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Hecht, Solberg, Robinson & Goldberg LLP  
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Attention: Michael J. Maher



DECLARATION ESTABLISHING  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND GRANTS OF EASEMENTS

FOR

SYCAMORE VISTA INDUSTRIAL PARK  
Vista, California

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02/05/02

TABLE OF CONTENTS

<u>ARTICLE</u>		<u>PAGE</u>
	RECITALS .....	1
1	DEFINITIONS .....	2
2	MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION .....	5
	2.1 Membership .....	5
	2.2 Voting Rights .....	5
3	COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION .....	6
	3.1 Creation of Lien and Personal Obligation for Assessments .....	6
	3.2 Purpose of Assessments .....	6
	3.3 Regular and Special Assessments .....	6
	3.4 Individual Special Assessments .....	7
	3.5 Rate of Assessment .....	7
	3.6 Date of Commencement of Regular Assessments; Due Dates .....	8
	3.7 Effect of Non-Payment of Assessments; Remedies of Association .....	8
	3.8 Subordination of the Lien to First Mortgages .....	9
	3.9 Estoppel Certificate .....	9
	3.10 Personal Liability of Owner .....	9
4	LAND USE .....	9
	4.1 Buildings .....	9
	4.2 Use Restrictions .....	9
	4.3 General .....	11
	4.4 Natural Open Space Lot .....	11
5	BUILDING TYPE AND APPROVAL; OPERATIONS GENERALLY .....	11
	5.1 Construction Type and Architectural Harmony .....	11
	5.2 Completion of Construction .....	12
	5.3 Landscaping .....	13
	5.4 Landscaping Around Park Monument Identification Signs .....	13
	5.5 Excavation and Underground Utilities .....	13
	5.6 Slope and Drainage .....	13
	5.7 No Parking on Private Streets .....	14
	5.8 Storage, Loading and Trash .....	14
	5.9 Maintenance and Repairs .....	14
	5.10 Inspection .....	14
	5.11 Division of Land .....	14
	5.12 Height Restriction .....	14
	5.13 Hazardous Materials .....	14
	5.14 Payment of Taxes .....	16
	5.15 Eminent Domain .....	17
6	SIGNS .....	17
7	BUILDING LOCATION .....	17
	7.1 Location .....	17
	7.2 Resistance to Fire .....	17

ARTICLE

PAGE

M:\Buielvistaccs\syc vista ccrs 07.wpd  
02/05/02

-ii-

<u>ARTICLE</u>		<u>PAGE</u>
8	CERTAIN IMPROVEMENTS .....	18
	8.1 Construction and Repair .....	18
	8.2 Interim Use of Buildable Lot .....	18
	8.3 Lighting Parking Areas Within the Park .....	18
	8.4 Utility Installations .....	18
	8.5 Landscaping and Irrigation System for Quarried Slope Areas on Lots F, G, H and I .....	19
9	MUTUAL RELEASE .....	19
10	EASEMENTS .....	19
	10.1 Grants of Easements .....	19
	10.2 Utility Lines .....	20
	10.3 Obstructions Within Private Streets .....	20
	10.4 Right of Entry by Association .....	21
	10.5 Reservation by Declarant .....	21
11	BUILDING UPKEEP AND MAINTENANCE .....	21
	11.1 Maintenance of Buildings .....	21
	11.2 Closure .....	22
	11.3 Repair or Replacement of Damaged Building .....	22
12	MAINTAINING COMMON IMPROVEMENTS AND NATURAL OPEN SPACE LOT .....	22
	12.1 Duties of Association .....	22
	12.2 Insurance .....	22
	12.3 Limitation of Expenditures .....	23
	12.4 Association's Right to Repair Neglected Lots .....	23
	12.5 Property Management Company .....	23
	12.6 Management Fee .....	24
13	APPROVAL OF OWNERS AND NOTICES .....	24
14	MODIFICATION PROVISION .....	25
15	NOT A PUBLIC DEDICATION .....	25
16	INJUNCTIVE AND DECLARATIVE RELIEF .....	25
17	BREACH SHALL NOT PERMIT TERMINATION .....	25
18	INDEMNITY BY ASSOCIATION .....	26
19	SEVERABILITY .....	26
20	ENFORCEMENT AND REMEDIES .....	26
	20.1 Right to Cure .....	26
	20.2 Legal and Equitable Relief .....	26
	20.3 Claim of Lien .....	27
	20.4 Waiver .....	27
21	LITIGATION EXPENSES .....	27

<u>ARTICLE</u>		<u>PAGE</u>
22	NO ASSIGNMENT OR TRANSFER .....	27
23	SALE BY OWNER .....	27
	23.1 Notice .....	28
	23.2 Transferee's Statement .....	28
	23.3 Release of Owner .....	28
	23.4 Liability of Transferor .....	28
24	SALE/LEASEBACK .....	28
25	MULTIPLE OWNERSHIP .....	28
26	TERM OF DECLARATION .....	29
27	MISCELLANEOUS .....	29
	 SUBORDINATION AGREEMENT	

Exhibits

"A"	-	Parcel Map
"B"	-	Legal Description

**DECLARATION ESTABLISHING  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND GRANTS OF EASEMENTS FOR  
SYCAMORE VISTA INDUSTRIAL PARK**

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This DECLARATION ESTABLISHING COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANTS OF EASEMENTS FOR SYCAMORE VISTA INDUSTRIAL PARK ("Declaration") is made as of February 11, 2002, with reference to the following

RECITALS

A. Declarant owns the Park, comprises that certain real property located in the City of Vista, County of San Diego, California, depicted on the Parcel Map attached to this Declaration as Exhibit "A" and more particularly described on Exhibit "B" attached hereto and by this reference made a part hereof.

B. Declarant intends to develop the Park as an industrial park in the manner and configuration set forth on the Parcel Map. The Park is a Common Interest Development described in §1351(k) of the California CIVIL CODE as a "Planned Development", currently consisting of a total of twenty (20) lots, of which one (1) is the Natural Open Space Lot and of which nineteen (19) are lots on which buildings may be located.

C. As soon as practicable after the recordation of this Declaration, Declarant shall convey the Natural Open Space Lot to the Association. The members of the Association will be the Owners of the Buildable Lots, which are the Lots subject to assessment pursuant to this Declaration. As a part of the Common Improvements, the private streets will be constructed within those portions of the Buildable Lots depicted on the Parcel Map as the areas to be improved as the private streets. The Association will maintain the Common Improvements. The Association will also maintain the Natural Open Space Lot as natural open space as required pursuant to the conditions of approval of the Parcel Map and the maintenance plan approved by the City in accordance therewith.

D. Declarant wishes to subject the Park in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all future owners of the Park or of Lots in the Park. The purpose of the Declaration is to ensure proper development and use of the Park, to protect the owner of each Lot against any improper development and use of surrounding Lots which might depreciate the value of the Lot, to prevent the erection on the Park of structures built of improper design or materials, to encourage the erection of attractive improvements, to prevent haphazard and inharmonious improvements, to secure and maintain proper setbacks from streets and adequate free spaces between structures, to provide for parking and vehicular access, ingress and egress, to provide for pedestrian access, ingress and egress, to enhance and protect the value, desirability and attractiveness of all the Park, and in general to provide adequately for a high type and quality of improvement of the Park in accordance with a uniform plan of development.

E. The Park is comprised of a total of twenty (20) legal lots as of the date of this Declaration. Therefore, with respect to the rights, duties and obligations between Declarant and Occupants under leases, and, in the event fee title to one or more of said lots is conveyed by Declarant to another Person (such Person thereby becoming an "Owner"), with respect to the rights, duties and obligations between such other Owner(s) on the one hand and Occupants under leases on the other hand, Declarant intends that the provisions of this Declaration are made pursuant to §1469 and §1470 of the California CIVIL CODE; and, in the event fee title to one or more of said lots is conveyed by Declarant to another Person (such Person thereby becoming an "Owner"), with respect to the rights, duties and obligations among such other Owner(s) and Declarant (or, in the event Declarant has conveyed fee title to all of said lots, with respect to the rights, duties and obligations among the Owners of said lots), Declarant intends that the provisions of this Declaration will be restrictive covenants made pursuant to §1468 of the California CIVIL CODE.

F. The Park is subject to the terms, requirements and conditions of approval of the Parcel Map (which are attached to the Planning Commission Resolution as an exhibit).

G. Parcel S and Parcel T of the Parcel Map are not within the Park and are not subject to this Declaration.

NOW, THEREFORE, Declarant hereby certifies, declares and establishes the following general plan for the protection and benefit of the Park, and hereby fixes the following protective covenants, conditions and restrictions upon each and every ownership interest in the Park. Each ownership interest in the Park shall be hereafter held, used, occupied, leased, sold, encumbered, conveyed and transferred under and pursuant to such covenants, conditions and restrictions. Each and all of the covenants, conditions and restrictions set forth herein are for the purpose of protecting the value and desirability of the Park and shall bind and inure to the benefit of the Lots and the respective Owners of the Lots during their respective periods of ownership.

## ARTICLE 1 DEFINITIONS

In addition to any other terms defined in this Declaration, the following definitions shall apply unless otherwise indicated:

"Articles" – The Articles of Incorporation of the Association.

"Association" – SYCAMORE VISTA INDUSTRIAL PARK ASSOCIATION, a California Nonprofit Mutual Benefit Corporation.

"Board" – The Board of Directors of the Association.

"Building Area" – Subject to the provisions of Article 5 and Section 8.5, the Building Area within each Buildable Lot of the Park shall be as follows: (a) prior to the commencement of construction or remodeling of a building structure within a Buildable Lot, the boundaries of the Buildable Lot; and (b) from and after the

commencement of construction or remodeling of a building structure on a Lot: (i) but before the erection of walls, the Building Area shall be the area within the vertical extension of the perimeter of the foundation, and (ii) after the erection of walls, the Building Area shall be the area within the exterior surface of the exterior walls of the building structure.

"Buildable Lot" – Each of Lots A through R, inclusive, as shown on the Parcel Map.

"Bylaws" – The Bylaws of the Association.

"City" – The City of Vista, California, a municipal corporation.

"Common Improvements" – The Common Improvements are comprised of: (a) the street surfaces, curbs, gutters, sidewalks, traffic control devices, street lighting and other improvements comprising the private streets within the Park; (b) the street identification signs within the Park; (c) the project identification monument signs within the Park and the landscaping related thereto; (d) the quarried slope areas on the northerly side of Lot F and on the westerly side of each of Lots G, H and I, including the landscaping planted and irrigation systems installed pursuant to Section 8.5; (e) landscaping and hardscape within the "Common Area Landscape and Pedestrian Access Easement" granted on the Parcel Map along the westerly and northwesterly side of Sycamore Avenue; and (f) any other improvements which the City requires the Association to maintain, repair and replace pursuant to the conditions of approval of the Parcel Map (which are attached to the Planning Commission Resolution as an exhibit). No Common Improvement(s) is, are or shall become for the exclusive use of one or more Occupants.

"Declarant" – NORTH COUNTY INDUSTRIAL PARK LLC, a California limited liability company ("NCIP"), its successor-in-interest (defined below), for so long as NCIP, or its successor-in-interest, is an Owner, NCIP, or its successor-in-interest, shall be the Declarant. As used in this definition, a "successor in interest" of NCIP shall mean a Person which, through a purchase or acquisition of stock or partnership interest(s), amalgamation, consolidation, reorganization, dissolution, merger or similar transaction (as opposed to a purchase, transfer or conveyance of one or more Lots), becomes vested with the rights and assumes the obligations of NCIP pursuant to this Declaration. In no event shall any purchaser at foreclosure of any Lot(s) owned by the Declarant become "Declarant". When and if there is no longer a Declarant, the Board shall exercise all of the rights and authority of Declarant.

"Declaration" – This Declaration Establishing Covenants, Conditions and Restrictions and Grants of Easements for Sycamore Vista Industrial Park, as it may be amended from time to time.

"Eligible Occupant" – An Occupant entitled to enforce this Declaration by virtue of the requirements of §1469 and §1470 of the California CIVIL CODE having been satisfied with respect to the Occupant's lease.

"Floor Area" – The floor area of all floors in any building or portion thereof, measured from the exterior surface of exterior walls.

"Law" or "Laws" – All statutes, ordinances, rules, regulations, requirements, permits or approvals promulgated by any federal, state or local governmental entity having jurisdiction over the Park or any business, use or operation therein, as the same may be amended, superseded, supplemented, modified or revised from time to time.

"Lot" – Any separate legal parcel or lot which is a portion of the Park. Any lot or parcel of real property created after the recordation of this Declaration comprising a portion of any Lot which is created by a legal subdivision or parcelization of such Lot, and any lot or parcel shown on the Parcel Map as a proposed lot or parcel, shall be included in the definition of Lot for purposes of this Declaration, whether or not such lot or parcel becomes legally effective after the recordation of this Declaration. In the event the ownership of or interest in any Lot is vested in more than one Person, the rights of such Persons under this Declaration shall be governed by the provisions of Article 25.

"Member" – An Owner which is entitled to membership in the Association as provided in this Declaration; that is, the Owner of a Buildable Lot.

"Mortgage" – A deed of trust as well as a mortgage encumbering a Buildable Lot.

"Mortgagee" – The beneficiary of a deed of trust as well as the mortgagee of a mortgage encumbering a Buildable Lot.

"Natural Open Space Lot" – Lot V as shown on the Parcel Map.

"Net Acreage" – The "Net Acreage" of each Buildable Lot is the net useable pad area and setbacks within the Buildable Lot, after deducting areas used or dedicated to curbs, gutters, slopes (except to the extent such slopes are used to satisfy landscape setback requirements imposed by the City), and easements for streets, sidewalks and other public rights-of-way (other than utilities). The Net Acreage of one or more Buildable Lots shall be redetermined in the event of (a) resubdivision of any one or more Buildable Lots or a merger affecting two or more Buildable Lots, in which event, the Net Acreage shall be redetermined for each resulting Buildable Lot; or (b) a parcel line, lot line or boundary line adjustment affecting two or more Buildable Lots. The initial Net Acreage of each Buildable Lot is listed in Section 3.5.

"Occupant" – Any Person from time to time entitled by right of ownership or under any lease or sublease to use and occupy any portion of the Building Area on any Buildable Lot within the Park.

"Owner" – Any Person (including Declarant) who from time to time holds fee title to any Buildable Lot within the Park. Notwithstanding the foregoing sentence, in the event of a sale/leaseback transaction of the type described in Article 24, the Seller/Lessee under such sale/leaseback transaction shall be deemed to be the "Owner" of such Lot for the purposes of this Declaration so long as it retains the powers and obligations conferred and imposed by this Declaration as provided in Article 24.

"Owners Majority" – The vote or written consent of a simple majority of the Owners of the Buildable Lots, with each Buildable Lot counting as one (1) vote.

"Person" – An individual, partnership, association, corporation, limited liability company, trust, governmental agency, administrative tribunal or any other form of business or legal entity.

"Parcel Map" – Parcel Map No. 18831, in the City of Vista, County of San Diego, recorded in the Office of the County Recorder of San Diego on October 31, 2001, as File No. 2001-0791150, a copy of which is attached to this Declaration as Exhibit "A".

"Park" – All the real property shown on the Parcel Map and described on Exhibit "B".

"Planning Commission Resolution" – The Resolution passed by the City Planning Commission for Planning Commission Case No. PC-3-075A, which was passed, approved and adopted at a regular meeting of the City Planning Commission on February 15, 2000.

## ARTICLE 2 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

2.1 Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Buildable Lot.

2.2 Voting Rights. The Association shall have two (2) classes of voting membership:

**Class A.** Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Buildable Lot owned. When more than one (1) Person holds an ownership interest in any Buildable Lot, all such persons shall be Members. The vote for such Buildable Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect

to any Buildable Lot and the authorized voter shall be designated in writing signed by a majority of the co-owners of the Buildable Lot.

**Class B.** The Class B Member shall be Declarant and shall be entitled to two (2) votes for each Buildable Lot owned. The Class B membership shall automatically cease and be converted to Class A membership when the total votes held by Class A Members equals ten (10).

### ARTICLE 3 COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

3.1 **Creation of Lien and Personal Obligation for Assessments.** Each Owner hereby covenants and agrees to pay to the Association, regardless of whether the Owner's Buildable Lot is improved with a building or other improvements: (a) annual regular assessments or charges, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Improvements; and (b) special assessments, such assessments to be established and collected as provided in this Declaration. The regular and special assessments, together with interest, costs and reasonable attorneys' fees, shall (except as otherwise provided in Section 3.4) be a charge on the Buildable Lot and shall be a continuing lien upon the Buildable Lot against which each such assessment is made, the lien to be effective upon recordation of a notice of delinquent assessments. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Buildable Lot at the time the assessment fell due.

3.2 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Owners of the Park, for the improvement and maintenance of the Common Improvements and the Natural Open Space Lot, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Articles, Bylaws, Declaration and rules and regulations adopted by the Board. The foregoing notwithstanding, assessments levied by the Association shall not be used to pay, reimburse or otherwise defray the cost of the initial construction of Common Improvements or any other improvements required pursuant to the conditions of approval of the Parcel Map.

3.3 **Regular and Special Assessments.** The Board shall levy regular and special assessments sufficient to perform the obligations of the Association as provided in the Declaration and Bylaws; provided, however, except for assessment increases necessary for emergency situations, the Board may not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year nor special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expense of the Association for the fiscal year, without the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with §7510) of Part 3 of Division 2 of Title 1 of the California CORPORATIONS CODE and §7613 of the California CORPORATIONS CODE. For purposes of this Section 3.3, "quorum" means more than fifty percent (50%) of the voting rights of the Owners. An emergency situation is any one of the following:

- (a) An extraordinary expense required by an order of a court;

(b) An extraordinary expense necessary to repair or maintain the Common Improvements or any part thereof for which the Association is responsible where a threat to personal safety is discovered;

(c) An extraordinary expense necessary to maintain the Natural Open Space Lot or any part thereof for which the Association is responsible where a threat to personal safety is discovered;

(d) An extraordinary expense necessary to maintain the Natural Open Space Lot or to repair or maintain the Common Improvements or any part thereof for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget pursuant to California CIVIL CODE §1365. However, prior to the imposition or collection of an assessment under this Subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of assessment.

3.4 Individual Special Assessments. The Association may also impose a special assessment against any Member to reimburse the Association for costs incurred in bringing that Member and that Member's Buildable Lot into compliance with the provisions of the Declaration, the Articles, the Bylaws and the Association rules and regulations, which assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of §7341 of the California CORPORATIONS CODE, as set forth in the Bylaws; provided, however, that except to the extent such special assessment is to reimburse the Association for the cost of collecting assessments, the special assessment shall not constitute a lien on the Member's Buildable Lot.

3.5 Rate of Assessment. Both regular and special assessments (other than a special assessment levied pursuant to Section 3.4) shall be fixed for all Buildable Lots as follows:

<u>Buildable Lot</u>	<u>Net Acreage</u>	<u>Percentage When Regular Assessments For All Buildable Lots Have Commenced*</u>
Lot A	3.979 acres	8.24%
Lot B	0.929 acres	1.92%
Lot C	1.450 acres	3.00%
Lot D	1.815 acres	3.76%
Lot E	2.263 acres	4.69%
Lot F	3.879 acres	8.04%
Lot G	2.168 acres	4.49%
Lot H	2.665 acres	5.52%
Lot I	3.435 acres	7.12%
Lot J	3.214 acres	6.66%
Lot K	2.881 acres	5.97%
Lot L	2.665 acres	5.52%

Lot M	2.757 acres	5.71%
Lot N	2.765 acres	5.73%
Lot O	2.242 acres	4.65%
Lot P	1.398 acres	2.90%
Lot Q	2.857 acres	5.92%
Lot R	3.549 acres	7.35%
Lot U	<u>1.355</u> acres	<u>2.81%</u>
Totals	48.266 acres	100.00 %

\*After the Net Acreage of one or more Buildable Lots has been redetermined as provided in the definition of "Net Acreage", the percentages in the foregoing table shall be redetermined.

Assessments shall be collected on a monthly basis or other periodic basis as determined by the Board.

**3.6 Date of Commencement of Regular Assessments; Due Dates.** Regular assessments shall commence as to all Buildable Lots having vehicular access to a private street on the first day of the month following the opening of business of the first tenant, Occupant or user of a Buildable Lot having vehicular access to the private street. Regular assessments shall commence as to a Buildable Lot having direct vehicular access to a public street (i.e., not requiring vehicular access to a public street via a private street) on the first day of the month following the day on which the City building inspector signs final approval on the on-site job card for construction of the building shell on the Buildable Lot. The first regular assessment for a fiscal year shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the regular assessment against each Buildable Lot at least thirty (30) days in advance of each regular assessment period. Written notice of the regular assessment shall be sent to every Owner subject thereto. The due dates for the annual assessment shall be established by the Board.

**3.7 Effect of Non-Payment of Assessments; Remedies of Association.** Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Buildable Lot from the time the assessment is due. Any assessment not paid within thirty (30) days after the due date shall bear interest from thirty (30) days following the due date at the rate of the greater of (i) twelve percent (12%) per annum, or (ii) two (2) points over the "Prime Rate" published in the Western Edition of the Wall Street Journal most recently before the due date; provided, however, in no event shall the interest charged under this Section exceed any maximum rate imposed by applicable Law. The Association may bring an action at law against the Owner personally obligated to pay the same, and in addition thereto, or in lieu thereof, may foreclose the lien against the Owner's Buildable Lot.

Any assessment not paid within thirty (30) days after the due date shall be delinquent. Except as otherwise provided in Section 3.4, the amount of any such delinquent assessment plus costs of collection, late charges, penalties, interest and attorney's fees, shall be and become a lien upon the Buildable Lot when the Association causes to be recorded with the County Recorder of San Diego County, California, a Notice of Delinquent Assessment, which shall state the amount of such delinquent assessment and such other charges thereon as may be authorized by this Declaration, a description of the Buildable Lot against which the same has been assessed, the name of the record owner of the

Buildable Lot and, in order for the lien to be foreclosed by non-judicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be signed by the person designated by the Association for that purpose or, if no one is designated, by the President of the Association. Upon payment of the delinquent assessment and charges in connection with which the Notice of Delinquent Assessment has been recorded, or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof.

Such lien may be enforced by sale by the Association after failure of the Owner to pay such assessment in accordance with its terms, such sale to be conducted in accordance with the provisions of §§2924, 2924b and 2924c of the California CIVIL CODE, applicable to the exercise of powers of sale in mortgages or in any other manner permitted by Law. The Association shall have the power to purchase the Buildable Lot at the foreclosure sale and to hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, interest and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Any sale or transfer of any Buildable Lot pursuant to this Section 3.7 shall not disturb the possession, or otherwise diminish the rights or enlarge the obligations, of any Occupant under any then-existing lease.

3.8 Subordination of the Lien to First Mortgages. The lien of assessment herein shall be subordinate to the lien of any first Mortgage upon any Buildable Lot, and the sale or transfer of any Buildable Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Buildable Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage or other purchaser of a Buildable Lot obtains title to the same as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Buildable Lot which became due prior to the acquisition of title to such Buildable Lot by such acquirer, except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Buildable Lots.

3.9 Estoppel Certificate. The Association shall furnish or cause an appropriate officer to furnish, upon demand by any Person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Buildable Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Buildable Lot is binding upon the Association as of the date of its issuance.

3.10 Personal Liability of Owner. No Member may exempt himself, herself or itself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Buildable Lot owned by the Member from the liens and charges hereof by waiver of the use and enjoyment of, the Natural Open Space Lot, the private streets or other Common Improvements, or by abandonment of the Member's Buildable Lot.