

Declaration of Restrictions – Pool Creek Subdivision

ARTICLE I

THIS DECLARATION, made on the date hereinafter set forth, by THE LAZY “G” BOYS, a California Limited Partnership referred to herein as “Declarant.”

WITNESSETH:

Declarant is the Owner of the real property located in the County of Sonoma, State of California, known as all lots as shown on the Subdivision Map (“Map” herein) described in Exhibit A to this Declaration of Restrictions (the “Restrictions”). The Declarant intends to subdivide this property into parcels for sale to owners who desire to take advantage of the natural environment that has been preserved on the property and who are willing to conform to the land uses permitted in this Declaration of Restrictions.

The Restrictions shall constitute:

1. Covenants running with the land, equitable servitudes, and administrative regulations governing the Pool Creek Subdivision and each parcel in it, to the maximum extent permitted under California law. The Restrictions are for the benefit of each parcel in the Pool Creek Subdivision against all others and shall burden each parcel for the benefit of all others, the Pool Creek Homeowners’ Association (the “Association”), and the county of Sonoma.
2. A contract under California law between the Declarant and each of his immediate successors in interest in each parcel. The contract shall run in favor of the County of Sonoma as third-party beneficiary, as described below, under California Civil Code § 1559, and shall bind all of the successors in interest of the Declarant in any parcel in this Subdivision and shall likewise bind the Association and its successors in perpetuity.

APPROVAL BY COUNTY

Notwithstanding anything in this Declaration to the contrary, prior to terminating this Declaration or rescinding, amending, adding, deleting, or otherwise modifying any provision of this Declaration in a manner that would affect any condition of approval imposed upon the Development by the Board of Supervisors in Resolution Number XXXXXXXX, the written consent of the Board of Supervisors or its designee shall first be had. Certificates of amendment to this Declaration recorded in Sonoma County Recorder’s Office evidencing any such alteration shall have attached the document in which such consent is

manifest. Failure to secure the consent required by this section shall render any rescission, termination, amendment, addition, or deletion null, void, and of no force or effect.

COUNTY AS THIRD-PARTY BENEFICIARY

In consideration of the County's approval of the Development, Declarants hereby covenant and agree and each Owner of any Lot subject to this Declaration by the acceptance of any deed thereto, whether or not this covenant and agreement shall be so expressed in said deed, and all heirs, executors, administrators, assigns, and successors in interest of each such Owner are deemed to covenant and agree that the County shall be a third party beneficiary within the meaning of Civil Code § 1559 of this Declaration and the provisions hereof relating to the conditions of approval imposed upon the Development the Board of Supervisors in Resolution Number XXXXXX, and that the County shall have all rights attendant thereto. Such rights shall include, but not limited to, the right, but not the obligation, to enforce this Declaration and the provisions hereof relating the conditions of approval imposed upon the Development by the Board of Supervisors in Resolution Number XXXXX. Should the County elect to exercise its right to enforce this Declaration and the provisions hereof relating to the conditions of approval imposed upon the Development, the County shall be entitled to recover any costs and expenses it incurs in so doing.

The prevailing party in any action brought to enforce the terms of this agreement or arising out of this agreement, with the exception of an action involving the County of Sonoma in its capacity as third-party beneficiary or otherwise, may recover its reasonable costs and expenses including witness, expert, and attorney fees expended in connection with such action(s) from the other party.

ARTICLE II

DEFINITIONS

1. "Association" shall mean and refer to Pool Creek Homeowners' Association, a California nonprofit corporation, and its successors and assigns.
2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.
3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The common area to be owned by the Association at the time of the conveyance of the first lot is shown on the subdivision Map hereinabove described.
5. "Lot" shall mean and refer to any plot of land shown upon the recorded Subdivision Map of the Properties, with the exception of the Common Area.
6. "Declarant" shall mean and refer to THE LAZY "G" BOYS, a California Limited Partnership and its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.
7. "Mortgagee" shall mean and include a beneficiary under or holder of a deed of trust, as well as a mortgagee.
8. "Member" shall mean and refer to every person or entity who holds membership in the Association.
9. "Articles" shall mean and refer to the Articles of Incorporation of POOL CREEK HOMEOWNERS' ASSOCIATION, as amended from time to time.
10. "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.
11. "Board" shall mean and refer to the Board of Directors of Association.
12. "Maintenance" shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting and other related improvements and fixtures in a state similar to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of regular fertilization, irrigation, and other garden management practices necessary to promote a healthy, weed free environment for optimum plant growth.

ARTICLE III

PROPERTY RIGHTS

1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall

pass with the title to every Lot subject to the following provisions:

- a. The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Area;
- b. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations after notice and hearing by the Board of Directors of the Association;

Notice of the proposed suspension of voting and/or use rights and the reasons therefor shall be mailed by first class mail to the owner eighteen days before the date set for the hearing. The owner may be heard orally or in writing, at the hearing. If a suspension is voted at the hearing, it shall take effect not less than five days later. The rights to use the common area for septic systems may not be suspended for any reason;

- c. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such restrictions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument consenting to such dedication or transfer has been signed by all of the members of the Association and has been recorded.
2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.
 3. Encroachments. There is reserved for the benefit of each lot an easement of maintenance and use to which the entire tract shall be subject for any and all encroachments resulting from roof, balcony, or deck overhang, wing walls and any other causes attributable to the design and construction of structures and any and all encroachments resulting from the construction errors, lateral shifting or settlement and any and all encroachments resulting from construction of sewer, water, drainage, cable TV and electrical lines and other utilities whether or not shown on the final recorded subdivision Map and whether or not known to the purchaser at the time of purchase and whether or not in existence at the time of purchase. Any such easement shall be appurtenant between each lot.
 4. Easements. Easements for access, installation and maintenance of utilities (telephone, gas, electrical, fire protection, storm drainages, water, sanitary, cable TV,

etc.) leach field and drainage facilities are shown on said recorded Map. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere, or change the direction of flow of drainage facilities in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, or if in a common area, by the Association, except for those improvements for which a public authority or utility company is responsible.

No dwelling unit or other structure of any kind shall be built, erected or maintained upon any such easement, reservation, or right-of-way, and said easements, reservations and rights-of-way shall at all times be open and accessible to public and quasi-public utility corporations; and other persons erecting, constructing or servicing such utilities and quasi-utilities, all of whom shall have the right to ingress and egress thereto and therefrom, and the right and privilege of doing whatever may be necessary, under and upon said locations for the carrying out of any of the purposes for which said easements, reservations, and rights-of-way are hereby reserved, and may hereafter be reserved.

5. Culminary Improvements. Should the Declarant sell lots prior to the completion of any portion of the improvements and should the completion thereof be assured by bond or other arrangements satisfactory to the Real Estate Commissioner which is also herein referred to as a bond, the governing body of the Association is directed to consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for the improvement in the Planned Construction Statement appended to the bond. If the Association has given an extension in writing for the completion of any Common Area improvements, the governing body shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

A special meeting of members may be held for the purpose of voting to over-ride a decision by the governing body not to initiate action to enforce the obligations under the bond or on the failure of the governing body to consider and vote on the question. The meeting shall be required to be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the governing body of petition for such a meeting signed by members representing two (2) Lots or more of the total voting power of the Association.

A vote of a majority of the voting power of the Association residing in members other than the Declarant to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the governing body shall

thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

6. No Partition. There shall be no partition either judicial or by agreement of the Common Area, nor shall Declarant or any person acquiring any interest in the properties or any part thereof seek any judicial or agreed partition thereof; provided, however, that if any lot shall be owned by two or more co-tenants as tenants-in-common, or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants so long as such judicial partition does not result in any physical partition. No Owner shall in any way sever his lot from his interest in the Common Area.
7. Ingress and Egress. All Owners, their families, tenants, guests and invitees shall have a non-exclusive easement, appurtenant to their individual lots as a walkway only over the Common Area for purposes of access to their individual Lots provided such access causes no physical damage to the common area except for normal wear and tear.
8. Access. Officers, agents, or employees of any governmental department or bureau shall have the right of immediate access to the Common Areas for reasons of public health, safety, and welfare, except where such common area is accessible only through a private unit.
9. Common Area Title. Title to the common area indicated Parcel A on said subdivision Map shall be transferred to the Association to be held and maintained for the mutual benefit of all owners. Said transfer shall occur prior to the transfer of any other lot by Declarant.
10. Lot Easements.
 - a. Not Used
 - b. Fire Protection. All Owners shall conform with and obey all laws and regulations regarding fire protection. Owners may provide swimming pools with pumping equipment meeting CDF fire requirements and access by pipeline to standpipes on Leslie Road provided by Declarant. Swimming pools shall be maintained full at all times unless temporarily excepted by written authorization from the Association. A swimming pool may be built on Lot 1 by Declarant in lieu of any requirement by the fire department; and the owner of Lot 1 will grant an easement for water for this purpose.
 - c. Declarant shall construct and the Association shall maintain a road for the benefit of Lots 2, 5, 7 and 8, as shown on said Map, and said Lots shall have

an easement over said road for ingress and egress. Cost of maintenance of said road shall be paid by the owners of the lots benefitted by said road in the following proportions: Lot 2, 22%; Lot 5, 36%; Lot 7, 36%; Lot 8, 6%. The anticipated cost of maintenance of said road shall in the above proportions be determined and added to the assessments of said Lots on an annual basis and be added to and become a part of the annual assessment of said Lots.

- d. Easements for leach fields, including the right of ingress and egress for the purpose of constructing and maintaining same, for the benefit of Lots 3, 4 and 8, within the common area, shall be as shown on the recorded map. Owners of the Lots benefitted shall maintain and repair said leach field appurtenant to said owners lot at said owners cost, subject to the supervision and control of the Association, which shall maintain final responsibility for conforming said leach fields to governmental regulation. In the event of a dispute between the owner and the Association regarding the conformance of the owners system with governmental regulation the decision of the agency of the County of Sonoma in charge of sanitation matters shall be the sole arbitrator of the matter.

11. Wells. If at any time an owner of a lot is unable to obtain sufficient water for domestic consumption, swimming pool and reasonable gardening on the owners Lot, said owner shall have the non-exclusive easement appurtenant to said lot to develop and pipe water from a location in the common area, but at all times subject to the permission and continuing control of the Association as to location of well, piping, appearance and similar matters.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.
2. Class of Membership. The Association shall have two classes of voting membership:

Class A. – Class A members shall be all owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds in interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to

any Lot.

Class B. – The Class B member shall be the Declarant and shall be entitled to three votes for each Lot owned. Class B membership shall cease and be converted to Class A membership on the happening of whichever of the following events occurs first:

- A. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- B. Two years from the date of the original issuance of the final public report for the subdivision.

ARTICLE V

POWERS AND DUTIES OF THE BOARD

1. The Board of Directors shall have power to:
 - A. Adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties including monetary penalties for the infraction thereof. Any such penalties shall be subject to hearing preceded by notice of such hearing.
 - B. Suspend the voting rights and right to use of the recreational facilities of a member during any period in which such membership shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing for a period not to exceed thirty (30) days for infraction of published rules and regulations.
 - C. Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of this Declaration or the Articles of Incorporation of the Bylaws.
 - D. Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties, subject to the limitations contained in this Declaration and in the Bylaws.
 - E. To terminate on ninety (90) days written notice any agreement for professional management of the project or any other contract providing for

services by the Declarant. Any such contract arranged by the Declarant shall not exceed three years.

2. The Directors are prohibited from taking any of the following actions, except with the vote or written assent of a majority of each class of the voting power of the Association:

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

- a. A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;
- b. A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rates;
- c. Prepaid casualty and/or liability insurance policies of not to exceed three year duration provided that the policy permits for short rate cancellation by the insured.

B. Incurring aggregate expenditures for capital improvement to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for the fiscal year.

C. Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the association for that fiscal year.

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

E. Filling of a vacancy on the Board created by the removal of a Board member.

3. Duties of the Board. It shall be the duty of the Board of Directors to:

- A.** Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth of the Class A members who are entitled to vote.
- B.** Supervise all officers, agents and employees of this Association and see that their duties are properly performed.
- C.** As more fully provided elsewhere in this Declaration, to:
 - a. Fix the amount of the annual assessments against each Lot at least thirty (30) days in advance of each annual assessment;
 - b. Send written notice of each assessment to every Owner with a pro forma operating statement (budget) for the ensuing year at least sixty (60) days before the beginning of the fiscal year;
 - c. Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of the certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.
- D.** Procure and maintain adequate liability and hazard insurance to protect the interest of the Association.
- E.** Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, and to procure director's liability insurance, should it be deemed necessary.
- F.** Cause the Common Area and landscaping to be maintained.
- G.** Provide for payment of utility services used for the benefit of Lots in common and of garbage and trash disposal services for the Common Area.
- H.** Employ personnel necessary for legal and accounting services.
- I.** Pay any taxes or special assessments which would be a lien on the Common Area and discharge any lien or encumbrance levied against the Common

Area.

ARTICLE VI
COVENANT FOR MAINTENANCE ASSESSMENTS

- 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- A.** Annual assessments or charges, and
- B.** Special assessments such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

No Common Area shall be subject to assessment.

- 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Area and of the homes situated upon the properties. Said assessments shall include and the Association shall acquire and pay for out of the funds derived from said annual assessments, the following:

- A.** Water, sewer, garbage, electrical, lighting, telephone and gas and other necessary utility service for the Common Area.
- B.** Maintenance and repair of storm drains, sanitary sewers and private roadways and walkways lying within the Common Area.

- C. Fire insurance covering the full insurable replacement value of buildings located within the Common Area.
- D. Liability insurance insuring the Association and owners against any liability to the public or to any owner, their invitees or tenants incident to their occupation or use of the Common Area and the lots in a combined personal injury and property damage coverage of liability not less than one million five hundred thousand dollars (\$1,500,000.00) for each occurrence. Coverage to be reviewed at least annually by the Association and increased in its discretion.
- E. Flood insurance if required by the first mortgagees.
- F. Workers' Compensation Insurance to the extent necessary to comply with any applicable laws, and any other insurance (including director's liability insurance) as may be deemed necessary by the Board of Directors of the Association.
- G. Painting, maintenance, repair, replacement and all landscaping of the Common Area, and such furnishings and equipment for the Common Area as the Association shall determine are necessary and proper, including, but without limiting the generality of the foregoing, all equipment, furnishings and personal property for the recreational area as is necessary or proper for the use thereof, and the facilities thereon by the Owners for recreational purposes and the Association shall have the exclusive right and duty to acquire the same.
- H. Landscape plating (including irrigation) and maintenance service for the Common Area; provided, however, that all landscaping of any lot be provided and maintained by the Owner thereof.
- I. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay for pursuant to the terms of these restrictions or by law or which in the opinion of the Association's Board of Directors shall be necessary or proper for the operation of the Common Area or for the benefit of the Owners, or for the enforcement of these restrictions.
- J. In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, or guest, lessee, invitees, or occupants of his Lot and is not covered by insurance required to be carried by the Association as provided elsewhere in this Declaration, the Association

shall notify the responsible Owner of costs of such maintenance or repairs. If any cost is not paid within thirty (30) days after notification, the Association may bring an action at law against the Owner personally obligated to pay the same provided that the Owner is first given notice and the opportunity to be heard.

3. Determination of Annual Assessment. Regular annual assessments shall be levied against each Owner according to the ratio of the number of Lots owned by the Owner assessed to the total number of Lots subject to assessments. The amount of the initial regular annual assessments shall be \$12.85, as to all lots and in addition thereto Lots 2, 5, 7 and 8 shall be subject to an additional annual assessment as determined pursuant to ARTICLE III, Section 10, paragraph (c). The Board of Directors of the Association may not without the vote or written assent of a majority of the voting power of the Association, other than Declarant, impose a regular annual assessment per subdivision interest which is more than 20% greater than the regular assessment for the immediately preceding fiscal year. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum provided above.
4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, or for other special purposes provided that in any fiscal year the governing body of the Association may not, without the vote or written assent of a majority of the voting power of the Association, other than Declarant, levy special assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

Every special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments. The above provisions with respect to special assessments do not apply in the case where the special assessment against a member is a remedy utilized by the governing body to reimburse the Association for costs incurred in bringing the member and his Subdivision interest into compliance with the provisions of the governing instruments for the Subdivision or for road maintenance under ARTICLE III(10)(c).

5. Notice and Quorum for any Action Authorized Under Article. Any action authorized under this Article which requires approval of the membership shall be

sent to all members not less than thirty days nor more than sixty days in advance of the meeting. The presence of members or of proxies entitled to cast fifty percent of all votes of the membership shall constitute a quorum.

Those in attendance may adjourn the meeting, if a quorum is lacking, to a time and date set by those in attendance not less than five days and not more than thirty days from the original meeting date. The quorum for the adjourned meeting shall be one-half of the required quorum at the preceding meeting, but never less than twenty-five percent of the total voting power of the Association.

If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings.

If the proposed action under this Article is favored by a majority of the votes cast at a meeting, but such vote is less than the requisite majority, members who were not present in person or by proxy may vote by written ballot which shall be distributed to all such members in person or by mail. The ballot shall set forth the proposed action and provide an opportunity to specify approval or disapproval. The ballot shall state the percentage of approvals necessary to pass the measure and shall indicate that the ballot must be received by the appropriate officers of the Association not later than thirty days from the date of the meeting to be counted.

6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis, except as provided in (4) above.
7. Date of Commencement of Annual Assessment. The annual assessment provided for herein shall commence as to all Lots on the first day of the month following the closing of the first sale of the first Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every Owner subject hereto. The due date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.
8. Effect of Non-Payment of Assessments: Remedies of the Association
Any assessment not paid within thirty days after the due date shall be subject to a late charge of five percent of the amount due and shall bear interest at the rate of

ten percent per annum from the due date until paid.

In the event of a default or defaults in payment of any assessment and in addition to any other remedies herein or provided by law, the Association may enforce each such obligation as follows:

- A.** By suit or suits at law to enforce each such assessment obligation. Any judgment rendered in any such action shall include a sum for reasonable attorney's fees as determined by the court. Upon full satisfaction of any such judgment, it shall be the duty of the Association, by an authorized officer thereof, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.
- B.** At any time after delinquency of any assessment, the Association may elect to file a claim of lien against the Lot of such delinquent Owner. Such claim of lien shall state 1) the name of the delinquent Owner or reputed Owner; 2) a description of the Lot against which claim of lien is made; 3) the amount claimed to be due and owing; 4) that the claim of lien is made by the Association pursuant to the terms of these restrictions; and 5) that a lien is claimed against said described Lot in an amount equal to the amount of the stated delinquency plus interest. Any such claim of lien shall be signed and acknowledged by an authorized officer of the Association. Upon recordation of such claim of lien by the Recorder of the County of Sonoma, the lien claimed therein shall immediately attach and become effective subject only to limitations hereinafter set forth. Each delinquency shall constitute a separate basis for a claim of lien, but a claim of lien may include more than one delinquency.

When recorded, the claim of lien may be enforced by sale by the Association, its attorney or other person authorized to make the sale, such sale to be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association shall have power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses, rent, assessments and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The Board may suspend the voting rights and right to use the recreational facilities of a member who is in default in payment of any assessments, as provided in the Bylaws.

Notice of the proposed suspension of voting and/or use rights and the reasons therefor shall be mailed by first class mail to the Owner 18 days before the date set for the hearing. The Owner may be heard, orally or in writing, at the hearing. If a suspension is voted at the hearing, it shall take effect not less than five days later.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or Abandonment of his Lot.

9. Transfer. An assessment upon any Lot in addition to any lien rights herein provided shall be a personal debt of the Owner thereof at the time the assessment is made, and the personal debt shall not pass to any new Owner upon the transfer of the Lot unless expressly assumed by that transferee. The interest of any Owner in the amounts paid pursuant to any assessment upon the transfer of a Lot or a unit ownership shall pass to the new Owner.
10. Subordination. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot or a deed in lieu of foreclosure shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure of the first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer except for a pro rate share of such assessments resulting from a reallocation of such assessments among all Lots including the mortgaged unit. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VII

ARCHITECTURAL CONTROL

1. Architectural Committee. An architectural control function will be exercised by the Board of Directors of the Association or by an Architectural Committee composed of three representatives appointed by the Board who shall serve at the pleasure of the Board except for the members appointed by Declarant as provided below.
2. Alterations, Additions or Improvements. No building, fence, wall, antenna or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography

by the Architectural Committee.

In the event the Board or its designated committee fails to approve or disapprove a proposal within thirty days after submission of plans and specifications to it, approval will be deemed to have been given and compliance with the terms of this Article conclusively presumed.

3. Architectural Committee Members. Declarant may appoint the original members of the Architectural Committee and all replacements until the first anniversary of the issuance of the original public report for the properties. Declarant may appoint a majority of the members of the Committee until ninety percent (90%) of the Lots have been sold or until the fifth anniversary of the original issuance of the final public report whichever occurs first.

After one year from the date of issuance of the original public report, the Board of Directors of the Association shall have the power to appoint one member to the Architectural Committee until ninety percent (90%) of all the Lots have been sold or until the fifth anniversary of the issuance of the final public report whichever occurs first. Thereafter the Board shall have the power to appoint all of the members of the Architectural Committee.

Members appointed to the Architectural Committee by the Board shall be from the membership of the Association. Members appointed to the Committee by Declarant need not be members of the Association.

ARTICLE VIII

EXTERIOR MAINTENANCE

The Association shall maintain the Common Area. Each individual Owner shall provide exterior maintenance to the improvements of each Lot which is subject to assessment hereunder, including paint, maintenance, repair and replacement of roofs, gutters, downspouts, and exterior building surfaces. The Owner of each individual Lot shall be responsible for maintenance of landscaping, lawns and shrubs within the fences or enclosed area appurtenant to that Lot.

In the event that the need for maintenance or repair to the Common Area is caused through the willful or negligent act of an Owner, his family, or guests or invites, and is not an insured loss under insurance required to be carried by the Association as provided elsewhere in this Declaration, the Association shall notify the responsible Owner of costs of such maintenance or repairs. If any cost is not paid within thirty days after notification, the Association may bring an action at law against said Owner personally, provided that the owner is first given notice and the opportunity to be heard.

ARTICLE IX

OWNER'S OBLIGATION TO REPAIR

Except for those portions which the Association is required to maintain and repair pursuant to this Declaration, each Owner shall, at his sole cost and expense, maintain and repair his residence, keeping the same in good condition and making all structural repairs as they may be required. Upon compliance with the conditions set forth in this Declaration regarding approval by the Architectural Committee, any Owner may perform for his residence, at his sole cost, such services as might be otherwise be provided by the Association hereunder.

ARTICLE X

USE RESTRICTIONS

Parcels and Common Area shall be occupied and used as follows:

- (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 single family residential purposes, together with an attached or detached private garage, carport, barn or stable, however, nothing contained in this paragraph shall be construed to apply to or to limit the use of the Common Area.
- (b) Animals and Poultry. The raising or keeping of livestock or animals, including without limitation poultry, birds, or reptiles for commercial purposes is prohibited within the subdivision, with the exception of horses. Pets in reasonable numbers may be kept; poultry and rabbits may be raised in pens for personal consumption subject to continuing regulation by the Association; and owners shall have equal rights to graze animals, other than household pets, in the Common Area. The number and types of animals which may be kept within the Common Area shall be as determined by the County of Sonoma and such allotment will be allocated from year to year among owners who wish to utilize grazing rights. Use of the Common Areas for such purpose shall be regulated by the Association. No animal or livestock may become a nuisance to the Owners or Occupants and the keeping of animals shall at all times be subject to the regulations of the Association. If declared to be nuisance by the Association, such animal or livestock shall be forthwith removed from the subdivision, provided further that no household pet shall be permitted to leave its Owner's lot unless under the direct control of a responsible person.

- (c) Mobile Home and Temporary Shelters: No trailer of any kind, mobile home, truck camper, tent, or boat shall be kept, placed, or maintained upon any parcel in such a manner that such trailer, mobile home, truck camper, tent, or boat is visible from neighboring lots or from any roadway, hiking or riding trails, provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed nine (9) months during and to be used exclusively in connection with the construction of any work or improvement permitted by these restrictions. No trailer, vehicle or boat shall be constructed, reconstructed or repaired upon any private area in such a manner that such construction, reconstruction or repair is visible from neighboring property or from roadways.
- (d) Hunting and Firearms: No hunting shall be permitted and no firearms shall be discharged or used either on individual Lots or the Common Area.
- (e) Garbage and Trash: All garbage and trash shall be placed and kept in covered containers. In no event shall such containers be maintained so as to be visible from neighboring property or from any roadway. The collection and disposal of garbage and trash shall be in strict compliance with any rules which may be adopted by the Association.
- (f) Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of said properties and no odor shall be permitted to arise therefrom which is or may be detrimental to any of the 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 on which clothes, rugs or similar items are exposed for the purpose of drying or airing shall be located except where such clothesline shall be adequately concealed so as to screen its view from any portion of the adjacent property. No clotheslines 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) Water Softeners. No water softener shall be installed and maintained for use in connection with any building on said property unless it is appropriately screened from exterior view.
- (j) Diligence in Construction. The work of constructing and erecting and building or structure shall be prosecuted diligently and continuously from the commencement thereof until the same is completed but in no case longer than nine (9) months. No out buildings shall be completed prior to the completion of the building, except that temporary office and storage buildings may be erected for workmen engaged in building a dwelling on said property. Such temporary buildings must be removed as soon as the dwelling is completed.
- (k) Exterior Fires. There shall be no exterior fires whatsoever, except barbecue pits in locations cleared to eliminate fire hazard and such other fires as may, from time to time, be permitted according to rules which may be adopted by the Owners' Association.
- (l) Wells. No wells for the production of, or from which there is produced water (except for personal use), oil, or gas shall be operated upon any lot; nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business. No mining or quarrying operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any lot.
- (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 by its 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 and Mailboxes. Design, location, and materials used in fences and mailboxes shall be approved by the Architectural Committee, and shall not exceed 6 feet in height, unless a greater height is approved by the Architectural Committee.
- (o) Television Antennas. No television, radio or other type antenna shall be permitted to be maintained on the roof or other exterior surface of any dwelling unless approved by the Architectural Committee.
- (p) Landscaping. Landscaping around dwellings shall be natural or grass wherever possible. Gravel or rack shall not be permitted in the immediate front yard of any dwelling in excess of 10% of the front yard area exclusive of driveways and walks. Improvements and roads shall follow the natural contours of the land to the extent possible.
- (q) Splitting of Parcels Restricted. No Lot shall be split or divided into smaller parcels by conveyance, lease, hypothecation, devise or other transfer.
- (r) Swimming Pools. Swimming pool heaters and filters must be screened from the road and adjacent sites. No domed pool covers or pools constructed above natural grade will be allowed without written approval of the Architectural Committee. This type of pool must be screened from the road and adjacent sites if approved.
- (s) Grading. No grading shall be allowed other than minimum grading necessary for roadway to building sites, grading under houses and in all cases must be approved by Architectural Control Committee. Homes with underpinned foundations will be preferred over flat lot foundations.
- (t) Minimum Floor Size. Each dwelling shall contain a minimum of 900 square feet and shall not be of prefabricated construction including prefabricated roof structures. Exposed solar equipment on roofs and around homes shall be treated so as to be an integral part of the house architecture.
- (u) Abuse of Common Areas. The Common Area shall be enjoyed by all Owners in the subdivision. Any defacing by Owners, their invitees or children or occupants, shall be cause for the Association to repair said damage and to assess the cost thereof to said Owner in the same manner and in the same procedure as prescribed in Article VI hereof (without

restricting ingress and egress over private roads during such default).

(v) Noise. No one shall engage in any activity that would raise the ambient noise above 65 decibels as measured on the "A" band level by a Sound Analyzer at any property line between the hours of 10:00 p.m. and 7:00 a.m.

(w) Roads. No roads or ways shall be permitted except as shown on said Map and private access to roads in the individual Lots, subject to the approval of the Architectural Committee.

(x) Trees. No one shall remove or cut a tree with a trunk diameter in excess of 6 inches without the prior written approval of the Architectural Committee. No Owner or other person may disturb vegetation or natural terrain more than 30 feet from an approved residence or other improvement, without the prior written approval of the Architectural Committee.

ARTICLE XI

GENERAL PROVISIONS

1. Right of Entry. For purpose of performing any exterior maintenance, repair or restoration authorized by this Declaration, the Association, through duly authorized agents or employees, shall have the right after twenty-four (24) hour notice to the Owner to enter upon any lot at reasonable hours on any day. In case of emergency, entry may be made at any time with only such notice as is reasonable under the circumstances.
2. Acceptance of Provisions. The Association and each grantee hereafter of any part or portion of or interest in the property and any purchaser under any grant or contract of sale or any lessee under any lease covering any part or portion of or interest in the 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 and Declarant provided for in this Declaration.
3. Enforcement. Each Owner shall comply strictly with the provisions of this Declaration and with the rules and regulations drafted pursuant thereto by the Association, as the same may be lawfully amended from time to time and with decisions adopted pursuant to said Declaration and rules and regulations. Failure to comply with same shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Association on behalf of the Owners, or by an aggrieved Owner. Failure by the Association or by any Owner to

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

Prior to commencement of such an action a hearing shall be held to determine what action, if any, shall be taken. Notice of the proposed action and the reasons therefor shall be mailed by first class mail to the Owner eighteen days before the date set for the hearing. The Owner may be heard, orally or in writing, at the hearing. Any action voted at the hearing shall take effect no less than five days later.

The Association, or any Owner, or the County of Sonoma as a third-party beneficiary, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Association cannot be dissolved.

4. Severability. Should any provision or portion hereof be declared invalid or in conflict with any law, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.
5. Terms. The covenants and restrictions of this Declaration shall run with and bind the property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns. This Declaration may be terminated only by an instrument in writing signed by a majority of the then Owners, approved in writing by the County of Sonoma and recorded with the County Recorder.
6. Amendment. Prior to close of escrow on the sale of the first Lot, Declarant may amend or terminate this Declaration, with the consent of the Department of Real Estate. After sale of the first unit, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of members representing a majority of the total voting power of the Association which shall include a majority of the affirmative votes or written consent of members other than Declarant, or where the two class voting structure is still in effect, at least a majority of each class of membership. However, the percentage of voting power necessary to amend a specific clause shall not be less than the percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded and shall become effective upon being recorded in the Sonoma County Recorder's office. No amendment shall adversely affect the rights of the holder of any mortgage

of record prior to the recordation of such amendment.

7. Rights of Institutional Lenders. No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first mortgage (meaning a mortgage with first priority over any other mortgage) on any Lot in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure of Trustee's sale, or otherwise. Notwithstanding any provision to the contrary, institutional lenders shall have the following rights:

A. Unless the holders of at least 66-2/3% of the first mortgages on Lots (based upon one vote for each first mortgage owned) have given their prior written approval, the Association shall not be entitled to:

- a) By act or omission, seek to abandon or terminate the planned development;
- b) Change the pro rata interest or obligations of any individual lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- c) Partition or subdivide any Lot;
- d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause;
- e) Use hazard insurance proceeds for losses to any property for other than the repair, replacement or reconstruction of such property.

8. Construction. Declarant is undertaking work of construction improvements upon the subject property. The completion of that work and the sale, rental, and other disposal of Lots is essential to the establishment and welfare of said property as a residential community, In order that said work may be completed and said property be established as a full-occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

A. Prevent Declarant, its contractors, or subcontractors from doing on the property or any lot, whatever is reasonably necessary or advisable in

connection with the completion of said work; or

- B. Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said property as a residential community and disposing of the same in parcels by sale, lease, or otherwise; or
- C. Prevent Declarant from conducting on any part of the property its business of completing said work and of establishing a plan of lot ownership and of disposing of said property in Lots by sale, lease or otherwise; or
- D. Prevent Declarant from maintaining such sign or signs on any of the property as may be necessary for the sale, lease or disposition thereof. The foregoing limitations of the application of the restrictions to Declarant shall terminate upon the sale of Declarant's entire interest in the project.

So long as Declarant, its successors and assigns, owns one or more of the Lots established and described herein, Declarant, its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make every effort to avoid disturbing the Owner's use and enjoyment of their Lots and the Common Area, while completing any work necessary to said Lots or Common Area.

9. Fair Housing. No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing or mortgaging, or occupancy of his unit to any person of a specified race, color, religion, ancestry, national origin, age, sex or family composition.

ARTICLE XIII

SPECIAL FHLMC WARRANTIES

In order that certain of the residential units may qualify for existing subsidized lending programs, it is declared that the following rights exist in favor of any first Mortgagee notwithstanding contrary or conflicting provisions contained herein:

Section 1: The first Mortgagee of any Lot may, by written notice to the Association, request written notice of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration within thirty (30) days. Such request shall state the name and mailing address of the Mortgagee, the name of the Mortgagor, the date of recording of the Mortgage and the official records book and page number, file number or other reference identifying such recording, and the residential Lot number and

subdivision encumbered by said Mortgage. Each notice of default given pursuant to such request may be sent by regular mail, postage prepaid, addressed to the Mortgagee at the address stated in such request. Following the elapse of two (2) years from the date of receipt of the written request last given by any Mortgagee pursuant to this Article, the Association shall have no further duty to notify such Mortgagee of Mortgagor's default.

Section 2: Any first Mortgagee who comes into possession of a Lot pursuant to the remedies provided for in the Mortgage, or foreclosure of the Mortgage, shall be exempt from any existing right of first refusal of any party as to the purchase of such Lot from the Mortgagor thereof.

Section 3: Any lease agreement between the planned unit development Owner and a lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, Articles of Incorporation or equivalent instrument and Bylaws, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his Lot.

Section 4: Should any of the Association's governing instruments provide for a "right of first refusal," such right shall not impair the rights of a first mortgagee to:

- A. Foreclose or take title to a Lot pursuant to the remedies provided in the mortgage, or
- B. Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or
- C. Interfere with a subsequent sale or lease of a Lot so acquired by the mortgagee.

Section 5: Association assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those common elements that must be replaced on a periodic basis. Such a reserve fund will be funded through the regular monthly assessments rather than by special assessments.

Section 6: Any agreement for professional management of the project will not exceed three (3) years and shall be cancelable by either party without cause and without imposition of a termination fee on ninety (90) days written notice.

Section 7: Unless at least sixty-six and two-thirds percent (66-2/3%) of the first Mortgages (based upon one (1) vote or each Mortgage) of units within the subdivision have given their proper written approval, the Association shall not be entitled to:

- A. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by the Association for the benefit of the units in the planned unit development. The granting of easements for public utilities or for other public purposes consistent with the intended use of such subdivision shall not be deemed a transfer within the meaning of this clause.
- B. By act or omission, seek to abandon or terminate this planned unit development project;
- C. Change the pro rata interest or obligations of any individual Lot for the purpose of:
 - a. Levying assessments or changes or allocating distributions of hazard insurance proceeds or condemnation awards; or
 - b. Determining the pro rata share of ownership of each Lot in the Common Area;
- D. By act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the maintenance of common fences and driveways, or the upkeep of lawns and plantings.
- E. Fail to maintain fire and extended coverage insurance on insurable Common Area in an amount not less than one hundred percent (100%) of the insurable value based on current replacement costs;
- F. Use hazard insurance proceeds for losses to any of the Property (whether to Lots or to Common Area) for other than the repair, replacement or reconstruction of such Property, except as provided by statute in case of substantial loss to the Lots and/or Common Area of the planned unit development project; or
- G. Partition or subdivide any Lot.

Section 8: First Mortgages shall have the right to examine the books and records of the Association, upon reasonable advance request in writing.

Section 9: First Mortgages of Lots in the Subdivision may, jointly or singly, pay taxes which are in default and which may or have become a charge against any Common Area and may pay over-due premiums on hazard insurance policies, or secure new hazard

insurance coverage on the lapse of a policy, for such property and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 10: Nothing herein or in the Articles of Incorporation of the Association or any other instrument relating to the subject property gives any owner of any lot or other party priority over any rights of first Mortgagees pursuant to their Mortgages, in the case of a distribution such unit owners of insurance proceeds or condemnation awards for losses to or a taking of common property in the subject Subdivision.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have executed this Declaration this ____ day of _____, _____.

By: _____

EXHIBIT "A"

Lots 1 though 8, inclusive as shown upon the map of POOL CREEK SUBDIVISION filed in the office of the County Recorder of Sonoma County on _____, _____ in Book _____ of Maps at pages _____ and _____.