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Starry Knoll

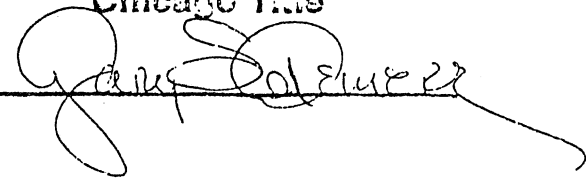
RETURN TO:

Oakmont Developers, Inc.  
P.O. Box 1332  
Windsor, CA. 95492

19-155632

THIS IS TO CERTIFY THIS TO BE A  
TRUE AND CORRECT COPY OF THE  
ORIGINAL, WHICH WAS RECORDED ON  
SEPTEMBER 6, 1995  
UNDER RECORDER'S INSTRUMENT NO.  
1995 0073775  
SONOMA COUNTY RECORDS  
Chicago Title

BY



OAKMONT VILLAGE DECLARATION NO. 48  
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:

Covenants or Restrictions based on race, color, religion, sex, handicap, family status, or national origin, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons; if any contained herein, are hereby omitted from this document.

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(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 15 of Article II, owner's spouse, brothers, sisters, nephews, nieces, parents and children of owner and owner's spouse.

17. 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.

18. Party Roof. A single roof covering two or more apartments.

19. Party Wall. A wall erected upon the boundary line of an apartment site, the center line of which being such boundary line, and (a) being a wall separating two apartments, one from the other, or (b) being the end wall of an apartment building containing two or more apartments.

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

21. Project. "Project" means an entire parcel of land divided or to be divided into lot ownerships as shown by the map resubdividing said parcel and recorded in the Official Records of Sonoma County, including all structures and improvements thereon.

22. Unit. "Unit" means the elements of a lot ownership or apartment ownership which are not owned in common with the owners of other lot ownerships or apartment ownerships in the project.

### ARTICLE III

#### PROPERTY REQUIREMENTS

##### Section 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.

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(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) Common Area. There shall be no obstruction of the Common Area nor shall anything be stored or planted in the Common Area without the prior consent of the Board. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the project or result in its cancellation without the prior consent of the Board.

(c) Interior of Apartments. The owner of each apartment shall keep the interior of the same and all fixtures and appliances within the same in good order and repair, and shall not do or permit or suffer anything to be done in such apartment which will or may have a tendency to increase the rate of fire insurance on the building containing said apartment or the contents thereof. He shall not interfere with the rights of owners of other apartments nor annoy any of such by unreasonable noises or otherwise. He shall comply with all laws, ordinances,

rules and regulations promulgated by any competent governmental authority and all ground rules now or hereafter promulgated by the Association or by the Board of Governors as hereinafter defined with respect to the occupancy and use of such apartment and the community facilities and Common Area.

(d) Party Walls.

(i) Maintenance. A party wall is erected for the benefit of the owners of the apartment on either side of the center line of such party walls within the boundaries of its property at all times in good order and repair, and no party wall, its footing or any portion thereof shall be removed, damaged, injured or destroyed, nor shall the same be altered, added to, enlarged or extended except only for the purpose of maintaining or repairing the same, unless and until the consent in writing of the Architectural Committee is first had and obtained.

(ii) Repair and Re-erection. Should any party wall be damaged, injured or destroyed, the owners of the property on either side thereof shall immediately re-erect or repair the same, provided, however, that should such owners fail within a reasonable time (time being of the essence) to re-erect or repair said party wall, the Board of Governors shall do so or cause the same to be done, and shall charge the responsible party therefor. All party wall re-erection or repairs shall be done in a workmanlike manner, using good new materials of like kind and quality to that of the wall being erected or repaired and complying in all things with all applicable building codes.

(iii) Costs. The costs of repair or re-erection of a party wall shall be borne by the owners of the property on either side thereof proportionately based upon the extent and nature of such repair or re-erection, and in the event of a dispute between the responsible parties as to the apportionment of such costs, the determination of the Board of Governors shall be conclusive and binding upon all parties to the dispute.

(iv) Special Assessment and Lien. In the event that either or both of the responsible parties shall fail to pay its proportionate share of the costs as set forth in sub-section (iii) of this paragraph (d), whether the repair or re-erection was done or caused to be done by the responsible parties or by the Board of Governors in accordance with the provisions of sub-section (ii) of this paragraph (d), the apartment ownership of the responsible party or parties so failing to pay shall be assessed and enforced by the Board of Governors as hereinafter set forth in Articles VIII and IX of this Declaration.

(e) Party Roofs.

(i) A party roof is constructed for the benefit of the owners of the apartments covered by said roof. No party roof or any portion thereof shall be removed, damaged or destroyed, nor shall the same be altered, added to, enlarged or extended except only for the purpose of maintaining or repairing the same, nor shall anything be constructed or erected thereon, unless and until the consent in writing of the Architectural Committee is first had and obtained.

(ii) Repair and Reconstruction. Should any party roof be damaged, injured or destroyed, the Board of Governors shall forthwith cause said roof to be repaired or reconstructed. All repairs and reconstruction shall be done in a workmanlike manner, using good and new materials of like kind and quality to those of the roof being repaired and shall comply with these restrictions and with all applicable building codes.

(iii) Costs. The costs of repair or reconstruction shall be borne equally by the owners of all of the apartments covered by the roof being repaired or reconstructed. Provided, however, that if the Board of Governors shall determine that the repairs have been made necessary by the fault or neglect of one or more specific owner or owners, the Board of Governors shall apportion such costs among the responsible parties. The determination of the Board of Governors shall be conclusive and binding.

(iv) Special Assessment and Lien. In the event any owner shall fail to pay his share of the costs as set forth in subsection (iii) of this paragraph (e), the apartment ownership of such owner shall be subject to a special assessment and lien for the payment of such costs which shall be assessed and enforced by the Board of Governors as hereinafter set forth in Articles VIII and IX of this Declaration.

(f) Mining and Drilling. No derrick, 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 operation so long as nothing shall be permitted to disturb the surface of said property or any improvement thereon or occupants thereof.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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.

(m) 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 a sign of customary and reasonable dimensions advertising the property described herein as for sale.

(n) Fences. No fences shall be constructed upon the subject property except that private patio areas may be enclosed by fences.

(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) Exterior Painting. Notwithstanding anything to the contrary herein contained, painting of the exterior surface of

all buildings or structures located upon the subject property shall be under the exclusive jurisdiction and control of the Board of Governors. No owner shall paint the exterior surface of any such building or structure without the prior approval of the Board of Governors.

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 control 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 plans (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) 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.



(d) 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 subdivision, 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. Normal maintenance of the Common Area [Parcel A], as hereinbefore defined in Article II of this Declaration, is the responsibility of the "Starry Knoll Owners Association," as spelled out in ARTICLE VII of this Declaration.<sup>1</sup>

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<sup>1</sup>The preceding sentence was added to the standard form of this Declaration in 1991 at the request of the California Department of Real Estate merely to clarify the long established structure in Oakmont whereby the "common area" is normally maintained by a subassociation [here, the Starry Knoll Owners Association], while the "community facilities" are exclusive responsibility of the Oakmont Village Association. Nothing in this addition is intended to vary

(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

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the historic rights and responsibilities of the two associations.

07/12/93

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.

(l) 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 Ten Dollars (\$10.00) 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 maybe 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.

(j) Developer Exemptions. Notwithstanding any other provision in this instrument to the contrary, the Declarant, or its successor in interest, is exempt from that portion of any assessments attributable to structural improvements intended for human occupancy, which portion of such assessments are for the purpose of defraying expenses and reserves directly attributable to the existence and the use of such improvements. This exemption from the payment of such assessments shall be in effect until the earliest of the following events:

- (A) A notice of completion of the structural improvements has been recorded;
- (B) Occupation or use of the dwelling unit; or

- (C) Completion of all elements of the residential structures which the Association is obliged to maintain.

Notwithstanding any other provision in this instrument to the contrary, Declarant, or its successor in interest, is exempted from the payment of that portion of any assessments which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time the assessments commence. This exemption from the payment of assessments attributable to common facilities shall be in effect only until a notice of completion of the common facilities has been recorded.<sup>2</sup>

## ARTICLE VI

### ENFORCEMENT

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 may be enjoined or abated by the Association and/or Declarant. Each remedy provided for in this Declaration shall be cumulative and not exclusive.

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<sup>2</sup>This subdivision (j) was added at the request of the Department of Real Estate in 1992, merely to clarify the long-established procedures in Oakmont. Nothing in this addition is intended to vary the historic rights and responsibilities of the Declarant.

ARTICLE VII

OWNERS' ASSOCIATION

(aka "Starry Knoll Owners Association")

Section 1. Composition: The Owners Association shall be composed solely of the owners of Lots 1 through 42, inclusive, as described in ARTICLE I of this Declaration, and each such owner shall be a member of the Starry Knoll Owners Association.

Section 2. Purposes: Subject to the limitations set forth in this Declaration, and subject to such limitations as may be imposed by its members, the Owners Association shall have the right, power, and duty to do all such things as are reasonably necessary for the benefit of its members and of the real property owned by its members.

The Owners Association shall:

(a) Provide for the maintenance, beautification and landscaping of the Common Area to the end that the same shall at all times present a neat, clean and well-kept appearance. The Owners Association shall also provide for the maintenance and landscaping of that portion of a privately owned unit situated outside the exterior walls or boundaries of any structures placed upon said unit. Normal maintenance of the Common Area [Parcel A], as hereinbefore defined in Article II of this Declaration, is the responsibility of the "Starry Knoll Owners Association," as spelled out in ARTICLE VII of this Declaration.<sup>3</sup>

(b) Cause the exterior of each single family residential building within the subject property to be painted as may in the opinion of the Board of Governors be required, but not less than once every eight (8) years.

(c) Unless otherwise provided for, provide for the collection and disposition of street sweepings, ashes, garbage, rubbish and the like.

(d) Remove, clean up and dispose of all weeds, trash and other unsightly and obnoxious things from the Common Area.

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<sup>3</sup>The preceding sentence was added to the standard form of this Declaration in 1991 at the request of the California Department of Real Estate merely to clarify the long established structure in Oakmont whereby the "common area" is normally maintained by a subassociation [here, the Starry Knoll Owners Association], while the "community facilities" are exclusive responsibility of the Oakmont Village Association. Nothing in this addition is intended to vary the historic rights and responsibilities of the two associations.

(e) To the extent not assessed to and/or paid by the several owners, pay all real property taxes and/or assessments and discharge such other liens as may be levied upon the Common Area of which in the opinion of the Board of Governors (as hereinafter defined) shall constitute a lien upon the Common Area rather than merely against a particular unit.

(f) Pay for such utility service as is not metered or charged to the several owners.

(g) To the extent required by this Declaration and to the extent required to protect the Common Area, maintain and repair the structures upon each individual lot.

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

(1) City May Compel Performance

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

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

- (i) Do or perform any act the Association is authorized to do or perform under the provisions of this declaration of protective restrictions which may be necessary for the maintenance of the Common Area, including, but not limited to, the performance of the necessary maintenance and the levy and collect the cost of doing such maintenance

in accordance with the assessment procedures set forth in this Declaration.

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

(i) Costs of Enforcement

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

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

(j) Maintain the private sewer line, private sewer easement and appurtenant facilities necessary to provide Lots 2, 3, and 4 (all as shown and designated on the Map referred to in ARTICLE-I) with sewer service to the public sewer system of the City of Santa Rosa, and to the public sewer connection which is located over and on the adjacent subdivision ("OAKMONT 9-A" Book 287 of Maps, pages 28-31, Sonoma County Official Records).

(k) The enumeration of the duties set forth in subparagraphs (a) through (j) above shall not be deemed to limit the powers of the Owners Association. All powers of the Owners Association shall, however, 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 3. Voting Rights of Members: It is hereby declared that membership in the Owners Association shall carry with it the right to one vote for each lot owned at any meeting of the Owners Association. It is further declared that each such vote shall be equal.

(a) Voting. At any meeting of the Owners Association, a member shall have the right to vote in person or by proxy. All

proxies must be in writing and shall designate the person or persons appointed to act as proxy. In the event more than one person is named to act as proxy, such persons shall be entitled to only one vote between them. If only one such proxy is present at the meeting, such person may vote or take any other action on behalf of the member as such member might take if present in person. If more than one such proxy is present, they must act unanimously. In the event they shall fail to act unanimously, they shall not be entitled to vote and such vote shall be lost. It shall be competent for a member to appoint the Board of Governors to act as proxy.

(b) Multiple Owners. Where a lot is owned by two or more owners, such owners shall be entitled to only one vote at any meeting of the Owners Association. If only one such owner shall be present at a meeting, said owner may vote or act on behalf of all such co-owners. In the event more than one such owner shall be present at a meeting, they shall be entitled to vote or take any other action as a member, only if they shall act unanimously. In the event they shall fail to act unanimously, they shall not be entitled to vote and said vote shall be lost.

(c) Declarant. Declarant shall act as the voting member of all lots owned by Declarant.

#### Section 4. Meetings of Members:

(a) Organizational Meeting. The organizational meeting of members shall be held not later than six (6) months after the sale of the first lot covered by this Declaration of Protective Restrictions.

(b) Annual Meetings. There shall be an annual meeting of the members of the Owners Association on the 25th day of April of each year at 7:30 p.m. at the Common Area or at such other reasonable place or time as may be designated by written notice from the Board of Governors.

(c) Special Meetings. Special meetings of the members of the Owners Association may be called at any reasonable time and place by written notice from the Board of Governors or by written notice from members having five percent (5%) of the total voting power of the Association and delivered to all members.

(d) Quorum. The presence at any meeting of the members of the Owners Association having a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any duly constituted meeting of the members upon the affirmative vote of the members having a majority of the total votes present at such meeting.

(e) Notice. Notice of all meetings, whether organizational, annual, or special, shall be given as provided in Section 5 of this Article VII.

Section 5. Notices:

Any notices permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of such notice has been deposited in the United States Mail, postage prepaid, addressed to each member at the address given by such member to the Manager or Board of Governors for purpose of service of said notice or to the lot of such member if no address has been given to the Manager or to the Board of Governors. Such address may be changed from time to time by notice in writing to the Board of Governors or the Manager.

Upon written request for notices delivered to the Board of Governors, the holder of any duly recorded mortgage or deed of trust against any lot ownership or apartment ownership may promptly obtain a copy of any and all notices permitted or required herein to be given to the owner or owners whose lot ownership or apartment ownership is subject to said mortgage or deed of trust. Said request for notices need not be renewed and shall entitle the holder of any mortgage or deed of trust requesting such notice to receive all notices sent to the owner or owners from and after the date of said request until said request is withdrawn or said mortgage or deed of trust is discharged of record.

All notices of meetings, whether organizational, annual, or special, shall specify the place, date, and hours of the meeting and the nature of the business to be transacted. Said notices shall be given not more than thirty (30) days nor less than ten (10) days prior to the date fixed for such meeting.

Section 6. Board of Governors:

(a) Election of the Board of Governors. At each annual meeting of the Owners Association, a Board of Governors shall be elected to serve for the forthcoming year. Such Board shall consist of three (3) members of the Owners Association. Members of the Board shall serve for a term of one (1) year or until their successors are elected. Vacancies in the Board may be filled by the remaining members thereof. At any such election, members shall be entitled to cumulate their votes.

(b) Meetings of the Board of Governors. Meetings may be called, held and conducted in accordance with such regulations as

the Board may adopt. Ordinarily, such meetings shall be conducted at least monthly, though the regulations adopted by the Board may prescribe meetings as infrequently as every six months if business to be transacted by the Board does not justify more frequent meetings.

(1) Regular meetings of the Board of Governors shall be held at a time and at a meeting place fixed by the Board from time to time. The meeting place shall ordinarily be within the subdivision itself unless in the judgment of the Board a larger meeting room is required than exists within the subdivision in which case the meeting room selected shall be as close as possible to the subdivision.

(2) Notice of the time and place of a regular meeting shall be posted at a prominent place or places within the Common Area and shall be communicated to Board members not less than four (4) days prior to the meeting unless the time and place of meeting is fixed by the regulations previously adopted by the Board; provided however that notice of a meeting need not be given to any Board member who has signed a waiver of notice or a written consent to holding of the meeting.

(c) Quorum. At any meeting of the Board of Governors, two (2) members shall constitute a quorum. The Board shall act by a majority vote of those present at its meetings.

(d) Chairman. The Board shall elect a Chairman who shall preside over both its meetings and those of the members.

(e) Declarant. Until the election of the Board, its rights, duties and functions shall be exercised by Declarant unless otherwise provided herein.

(f) Authority and Duties of the Board of Governors. The Board of Governors shall be the managing body for the Owners Association. It shall establish the maintenance fund as hereinafter provided and shall provide for the accomplishment of the purposes set forth in Section 2 of this Article VII. In connection therewith and from the maintenance fund it shall acquire and pay for the following:

(1) Such utility services as may be necessary for the Common Area and where not separately metered or charged, for the individual lots.

(2) The Board shall procure and pay for a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, if available, on all structures



located within the Common Area, with a responsible insurance company. The insurance shall cover the full replacement cost of such improvements.

In the event of loss or damage by fire or other casualty covered by said insurance, the proceeds thereof shall be paid to an insurance trustee to be designated by the Board; and, subject to prior rights of mortgages, said proceeds shall be used for the repair and rebuilding of the damaged property. All proceeds over and above those necessary for the repair and rebuilding of the damaged property shall be paid to the owners or the holder of the beneficial interest in any mortgage or deed of trust, as their interests may appear.

(3) Liability insurance insuring the Board and the members against any liability to the public or to the owners incident to the ownership and/or use of the Common Area. The limits under such insurance shall not be less than Two Hundred Thousand Dollars (\$200,000.00) for any one (1) person injured, Five Hundred Thousand Dollars (\$500,000.00) for any accident, and Fifty Thousand Dollars (\$50,000.00) for property damage. Insurance coverage shall be reviewed at least annually by the Board, and the Board shall make such additions or modifications thereof as shall be deemed necessary.

(4) Workmen's Compensation Insurance to the extent necessary to comply with any and all applicable laws.

(5) A fidelity bond naming the members of the Board and/or the Manager and such other persons as may be designated by the Board as principals and the owners as obligees in an amount equal to twice the estimated cash requirement for each year established pursuant to Article VIII hereof.

(6) Legal and accounting services necessary or proper for the operation of the Owners Association.

(7) All other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure or pay for pursuant to the terms of these restrictions, or by law, or which in its opinion shall be necessary for the proper operation of the buildings in the Common Area.

(8) Taxes, assessments and other liens. The Board shall pay any amount necessary to discharge all taxes and assessments or other liens or encumbrances levied against the project or any part thereof which in the opinion of the Board constitute a lien against the entire project or against the Common Area, rather than merely against a particular unit, lot

ownership or apartment ownership. Where one or more owners are responsible for the existence of such a lien, they shall be jointly and severally liable for the cost of discharging it.

(9) Painting. The Board shall cause each structure within its jurisdiction to be painted not less than once every eight (8) years.

(10) Maintenance and Repair. Wherever this Declaration of Restrictions requires the Board to maintain and repair a structure upon an individual lot, or wherever such maintenance or repair shall be necessary in the discretion of the Board to protect the Common Area, and the owner or owners of such individual lot have failed or refused to perform said maintenance and repair, the Board shall cause such maintenance and repair to be accomplished and shall charge the individual owners therefor.

(11) The Board may delegate any of its duties, powers or functions to any person or firm to act as Manager, provided that such delegation shall be revocable upon notice by the Board. In the absence of any such appointment, the Chairman of the Board shall act as Manager.

(12) Right of Entry. In connection with any maintenance or construction for which the Board is responsible, the Board and/or its duly authorized agent or representative shall have the right to enter any unit at all reasonable times.

Section 7. Change in Form of Owners Association: Nothing contained in this Article VII shall be construed so as to prevent the owners from incorporating any Owners Association or from merging any two (2) or more Owners Associations into one body. Any such incorporation or merge shall require the consent of three-quarters (3/4) of the members. Any such successor organization shall have the same powers and duties as are set forth herein and in Articles VIII and IX of this Declaration.

Section 8. Name: The Owners Association is hereby named and shall hereafter be known as the "Starry Knoll Owners Association."

## ARTICLE VIII

### MAINTENANCE FUND - ASSESSMENTS

#### FOR THE STARRY KNOLL OWNERS ASSOCIATION

Section 1. Assessments: At least thirty (30) days prior to the beginning of each calendar year, the Board shall estimate the net charges to be paid during such year (including a reasonable

provision for contingencies, and less any expected income and any surplus from the prior year's fund). Said estimated cash requirement shall be assessed to the owners of each lot in the proportion that each such owner shall own in the Common Area. Since each owner of each lot owns an undivided 1/42 of the Common Area, each such owner shall be assessed and responsible for 1/42 of said estimated cash requirement.<sup>4</sup> If the sum estimated proves inadequate for any reason, including non-payment of any owner's assessment, the Board may at any time levy a further assessment which shall be assessed to the owners in like proportions, unless otherwise provided herein. Each owner shall be obligated to pay assessments made pursuant to this paragraph to the Board in equal monthly installments on or before the first day of each month during such year or in such other manner as the Board may designate.

Section 2. Interim Assessment: When the first Board elected hereunder takes office, it shall determine the estimated cash requirements as hereinabove defined for the period commencing thirty (30) days after said election and ending on December 31st of the calendar year in which said election occurs. Assessments shall be levied against the owners during said period as provided in Section 1 of this Article VIII.

Section 3. Special Assessments: The Board of Governors shall have the power to levy special charges and assessments against individual dwelling units to defray expenses of the Owners 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. Such special charges, assessments and lien securing the same, shall be fixed, levied and enforced, in the same manner and to the same effect as the assessments provided for in Section 1 hereof. Except that such special charges and assessments shall be and are payable in full on the first day of the second calendar month next after the date upon which the same shall have been fixed and established by the Board of Governors.

Section 4. Notice: At the close of each fiscal year the Board shall cause to be prepared an annual operating statement reflecting the income and expenditures of the Association for its fiscal year. A copy of said statement shall be delivered to each owner, either personally or by mail, within ninety (90) days after the end of the fiscal year.

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<sup>4</sup>The preceding sentence was added to the standard form of this Declaration in 1991 at the request of the California Department of Real Estate merely to clarify the long established structure in Oakmont, and this new provision is not intended to vary the historic interpretation of this document.

Section 5. Declarant Exemption: Notwithstanding any other provision in this instrument to the contrary, the Declarant, or its successor in interest, is exempt from that portion of any assessments attributable to structural improvements intended for human occupancy, which portion of such assessments are for the purpose of defraying expenses and reserves directly attributable to the existence and the use of such improvements. This exemption from the payment of such assessments shall be in effect until the earliest of the following events:

- (A) A notice of completion of the structural improvements has been recorded;
- (B) Occupation or use of the dwelling unit; or
- (C) Completion of all elements of the residential structures which the Association is obliged to maintain.

Notwithstanding any other provision in this instrument to the contrary, Declarant, or its successor in interest, is exempted from the payment of that portion of any assessments which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time the assessments commence. This exemption from the payment of assessments attributable to common facilities shall be in effect only until a notice of completion of the common facilities has been recorded.<sup>5</sup>

## ARTICLE IX

### LIENS

Section 1. Reservation of Liens: Declarant, as to the property covered by this Declaration, has established and does hereby establish and reserve and impose a lien thereon securing each charge and assessment provided for by Article VIII of this Declaration, together with costs, penalties and interest, and Declarant does hereby assign to the Board of Governors of the Starry Knoll Owners Association hereby established the right to collect and enforce the collection of the same in accordance with and subject to the limitations contained in the provisions of this Declaration.

Section 2. Delinquency of Charges and Assessments: Thirty (30) days after any charge or assessment provided for in Article VIII

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<sup>5</sup>This was added at the request of the Department of Real Estate in 1992, merely to clarify the long-established procedures in Oakmont. Nothing in this addition is intended to vary the historic rights and responsibilities of the Declarant.

shall be due and payable, the same shall be and become delinquent and shall so continue until the amount of said charge, together with all costs, penalties and interest, shall have been fully paid or otherwise satisfied.

Section 3. Notice of Delinquency: Any time after any charge provided for herein has become delinquent, the Board of Governors may record a Notice of Delinquency as to such lot ownership or apartment ownership which Notice shall state therein the amount of such delinquency and the interest, costs (including attorney's fees) and penalties which have accrued thereon, and a description of the lot ownership or apartment ownership against which the same has been assessed and the name of the record or reputed owner thereof. Such notice shall be signed by a member of the Board of Governors. Upon the payment of said charges, interest, penalties and costs in connection with which such notice has been so recorded or other satisfaction thereof, the Board of Governors shall record a further notice stating the satisfaction and release of the lien theretofore established.

Section 4. 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 lot ownership or apartment ownership 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.

Section 5. Enforcement of Lien: Each lien established pursuant to the provisions of this Article 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 real property (including Trust Deeds with power of sale) by the laws of the State of California at the date of the commencement of such 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 any such lien, the Board of Governors 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 Governors.

Section 6. Mortgage Protection: Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon the interest of any lot ownership or apartment ownership shall be subject and subordinate to and shall not affect the rights of the holder of

an indebtedness secured by any recorded mortgage or deed of trust upon such interest made in good faith and for value, which said mortgage or trust deed shall have been recorded prior to the recording of the Notice of Delinquency provided for in Section 3 above, provided that after the foreclosure of any such mortgage or deed of trust there shall be a lien on the interest of the purchaser at such foreclosure sale to secure all assessments, assessed hereunder to such 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.

(b) No amendment to this Section 6 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 X

### TAXES AND ASSESSMENTS

Each owner shall execute such instruments and take such action as may be reasonably specified by the Board to obtain separate assessments of each lot ownership or apartment ownership. If any taxes and/or assessments may, in the opinion of the Board, nevertheless be a lien on the entire subdivided property or any part of the Common Area, they shall be paid by the Board and shall be assessed by the Board to the owners. Each owner shall be obligated to pay the taxes or assessments assessed by the County Assessor or the City against his own lot or personal property or interest in the Common Area. Each owner shall be obligated to pay any assessments by the Board for the portion of any taxes or assessments assessed by the County Assessor or the City against the entire subdivided property or any part of the Common Area in proportion to his ownership in the Common Area. Such payment shall be made to the Board at least thirty (30) days prior to delinquency of such tax or assessment. Such assessments by the Board shall be secured by the lien created by Article IX.

## ARTICLE XI

### DURATION 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 XI 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 the trust deed appearing of record shall be deemed an owner of land covered by his mortgage, trustee, lease or

contract of sale with rights under the this Section 2 equal to those of the owners.

## ARTICLE XII

### 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 and/or of the Owners Association and/or its Board of Governors (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.

Section 9. Partition: There shall be no partition of the subject property except in accordance with the terms of Section 752 of the Code of Civil Procedure of the State of California.

Section 10. Indemnification of City: In consideration of and as a condition of approval of the subdivision development, Declarant on behalf of itself and its successors and assigns and the Association created herein does hereby release, discharge, hold and save harmless the City of Santa Rosa, its officers, and employees from any and all liability, claims or demands arising out of the inadequate or negligent maintenance of the Common Area or improvements thereto.

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

#### ARTICLE XIII

##### EASEMENTS AND RIGHTS OF WAY

Section 1. Easements for Ingress and Egress: Declarant hereby specifically reserves for the benefit of the owners of the subject property an easement or easements for roadways and walkways along, over and upon the Common Area.

Section 2. Easements for Support and Maintenance: Whenever and wherever there shall exist a party wall and/or a party roof as defined herein, each adjoining owner shall have an easement for support and maintenance over that portion of the party wall or roof which forms a part of the adjoining owner's property and each adjoining owner shall have the right to enter upon the other's property at reasonable times for the purpose of repairing and/or maintaining said party wall or roof.

Section 3. Easements for Utility Purposes: There is specifically reserved an easement or easements for utility purposes including, but not limited to, power, water, sewer, telephone, gas and trash pick-up along, over, upon, and under the Common

Area and Declarant hereby reserves the right to grant said easement to such persons, firms and organizations, including the City of Santa Rosa, as shall be necessary or convenient for the purpose of serving such utilities to the subject property.

ARTICLE XIV

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 XIV, 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 XI

Article XII

Article XIII

Article XIV

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 XV

SALE OF COMMUNITY FACILITIES

In the event the community facilities owned or to be owned by Oakmont Village Association (which said facilities shall have been acquired by Oakmont Village Association from Declarant or either of them without cost to Oakmont Village Association) shall be sold or transferred by Oakmont Village Association, whether said sale or transfer shall be voluntary or involuntary, or by virtue of condemnation proceedings commenced in or prosecuted by any governmental authority prior to the time when declarant shall have sold One Thousand Two Hundred Fifty (1,250) houses and/or apartments to persons who have become members of Oakmont Village Association by virtue of recorded deed restrictions or otherwise, the proceeds of said sale or transfer, shall be paid to Oakmont Village Association and to H. N. Berger and Frances C. Berger in the following proportions:-

(a) To Oakmont Village Association that portion of said proceeds which shall bear the same ratio to the whole thereof as the number of houses and/or apartments sold by Declarant to persons who have become members of Oakmont Village Association shall bear to One Thousand Two Hundred Fifty (1,250).

(b) To H. N. Berger and Frances C. Berger the balance of said proceeds.

IN WITNESS WHEREOF, Declarants have executed this Declaration this 30th day of August, 1995.

OAKMONT DEVELOPERS, INC.

By Jeffrey D. Civian

STATE OF CALIFORNIA )
) SS.
COUNTY OF SONOMA )

On August 30, 1995, 1993, before me, Kathy Nelsen, the undersigned, a Notary Public in and for said County and State, personally appeared Jeffrey D. Civian, personally known to me (or proved to me on the basis of satisfactory evidence or, known to me 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 in his/her/their authorized capacities, and that by his/her/their signature(s) on the instrument the person(s) or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Kathy Nelsen
Notary Public

07/12/93

