

BAY RIDGE HOMEOWNER'S ASSOCIATION
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
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SAFECO/S-574328
Recording Requested By
and
When Recorded Return To:

MCDONALD, HECHT & WORLEY
Mr. Alex C. McDonald
617 Financial Square
600 "B" Street
San Diego, California 92101

WE HEREBY CERTIFY THAT THIS IS A FULL
TRUE AND CORRECT COPY OF THE ORIGINAL
DOCUMENT AS THE SAME APPEARS IN THE
OFFICE OF THE COUNTY RECORDER OF SAN
DIEGO COUNTY, STATE OF CALIFORNIA,
RECORDED ON July 23, 1979
AS FILE NO. 79-304362 IN
OFFICIAL RECORDS OF SAID COUNTY.

SAFECO Title Insurance Company

BY: *[Signature]*

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,
made this 12th day of July, 1979, by TREETOPS UNLIMITED, a joint
venture composed of Pacific Scene, Inc., a California corpora-
tion, and Financial Scene Incorporated, a California corporation,
hereinafter called "Declarant;"

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain real proper-
ty situated in the City of San Diego, County of San Diego, State
of California, which is more particularly described as:

Lots 97 through 136, inclusive, and Lots 161
and 162, of AMERICAN PIE according to Map
thereof No. 9118 filed in the Office of the
County Recorder of San Diego County, Califor-
nia, on February 15, 1979;

NOW, THEREFORE, Declarant hereby certifies and declares and
does hereby establish the following general plan for the protec-
tion and benefit of all of the real property described above and
has fixed and does hereby fix the following protective covenants,
conditions and restrictions upon each and every ownership inter-
est in the real property described above, under which said cove-
nants, conditions and restrictions each ownership interest there-
in shall be hereafter held, used, occupied, leased, sold, encum-
bered, conveyed and/or transferred. Each and all of said cove-
nants, conditions and restrictions are for the purpose of pro-
tecting the value and desirability of and shall inure to the
benefit of all of the real property described above and shall run
with and be binding upon and pass with said real property and
each and every ownership interest therein and shall inure to the
benefit of, apply to and bind the respective successors in title
or interest of Declarant.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to BAY RIDGE HOMEOWNERS ASSOCIATION, a California corporation not for profit, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Declarant" shall mean and refer to TREETOPS UNLIMITED, a joint venture composed of Pacific Scene, Inc., a California corporation, and Financial Scene Incorporated, a California corporation, its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped Lot from the Declarant for the purpose of development.

Section 4. "Properties" shall mean and refer to that certain real property located in the City of San Diego, State of California, hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 5. "Common Area" shall mean all real property (including improvements thereon) 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 described as follows:

Lots 161 and 162 of AMERICAN PIE according to Map thereof No. 9118 filed in the Office of the County Recorder of San Diego County, California, on February 15, 1979.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area.

Section 7. "Common Maintenance Area" shall mean and refer to those portions of Lots over which easements for common maintenance are conveyed to the Association and shall consist of portions of front yards.

Section 8. "Mortgage" shall mean and refer to a deed of trust as well as a mortgage encumbering a Lot.

Section 9. "Mortgagee" shall mean and refer to the beneficiary of a deed of trust as well as the mortgagee of a mortgage encumbering a Lot.

Section 10. "Board" shall mean and refer to the Board of Directors of the Association.

Section 11. "Articles" shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended.

Section 12. "Bylaws" shall mean and refer to the Bylaws of the Association as they from time to time be amended.

ARTICLE II

PROPERTY RIGHTS IN COMMON AREA

Section 1. Owners' Easements of Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress and of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every such 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 facility 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 by the Association 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 reasonable written notice and an opportunity for a hearing before the Board;

(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 conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on his Lot.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1. Membership in Association. 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 a Lot which is subject to assessment.

Section 2. Classes of Membership. The Association shall have two (2) 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 (1) vote for each Lot owned. When more than one (1) person holds an interest in any one (1) 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 (1) vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(i) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(ii) Two (2) years following the date of issuance by the California Department of Real Estate of the most recently issued original Final Subdivision Public Report covering a phase of the overall development; or

(iii) On March 31, 1983.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 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 a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) annual assessments or charges, and (b) special assessments for capital improvements, 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 Lot 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.

Section 2. Purpose for Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of its members and for the improvement and maintenance of the Common Area and Common Maintenance Area.

Section 3. Maximum Annual Assessment.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$600.00 per Lot.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership of the Association.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by the vote or written assent of fifty-one percent (51%) of each class of members of the Association.

(d) The Board may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. 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, provided that any such assessment shall have the vote or written assent of fifty-one percent (51%) of each class of members of the Association. Each such special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments in Article IV, Section 1 hereinabove.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Any action authorized under Section 3 or Section 4 requiring the vote of the members shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. A quorum for such meeting shall be fifty-one percent (51%) of each class of members entitled to vote on such action. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. If the proposed action is favored by a majority of the votes cast at such meeting but such vote is less than the requisite fifty-one percent (51%) of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

Section 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.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the close of the first sale of a Lot by Declarant or on the first day of the month following the conveyance by Declarant of the Common Area to the Association, whichever shall first occur. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. 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. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Lot at the time the assessment is made. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. 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 Lot. 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.

Any assessment not paid within thirty (30) days after the due date shall be delinquent. The amount of any such delinquent assessment, plus any other charges thereof, as provided for in this Declaration, shall be and become a lien upon the Lot when the Association causes to be recorded with the County Recorder of San Diego County, 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 Lot against which the same has been assessed and the name of the record owner thereof. Such notice shall be signed by the President or Vice President, and the Secretary or Assistant Secretary of the Association. Upon payment of such delinquent assessment and charges in connection with which such notice has been so 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.

Unless sooner satisfied and released, or the enforcement thereof initiated as hereinafter provided, such lien shall expire and be of no further force and effect one (1) year from the date of recordation of the Notice of Delinquent Assessment. The one (1) year period may be extended by the Association for not to exceed one (1) additional year by recording a written extension thereof.

Such lien may be enforced by sale by the Association, its attorney or other person authorized to make the sale, 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 Sections 2924, 2924(b) and 2924(c) of the 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 Lot at foreclosure sale and to hold, lease, mortgage and convey the same.

Section 9. Subordination of the Lien to First Mortgages.
The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure 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 Lot from liability for any assessments thereafter becoming due or from the lien thereon.

Section 10. Exempt Property. All properties dedicated to and accepted by a local public authority, and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of California shall be exempt from the assessment created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Capitalization of Association. Upon acquisition of record title to a Lot from Declarant, each Owner shall make a contribution to the capital of the Association in an amount equal to one-sixth (1/6th) the amount of the then annual assessment for that Lot as determined by the Board. This Section shall not apply to the resale of any Lot by an Owner.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall, patio, patio cover or other structure or improvement shall be commenced, erected, placed or altered upon any Lot until the location and the complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the Board, or by an architectural committee composed of three (3) or more but not to exceed five (5) representatives appointed by the Board from the membership of the Association; provided, however, that in the event the Board or its designated committee fails to approve or disapprove such location, plans and specifications or other request made of it within thirty (30) days after the submission thereof to it, then such approval will not be required, provided that any structure or improvement so to be erected or altered conforms to all other conditions and restrictions herein contained and is in harmony with similar structures erected within the Properties. The grade, level or drainage characteristics of the Lot or any portion thereof shall not be altered without the prior written consent of the Board or its designated committee. The provisions of this Article V shall not apply to the construction by Declarant of dwellings or other improvements on Lots and neither the Board nor any committee appointed by the Board shall have any authority or right to approve or disapprove thereof.

ARTICLE VI

USE RESTRICTIONS

Section 1. Residential Purposes Only. No Lot shall be used, except for residential purposes, and no building or build-

ings shall be erected, constructed, altered or maintained on any Lot other than one (1) single-family dwelling not to exceed two (2) stories in height and a private garage for not more than two (2) cars; provided, however, Declarant may use any of the Lots owned by it for model homes and sales office purposes for a period of four (4) years following the close of sale by Declarant of the first Lot.

Section 2. New Building Only. No building of any kind shall be moved from any other place onto any Lot, nor from one Lot to another Lot, without the prior written permission of the Board or the architectural committee appointed thereby.

Section 3. Minimum Floor Area of Dwellings. The ground floor area of the main structure located on any Lot, exclusive of open porches, patios, exterior stairways and garages, shall not be less than 900 square feet.

Section 4. Balconies and Decks. No balcony or deck shall be higher above the ground than the highest dwelling floor level, except with the written approval of the Board or the architectural committee appointed by the Board.

Section 5. No Second-Hand Materials, Painting Required. No second-hand materials shall be used in the construction of any building or other structure on any Lot without the prior written approval of the Board or the architectural committee appointed thereby. All buildings and fences which are of frame construction shall be painted or stained upon completion with the paint or stain coverage (including the number of coats) as provided in the approval of the plans therefor by the Board or the architectural committee appointed thereby.

Section 6. Diligence in Construction Required. The work of constructing and erecting any building or other structure shall be prosecuted diligently from the commencement thereof, and the same shall be completed within a reasonable time in accordance with the requirements herein contained. No outbuilding shall be completed prior to the completion of the dwelling, except that temporary storage and convenience facilities may be erected for workmen engaged in building a dwelling on the Lot, but such temporary facilities shall be removed as soon as the dwelling is completed.

Section 7. Trees. All trees, hedges and other plant materials shall be trimmed by the Owner of the Lot upon which the same are located so that the same shall not exceed the height of the house on the Lot; provided, however, that where trees do not obstruct the view from any other of the Lots in the Properties they shall not be required to be so trimmed. Before planting any

trees, the proposed location of such trees shall be approved in writing by the Board or the architectural committee appointed thereby.

Section 8. Fences, Hedges and Rails. No fence, rail or hedge over 36 inches in height shall be placed in front of the set-back line on a Lot as shown on the recorded Map(s) covering the Properties. Where trellises, fences or hedges are allowed, review by the Board or the architectural committee in relation to normal enjoyment of view by other Lot owners shall be required.

Section 9. No Antennae. There shall be no outside television or radio antennae constructed, installed or maintained on any Lot for any purpose whatsoever.

Section 10. Drying Yards. No drying yards shall be permitted unless screened from all views exterior to the Lot on which the drying yard is located by fence, hedge or shrubbery, which screening and the adequacy thereof shall be subject to the approval of the Board or the architectural committee appointed thereby.

Section 11. No Tents, Shacks or Vehicles. No tent, shack, trailer, basement, garage or outbuilding shall at any time be used on any Lot as a residence, either temporarily or permanently, nor shall any residence of a temporary character be constructed, placed or erected on any Lot. No boat, camper, recreational vehicle, trailer, van or motor vehicle of any type other than a standard automobile shall be stored or parked on any Lot except in the garage, except temporarily and solely for the purpose of loading and unloading.

Section 12. No Signs. No sign other than one (1) sign of customary and reasonable dimensions advertising a Lot for sale or lease and numerals identifying the address of the residence on the Lot shall be erected or displayed upon any of said Lots or upon any building or other structure thereon without the prior written permission of the Board or the architectural committee appointed thereby. No sign of a permanent nature shall be allowed except house numbers indicating the street address of such Lots. Anything herein to the contrary notwithstanding, so long as Declarant retains ownership of any Lot, but not longer than four (4) years following the close of sale by Declarant of the first Lot, it may erect such signs as it reasonably determines is necessary for the sales promotion of such Lots.

Section 13. No Wells. No well for the production of, or from which there is produced, water, 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 slant drilling shall be permitted above a plane 500 feet below the surface of the land.

Section 14. Animals Restrictions. No turkeys, geese, chickens, ducks, pigeons or fowl of any kind, goats, rabbits, hares, horses or animals usually termed "farm animals" shall be kept or allowed to be kept on any Lot.

Section 15. No Commercial Activity. No commercial business shall be conducted on any of said Lots, and nothing shall be done upon any Lot which may become an annoyance or nuisance to the neighborhood or other Lot Owners. No external speakers, bells or horns shall be permitted on any Lot.

Section 16. Drainage. No Owner of a Lot shall in any way interfere with the established drainage pattern over his Lot from adjoining or other Lots; provided, however, each Owner will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his Lot. For the purpose hereof, "established drainage" is defined as the drainage which occurred at the time the overall grading of said Lot was completed by Declarant. Each Lot Owner shall permit free access by Owners of adjacent or adjoining Lots to slopes or drainageways located on his Lot when such access is necessary for the maintenance of permanent stabilization on said slopes or of the drainage facilities to protect property other than the Lot on which the slope or drainageway is located.

Section 17. Slope Control, Use and Maintenance. Each Lot Owner will keep, maintain, water, plant and replant all slope banks located on such Owner's Lot, other than that portion thereof, if any, located within the Common Maintenance Area, so as to prevent erosion and to create an attractive appearance. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on any of said slope banks which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels.

Section 18. No Subdivision of Lots. No Lot shall be resubdivided into building sites having a frontage of less than shown on the recorded map of which the Lot is a part, filed for record in the Office of the Recorder, San Diego County, California.

Section 19. Leasing of Lots. Each Owner shall have the right to lease his Lot, provided that all such leases must be in writing and shall provide that the lease is subject in all respects to the provisions of this Declaration and to the Articles

and Bylaws and that any failure of the lessee to comply with the provisions of each such document shall constitute a default under the lease. A lessee shall have no obligation to the Association to pay assessments imposed by the Association nor shall any lessee have any voting rights in the Association. No Owner may lease his Lot or improvements thereon for hotel, motel or transient purposes. Any lease which is either for a period of fewer than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes.

Section 20. Garage Doors. Garage doors shall be closed at all times other than when a vehicle is entering or leaving the garage.

Section 21. Equipment and Structure Repair. No automobile or other equipment may be dismantled, repaired or serviced on any Lot except in the garage. No structure on any Lot shall be permitted to fall into disrepair and all structures shall at all times be kept in good condition and repair, and adequately painted or otherwise finished.

Section 22. Insurance.

(a) The Association shall keep (i) any improvements in the Common Area insured against loss by fire and the risks covered by a Standard All Risk of Loss Perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof, and (ii) all personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the Common Area and personalty owned by the Association shall be payable to the Association. In the event of any loss, damage or destruction, the Association shall cause the same to be replaced, repaired or rebuilt if it occurred in the Common Area. In the event the cost of such replacement, repair or rebuilding of Common Area (i) exceeds the insurance proceeds available therefor, or (ii) no insurance proceeds are available therefor, the deficiency or full cost thereof shall be assessed to the Owners as a special assessment pursuant to Section 4 of Article IV above.

(b) The Association shall procure and keep in force public liability insurance in the name of the Association and the Owners against any liability for personal injury or property damage resulting from any occurrence in or about the Common Area in an amount not less than \$500,000.00 in indemnity against the claim of one (1) person in one (1) accident or event and not less than \$1,000,000.00 against the claims of two (2) or more persons

in one (1) accident or event, and not less than \$100,000.00 for damage to property.

(c) The Association shall maintain a fidelity bond in an amount equal to one hundred fifty percent (150%) of the annual assessments, plus reserves, naming the Association as obligee and insuring against loss by reason of the acts of the Board, officers and employees of the Association, and any management agent and its employees, whether or not such persons are compensated for their services.

(d) Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be cancellable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association, Board and Owners.

(e) Anything contained herein to the contrary notwithstanding, the Association shall maintain such insurance coverage as may be required by the Federal National Mortgage Association ("FNMA") so long as FNMA holds a mortgage on or owns any Lot.

Section 23. Condemnation. In the event the Common Area or any portion thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Association.

ARTICLE VII

MAINTENANCE RESPONSIBILITIES

Section 1. Association Maintenance. The Association shall maintain and provide for the maintenance of all the Common Area and Common Maintenance Area and all improvements thereon in good repair and appearance. The Association shall provide landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation originally placed in the Common Area and Common Maintenance Area by Declarant or Declarant's successor, pursuant to landscape plans submitted to the City of San Diego and approved by said City in connection with approval of the subdivision map referred to on the first page hereof.

Section 2. Owner Maintenance. Each Owner shall keep and maintain in good repair and appearance all portions of his Lot (other than that portion thereof located within the Common Maintenance Area) and improvements thereon, including but not limited to any fence which is on the Lot line and the residence located thereon. The Owner of each Lot shall water, weed, maintain and care for the landscaping located on his Lot (other than that portion thereof located within the Common Maintenance Area) so that the same presents a neat and attractive appearance.

ARTICLE VIII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbi-

trators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The Association and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. Enforcement shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violations and/or to recover damages.

Section 2. Severability. Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

Section 3. Amendments. This Declaration may be amended at any time and from time to time by an instrument in writing signed by the Owners holding not less than seventy-five percent (75%) of the voting power of each class of members of the Association, which amendment shall become effective upon the recording thereof with the Office of the County Recorder of San Diego County, California.

Section 4. Extension of Declaration. Each and all of these covenants, conditions and restrictions shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which date they shall automatically be extended for successive periods of ten (10) years.

Section 5. Annexation.

(a) Additional residential property and Common Area may be annexed to the Properties upon the written assent of two-thirds (2/3) of the voting power of each class of members of the Association.

(b) Additional land within the area described as Lots 1 through 96, inclusive, Lots 137 through 160, inclusive, and Lots 163 and 164 of AMERICAN PIE according to Map thereof No. 9118 filed in the Office of the County Recorder of San Diego County, California, on February 15, 1979, may be annexed as Lots, Common Area and Common Maintenance Area to the Properties by the

Declarant without the consent of members of the Association within three (3) years following the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report for a phase of the overall development; provided, however, that the Federal Housing Administration and the Veterans Administration determine that the annexation is in accord with the general plan heretofore approved by them.

Section 6. FHA and VA Approval. As long as there is a Class B membership in the Association, the following actions will require the prior approval of the Federal Housing Administration and the Veterans Administration: Annexation of additional property to the Properties, mergers and consolidations, dedications or mortgaging of Common Area, special assessments and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 7. Encroachment Easement. In the event any improvement to a Lot encroaches upon the Common Area or Common Maintenance Area as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion thereof, a valid easement for the encroachment and for maintenance of the same shall exist so long as the encroachment exists. Each Owner of a Lot within the Properties is hereby granted an easement over all adjoining Lots for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhangs, architectural or other appendants and drainage of rain water from roofs. There shall be easements for the maintenance of said encroachments so long as they shall exist and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed and then rebuilt, or repaired, the Owners of such Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for maintenance of such encroachments so long as they shall exist.

Section 8. Special Responsibilities of Association. In the event that the improvements to be installed by Declarant to the Common Area or Common Maintenance Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering the Properties, and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the

completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement, then the Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by members representing ten percent (10%) or more of the voting power of the Association (excluding the voting power of Declarant), the Board shall call a special meeting of the members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of members shall be held not less than fifteen (15) days nor more than thirty (30) days following receipt of the petition. At said meeting a vote of a majority of the voting power of the members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association. Nothing contained herein shall indicate or imply that the Veterans Administration has or would approve any such bonding arrangement.

Section 9. Mortgage Protection. No breach of any of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any first Mortgage encumbering any Lot made 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 or a trustee's sale, or otherwise.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has set its hand and seal as of the date first hereinabove written.

TREETOPS UNLIMITED

BY: PACIFIC SCENE, INC.

By _____

By _____
Willie John Ant Sec

BY: FINANCIAL SCENE INCORPORATED

By D. R. McArthur
D. R. McArthur, Executive Vice President
By Patricia R. Hirai
Patricia R. Hirai, Assistant Secretary

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On July 19th 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared HERB PALMTAG, known to me to be the Vice President, and WILBUR E. JOHNSON, known to me to be the Assistant Secretary of PACIFIC SCENE, INC., the corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of said corporation, said corporation being known to me to be one of the joint venturers of TREETOPS UNLIMITED, the joint venture that executed the within instrument and acknowledged to me that such corporation executed the same as such joint venturer and that such joint venture executed the same.

WITNESS my hand and official seal.

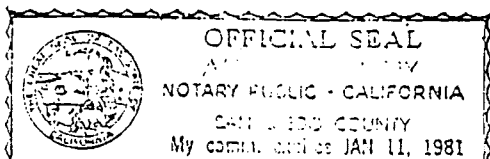


Christiana Wagner
NOTARY PUBLIC

2103 Congress Street, San Diego, CA 92110
STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On July 19, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared D. R. McArthur, known to me to be the Exec. Vice President, and Patricia R. Hirai, known to me to be the Assistant Secretary of FINANCIAL SCENE INCORPORATED, the corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of said corporation, said corporation being known to me to be one of the joint venturers of TREETOPS UNLIMITED, the joint venture that executed the within instrument and acknowledged to me that such corporation executed the same as such joint venturer and that such joint venture executed the same.

WITNESS my hand and official seal.



Christiana Wagner
NOTARY PUBLIC

SUBORDINATION AGREEMENT

UNION BANK, a corporation, being the beneficiary under that certain Deed of Trust dated July 18, 1979 and recorded with the Office of the County Recorder of San Diego County, California on July 20, 1979, as File/Page No. 79-302268, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate and inferior to the Declaration of Covenants, Conditions and Restrictions to which this Subordination Agreement is attached.

UNION BANK

By Bert Nielsen
Title: Vice President

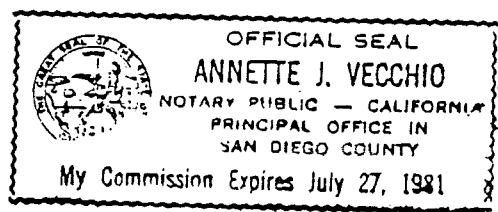
By James W. Waldorf
Title: ASST VICE PRESIDENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On July 20 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Bert Nielsen Nielsen, known to me to be the Vice President, and James W. Waldorf, known to me to be the Assistant Vice President Secretary of the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Annette Vecchio
NOTARY PUBLIC



SAFECO/S-574328
Recording Requested By
and
When Recorded Return To:

MCDONALD, HECHT & WORLEY
Mr. Alex C. McDonald
617 Financial Square
600 "B" Street
San Diego, California 92101

WE HEREBY CERTIFY THAT THIS IS A FULL,
TRUE AND CORRECT COPY OF THE ORIGINAL
DOCUMENT AS THE SAME APPEARS IN THE
OFFICE OF THE COUNTY RECORDER OF SAN
DIEGO COUNTY, STATE OF CALIFORNIA,
RECORDED ON SEPTEMBER 26, 1979
AS FILE NO. 79-402313 IN
OFFICIAL RECORDS OF SAID COUNTY.

SAFECO Title Insurance Company
BY: *Ruth J. Dodger*

DECLARATION OF ANNEXATION
(Phase 4)

THIS DECLARATION OF ANNEXATION is made this 21st day of
September, 1979, by TREETOPS UNLIMITED, a joint venture, here-
inafter called "Declarant," with reference to the following

RECITALS:

A. Declarant executed that certain Declaration of Cove-
nants, Conditions and Restrictions ("Declaration") which was
recorded on the 23rd day of July, 1979, with the Office of the
County Recorder of San Diego County, California as File/Page No.
79-304362, covering all of that real property located in the City
of San Diego, County of San Diego, California, described as:

Lots 97 through 136, inclusive, and Lots 161 and
162 of AMERICAN PIE according to Map thereof No.
9118 filed in the Office of the County Recorder
of San Diego County, California, on February 15,
1979,

Lots 97 through 136 are defined in the Declaration as "Lots" and
Lots 161 and 162 are defined in the Declaration as "Common Area."

B. The Declaration provides in Section 5 of Article IX,
that Declarant may annex additional property as described in
Subsection 5(b) of Article IX thereof to the Lots and Common Area
described in the Declaration and thereby make such additional
property subject to the Declaration and subject to the jurisdic-
tion of BAY RIDGE HOMEOWNERS ASSOCIATION which is defined in the
Declaration as the "Association."

C. Declarant heretofore annexed to the Declaration and to
the jurisdiction of the Association that certain real property
described as:

Lots 1 through 10, inclusive, 67 through 72, inclusive, 153 through 160, inclusive, and 164 of AMERICAN PIE according to Map thereof No. 9118 filed in the Office of the County Recorder of San Diego County, California, on February 15, 1979

by Declaration of Annexation recorded with the Office of the County Recorder of San Diego County, California, on August 21, 1979 as File/Page No. 79-350911, and

Lots 11 through 24, inclusive, 53 through 66, inclusive, 73 through 84, inclusive, and 163 of AMERICAN PIE according to Map thereof No. 9118 filed in the Office of the County Recorder of San Diego County, California, on February 15, 1979

by Declaration of Annexation recorded with the Office of the County Recorder of San Diego County, California, on September 12, 1979 as File/Page No. 79-381499.

D. Declarant is the owner of the real property located in the City of San Diego, County of San Diego, California, described as:

Lots 25 through 52, inclusive, 85 through 96, inclusive, and 137 through 152, inclusive, of AMERICAN PIE according to Map thereof No. 9118 filed in the Office of the County Recorder of San Diego County, California, on February 15, 1979,

which property is a part of the property described in Subsection 5(b) of Article IX of the Declaration which may be annexed to the Lots and Common Area and to the jurisdiction of the Association.

E. Declarant now wishes to annex the property described in Recital D above to the property covered by the Declaration and to the jurisdiction of the Association and thereby make the property described in Recital D above subject to the terms, conditions and restrictions of the Declaration.

NOW, THEREFORE, Declarant declares as follows:

1. Pursuant to the terms of the Declaration, Declarant, as the owner of

Lots 25 through 52, inclusive, 85 through 96, inclusive, and 137 through 152, inclusive, of AMERICAN PIE according to Map thereof No. 9118 filed in the Office of the County Recorder of San Diego County, California, on February 15, 1979 (hereinafter called "Annexed Lots"),

declares that all of the Annexed Lots are hereby annexed to and made a part of the Lots as defined in the Declaration. All of the Annexed Lots shall be held, sold, leased, transferred, occupied and conveyed subject to the terms, provisions, covenants, conditions, restrictions and easements of the Declaration as it may hereafter be amended.

2. The obligation of Owners of Lots annexed hereby to pay assessments to the Association, and their right to vote as a member of the Association, shall commence on the first day of the month following the conveyance of record by Declarant of the first Lot located within the Annexed Lots.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

TREETOPS UNLIMITED, a joint venture

BY: PACIFIC SCENE, INC., a
California corporation

By *Neil Palumbo*

By *William J. M. Costello*

BY: FINANCIAL SCENE INCORPORATED, a
California corporation

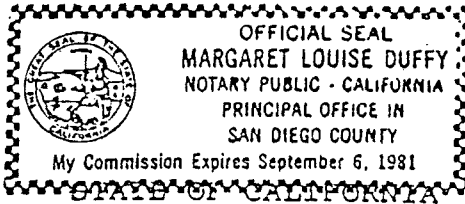
By *Lynda M. Ferguson Asst. Vice Pres*

By *John R. Yarnall, Secy*

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On September 24, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Herb Palmtag, known to me to be the Vice President, and Wilbur E. Johnson, known to me to be the Assistant Secretary of PACIFIC SCENE, INC., the corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of said corporation, said corporation being known to me to be one of the joint venturers of TREETOPS UNLIMITED, the joint venture that executed the within instrument and acknowledged to me that such corporation executed the same as such joint venturer and that such joint venture executed the same.

WITNESS my hand and official seal.

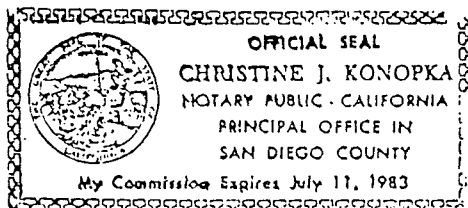


Margaret Louise Duffy
NOTARY PUBLIC

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On September 25, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared LINDA M. FERGUSON, known to me to be the ASST. VICE President, and PATRICIA R. HIRA, known to me to be the ASSISTANT Secretary of FINANCIAL SCENE INCORPORATED, the corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of said corporation, said corporation being known to me to be one of the joint venturers of TREETOPS UNLIMITED, the joint venture that executed the within instrument and acknowledged to me that such corporation executed the same as such joint venturer and that such joint venture executed the same.

WITNESS my hand and official seal.



Christine J. Konopka
NOTARY PUBLIC

SUBORDINATION AGREEMENT

UNION BANK, a California corporation, beneficiary under that certain Deed of Trust dated January 15, 1979 and recorded February 16, 1979 with the Office of the County Recorder of San Diego County, California, as File No. 79-070780, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate and inferior to the Declaration of Covenants, Conditions and Restrictions made applicable to the real property described in Recital C to the Declaration of Annexation to which this Subordination Agreement is attached by this Declaration of Annexation and to this Declaration of Annexation.

UNION BANK, a California
corporation

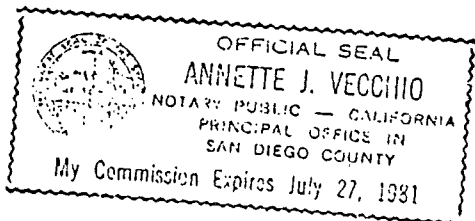
By Bert Nielsen

By Frank S. Foster Vice President
Vice President

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On Sept 25 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Bert Nielsen, known to me to be the Vice President, and Frank S. Foster, known to me to be the Vice President Secretary of the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



Annette J. Vecchio
NOTARY PUBLIC

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of BAY RIDGE HOMEOWNERS ASSOCIATION, a California nonprofit corporation; and

2. That the foregoing Bylaws, comprising sixteen (16) pages, constitute the Bylaws of said Corporation duly adopted at the meeting of the Board of Directors thereof duly held on July 18, 1979.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Corporation this 19th day of July, 1979.

Kathy Williams
Kathy Williams, Secretary

