

17D

RETURN TO:

OAKMONT DEVELOPERS, INC.
6637 OAKMONT DRIVE
SANTA ROSA, CA 95405

Recorded At Request Of
TICOR

at _____ min. past 8 A.M.

APR 12 1988

OFFICIAL RECORDS
SONOMA COUNTY CALIF.

Remiss of [Signature]

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OAKMONT VILLAGE DECLARATION NO. 40
OF
PROTECTIVE RESTRICTIONS

THIS DECLARATION is made on the date hereinafter set forth by OAKMONT DEVELOPERS, INC., a California corporation, hereinafter referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant is the owner and/or developer of certain real property situated in the County of Sonoma, State of California, which is more particularly described in Article I hereof; and

WHEREAS, Declarant is about to, or will in the future, sell, or convey the said real property or portions thereof, subject to certain protective restrictions, covenants, conditions, reservations, liens, and charges between Declarant and the purchasers and users of said property as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the real property described herein is held and shall be held, conveyed and transferred, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following limitations, to be in the furtherance of a general plan for the subdivision, improvement and sale of the said real property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the real property and every part thereof. All of said limitations, covenants and restrictions, shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the described real property or any part thereof, and shall be for the benefit of each owner of any portion of said real property or any interest therein, and shall inure to the benefit of and be binding upon each such successor in interest of the owners thereof as follows:

ARTICLE IPROPERTY SUBJECT TO DECLARATION

The real property subject to this Declaration which hereinbefore and hereinafter is sometimes referred to as "said property" or "subject property", is more particularly described as:

"All that certain real property situated in the City of Santa Rosa, County of Sonoma, State of California, consisting of Lots 1 to 26, inclusive, and Parcel "A", as shown on map entitled "Oakmont No. 17-D" and recorded on the 1st day of April 1, 1988, in Book 415 of Maps at Pages 14 - 17 in Office of the Recorder of the County of Sonoma, State of California.

ARTICLE IIDEFINITIONS

Certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefor:

1. Approvals and Consents. Approval, consent, authorization or permission shall mean an approval, consent, authorization or permission in writing.
2. Architectural Committee. The Architectural Committee hereinafter established with powers as hereinafter provided.
3. Articles of Incorporation and By-Laws. Articles of Incorporation or By-Laws, as the case may be, of the Association as the same may be amended from time to time.
4. Association. OAKMONT VILLAGE ASSOCIATION, a California non-profit corporation.
5. Building. "Building" shall mean any structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals, or property.
6. Building Envelope. "Building Envelope" shall mean the area within which structures must be confined, as designated on the supplemental data sheet of the Final Subdivision Map of the subject property.
7. Community Facilities. Streets, roadways, drives, walks, alleys, electrical, water, gas and telephone service and

fixtures, dressing rooms, swimming pools and the accessory equipment to such parks, open spaces, parkways, planted landscaped areas, sprinkling systems, playgrounds, gates, recreation areas, tennis courts, clubhouses, places of amusement and other facilities of like nature, all for the use and benefit of the owners of the subject property, or any portion thereof, owned or to be owned by the Association.

8. Declarant. OAKMONT DEVELOPERS, INC., a corporation.

9. Declaration. Refers to this Declaration as the same may be amended, changed, or modified from time to time.

10. Hillside Lot. Hillside lot means all lots with building envelopes as shown and designated on the supplemental data sheet of the Final Subdivision Map of the subject property.

11. Lot. Lot means the land which is conveyed separately to the owner thereof as designated in the map recorded in the County Recorder's Office.

12. Owner's Immediate Family. For the purpose of defining "owner's immediate family" and for no other purpose, the word "owner" as used in this Paragraph 12 of Article II shall mean:

- (a) The owner, if the owner be a natural person, or
- (b) The members of the Board of Directors, if the owner be a corporation, or
- (c) Each of the general partners, if the owner be a partnership, or
- (d) Each of the members of the governing body, if the owner be an association, or
- (e) Each of the owners, if the owner be more than one person, and "owner's immediate family" shall include the owner, particularly described in this Paragraph 12 of Article II, owner's spouse, brothers, sisters, nephews, nieces, parents and children of owner and owner's spouse.

13. Owner, Record Owner and Owner of Record Title. The record owner of any part or portion of subject property as shown by the records of the County Recorder of Sonoma County, California.

14. Person. A "person" shall include a natural person, partnership, an association and a corporation unless the context indicates a contrary meaning.

15. Structure. "Structure" shall mean that which is built or constructed by human hand, including but not limited to, an edifice or a building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

ARTICLE IIIPROPERTY REQUIREMENTSSection 1. Ownership and Occupancy.

(a) Membership in Association. Subject to the provisions hereinafter contained, relative to multiple ownership and voting rights, every person who shall own any part of the subject property shall be a member of the Association and shall be subject to the rules and regulations of the Association.

(b) Ownership. The lot ownerships and/or apartment ownerships governed by this Declaration may be owned by any person.

(c) Age Occupancy Restriction. This project is a senior citizen housing development. No dwelling unit erected upon the real property subject to this Declaration may be occupied in whole or in part, except as follows: (a) one person in residence must be age 55 or older, and (b) each other person in residence in the same dwelling unit must be such person's spouse, co-habitant, a person age 45 or older, a person providing primary physical or economic support for the resident age 55 or older, or a dependent adult of any of such persons. Co-habitant means persons who live together as husband and wife. Upon the death, dissolution of marriage, upon hospitalization or other prolonged absence of the resident age 55 or older, nothing in this paragraph shall prevent such person's spouse, co-habitant, person providing primary physical or economic support, or person age 45 or older then residing therein from continuing his or her or their occupancy of the dwelling unit with their dependent adults, if any. Any person may be a temporary occupant of such dwelling unit as a guest of any of the persons described above for not more than ninety (90) days in any calendar year.

Section 2. Uses of Property:

(a) Residential Use. No building or other structure shall be constructed, erected, altered, or maintained upon any portion of the subject property which shall be used, designed or intended to be used for any purpose other than for residential purposes, together with an attached or detached private garage or carport, provided, however, that nothing contained in this paragraph shall be construed to apply to or to limit the use of the common area.

(b) Building Location and Set-Back Line. Except with the approval of the Architectural Committee, no building shall be located on any lot nearer to the front line or nearer to the side street line than the minimum building set-back line shown on the supplemental data sheet of the Final Subdivision Map of the

subject property. In any event, except with the approval of the Architectural Committee, no building shall be located on any lot nearer than fifteen (15) feet to the front lot line and no further than thirty (30) feet from the front lot line or nearer than ten (10) feet to any side street line. Except with the approval of the Architectural Committee, no building shall be located nearer than three (3) feet to an interior lot line or nearer than fifteen (15) to the rear lot line. For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. Provisions in this paragraph pertaining to the set-back of an interior lot line shall not apply to a lot line which divides the two dwelling units of a duplex.

(c) Painting. The owner of each lot shall keep the building thereon in good order and repair and shall keep the exterior thereof painted so that the same shall present a clean and well-kept appearance at all times.

(d) Mining and Drilling. No derricks, pump or any other equipment or structure for boring, drilling, mining or extracting any oil, gas, or mineral of any kind or nature whatsoever, shall be erected, placed or permitted upon any part of subject property, nor shall any oil, gas, petroleum or other hydrocarbon substances be extracted from the surfaces of the subject property provided, however, that nothing herein contained shall prevent the extraction or capturing of any oil, gas, petroleum or other hydrocarbon substance or mineral or mineral substance by slant well drilling or by other similar operations so long as nothing shall be permitted to disturb the surface of said property or any improvement thereon or occupants thereof.

(e) Animals and Poultry. The raising and/or keeping of livestock, and/or other animals, poultry, birds and/or reptiles, for pleasure or commercial gain upon any part of said property is prohibited except that no more than two (2) dogs, cats and other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and further provided that they do not become a nuisance to other owners or occupants of property subject to the control of the Association, and if and when declared to be a nuisance by the Board of Directors of the Association, such dog, cat or other household pet or pets shall be forthwith removed from the subject property.

(f) Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of said property and no order shall be permitted to arise therefrom which is or may be detrimental to any property in the vicinity thereof or the occupants thereof and no nuisances shall be permitted to exist or operate upon any portion of said property

which are offensive or detrimental to any property in the vicinity thereof, or to its occupants.

(g) Clotheslines. No clotheslines, clothes racks or other apparatus upon which clothes, rugs or similar items are exposed for the purpose of drying or airing shall be located except where such clotheslines shall be adequately concealed so as to screen its view from any portion of the adjacent property. No clothesline shall be placed in carports or open garages.

(h) Condition and Repair. No building or structure upon any property covered by this Declaration shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted.

(i) Maintaining Drainage. No obstruction, diversion, bridging or confining of existing channels upon, under and/or across any portion of said property through which water in times of storms, or otherwise naturally flows, or through which water has been caused to flow artificially by Declarant in the development of said property, shall be made by any person, provided, however, that the right is hereby expressly reserved to Declarant and/or to any corporation owned or controlled by Declarant at an incident to the development of the entire property, to change existing channels for the natural flow of water, and also to create channels and means of artificial drainage and water flow, and further, to cause reasonable increases or decreases in the amount of water which would in a state of natural flow into and through any such natural or artificial water channels or means of drainage. No change shall be made in the grade of any property as established by the developer or its engineers without the written consent of the Architectural Committee.

(j) Temporary Structures. No structure of a temporary character, basement, tent, garage, barn or other out building shall be used on any lot at any time as a residence either temporarily or permanently. No trailer, boat or truck may park on any lot unless approved by the Architectural Committee. Provided, however, that nothing herein contained shall apply to temporary or other buildings or structures erected, constructed, owned, used or maintained by Declarant or its agents or contractors, or by corporations owned and/or controlled by Declarant for use in connection with its construction, development, sale or lease of any part or portion of said property.

(k) Billboards and Signs. No billboard, poster or sign of any character shall be erected, maintained, or displayed upon or about any part of said property without the approval of the Architectural Committee, and any billboard or sign not so permitted shall be summarily removed and destroyed. Provided, however, that nothing herein contained shall apply to any

billboard, poster or sign erected or used or maintained by Declarant or its agents or contractors or by any corporation owned or controlled by Declarant for or in connection with the construction, development, sale or lease of any portion of said property. Provided, further, that nothing herein shall be deemed to prevent display of the sign of customary and reasonable dimensions advertising the property described herein as for sale.

(l) Sight Distance at Intersections. No fence, wall, structure, hedge, shrub, or other planting over three (3) feet in height (or over twenty-four [24] inches in height within five [5] feet of the curb line) shall be permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them thirty (30) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended except with the approval of the Architectural Committee. Except with the approval of the Architectural Committee, no tree shall be permitted to remain within such distances of such intersection as the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(m) Trees, Hedges and Shrubs. No trees shall be planted in the front parkway or between the front dwelling unit line and the front property line without first securing written approval of the Architectural Committee. All trees, hedges, shrubs, flowers or grass growing on a lot shall be maintained and cultivated so that insects, pests and/or diseases shall not be a menace to other trees, hedges, flowers or lawns or surrounding properties, and so that the lot is not detrimental to the neighborhood as a whole.

(n) Golf Course Lots. On any lot abutting the golf course, no fence, wall or other structure shall be constructed on the perimeter of a lot abutting the golf course closer than twenty-five (25) feet from the lot line which abuts the golf course except with the approval of the Architectural Committee.

(o) Carports and Garages. Use of carports or open garages shall be limited to the storage of vehicles, except the storage will be permitted within the enclosed closed storage areas.

(p) Television Antennas. No television antenna shall be permitted to be maintained on the roof or other exterior surface of any dwelling.

(q) Gravel Landscaping. Landscaping with gravel or rock shall not be permitted in the front yard of any dwelling where such gravel constitutes an excess of fifteen percent (15%) of the front yard area exclusive of driveways and walks.

(r) Hillside Lots. Hillside lots are subject to the following additional restrictions:

(1) All buildings shall be limited to a maximum height of thirty-five (35) feet, except for any building located above the Five Hundred (500) ft. elevation, which buildings shall be further restricted to a standard, single-story height.

(2) All construction shall be subject to site design review to insure that it fits each site and preserves the natural features of the site, including trees and existing topography.

(3) To reduce apparent bulk and mass of houses, no houses shall stand on high piers and beams.

(4) There shall be no flat pad grading of lots.

(5) Decks extending from houses sited on sloping terrain are to be provided in lieu of large levelled lawn areas and surface patios.

(s) Grading Restrictions. Lots 1 through 26, inclusive, as shown and designated on the Final Subdivision Map of the subject property shall have grading limited to garage pads, driveways, necessary walks, understructure areas, pools and minor landscape areas.

(t) City Requirements. The development of each lot shall comply and be in conformity with the City of Santa Rosa adopted zoning for the subject property, including the approved Policy Statement and Development Plan, and the conditions of approval of the tentative map for this subdivision.

Note: The City of Santa Rosa cannot guarantee water service above elevation 600 feet. An individual water booster pump shall be required behind the meters for Lots 9 through 12, inclusive of the subject property.

Section 3. Architectural Control:

(a) Approval of Plans, Planting, and Alterations. No building, fence, wall, tent or any other structure shall be erected, constructed, altered or maintained upon, under or above or moved upon any part of said property, and no grading, cuts, fill or excavation shall be done, changed or altered (except such as may be erected, constructed, done, changed, altered, maintained or moved by the Declarant or by the corporation owned or controlled by the Declarant), unless the plans and specifications thereof, showing the construction, nature, kind, shape, height, material, and exterior color scheme thereof, and a plot plan

indicating the location of such structure on the building site to be built upon and grading plan (if requested) of the building site shall have been submitted to and approved by the Architectural Committee, and a copy of such plans and specifications, plot plan and grading plan as finally approved is deposited for permanent record with the Association.

(b) Approval of Completed Works of Improvement. All construction work of improvement, alteration and other work of whatever kind, covered by the plans and specifications, plot plans, grading plans and other plans and matters requiring Architectural Committee approval shall be done and performed in accordance with the approval given, and upon the proper completion thereof, the Architectural Committee shall, upon written request, issue its Certificate of Completion in compliance or its written specific objection to the work as non-complying. If said committee fails to issue such Certificate of Completion in compliance and/or written specific objection within thirty (30) days after the request in writing for the same has been made to it, proper completion of the construction work or alteration involved shall be conclusively presumed.

(c) Approval of Subdivision Plans. No part of the property covered by this Declaration shall be resubdivided nor shall any additional map of the same be recorded unless and until the same shall have been submitted to and approved, in writing, by the Architectural Committee.

(d) Right of Inspection. During reasonable hours, any member of the Architectural Committee or any agent of such committee or any representative of the Association or Declarant shall have the right to enter upon and inspect any portion of said property and the exterior of the buildings and improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and shall not become liable therefor or be deemed guilty of trespass nor any other tort by reason thereof.

(e) Waiver and Liability.

(i) The approval of the Architectural Committee or the Association or its Board of Directors or Declarant of any plans and specifications, plot plan, grading or any other plan or matter requiring approval under this Declaration shall not be deemed a waiver of any right to withhold approval as to a similar or other feature or element embodied therein and subsequently or additionally submitted for approval.

(ii) Neither the Architectural Committee nor any member thereof nor the Association nor its Board of Directors nor its officers nor Declarant nor its agents shall be in any way responsible or liable for any loss or damage in any case or

instance for any effort or defect which may or may not be shown on any plans and specifications or on any plot or grading plan or planting or other plan or in any building or structure or part or portion thereof nor work done in accordance with such plans and specifications or plan nor for any error or defect nor for any act or omission in the premises nor in creating or maintaining drainage channels, diversions or facilities or in any instance whatsoever in developing or maintaining subject or adjoining property nor in connection with any such matter whether or not the same has been approved by said Architectural Committee and/or any member thereof and/or the Association and/or its Board of Directors and/or Declarant.

ARTICLE IV

ARCHITECTURAL COMMITTEE

Section 1. Members of Committee: The Architectural Committee shall consist of three (3) members, each of whom shall be appointed or elected for the term and be subject to the provisions set out in this Declaration. No member of said committee shall be required to be a member, director, or officer of the Association.

Section 2. Appointment and Election of Committee Members:

(a) Appointment of Members. The right to appoint the members of the Architectural Committee shall be and is hereby vested solely in the Declarant for a period of ten (10) years from the date of the recording of this Declaration, unless prior to the expiration of said period, Declarant releases such right of appointment to the Association by the recording of a statement of such release, duly executed by Declarant. Each member of said Committee, subject to appointment by Declarant, shall serve until such time as Declarant removes him and appoints a member to succeed him by recording a notice of such removal and appointment and/or until such member resigns by recording a notice of such resignation, provided that the terms of all members appointed by Declarant shall expire at the end of said ten (10) year period. The original members of such committee are hereby appointed by Declarant and are the following:

WILLIAM P. GALLAHER

PATRICK R. GALLAHER

JEFFREY D. CIVIAN

Notwithstanding anything to the contrary herein contained, at any such time as (1) ninety percent (90%) of the units herein described have been sold, and (2) no new increment or subdivi-

sion, the purchasers of which will by virtue of recorded deed restrictions become members of OAKMONT VILLAGE ASSOCIATION, has been commenced by Declarant or its successors in interest for a period of two (2) years after the date upon which ninety percent (90%) of said units were sold, the new members of OAKMONT VILLAGE ASSOCIATION may, by a vote of seventy-five percent (75%) of said members, elect to appoint the members of the Architectural Committee. In such event, said appointment shall be made as provided in subparagraph (b) of this Section 2. No Architectural Committee so appointed shall have any jurisdiction or control over any new increment or subdivision which may thereafter be added by Declarant or its successors in interest notwithstanding the fact that the purchasers thereof may become members of OAKMONT VILLAGE ASSOCIATION.

(b) Appointment by Board of Directors of Association. Upon the expiration of ten (10) years from the date of recording of this Declaration or upon the right of appointment of said members being released by Declarant prior to the expiration of said ten (10) year period, the authority to appoint the new members of the Architectural Committee by the Association, as aforesaid, the Architectural Committee shall be deemed a committee of the Association and shall thereafter, but not before, anything to the contrary in this Declaration notwithstanding, be subject (within the limits set out in this Declaration) to its control and jurisdiction. The term of office and compensation, if any, of the members of the Architectural Committee elected by the Board of Directors shall be governed and controlled by the provisions of the By-Laws of the Association.

Section 3. Powers of the Architectural Committee. The powers and authority of the Architectural Committee shall be as provided in this Declaration and shall apply only to the property covered by this Declaration. The powers and authority of the Architectural Committee shall not be enlarged or diminished except by modification or amendment of this Declaration as provided hereafter, and the same shall not be limited or changed by the Board of Directors of the Association.

Section 4. Action by Committee:

(a) Any action by the Architectural Committee shall require the affirmation of at least two (2) of its members. The Committee may act in any writing signed by at least two (2) of its members.

(b) The Architectural Committee may appoint a representative who may but need not be a member of the Committee, which representative may exercise all of the powers of the Committee as set forth in this Declaration, and the acts of such representative for and on behalf of the Committee within the scope of the powers of the Committee as set forth in this

Declaration shall be deemed the acts of the Committee for all purposes.

ARTICLE V

OAKMONT VILLAGE ASSOCIATION

Section 1. Purposes of Association: Oakmont Village Association, a non-profit corporation organized under the laws of the State of California, shall have the rights, powers and duties as set forth in its Articles of Incorporation, together with its general powers as a non-profit corporation, subject to the provisions of this Declaration and any limitations imposed hereby, to do and perform each and every of the following for the benefit, maintenance and improvement of the property covered by this Declaration and for the benefit of the owners thereof, to wit:

(a) To purchase, lease, or otherwise acquire, construct, improve, repair, maintain, care for, own and dispose of all community facilities as hereinbefore defined in Article II of this Declaration, which shall be appropriate for the use and benefit of the owners of and/or the improvement and development of the subject property or any part thereof, and to charge for the use thereof.

(b) To provide for the maintenance, beautification and landscaping of said community facilities; to provide for the collection and disposition of street sweeping, ashes, garbage, rubbish and the like and to make and collect charges therefor. Insofar as it can legally do so, to grant franchises, rights of way, and easements for public utilities and other purposes over and under any of said property.

(c) To remove, clean up and/or burn grass and weeds and to remove any unsightly or obnoxious things from the subject property and to take such action as may be necessary or desirable to keep the subject property neat and in good order and to make and collect additional charges therefor as hereinafter provided.

(d) To the extent not assessed or paid by the several owners thereof, pay all real property taxes and assessments levied upon any part or portion of the community facilities by a duly authorized governmental or quasi-governmental authority.

(e) To the extent not purchased, owned and maintained by the several owners thereof, and to the extent deemed necessary by the Board of Directors of the Association, to purchase, carry, and at all times maintain in force, fire, liability and other insurance covering all the community facilities, the improvements thereon, and appurtenant thereto in such amounts and with endorsements and coverage as shall be considered good sound

insurance coverage for like structures by the Board of Directors of the Association.

(f) To pay for such utility services as may be applicable to the Association.

(g) To exercise control over the occupancy, leasing and transfer of ownership in accordance with the provisions of this Declaration and/or the provisions of such other Declaration of protective restrictions heretofore or hereafter filed which vest such power in Oakmont Village Association and/or in accordance with the By-Laws of Oakmont Village Association.

(h) To enter into, make, perform and carry out contracts of every kind and character for any lawful purpose consistent with its status as a non-profit corporation.

(i) To exercise such powers of enforcement, control, interpretation, modification and cancellation of this Declaration which now are or hereafter may be vested in, delegated to or assigned to the Association, and to pay all expenses incidental thereto. To commence and maintain in its own name or on behalf of itself or any owner of any portion of the subject property (with the owner's consent), or in the name of or on behalf of and as the agent of any owner, actions and suits to restrain and enjoin the breach or threatened breach of this Declaration or any portion thereof and to enforce this Declaration and to pay the expenses therefor.

(j) To make, establish, publish, promulgate, amend, repeal, and to enforce rules and regulations governing the use of community facilities on the subject property and governing the conduct of various owners of the subject property with relation thereto, which rules and regulations, and each of them, as the same are established from time to time, shall be binding upon each and every such owner and all the occupants of the subject property, provided, however, no ground rule shall ever be established which shall not apply equally to all such owners, and provided further that no such ground rule, amendment or repeal thereof shall be effective until and unless the same, or a copy of the same shall be furnished to each such owner by mailing ordinary mail or by delivering the same in person.

(k) Generally to do any and all things that a corporation organized under the laws of the State of California may lawfully do in operating for the benefit of its members, except as expressly limited in its Articles of Incorporation and in this Declaration, and to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration and do to and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association

or for the peace, health, comfort, safety and the general welfare of the owners of any property subject to the jurisdiction of the Association.

(1) All powers and authorities granted to the Association in this Declaration, and elsewhere, shall be subject and subordinate to all the rights, powers and authority granted to the Architectural Committee and the Declarant under the provisions of this Declaration.

Section 2. Membership in the Association. Membership in the Association and voting rights and other rights of members shall be as is provided in the Articles of Incorporation of the Association and/or the By-Laws of the Association and nothing set forth in this Declaration is intended to vary, change, modify or limit the provisions of said Articles of Incorporation and/or By-Laws relating to membership and voting rights of members. A copy of the Articles of Incorporation and a copy of the By-Laws will be furnished to each purchaser.

Section 3. Charges, Assessments or Liens: Each lot, lot ownership, apartment ownership or mobile home space as the same may be hereinbefore or hereinafter defined, and the improvements thereon, hereinafter, for the purpose of this Section 3. collectively referred to as dwelling units except such as are owned by the Association and/or by Declarant or a corporation owned or controlled by Declarant, shall be subject to general and special charges and assessments and liens to secure the payment of the same. The Association shall have the sole authority to fix and establish the amounts of general and specific charges and assessments provided for in this Article V and the amounts of such interest, costs, (including attorney's fees) and penalties for the late payment or the non-payment thereof.

(a) General Charges, Assessments and Liens.

(1) The general charges and assessments shall be fixed and established annually, or more often, by the Board of Directors of the Association and shall be collected monthly by the Association, as hereinafter provided.

(i) The Board of Directors of the Association shall annually, as hereinafter provided by the resolution duly adopted, estimate, in its best judgment, the cash requirements reasonably necessary or proper; (a) for the operation of the Association and the operation, maintenance, care and improvement of the community facilities for the year or portion of the year for which such estimate is made, which estimate of cash requirements may include, among other things, taxes, assessments, sewer, electrical, water, gas, and telephone charges, insurance premiums, operating expenses, legal and accounting fees, management fees, employee's gratuity funds, maintenance, costs, alterations,

replacements and repairs relative to the community facilities and any other part of the subject property, salaries, costs of leasing or purchasing real or personal property, interest on mortgage, trust deed or other indebtedness and principal on the same, the payment of any other liens or charges and expenses for any other corporate purposes; (b) for the creation of such reserves for future maintenance and such reserve for contingencies as may seem proper; and (c) for the payment or establishment of a reserve for any obligations, liabilities incurred, even though incurred during a prior period, or to be incurred.

(ii) The Board of Directors of the Association may, from time to time, by a resolution adopted at any general or special meeting, establish an estimate and fix general charges and assessments or modify any estimate or estimates previously made, and increase or diminish the amount previously estimated as cash requirements of the Association for any year or portion thereof, and increase or diminish the amount of general charge and assessment provided that no such determination by the Board of Directors shall have any retroactive effect on the amount of charge or assessment payable by any owner for any period elapsed prior to the date of such determination.

(2) The general charge and assessment levied against each such dwelling unit shall be based upon the number of persons residing in each such dwelling unit. Such general charges and assessments shall not be less than One Dollar (\$1.00) per month per person and not more than Seven Dollars (\$7.00) per month per person except upon the vote or written assent of two-thirds (2/3) of the members of the Association, provided, however, that vacant dwellings shall be assessed as if they had one occupant.

(b) Special Charges, Assessments and Liens. The special charges and assessments and the liens securing the same provided for in this subsection (b) shall be fixed, levied and enforced in, and to the same effect, as the general charges and assessments provided for in subsection (a) of this Section 3. Provided, however, that any special charges and assessments shall be and are payable in full on the 1st day of the second calendar month next after the date the same shall be affixed and established by the Board of Directors of the Association.

(1) The Board of Directors may annually or more often fix and establish the special charges and assessments against any dwelling unit to defray the cost of such clean-up work as may be necessary in accordance with the provisions of subsection (c) of Section 1. of this Article V, provided that the charges and assessments collected from the owners thereof shall be in such amounts as shall have been expended solely for the cleaning-up and keeping in good order of such site.

(2) The Board of Directors of the Association shall have the power to levy special charges and assessments against individual dwelling units to defray expenses the Association incurred in the fulfillment of its powers and duties provided for herein, which said costs and expenses shall have been incurred for the benefit of such individual dwelling units or shall have been occasioned by the fault or neglect of the owners thereof.

(c) Collection and Expenditure of Charges and Assessments. Except as may be hereinafter provided, the Association shall have the sole authority to collect and enforce the collection of all charges and all assessments provided for in this Article V, and may, in addition to such charges and assessments, charge and assess costs, penalties and interest for late payment and non-payment thereof - costs may include reasonable attorney's fees - and to expend all monies collected from such charges, assessments, costs, penalties and/or interest for the payment of expenses and costs of carrying out the rights and powers of the Association as provided for in this Declaration and/or in the Articles of Incorporation and/or in the By-Laws of the Association.

(d) Delinquency of Charges and Assessments. Thirty (30) days after any general or special charge or assessment shall be due and payable and unpaid or not otherwise satisfied, the same shall be and become delinquent and shall so continue until the amount of said charge and assessment, together with all costs, penalties and interest as herein provided have been fully paid or otherwise satisfied.

(e) Notice of Delinquency. At any time after any general or special charge and assessment against any dwelling unit has become delinquent, the Association may record a Notice of Delinquency as to such dwelling unit, which notice shall state therein the amount of such delinquency and the interest, costs (including attorney's fees) and penalties, which have accrued thereon, description of the dwelling unit against which the same has been assessed, and the name of the record or reputed owner thereof, and such notice shall be signed by an officer of the Association provided that upon the payment of said charges, assessments, interests, penalties and costs in connection with which such notice has been so recorded or other satisfaction thereof, the Association shall record a further notice stating the satisfaction and release of the lien thereof.

(f) Attachment of Lien. Immediately upon the recording of any Notice of Delinquency pursuant hereto, the amounts of the delinquency set forth therein and the interest, costs and penalties accrued and accruing thereon, shall be and become a lien upon the dwelling unit described therein, which lien shall continue until the amount of such delinquency and the interest, costs and penalties accrued thereon have been fully paid or

otherwise satisfied or the lien foreclosed as provided for herein.

(g) The Enforcement of Liens. Each lien established pursuant to the provisions of this Declaration by the recording of a Notice of Delinquency as hereinabove provided, may be foreclosed as and in the same manner as is provided for the foreclosure of a mortgage upon the real property by the laws of the State of California at the date of the commencement of such foreclosure action. Interest shall accrue at the rate of seven percent (7%) per annum upon all unpaid charges or assessments from the date of delinquency. In any action to foreclose such lien the Association shall be entitled to costs, including reasonable attorney's fees and such penalties for delinquent charges and assessments as shall have been established by the Board of Directors of the Association.

(h) Reservation of Assessment Liens. Declarant as to the property covered by the Declaration and each dwelling unit embraced therein has established and does hereby establish, reserve and impose a lien thereon securing each charge and each assessment provided for by this Article V, together with said costs, penalties and interest, and Declarant does hereby assign to the Association the right to collect and enforce the collection of the same in accordance with and subject to the limitations contained in each of the provisions of this Declaration.

(i) Mortgage Protection. Notwithstanding all other provisions hereof:

(1) The liens created hereunder upon the interest of any dwelling unit shall be subject and subordinate to, and shall not affect the rights of the holder of an indebtedness secured by any mortgage or deed of trust upon such interest made in good faith and for value which said mortgage or deed of trust had been recorded prior to the recording of a Notice of Delinquency (as provided in Paragraphs (e) and (f) of this Section 3), provided that after the foreclosure of any such mortgage or deed of trust there shall be a lien upon the interest of that purchaser at such foreclosure sale to secure all assessments and charges whether general or special assessed hereunder to the purchaser as an owner after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided herein.

(2) No amendment of this Section 3 shall affect the rights of the holder of any such mortgage or deed of trust recorded prior to recordation of such amendment who does not join in the execution thereof.

ARTICLE VIENFORCEMENT

Section 1. Enforcement: The Association, Declarant or any owner or owners shall have the right and power to enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and/or by conveyance, lease or contracts of sale upon said property covered by this Declaration or any portion thereof except as provided to the contrary in the instrument creating the same, provided that such right and/or power of the Association shall not be exclusive unless expressly so provided and when not exclusive, may be exercised severally or jointly with Declarant and/or any owner or owners.

Section 2. Nuisances and Violations of Provisions. Every act or omission whereby any restrictions, conditions or covenant in this Declaration set forth or to which the said property or any portion is subject is violated in whole or in part is declared to be and shall constitute a nuisance and maybe enjoined or abated by the Association and/or Declarant. Each remedy provided for in this Declaration shall be cumulative and not exclusive.

ARTICLE VIIDURATION OF RESTRICTIONS

Section 1. Duration of Restrictions: All of the restrictions, conditions, covenants, reservations, liens and charges set forth in this Declaration shall continue and remain in full force and effect at all times against said property covered by this Declaration, and each part thereof, and the owners thereof, subject to the right to amend, change, modify and terminate provided for in Section 2. of this Article VII for a period of twenty-one (21) years from the date hereof. Provided, however, that all of said restrictions, conditions, covenants, reservations, liens and charges in this Declaration contained which are subject to expiration as the same are in force immediately prior to such expiration shall continue automatically without further notice from that time for a period of ten (10) years and thereafter for successive periods of ten (10) years, each without limitation unless within six (6) months prior to any said expiration date there shall be recorded a written agreement executed by the then record owners (including mortgagees under recorded mortgages and trustees and beneficiaries under record trust deeds) of more than three-fourths (3/4) of the lot ownerships or apartment ownerships embraced with the property covered by this Declaration exclusive of property owned by the Association by the terms of which agreement any or all of said restrictions, conditions, covenants, reservations, liens and charges are changed, modified or extinguished in whole or in part as to all

or any part of the property subject thereto. In the event that any such written agreement or change or modification shall be duly executed and recorded as provided herein, the restrictions, conditions, covenants, reservations, liens and charges as changed or modified thereby shall continue in force for successive periods of ten (10) years from and after the date of said change or modification unless and until further change, modified or extinguished in the manner provided above.

Section 2. Modification of Restrictions:

(a) Method of Modification. Amendment, change, modification, or termination of all or any of the restrictions, conditions, covenants, reservations, liens or charges set forth in this Declaration (and as the same may be incorporated in any deed, contract of sale or lease) may be made and effected from time to time by written instrument duly executed by the owners of three-fourths (3/4) of the lot ownerships or apartment ownerships, and then recorded.

(b) Consent of Members Required. Notwithstanding anything to the contrary contained herein, no modification of any of the provisions contained herein relative to the Oakmont Village Association shall be effected unless consented to by three-fourths (3/4) of the members of said Association.

(c) Consent of Mortgagees, Trustees and Beneficiaries. "Owner", "Record Owner", and "Owner of Record Title", and the plural of each of said terms as used in this section shall include not only the persons designated in Paragraph 10 of Article II hereof, but also each mortgagee, beneficiary, and trustee under a trust deed appearing of record shall be deemed an owner of land covered by his mortgage, trust deed, lease or contract of sale with rights under the this Section 2 equal to those of the owners.

(d) Consent of City of Santa Rosa. Notwithstanding the foregoing, no modification or deletion of Subsections (l), (r) and (t) of Section 2 of Article III, Subsection (d), of Section 2 of Article VII, or Article XI shall be effected unless prior written approval of the City of Santa Rosa is first obtained.

ARTICLE VIII

MISCELLANEOUS

Section 1. Acceptance of Provisions by Grantees. The Association and each grantee hereafter of any part or portion of the property covered by the Declaration, and any purchaser under the contract of sale or lessee under any lease covering any part or portion of such property accepts the same, subject to all of the restrictions, conditions, covenants, reservations, liens and

charges and the jurisdiction, rights and powers of the Association, the Architectural Committee and Declarant provided for in this Declaration.

Section 2. Conclusiveness of Records. For the purpose of making a title search upon guarantying or insuring title to any lot, or lot ownership, or apartment ownership, or interest therein, or lien, or mortgage or trust deed thereon embraced within the property and for the purpose of protecting purchasers and/or encumbrancers in good faith and for value or any other lawful purpose or purposes:

(a) As to any act or non-act of the Association, its departments, committees, or agents (excepting the Architectural Committee) and/or as to performance or non-performance of any act of any owner of any lot, or lot ownership embraced within the subject property or of any interest therein or lien or mortgage or trust deed thereon, including but not limited to the payment of any dues, fees, charges or assessments, interest, costs and penalties, a certificate as to any matters contained in the records of the Association certified by the secretary thereof shall be conclusive proof as to all matters shown by such certificate.

(b) As to any act or non-act of Declarant, a certificate as to any matters contained in the records of Declarant certified by Declarant or his duly authorized agent shall be conclusive proof as to all matters shown by such certificate.

(c) As to any act or non-act of the Architectural Committee, a certificate as to any matters contained in the records of the Architectural Committee certified by any two (2) members thereof shall be conclusive proof as to all matters shown by such certificate.

Section 3. Construction and Validity of Restrictions. All of said restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together but if it shall at any time be held that any one (1) or more of said restrictions, conditions, covenants, reservations, liens or charges or any part thereof is invalid or the same shall for any reason become unenforceable no other restriction, condition, covenant, reservation, lien or charge or any part thereof shall thereby be affected or impaired.

Section 4. Assignment of Powers. Any and all of the rights and/or powers of Declarant provided for in this Declaration and/or modification and/or amendment thereof may be delegated, transferred, assigned, conveyed or released by Declarant to a corporation or corporations owned or controlled by Declarant or to the Association, and the Association shall accept the same upon the recording of a notice thereof, and the same shall be

effective for the period and the extent stated therein.

Section 5. Waiver. The failure by the Association and/or Declarant and/or any owner of any property covered by this Declaration or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which said property or any part thereof is subject shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge.

Section 6. Titles. All titles used in this Declaration, including those of articles, sections, and subsections, are intended solely for the convenience of reference, and the same shall not, nor shall any of them affect that which is set forth in articles, sections or subsections, nor any of the terms or provisions of this Declaration or in the meaning thereof.

Section 7. Singular and Plural, Masculine and Feminine. The singular shall include the plural, and the plural the singular, unless the context requires the contrary, and the masculine, feminine and neuter shall include the masculine, feminine or neuter, as such context requires.

Section 8. Successor in Interest. Reference herein to either the Association or Declarant shall include each successor to the affairs of such, and each such successor shall succeed to the rights, powers and authority hereunder of such to whose affairs it succeeds. The right is hereby granted to the Declarant to delegate any or all of the rights, powers, and authorities herein reserved to Declarant to any person, firm or corporation. Any such delegation shall be made in writing and recorded in the Office of the County Recorder of Sonoma County. Any such delegation can be revoked by recording a Notice of Revocation in the Office of the County Recorder of said County.

ARTICLE IX

EASEMENTS, RIGHTS OF WAY AND COMMUNITY FACILITIES

Section 1. Reservations. Declarant hereby specifically reserves unto itself, its successors and assigns from said property covered by this Declaration, easements and rights of way on, over, under, across and along parcels or strips of land to be described in a Declaration of Easements to be executed by Declarant, which shall be recorded subsequently to the recording of this Declaration (whether one or more Declarations of Easements to be in the discretion of Declarant) and use of such easements and rights of way and if approved by Declarant, use of any other parcels or strips of land used for any of the uses and purposes designated in the following Section 2. of this article (notwithstanding anything to the contrary in this Declaration

contained) shall be restricted by the provisions of this Declaration and each of said parcels and strips of land may be used for the said hereafter set forth uses and purposes.

Section 2. Uses and Purposes of Easements and Rights of Way.

(a) The easements, rights of way, parcels and strips of land referred to in Section 1 of this Article X, unless expressly provided to the contrary in any such Declaration of Easements, are reserved for the purpose of constructing, erecting, operating and maintaining thereon, therein and thereunder (1) roads, streets, walks, driveways, parkways and park area; (2) poles, wires, and conduits for the transmission of electricity for lighting, heating, power, telephone, television, and other purposes and for the necessary attachments in connection therewith; and (3) public and private sewers, storm water drains, land drains and pipe, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection with the foregoing.

(b) The easements and rights of way referred to in this Article X and/or in any such Declaration of Easements are and each of them is and shall be reserved unto Declarant, its successors and assigns with such rights and authority in connection therewith as set forth in this Declaration and/or in any such Declaration of Easement or either or any of them, and such right and authority shall include but not be limited by the right at any time and from time to time to convey all or any part of said easements and rights of way to others and/or to dedicate the same or any of them or any part thereof to the public.

Section 3. Additional Easements. In addition to easements and rights of way reserved in or provided for in this Declaration and/or in any said Declaration of Easements, Declarant may also reserve such future and additional easements and rights of way as may be proper in any deed or conveyance covering any part or portion of subject property.

Section 4. Community Facilities.

(a) Certain areas embraced within the property covered by this Declaration may from time to time be designated by Declarant to be used for some or all of the community facilities referred to in this Declaration by then recording an instrument or instruments executed by Declarant and describing such area or areas and stating the community facilities which the same are to be used, and from the date of such recording, such area or areas may be used for the community facility purposes for which the same has been so designated.

(b) Areas embraced within the property covered by this Declaration may also be specifically designated by Declarant from

time to time as areas not to be used for any community facility or not to be used for certain community facilities, and such designation may be made by an instrument or instruments executed by Declarant and recorded, describing such areas and stating the community facilities for which the same shall not be used.

ARTICLE X

ANNEXATION OF ADDITIONAL PROPERTY

Upon the recording of any Declaration of protective restrictions containing provisions as are more particularly set forth hereafter in this Article X, which Declaration covers real property situated in the County of Sonoma, State of California; and which Declaration is executed by Declarant, his successors and assigns, or is executed by any other person or persons and is approved by Declarant either in writing attached thereto and recorded therewith or in a writing recorded subsequent thereto and in which Declaration the Association is named, the Association shall have and accept and exercise jurisdiction thereover and the improvements thereon (whether there be one or more of such Declarations) and in each such case or instance, the Association shall have the power and authority and duty to do and perform all of the acts and fix, impose and collect all charges and assessments from owners of lots, lot ownerships, apartment ownerships or condominiums in said real property as may be provided for in such Declaration of Restrictions; provided, however, that each of such Declarations covering the said real property, unless otherwise approved by the Association and Declarant shall contain provisions which impose restrictions, conditions, reservations, covenants, liens and charges like in every material respect to those set forth in the following enumerated articles of this Declaration:

Article II

Article III, except that the age limits may be changed

Article IV, except that the name of the persons set forth in subparagraph (a) of Section 2 thereof may be different

Article V

Article VI

Article VII

Article VIII

Article IX

Article X

with such variations as may be required by reason of differences in time or dates and/or differences in ownership and/or conditions between the property covered by such new Declarations on the property which is the subject of this Declaration.

ARTICLE XIMAINTENANCE RESTRICTIONS

The covenants, conditions, and restrictions contained in this Article apply only to the portions of the subject property described in Section 1:

Section 1. Land Affected.

Only the following portions of the subject property are subject to the maintenance obligations set forth in this Article:

"Lots 7, 8, 9, 10, 11, 12, 13 and 14 and Parcel "A" as shown on the Map entitled, "Oakmont No. 17-D" and recorded on the 1st day of April, 1988, in Book 415 of Maps at Pages 14 - 17, in the Office of the Recorder of the County of Sonoma, State of California.

Section 2. Parcel A.

The owners of said Lots No. 7, 8, 9, 10, 11, 12, 13 and 14 are jointly served by a privately owned parcel (Parcel "A") for ingress, egress, utility and drainage purposes, as shown upon the map described in Section 1 (hereinafter referred to as Parcel "A"). Parcel A is owned and shall continue to be owned in common and in equal shares by the owners of Lots 7, 8, 9, 10, 11, 12, 13 and 14.

Section 3. Use.

The use and enjoyment, as well as the responsibility for the improvement, care, maintenance and repair of Parcel A shall be shared equally by the owners of said Lots 7, 8, 9, 10, 11, 12, 13 and 14, provided, however, that should any maintenance or repairs of said Parcel A be required because of any damage caused by one of the property owners of said lots or parcel, or their guests, or invitees or agents, the owner causing such damage shall be solely responsible for the cost of any required repairs.

Section 4. Disputes.

Any dispute arising between the owners of said Lots 7, 8, 9, 10, 11, 12, 13 and 14 as to the use and enjoyment or the improvement, maintenance, and repair of Parcel A, or the cost thereof, which cannot be resolved after consultation shall be submitted to arbitration in accordance with the provisions of Section 1280, et seq., the California Code of Civil Procedure, or successor

