

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Birnam Wood Golf Club
c/o Mullen & Henzell (8)
112 E. Victoria Street
Santa Barbara, CA 93102

THIS SPACE FOR RECORDER'S USE ONLY

THE CCR'S

**THIRD AMENDED AND RESTATED
DECLARATION AND ESTABLISHMENT OF PROTECTIVE CONDITIONS AND
RESTRICTIONS OF BIRNAM WOOD**

THIS THIRD AMENDED AND RESTATED DECLARATION AND ESTABLISHMENT OF PROTECTIVE CONDITIONS AND RESTRICTIONS (this "Declaration") is made this 14th day of November, 2000, by those parties whose signatures appear below (individually, a "Declarant" and collectively, the "Declarants") as follows:

WITNESSETH:

WHEREAS, East Valley Ranch Company, a California corporation, entered into that certain Declaration and Establishment of Protective Conditions and Restrictions of Birnam Wood Golf Club dated and recorded August 28, 1967, in Book 2202, Page 1405 of Official Records of the County of Santa Barbara, State of California (the "Original Declaration"); and

WHEREAS, the Original Declaration was amended by that certain Amendment to Declaration and Establishment of Protective Conditions and Restrictions of Birnam Wood Golf Club dated January 16, 1981, and recorded February 12, 1981, as Instrument No. 81-6340 of Official Records of the County of Santa Barbara, State of California (the "Amendment" which, with the Original Declaration, are hereinafter referred to as the "Amended Declaration"); and

WHEREAS, the Amended Declaration was amended and restated by that certain Amended and Restated Declaration and Establishment of Protective Conditions and Restrictions of Birnam Wood Golf Club dated August 1, 1990, and recorded October 12, 1990, as Instrument No. 90-067276 of Official Records of the County of Santa Barbara, State of California (the "Amended and Restated Declaration"); and

WHEREAS, the Amended and Restated Declaration was again amended and restated by that certain Second Amended and Restated Declaration and Establishment of Protective Conditions and Restrictions of Birnam Wood dated March 22, 1996, and recorded April 1, 1996 as Instrument No. 96-019767 of Official Records of the County of Santa Barbara, State of California (the "Second Amended and Restated Declaration"); and

WHEREAS, Section K of Article X of the Second Amended and Restated Declaration provides that, except as to Section A of Article III, the Second Amended and Restated Declaration or any parts thereof may be amended by an instrument in writing subscribed by the owners of not less than seventy-five percent (75%) of the Lots within that real property in the County of Santa Barbara, State of California, described as all of that 213.475 acre tract of land shown on the map of survey filed in Book 80, Page 44 of Record of Surveys, in the Office of the County Recorder of Santa Barbara County (hereinafter referred to as "Birnam Wood" or as "Said Property");

WHEREAS, the record owners as of the date hereof of the lots in Birnam Wood are listed on Exhibit A hereto; and

WHEREAS, Declarants are the record owners as of the date hereof of not less than seventy-five percent (75%) of the lots in Birnam Wood and desire to amend and restate the Second Amended and Restated Declaration on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, know all men by these presents:

Declarants hereby declare that the Second Amended and Restated Declaration is hereby amended and restated on the terms and subject to the conditions set forth herein.

Declarants hereby declare further that all of the lots, parcels and portions of said Birnam Wood are part of a planned development as defined in California Civil Code Section 1351(k) and are held and shall be held, transferred, hypothecated, sold, conveyed or encumbered, leased, rented, used, occupied and improved, subject to the covenants, restrictions, reservations, conditions subsequent, and charges as follows, all of which are imposed as equitable servitudes pursuant to a plan for the subdivision, improvement and sale of said land and every part thereof. All of the limitations, restrictions, conditions and covenants shall run with the land and shall be binding upon all parties having or occupying any right, title or interest in the Said Property or any part thereof.

ARTICLE I. PROPERTY SUBJECT TO THIS DECLARATION

The property subject to this Declaration is known as Birnam Wood and is more particularly described as:

All of that 213.475 acre tract of land shown on the map of survey filed in Book 80, Page 44 of Record of Surveys, in the office of the County Recorder of the County of Santa Barbara, State of California.

ARTICLE II. DEFINITION OF TERMS

A. "Lot" as used within and for the purposes of this Declaration means every portion of Said Property of a size not less than one gross acre nor more than 1.999 gross acres held in a single ownership, which is to say that any parcel now or hereafter held in Said Property shall be deemed for purposes hereof to contain as many Lots as there are gross acres within said parcel, disregarding for purposes of determining the number of Lots any fractional portion of an acre contained therein.

B. "Said Property" means the property described in Article I unless the context and circumstances otherwise require.

C. "Setback" means the minimum distance between the dwelling house, or other structure referred to and a given street center line or other line.

D. "Building Site" means a single Lot or a parcel consisting of contiguous Lots in a common ownership and utilized and approved by the Committee for the single family residence and customary outbuildings.

E. "Corporation" means Birnam Wood Golf Club, a Delaware nonprofit corporation, or its successor, and is the "Association" as that term is defined in California Civil Code Section 1351(a) which, by virtue of California Civil Code Section 1363(c), may exercise all of the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the California Corporations Code.

F. "Board of Directors" or "Board" means the Board of Directors of the Corporation elected by the Stockholders.

G. "Committee" means the Architectural and Landscape Committee of the Corporation.

H. "Owner" or "Stockholder" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the property, who is by virtue of said ownership a holder of stock in the Corporation.

I. "Club" means the social and recreational facilities operated by the Corporation as a private club with membership pursuant to the By-laws and this Declaration.

J. "Member of the Club" means any person who is granted rights and privileges to use the social and recreational facilities operated by the Corporation pursuant to the By-laws and this Declaration.

K. "Clubhouse" means the Clubhouse of the social and recreational club located upon Said Property, together with its appurtenances and surrounding areas such as verandas, parking areas, tennis courts and related facilities.

L. "Street" means any street, highway or other thoroughfare upon Said Property, whether described in recorded maps or elsewhere as a street, avenue, boulevard, place, drive, road, terrace, way, lane, circle or otherwise.

ARTICLE III. USE OF THE PROPERTY

A. All of the above defined Lots, except only those properties and interests referred to in Section A of Article VII, shall be used for residential purposes only and no building shall be erected, constructed, altered or maintained on any of said Lots other than a dwelling for a single family (including guests and household servants) with customary and suitable outbuildings as permitted by law and this Declaration.

B. No horses, cattle, cows, goats, sheep, rabbits, hares, reptiles or other animals, pigeons, pheasants, game or other birds, fowl or poultry shall be raised, kept or permitted upon Said Property or any part thereof, except dogs and cats and other household pets may be kept, provided that they are not kept, used or raised for commercial purposes or in unreasonable numbers and provided further that they do not become a nuisance and the Owners comply with the Rules adopted by the Corporation from time to time pertaining to animals.

C. No part of Said Property shall be used for the purpose of drilling thereon for or producing therefrom water without the prior written approval of the Board of Directors upon the recommendation of the Architectural and Landscape Committee. No part of Said Property shall be used for the purpose of drilling thereon for or producing therefrom oil, gas or any mineral substance. The Corporation hereby reserves all crude oil, petroleum, gas, brea, asphaltum and all kindred substances and other minerals under and in Said Property.

D. No noxious or offensive trade or activity shall be carried on or upon Said Property or any part thereof, nor shall anything be done or suffered or maintained thereon which is detrimental to the beauty and character of Birnam Wood or may be or become an annoyance or nuisance to the neighborhood or the residents or a hindrance to the use of the Corporation's golf course or other facilities.

E. No television or other antennae or unsightly objects, poles or wires shall be permitted on the roof of any dwelling or other building or on Said Property except as may specifically be approved by the Corporation; and, in the case of television antennae, the owner of the property may, at his option, make arrangements to utilize the underground television antenna system. In acting on requests for approval of a satellite dish, the Corporation shall comply with California Civil Code Section 1376.

F. No sign, billboard, flag or banner of any kind shall be displayed to the public view on any portion of Said Property except (i) as specifically permitted by law, and when permitted by law, then only on poles approved by the Corporation; (ii) home security signs of a size approved by

the Corporation (limit of two per residence) and (iii) other signs authorized by the Corporation on or around the Clubhouse property.

G. No area or building on Said Property shall be rented by the Owner thereof for transient or hotel purposes nor shall any area or building be otherwise leased or rented without the prior approval by the Corporation.

H. Each Owner of a Lot or Building Site shall maintain it and the improvements thereon in a condition and appearance appropriate to the quality of the residential area, and in conformity to the requirements of this Declaration. In the event that an Owner fails properly to maintain his property and the improvements thereon in such manner, the Corporation may maintain and/or conform the same and charge the Owner therefor as hereinafter provided.

ARTICLE IV. ARCHITECTURAL AND LANDSCAPE COMMITTEE

A. An Architectural and Landscape Committee composed of at least three Stockholders and such non-voting consultants as it shall deem advisable, shall be established by the Board of Directors of the Corporation and shall have the powers, rights and duties hereinafter set forth. The Board of Directors shall be empowered to remove members of the Committee from time to time and to appoint new members whenever vacancies shall occur. Any action of the Committee may be taken by a majority of the members thereof, and the members of said Committee may act without a formal meeting. The Corporation, may, in its discretion, pay reasonable compensation to such consultants for their services.

B. No building or other structure including fences and walls, whether located on a residential Lot or Building Site or on Clubhouse Property shall be demolished, erected, altered or repaired without first having a Birnam Wood Building Permit issued by the Corporation. No Birnam Wood Building Permit shall be issued until the building plans, specifications and plot plan showing the location, elevation and grade lines of such building or other structure, or such other description of the proposed work as shall be acceptable to the Committee have been approved in writing by the Committee. Two sets of such plans, specifications and plot plan or other description shall be submitted to the Committee together with such reasonable fees for the cost of examination and approval as the Board may set. The Committee, before giving such approval, may require that changes be made to comply with its Building Regulations and such other requirements as the Committee may, in its absolute discretion, impose as to structural features of said building or other structure, the height of any structure or wall, the type of building material used, or other features or characteristics thereof not expressly covered by any of the provisions of this Declaration, including the location of the building or other structure with respects to topography, natural drainage and finished ground elevation. The Committee may also require that the exterior finish and color and/or exterior lighting and the architectural style or decoration of such building or other structure shall be such as in the absolute discretion of the Committee, shall be deemed to be suitable in view of the general architectural style and character of structures erected or to be erected in the community. The exterior surface of any building or other structure in Said Property shall not be repainted or refinished in a color or manner differing from the previous painting or finishing of such building or other structure until the Committee

shall have given its written approval of such repainting or refinishing following the submission of an acceptable description of the work proposed to be done.

C. No substantial landscaping, planting or replanting of any area of a Lot or Building Site shall be commenced until a Birnam Wood Building Permit has been issued and no Birnam Wood Building Permit for such work shall be issued until such landscaping plan showing the proposed planting and landscaping as shall be acceptable to the Committee, has been approved in writing by the Committee. Two sets of all such drawings and descriptions constituting such landscaping plan shall be submitted to the Committee together with such reasonable fees for the cost of examination and approval as the Board may set. The Committee, before giving such approval, may require that changes be made to comply with such requirements as the Committee may, in its absolute discretion, impose to assure that such plan shall be suitable in view of the general appearance, quality and character of the area as a whole and the protection of the beauty and usability of the golf and recreation areas and facilities of the Corporation.

D. No tree or other perennial plant exceeding 20 feet in height or six inches in trunk diameter, or which has been marked for preservation by the Committee, may be modified or removed without permission in writing from the Committee first obtained.

E. Under no circumstances shall any planting or landscaping be added, removed or altered within the area of any Lot or Building Site covered by a golf course easement, nor may any plants exceeding five feet in height be placed or suffered to grow within 15 feet of a golf course easement boundary line.

F. Neither the Corporation nor the Architectural and Landscape Committee nor any Stockholder thereof shall be responsible for structural or other defects of any kind or nature whatsoever in said plans or specifications and/or in structures or improvements erected in accordance therewith. Approval of plans by the Committee or the Board shall in no way make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify, and hold the Committee and the Board, and its members, harmless from any and all liability arising out of that approval. Upon issuance of a Birnam Wood Building Permit, and as a condition thereof, each owner shall be required to execute and deliver an indemnification agreement so providing. The issuance of a Birnam Wood Building Permit shall not operate as a substitute for or excuse an Owner from complying with all other requirements that may be imposed by any governmental agency or quasi governmental agency having jurisdiction over the Property. After obtaining a Birnam Wood Building Permit, each owner shall obtain all necessary approvals and permits that may be required by such other agencies including but not limited to the County of Santa Barbara and the Montecito Association.

ARTICLE V. CHARACTER OF BUILDINGS, IMPROVEMENTS AND LANDSCAPING

A. No building may be erected or maintained upon any Lot or Building Site on Said Property except one single family dwelling with private appurtenant garages and customary

outbuildings. No such building shall be erected or commenced without the prior written approval of the Committee, applied for and granted in the manner hereinabove set forth.

B. No trailer, outhouse, garage, shed, tent or any temporary buildings of any kind shall be erected or maintained on any Lot or Building Site prior to the erection of the principal dwelling house or building thereon. provided, however, that the conditions herein contained shall not be construed to prevent the temporary construction and maintenance by an Owner or the Corporation of buildings or improvements on his or its property necessary for the development or improvement of the property.

C. The work of constructing any residence or building shall be prosecuted diligently and continuously from the commencement thereof until the same is completed. All structures shall be suitably finished, colored, painted or stained immediately upon completion.

D. No building shall be erected on any Lot or Building Site any portion of which is nearer than 25 feet to the rear lot line or golf course easement line, nor nearer than 15 feet to either side lot lines, nor nearer than 50 feet to the street center line.

E. No building erected or constructed elsewhere shall be moved onto any Lot or Building Site without the prior written approval of the Committee.

F. No horse trailer, living trailer, house car or "camper", boat or boat trailer, shall be parked on any road, Lot or Building Site either temporarily or permanently, nor shall any motor vehicle not capable of being operated be parked for longer than forty-eight (48) hours outside of a garage of any Lot or Building site. Other than customary minor maintenance work and minor emergency repairs, there shall be no painting, repainting or mechanical work done on vehicles on any Lot or Building Site.

G. The Corporation or its representatives shall have the right at all times to enter on any unimproved Lot or Building Site, or upon the exterior portions of any improved Lot or Building Site after reasonable notice to the Owners thereof, or on request of the Owners thereof, to maintain and/or conform the same as provided in Section H of Article III hereof, to plant or replant, trim, cut back, remove, replace and/or maintain hedges, trees, shrubs, or flowers, on the area and/or to keep cultivated and/or remove plants, and the Corporation or its agents shall not thereby be deemed guilty of any manner of trespass.

ARTICLE VI. STOCK OWNERSHIP IN THE CORPORATION; MEMBERSHIP IN THE CLUB

A. Every person or entity who is the record Owner of any Lot which is part of Said Property, shall be a Stockholder of the Corporation; provided that any such person or entity who holds any interest in a Lot merely as a security for the performance of an obligation shall not be a Stockholder. Each Stockholder upon the purchase or acquisition of his Lot or Lots, shall receive

one share of stock in the Corporation for each Lot purchased or acquired. Each new Owner of any improved Lot or Building Site (or in the case of a new Owner that is not a natural person, then the natural person designated under Article IX) shall become a Corporate Member of the Club. Except as specifically provided in Article IX, in the event of the death of the designated or natural Corporate Member associated with a Lot, or if for any other reason the membership shall cease, a non-natural Owner of the Lot must designate another natural person as the Member and, upon approval thereof by the Corporation, incur another initiation fee.

B. No Owner of a Lot may, by purporting to waive, surrender or reject the share or shares of stock in the Corporation appurtenant to his Lot or Lots, relieve himself of his obligations as Stockholder or Owner.

C. The shares of stock in the Corporation held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale of such Lot and then only to the purchaser of such Lot, one share of stock in the Corporation being appurtenant to each Lot. Any attempt to make a prohibited transfer shall be void and will not be reflected on the books and records of the Corporation. In the event the Owner of any Lot should fail or refuse to transfer the shares of stock in the Corporation registered in his name to the purchaser of such Lot, the Corporation shall have the right to record the transfer upon the books of the Corporation and to issue a new certificate evidencing such shares of stock in the Corporation to the purchaser, and thereafter the old certificate shall be null and void as though the shares evidenced thereby had been surrendered and the purchaser shall be a holder of the shares of stock in the Corporation; provided, however, that notwithstanding anything to the contrary hereinabove set forth, the Owner shall be permitted to pledge his share certificates to the holder of the first mortgage or first Deed of Trust made in good faith and for value and shall not be deemed thereby to have transferred the shares of stock in the Corporation evidenced thereby, nor shall the pledgee be deemed to have become Stockholder or Owner of stock in the Corporation. A first mortgage or first Deed of Trust as used herein shall be defined as a mortgage or Deed of Trust which at the time of first recordation thereof is not outranked in priority of record by the lien of another mortgage or Deed of Trust.

D. The Corporation shall have only one class of stock and the right to receive and hold such stock shall be limited to the fee Owners of Lots in Said Property who are by virtue of such ownership the holders of shares of stock in the Corporation.

E. Each Stockholder shall be entitled to one vote for each share of stock in the Corporation held by him, which is to say that the number of votes of each Stockholder shall be equal to the number of Lots of which he is the record owner. When more than one person holds such share or shares of stock in the Corporation, the vote for each share of stock shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one share of stock, except that whenever, and as long as the Certificate of Incorporation of the Corporation shall so provide, shares of stock may be cumulatively voted for the election of Directors of the Corporation.

F. The Corporation shall not be liable or responsible for loss or damage to the property or person of any Stockholder, Member, member of his family or his guest occurring in, on, or upon

Said Property which is not directly and proximately caused by the negligent acts of the Corporation or its agents in the course of their employment. In addition, each Stockholder acknowledges the existence of the golf course and related improvements located on Said Property; acknowledges that there is a risk of personal injury or property damage inherent in the ownership of property that is located at, near, or adjacent to a golf course, and by acceptance of his deed to a Lot within Said Property, and by acceptance of his shares of stock, fully assumes and accepts that risk.

ARTICLE VII. POWERS AND DUTIES OF THE CORPORATION

A. The Clubhouse is owned by the Corporation in fee simple. The Corporation has heretofore acquired an exclusive easement for golf course and related purposes over the golf course areas and an exclusive easement for the erection and maintenance of fences, gates and a gatehouse and related purposes over that certain area surrounding and in the vicinity of the entrance to Said Property. The Corporation has acquired a non exclusive right-of-way over all streets on the property. The Corporation is the owner of a non exclusive right-of-entry upon certain property around the alignment of Buena Vista Creek for the purpose of inspecting, clearing and maintaining the creek as flood control channel. The Corporation may from time to time acquire such other properties, rights or interest in Said Property as may be consistent with the provisions of this Declaration, its Certificate of Incorporation and its By-laws. All of said rights, titles and interests are owned by the Corporation and shall be utilized for the protection, use and enjoyment and recreation of its members and Stockholders.

B. No portion of Said Property as to which the Corporation is the owner of the fee shall be deemed, while such fee is held by the Corporation, to constitute a Lot hereunder. When and in the event that any such Lot shall be conveyed in fee by the Corporation to another, it shall thereupon (subject to the definition of "Lot" herein) immediately become a Lot or Lots and a share of stock shall be issued by the Corporation and conveyed with each Lot to the grantee thereof.

C. In addition to the powers delegated to it by its Certificate of Incorporation and without limiting the generality thereof, the Corporation shall:

1. Own, maintain and otherwise manage all of the Corporation properties together with the Clubhouse and facilities and all improvements and landscaping thereon, and all property acquired by the Corporation.

2. Maintain roads and streets, parkways, median strips, fencing and gates and gatehouses, maintenance and storage facilities, all of the areas within the golf course easement area, channel and other drainage areas and such other areas and facilities on Said Property as may be consistent with its corporate purpose.

3. Pay real and personal property taxes and other charges assessed against its interests, properties and facilities.

4. Have the authority to offer to its Stockholders and Members of the Club, their families and any guests such additional services as may be consistent with its corporate purposes at such costs and charges and upon such terms and conditions as the Board of Directors may from time to time determine.

5. Maintain a policy or policies of liability insurance, insuring the Corporation and its agents, guests and invitees and the Stockholders and Members of the Club or the Corporation against liability to the public or to the other members or Members of the Club, their guests and invitees incident to the use of the Corporation properties or facilities in an amount necessary to provide such coverage and protection as the Corporation may deem prudent.

6. Maintain a policy or policies of fire and such other casualty insurance as the Corporation may deem necessary upon all of the properties and facilities of the Corporation in such amounts and with such companies as the Corporation may determine. Upon the occurrence of any casualty loss resulting in damage to any of the facilities, the Corporation shall use such proceeds as are available to it from such insurance policies to replace and rebuild said facilities in the manner it deems most suitable to the mutual benefit of its Stockholders and Members of the Club.

7. Maintain Workman's Compensation Insurance to the extent necessary to comply with any applicable law.

8. Maintain its funds in bank accounts and other depositories and have conducted by a Certified Public Accountant an annual independent confirmation or audit of the account or accounts and provide for the preparation and the furnishing of a full written report thereof to each Owner within 30 days of its completion.

9. Establish and maintain such initial working capital, capital replacement and contingencies funds as the Directors may deem prudent and appropriate.

10. Establish and publish such general Rules and Regulations as the Corporation may deem reasonable in connection with the use of its properties, facilities and the regulation of its activities, alter and amend such Rules and Regulations from time to time as the Board of Directors may deem necessary, to publish and distribute such Rules and Regulations to all Members of the Club. Such Rules and Regulations shall be binding upon all Members of the Club upon publication and distribution.

11. In its discretion, employ any agent or agents, and enter into any contracts for the purpose of performing its duties.

12. Undertake, police and enforce the restrictions, covenants and conditions herein contained on behalf of all the Owners of Said Property.

13. Prepare and distribute to all Stockholders the financial documents required by Section 1365 of the California Civil Code within the times and in the manner therein specified.

14. Set and establish, allocate, bill and collect, levy and enforce its charges and assessments for the purposes set forth herein and in the manner set forth in Article VIII.

ARTICLE VIII. ASSESSMENTS, DUES, FEES AND LIENS

A. Each Owner for each Lot owned by such Owner within the property, and each new Owner of any Lot by acceptance of a deed therefor, and his stock in the Corporation, whether or not it shall be so expressed in any such deed, stock certificate or other conveyance, hereby covenants and agrees or shall be deemed to covenant and agree to pay to the Corporation:

1. Monthly landowner assessments.
2. Such special landowner assessments as may be permitted hereunder, such assessments as may be fixed, established and collected from time to time as hereinafter provided.
3. Charges incurred by the Corporation for goods and services specially purchased or ordered by or on behalf of the Stockholder.
4. Monthly dues, in the case of any Member of the Club.
5. The initiation fee for Corporate Membership, in the case of a new Owner of any improved Lot or Building Site.

B. Monthly landowner assessments, special landowner assessments, monthly dues and initiation fees, together with interest thereon, and costs of collection thereof as hereinafter provided, may become a charge upon the land and a continuing lien upon the property against which such assessment is made, but only upon the recordation of a claim of lien when made strictly in accordance with the provision of Section H of this Article. Such assessments, dues and fees, plus any indebtedness to the Corporation for charges incurred, together with interest thereon and the cost of collection, shall also be the personal obligation of the Stockholder-Lot Owner against whom such charges, dues, fees or assessments are charged.

C. The monthly landowner assessments and the special landowner assessments shall be used exclusively for the purpose of financing the landowner services of the Corporation rendered as a homeowner's association for the protection and preservation of property and property values in Birnam Wood, pursuant to the provisions of the Declaration. Such services shall include but need not be limited to: landscaping and landscape maintenance on all non recreational areas; upkeep of streets, parkways, median strips, fences and gates in Birnam Wood; guard and related services; services and costs of the Architecture and Landscaping Committee; flood control activity; and organizational, staff and administrative costs incidental thereto.

D. Charges shall be made for goods and services offered by the Corporation and rendered or sold to an individual Stockholder who is a Member of the Club or his family or guests upon specific request, and shall be the personal responsibility of such Stockholder as incurred but shall

not be or become a lien upon the property of the Stockholder as provided in Section H of this Article. Charges for goods and services sold or rendered shall likewise be made to Members of the Club who are not also Stockholders.

E. Each of the Lots shall be subject to the monthly landowner assessment set forth in Section B of this Article in an amount equal to each such Lot's pro rata share of the total monthly landowner assessments. Said pro rata share shall be that portion of the total of said monthly landowner assessments that each Lot bears to aggregate number of Lots in Said Property as Said Lots are defined herein, except that the property owned by the Corporation in fee shall not be deemed a Lot hereunder and shall not be subject to assessment or considered in the said allocation.

1. At all meetings of the Corporation, one vote shall be cast by each Stockholder for each share held in the Corporation.

2. Prior to each annual Stockholders' meeting, the Board of Directors of the Corporation shall consider the current costs of landowner services and the future needs of the Corporation in connection therewith, and shall fix and establish the total projected financial requirements for the coming year and on the basis thereof, considering the need for prudent contingency reserves and capital replacement funds, shall establish the total assessment required for the coming year and the amount of the monthly assessment allocated against each Lot. Annual increases in regular assessments for any fiscal year may not be imposed unless the Board has complied with Section 1366(a) of the California Civil Code with respect to that fiscal year, or has obtained the approval of Stockholders as therein provided. In addition, the Board may not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Corporation's preceding fiscal year without the approval of Stockholders obtained in the manner specified in California Civil Code Section 1366(b). Notice of any increase in the regular assessments of the Corporation shall be given to Stockholders within the time and in the manner specified in Section 1366(c) of the California Civil Code.

F. In addition to the monthly assessment hereinabove provided, the Corporation may levy in any assessment year (and apportion among the lots equally as with monthly assessments), a special assessment when necessary applicable in that year only, for the purpose of meeting special or unbudgeted needs of the Corporation in the carrying out of its duties, provided that any such assessment shall have the consent of a majority of the votes entitled to be cast by Stockholders, whether cast in person or by proxy at a meeting duly called for this purpose, and provided further that the Board may not impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the Corporation for that fiscal year without the approval of Stockholders obtained in the manner specified in California Civil Code Section 1366(b). Notice of any increase in special assessments of the Corporation shall be given to Stockholders within the time and in the manner specified in Section 1366(c) of the California Civil Code.

G. If the liabilities to the Corporation are not paid on the date when due, then such liabilities shall become delinquent and the Board of Directors may take such action toward their collection as is authorized by the By-laws and Certificate of Incorporation. In the event that it becomes

necessary to institute action for the collection of a liability, the defaulting Stockholder shall pay interest on all sums imposed including the delinquent assessments, reasonable costs of collection, including but not limited to attorneys fees and late charges, at the maximum annual percentage rate allowed by law, not to exceed 12 percent, commencing 30 days after the assessment becomes due.

H. As to monthly or special landowner assessments and Club dues and initiation fees, in addition to other remedies available, the Board of Directors may any time after 60 days after the posting of a delinquency for such assessment, as provided in the Certificate of Incorporation and the By-laws, and after notice as required by California Civil Code Section 1367 (which time periods may run concurrently), elect to record in the Santa Barbara County Recorder's Office a claim of lien in the name of the Corporation against the defaulting Stockholder's property in Birnam Wood. Such claim shall state: (1) the amount that is unpaid, plus any interest and costs of collection, including all costs and charges incurred in the preparation and filing of such notice and claim of lien; (2) a description of the property against which the claim of lien is made; (3) the name of the record Owner thereof; (4) that the claim is made by the Corporation pursuant to the terms of this Declaration; and (5) that a lien is claimed against the described property in the amount stated to be due and owing to the Corporation by the defaulting Owner. The Claim of lien shall be signed and acknowledged by at least two officers of the Corporation thereunto duly authorized. Upon the recording of such claim, the amount due and owing to the Corporation, as stated in the claim of lien, shall become a lien upon the described property. Any such lien may be foreclosed in accordance with California Civil Code Section 1367. If such foreclosure be by suit in Court, the defaulting Owner shall pay to the Corporation such sums as the Court may fix as attorney's fees. The Corporation may bid on the property at the foreclosure sale and may hold, lease or mortgage and convey the same, subject to the provisions of this Declaration.

I. Upon payment in full of said assessment and charges after a claim of lien has been recorded, as aforesaid, a notice of satisfaction and release of lien shall be recorded in the Santa Barbara County Recorder's office by the Corporation, said notice to be executed and acknowledged by at least two officers of the Corporation thereunto duly authorized.

J. If any property subject to a monetary lien created by this Declaration shall be subject to the lien of a First Mortgage or Deed of Trust, the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of said Mortgage or Deed of Trust.

ARTICLE IX. SALES OF PROPERTY

A. No Owner of any Lot or Lots in Said Property shall transfer, except in compliance with the requirements of this Article IX, said Lot or Lots to another until the proposed transfer of the Lot or Lots and the appurtenant share or shares of stock in the Corporation to said proposed purchaser has been approved by the Corporation by delivery of the recordable document set forth in Section D hereof and such document has been recorded. Application for said approval shall be made by the seller and purchaser jointly upon forms provided by the Corporation and prescribed by the Corporation in compliance with the terms of this Declaration (the "Application

for Corporate Membership and Transfer"). (In the case of a proposed purchaser that is not a natural person, the Application for Corporate Membership and Transfer shall indicate (and be co-signed by) the natural person who, upon consummation of the purchase, shall serve as the Corporate Member of the Club.) The Application for Corporate Membership and Transfer shall be considered by the Corporation solely upon reasonable, uniform and objective standards established by Stockholders of the Corporation including, among other things: the proposed purchaser's ability to meet financial and other obligations entailed in the ownership of a Lot or Lots in the Property and membership in the Club and the purchaser's consent to subscribe to and comply with the provisions of this Declaration and the rules and regulations of the Club. In the event of the death of a Corporate Member, the surviving spouse shall become the Corporate Member and shall have all the rights and obligations thereof. Upon the death of that surviving spouse, the Corporate Membership shall cease. No application for Corporate Membership and Transfer shall be required by reason of the transfer of any Lot or Lots to the surviving spouse of a deceased Corporate Member, or from or to a trust of which the surviving spouse is the primary beneficiary or from or to another legal entity owned or controlled by the surviving spouse. In no event and under no circumstances, shall the approval of the proposed transfer be denied or withheld by reason of or for reasons related to the proposed purchaser's race, color, creed, national origin, sex, religion, ancestry or disability. The standards and procedures related to sales of property shall be solely controlled by this Declaration.

B. In the event that upon application the Corporation shall, for reasons allowable under Section A of this Article, deny the approval for such transfer, the Corporation shall have the option, exercisable by its delivery of written notice to the seller within 30 days after the submission of the completed Application for Corporate Membership and Transfer, to purchase the property in question for the same price and upon the same terms and conditions as were applicable to the proposed sale and transfer; provided, however, that the Corporation shall have 60 days to close such purchase following delivery of its written notice of exercise.

C. If the Corporation shall, pursuant to the provisions of Section B of this Article, have the option to purchase said Lot or Lots and shall decline or fail to exercise it, the Owner thereof shall have the right within 60 days of approval or expiration of the option to sell the property and its appurtenant share or shares of stock in the Corporation to the proposed purchaser for the price and upon the same terms and conditions as originally established; provided, however, that any proposed sale after said time or for a different price or upon different terms and conditions and/or to a different purchaser, shall be deemed a new proposed sale and shall require a new Application for Corporate Membership and Transfer as set forth in Section A of this Article and, provided further, that if there shall be no approval of the new proposed transfer, the option provision of Section B of this Article shall again apply.

D. If the transfer of a Lot or Lots and the appurtenant shares of stock in the Corporation shall be approved or if, failing such approval, the Corporation shall decline or fail to exercise its option under Section B during the time allowed, and provided that any applicable transfer fee and indebtedness of the transferor to the Corporation shall have been paid, the Corporation shall prepare, execute and deliver to the proposed transferee a document in recordable form setting forth the name of the proposed transferee, the description of the land concerned, and that the proposed transfer has met the requirements of this Declaration and is not in violation thereof and

the delivery of such document shall be binding upon the Corporation and the Owners of all property covered by this Declaration.

E. The purchaser of any Lot in the Said Property shall by virtue of said purchase become a Stockholder of the appurtenant shares of stock in the Corporation and the property so purchased shall remain subject to this Declaration. No sale or transfer, whether approved or not, shall have the effect of separating any Lot or Lots in the Said Property from the share or shares appurtenant thereto or of releasing Said Property from the restrictions contained in this Declaration.

ARTICLE X. EFFECT AND CONSTRUCTION OF THIS DECLARATION

A. The conditions, restrictions and covenants hereby established may be enforced as equitable servitudes and shall operate as covenants running with the land. Remedies for breach or violation may be enforced by the Corporation or by any Owner or Owners of any Lot or Lots, including any bona fide purchaser under contract by any appropriate legal proceedings allowed by law or in equity.

B. Provided, however, that a breach of any of the foregoing conditions and restrictions, shall not affect or render invalid or subordinate the lien of any Mortgage or Deed of Trust made for value which may then be a lien, or become a lien upon Said Property, but such conditions and restrictions shall be binding upon and effective against any Owner, and the heirs, devisees, executors, administrators, successors and assigns of any Owner, whose title is acquired under and through any such Mortgage or Deed of Trust by foreclosure, Trustee's Sale, or otherwise.

C. Provided also, that the rights of the Corporation concerning any Lot arising hereunder shall not be exercised until, and no action shall be brought to enforce or establish such rights unless, the requirements of California Civil Code Section 1354 have been satisfied.

D. The determination by any Court that any of the provisions of this Declaration are unlawful or invalid shall not affect the validity of any of the other provisions hereof.

E. Damages are declared not to be adequate compensation for any breach of the provisions of this Declaration, the Declarants contemplating the enforcement of such restrictions as part of the general plan of improvement of Said Property, and not solely for the purpose of obtaining damages for the breach of such restrictions.

F. All of the conditions, restrictions and charges set forth in this Declaration are imposed upon Said Property for the direct benefit of Said Property, the Owners thereof, and the Corporation as a part of the general plan of improvement, development, building, occupation and maintenance hereby; and said conditions, restrictions and charges shall run with the land and continue to be in full force and effect until January 1, 2020, at which time said conditions, restrictions and charges shall be automatically extended for successive periods of ten years, unless within six months prior to the expiration of any such ten year extension period, by a vote of a majority of the Owners of record of the Lots, it is agreed to terminate said conditions, restrictions and charges by an instrument in writing, signed by said Owners, which shall be acknowledged by them so as to entitle it to be recorded in the office of the Recorder of the

County of Santa Barbara; provided, however, the prohibitions of Section A of Article III shall be perpetual upon all property for the mutual benefit of every Lot or Building Site therein.

G. The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by the Corporation or the Owners of any portion of Said Property, or their and each of their legal representatives, heirs, successors, or assigns; and the failure to enforce any of such conditions, restrictions or covenants herein contained shall in no event be deemed to be a waiver of the right to do so thereafter.

H. No failure by the Corporation to perform any of the duties, functions or responsibilities of the Corporation required of it herein shall operate to defeat the effect of or to invalidate or prevent the enforcement of the mutual conditions, restrictions and covenants herein contained or to create a right of rescission of all or any part hereof, or to free all or any portion of Said Property from the effect hereof.

I. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the protection of the community of Birnam Wood.

J. In any legal proceeding commenced by anyone entitled to enforce or restrain a violation of this Declaration or any provision hereof, the losing party or parties shall pay the attorney's fees of the prevailing party or parties in such amount as may be fixed by the Court in such proceeding.

K. Except as to Section A of Article III, this Declaration or any parts thereof may be amended by an instrument in writing subscribed by the Owners of not less than 75% of the Lots within the Said Property and upon compliance with the provisions of Civil Code Section 1355.

L. This Declaration may be executed in several counterparts all of which shall constitute one and the same instrument.

BIRNAM WOOD GOLF CLUB
SUPPLEMENTARY INFORMATION ON FUTURE MAJOR REPAIRS
AND REPLACEMENTS (UNAUDITED)

October 31, 2002

An independent engineer conducted a study on September 9, 2002, to estimate the remaining useful lives and the replacement costs of the components of common property. Estimated replacement costs were based on the estimated costs to repair or replace the common property components at the date of the study. Funding requirements consider an annual inflation rate of 3% on amounts funded for future major repairs and replacements. The annual funding requirement is estimated to be \$684,000. The amount of cash held in replacement funds is approximately \$402,000 at October 31, 2002.

The following information is based on the study and presents significant information about the components of common property. (Amounts are rounded to the nearest thousand dollars.)

<u>Component</u>	<u>Estimated Remaining Useful Life (Years)</u>	<u>Estimated Future Replacement Cost at October 31, 2002</u>	<u>Estimated Future Replacement Cost at October 31, 2001</u>
Roads and Security	0 to 20	\$ 1,043,000	\$ 161,000
Golf Course Machinery and Equipment	0 to 22	4,730,000	5,511,000
Clubhouse Contents	0 to 8	1,614,000	1,464,000
Cottages Contents	0 to 7	<u>700,000</u>	<u>651,000</u>
Totals		<u>\$ 8,087,000</u>	<u>\$ 7,787,000</u>