec. 1357 (regarding partition and sale) shall be deemed satisfied, and the insurance proceeds payable on account of such damage or destruction shall be disbursed as follows; and in the event

of partition and sale under any conditions stated in Civil Code Sec. 1354, the proceeds of sale shall be disbursed as follows:

First, to the mortgagees in order of their priority to the extent of monies owed such mortgagee;

Second, to the cost of removing any remaining or destroyed portions of the project improvements and complying with all other applicable requirements of governmental agencies;

Third, to the owners in proportion to the respective fair market values of their units and their interests in the common area at the time of the destruction as determined by the Association, provided, however, that if any owner or mortgagee protests the proposed distribution based upon said fair market values as so determined, a licensed independent appraiser acceptable to the Association and to the protesting members or mortgagees shall be appointed by the Association to make the determination of the respective fair market values of the units at the time of the destruction. In the event of a failure to agree upon an appraiser, the appraiser shall be appointed by the then President of the Atascadero Board of Realtors.

(8) In the event there is any damage or destruction to the project improvements which is not material, as that term is defined above, the damaged improvements shall be repaired and reconstructed (without the necessity of any special election) in accordance with the applicable provisions of this section.

Any election to terminate the legal status of the project after substantial destruction or a substantial taking on condemnation of the project property shall require the approval of eligible holders holding mortgages on units which have at least fifty-one percent (51%) of the votes of units subject to eligible holder mortgages.

3. The Association shall represent the unit owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the common area, or part thereof. In the event of a taking or acquisition of part or all of the common area by a condemning authority, the award or

proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the unit owners and their mortgagees as their interests may appear. In the event of an award for the taking of any unit in the project by eminent domain, the owner of such unit shall be entitled to receive the award for such taking and after acceptance thereof he and his mortgagee shall be divested of all interest in the project if such owner shall vacate his unit as a result of such taking. The remaining owners shall decide by majority vote whether to rebuild or repair the project, or take other action. The remaining portion of the project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining owners in the project. In the event of a taking by eminent domain of any part of the common area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where units are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among owners of units and their respective mortgagees according to the relative values of the units affected by the condemnation, said values to be determined by the method provided in Section 8.8.

ARTICLE IX

GENERAL PROVISIONS

1. Enforcement: The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter improsed by the provisions of this Declaration, and in such action be entitled to recover reasonable attorney's fees as are ordered by the Court. Failure by the Association or by any other to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

2. Invalidity of any Provision: Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

3. Mortgage Protection Provisions: No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provision herein, shall render invalid the lien of any mortgage or deed of trust on any unit made in good faith and for value; all these covenants, conditions and restrictions shall be binding upon and effective against any owner whose title in derived through foreclosure or trustee's sale, or otherwise.

Except upon the prior written approval of at least fifty-one percent (51%) of all first mortgagees in existence on the units based on one (1) vote for each mortgagee, neither the Association nor the members shall be entitled to amend a material provision of this Declaration, or the Bylaws or the Articles. For purposes of determining what provisions are material in this Declaration and in the Bylaws or the Articles, such terms shall include provisions relating to: (a) Voting rights (b) assessments, assessment liens, or subordination of assessment liens (c) reserves for maintenance, repair and replacement of common area (d) responsibility for maintenance and repairs (e) interest in and rights to use common area (f) unit boundaries (g) annexation or withdrawal of property to or from project

(h) insurance or fidelity bonds (i) leasing of units (j) restrictions on owner's right to sell or transfer lots (k) decision by association to convert from professional management to self-management (l) restoration or repair of common area (m) action to terminate legal status of project (n) provisions which expressly benefit mortgage holders, insurers or guarantors.

No portion of the common area may be abandoned, partitioned, sold, alienated, subdivided, released, transferred, hypothecated or otherwise encumbered, without the prior approval of sixty-seven percent (67%) of first mortgagees; provided, however, the granting of easements for public utilities and other public purposes consistent with the intended use of the common area shall not require such approval.

Any first mortgagee of any unit or the common area, upon written request to the Association, is entitled to the following:

A. Copies of Project Documents: The Association shall make available to lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, Bylaws, Articles or other rules concerning the project and the books, records and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances.

B. Audited Statement: The holders of fifty-one percent (51%) or more of first mortgages shall be entitled, upon written request, to have an audited financial statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Such statement shall be furnished within a reasonable time following such request.

C. Notice of Action: Upon written request to the Association, identifying the name and address of the eligible mortgage holder or eligible insurer or guarantor, and the unit number or address, such eligible mortgage holder or eligible iinsurer or guarantor will be entitled to timely written notice of: (1) Condemnation loss or any casualty loss which affects a material portion of the project or any unit on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable; (2) any default in performance of obligations under the project documents or delinquency in the payment of assessments or charges owed by an owner of a unit subject to a first mortgage held, insured or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days; (3) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (4) any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in this Section. The Association shall discharge its obligation to notify eligible holders or eligible insurers or guarantors by sending written notices required herein to such parties at the address given on the current request for notice, in the manner prescribed by 8 of this Article.

In the event this Declaration is amended to provide for any right of first refusal in the Association, a mortgagee who comes into possession of a unit pursuant to a judicial foreclosure or a trustee's sale shall be exempt from this provision.

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

In the event that the common area or any portion thereof is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any first mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" shall mean damage exceeding Ten Thousand Dollars ($10,000). If requested in writing by a first mortgagee, the Association shall evidence its obligations under the section in a written agreement in favor of such first mortgagee.

In the event of a proposed action by the Association requiring a prescribed vote for approval by first mortgagees, if any first mortgagee does not respond to a proposal within thirty (30) days from the date of mailing of notice of such proposal that first mortgagee's vote shall be counted as a "yes" vote.

4. Owner's Right and Obligation to Maintain and Repair: Except for those portions of the project which the Association is required to maintain and repair, each unit owner shall, at his sole cost and expense, maintain and repair his unit, and shall maintain the landscaping within any private yard area appurtenant thereto which is part of the restricted common area. Each owner shall bear the cost of maintenance, repair, and replacement of the following items within or serving such owner's unit: Entrance and stairway interior surfaces of all perimeter and interior walls, ceilings and floors, hot water heaters, built-in appliances of any nature whatsoever, heating equipment servicing such unit, interior and exterior doors, and windows. Each owner shall have the exclusive right to paint, plaster, panel, tile, paper, or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, and doors bounding his unit. In the event an owner fails to maintain the interior of his unit in a manner which the Board deems necessary to preserve the appearance and value of the property, the Board may notify the owner of the work required and request that it be done within sixty (60) days from the giving of such notice. In the event the owner fails to carry out such maintenance within said period, the Board may, following notice and hearing, cause such work to be done, and may charge the cost thereof to such owner, and if necessary file suit for the amount thereof.

5. Limitation of Restrictions on Declarant: Declarant is undertaking the work of construction of the residential dwellings and incidental improvements upon the property. The rapid completion of that work and the sale, rental, and other disposal of these lots is essential to the establishment and welfare of the property as a residential community. Nothing in this Declaration shall be understood or construed to:

A. Prevent Declarant, its contractors, or subcontractors from doing on the property or any lot whatever is reasonably necessary or advisable in connection with the completion of the work; or

B. Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the property, such structures as may be reasonable and necessary for the conduct of its business of completing the work, establishing the property as a residential project, and disposing of the same by sale, lease or otherwise; or

C. Prevent declarant from maintaining such sign or signs on any of the property as may be necessary for the sale, lease, or disposition thereof; however, signs may not be posted by Declarant upon any lot not owned by Declarant unless the consent of the lot owner is first obtained. This is not intended to prohibit Declarant's use of the common area, subject to the provisions of this Article.

Nothing in this section shall be deemed to authorize Declarant to unreasonably interfere with other owners' rights and enjoyment in the common area. All rights which Declarant may claim under this section shall automatically terminate two (2) years from the issuance of the original public report for the project.

6. <u>Termination of Any Responsibility of Declarant</u>: In the event Declarant shall convey all of its right, title and interest in and to the property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

7. <u>Owners' Compliance</u>: Each owner, tenant, or occupant of a unit shall comply with the provisions of this Declaration, and to the extent they are not in conflict with the Declaration, the Articles, or the Bylaws, decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time. Failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due, for damages and/or for injunctive relief.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Articles or the Bylaws, shall be deemed to be binding on all owners of units, their successors and assigns.

8. Notices: Any notice permitted or required by the Declaration, Articles or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each person at the current address given by such person to the Secretary of the Board, addressed to the unit of such person, if no address has been given to the Secretary.

9. Fair Housing: No owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of his lot to any person of a specified race, color, religion, ancestry, or national origin.

10. Enforcement and Nonwaiver:

A. Right of Enforcement: Except as otherwise provided herein, the Association and/or any owner of any unit shall have the right to enforce any or all of the provisions of this Declaration upon any property within the project and the owners thereof.

B. Violations and Nuisance: Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by Declarant or the Association or any owners of lots.

C. Violation of Law: Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation, or use of any property within the project is hereby declared to be a violation of these restrictions and subject to any or all of the enforcement procedures set forth in these restrictions.

D. No Forfeiture of Rights: There shall be no power in the Association to cause any forfeiture or abridgment of an owner's rights to the full use and enjoyment of his individually owned subdivision interest on account of a failure by the owner to comply with provisions of the governing instruments or of duly-enacted rules of operation for common area and facilities, except where the loss or forfeiture is the result of the judgment of a Court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the owner to pay assessments levied by the Association.

E. Captions: All captions and titles used in this Declaration are intended solely for convenience or reference and shall not affect that which is set forth in any of the provisions hereof.

F. No Right Given to the Public: Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the project to the general public or for any public use or purpose.

11. Interpretation: The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the project. This declaration shall be construed and governed under the laws of the State of California.

12. Arbitration: Any disputes between the Association and any owner shall be settled by arbitration pursuant to the rules of the American Arbitration Association.

ARTICLE X

CONFORMANCE TO CITY REQUIREMENTS

1. Violation of Ordinances or Permits: Nothing in these CC&Rs shall be construed to authorize the Association, Board, Owners, or Occupants to violate the provisions or restrictions of any cognizant governmental authority, including without limitation the laws, ordinances, permits and powers of the City of Atascadero applicable to the project.

2. Approval of Amendments by the City of Atascadero: Any amendment to these CC&Rs shall be submitted for approval, and shall not become effective until such amendment has been reviewed and approved as to form by the City of Atascadero. Such review and approval shall be solely for the purpose of ensuring that such amendments do not conflict with any conditions attached to the approval of the subdivision of said City.

3. Right of City to Compel Performance: The City of Atascadero is hereby given ancillary jurisdiction over the enforcement of these CC&Rs with respect to the duty to maintain the common areas. In the event of breach of any such requirements, the City of Atascadero may give written notice of such breach or interference to the Association, together with a demand on the Association to remedy the breach. If the Association refuses to do so, or fails to take appropriate action within thirty (30) days of receipt of said notice, upon a resolution of the City Council of said City, the City shall have full power to perform the necessary maintenance and repair to the Common Area and to charge the cost thereof to the Association. Any funds collected by the City shall be applied, after deducting expenses of enforcement, to correct the breach or interference, and any excess funds shall be paid to or applied for the benefit of the Association and its members.

ARTICLE XI

AMENDMENT TO DECLARATION

Prior to the sale of the first lot, Declarant may amend this Declaration by recording a copy of such amendment in the office of the

County Recorder of San Luis Obispo County, California, with the prior consent of the California Department of Real Estate.

After the sale of the first lot, this Declaration may be amended by the vote or written consent of sixty-seven percent (67%) of the total voting power of the Association and at least a majority of members other than the Declarant; or, if a 2-class voting structure is still in effect, sixty-seven percent (67%) of the voting power of each class of members. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Notwithstanding anything herein contained to the contrary, no such amendment shall be effective for any purpose unless and until the same has been reduced to writing, signed by two officers of the Association who shall certify that said amendment was made in compliance with this Article, and recorded in the office of the County Recorder of San Luis Obispo County, California.

Notwithstanding any other provisions of this Declaration, no amendment, change, modification, or termination of the conditions, covenants and restrictions of this Declaration regarding the duty of the Association to maintain the common area and elements shall be effective for any purpose until approved in writing by the Planning Director of the City of Atascadero.

ARTICLE XII

ANNEXATION

Additional parcels and phases may be annexed to and become subject to this Declaration upon approval in writing of the Association, pursuant to vote or written consent of a two-thirds (2/3) majority of the voting power of the members, excluding the Declarant, and the approval of the California Department of Real Estate and of sixty-seven percent (67%) of all mortgagees of units. The Association and the owners of any property who desires to add it to the scheme of this Declaration under this Article and to subject it to the jurisdiction of the Association shall file and record a Declaration of Annexation.

John R. Madrid
JOHN R. MADRID

Valerie L. Ingels
VALERIE L. INGELS

Declarants

3001 (6/82) (Individual) First American Title Company

STATE OF CALIFORNIA
COUNTY OF San Luis Obispo } ss.

On October 12, 1989 before me, the undersigned, a Notary Public in and for said State, personally appeared John R. Madrid

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

WITNESS my hand and official seal.

Signature Cynthia A. Wilson

CYNTHIA A. WILSON
NOTARY PUBLIC
SAN LUIS OBISPO COUNTY
CALIFORNIA
My Commission Expires on April 5, 1991

(This area for official notarial seal)

3001 (6/82) (Individual) First American Title Company

STATE OF CALIFORNIA
COUNTY OF San Luis Obispo } ss.

On October 11, 1989 before me, the undersigned, a Notary Public in and for said State, personally appeared VALERIE L. INGELS

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

WITNESS my hand and official seal.

Signature Cynthia A. Wilson

CYNTHIA A. WILSON
NOTARY PUBLIC
SAN LUIS OBISPO COUNTY
CALIFORNIA
My Commission Expires on April 5, 1991