

RECORDING REQUESTED BY:  
FIRST AMERICAN TITLE

WHEN RECORDED, RETURN TO:

FRANK P. NICOLETTI  
Attorney At Law  
404 Saratoga Avenue, #100  
Santa Clara, CA 95050

0129-003129-038

730104



CONTRA COSTA Co Recorder Office  
STEPHEN L. WEIR, Clerk-Recorder  
DOC- 2003-0498315-00

Acct 6- First American Title

Monday, OCT 06, 2003 08:00:00

MIC \$1.00;MOD \$11.00;REC \$15.00

TCF \$10.00;

Ttl Pd \$37.00

Nbr-0001788570

dar/R2/1-11

COUNTRY CLUB VISTA

REVISED SUPPLEMENTAL DECLARATION

OF

RESTRICTIONS (CC&Rs)

TITLE 7 - CLAIMS PROCEDURE

This Revised Supplemental Declaration contains alternative dispute resolution procedures that include a waiver of trial by a jury. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.

**COUNTRY CLUB VISTA**  
**REVISED SUPPLEMENTAL**  
**DECLARATION OF RESTRICTIONS (CC&Rs)**  
**TITLE 7 - CLAIMS PROCEDURE**

**THIS REVISED SUPPLEMENTAL DECLARATION OF RESTRICTIONS (CC&Rs)** is executed by SCS Development Company, a California corporation ("Declarant") with reference to the following:

- A. Declarant is developing a residential development in multiple phases located on certain real property in Richmond, California (the "Development").

Declarant currently owns Lots 1, 2, 6, 95, 96, 139, 140, 142, 144, and 145, (individually "Lot" and collectively "Lots") more particularly described on the subdivision map entitled "Subdivision 8236 Parcel 3 at Park Ridge" filed for record on August 12, 1999 in Book 413 of Maps at pages 29 through 41 in the records of Contra Costa County, California.

Declarant currently owns Lots 1-15, 38-55 and 71-97 (individually "Lot" and collectively "Lots") more particularly described on the subdivision map entitled "Subdivision 8234" filed for record on July 19, 2000 in Book 421 of Maps at pages 34 through 50 in the records of Contra Costa County, California.

Declarant currently owns Lots 1-5, 10, and 16-67, (individually "Lot" and collectively "Lots") more particularly described on the subdivision map entitled "Subdivision 8235" filed for record on July 19, 2000 in Book 422 of Maps at pages 1 through 7 in the records of Contra Costa County, California.

Declarant currently owns Lots 1-12, 28-67, 75-82, 96-101, 123-127 and 138-150, (individually "Lot" and collectively "Lots") more particularly described on the subdivision map entitled "Subdivision 8237" filed for record on August 22, 2000 in Book 423 of Maps at pages 1 through 13 the records of Contra Costa County, California.

- B. The Development is subject to the Country Club Vista Declaration of Restrictions (CC&Rs) recorded on October 16, 2000, as Document No. 2000-0228686-00 in the records of Contra County, California (the Country Club Vista Declaration).
- C. The California Legislature adopted Title 7 of Part 2 of Division 2 of the Civil Code (Civil Code sections 895 through 945.5) commonly known as "SB 800". The new law establishes certain functionality standards and establishes procedures for the processing and resolution of claims for violation of these standards. The law is effective January 1, 2003 and is applicable to residences originally sold on or after January 1, 2003.
- D. Declarant recorded a Supplemental Declaration against the Lots and Common Area on March 13, 2003 as Document No. 2003-0114927-00 in the records of Contra Costa County to: (i) incorporate the requirements of the new law; (ii) make certain elections under the new law, and (iii) provide for the annexation of additional lots and common area so that the additional lots and common areas are bound by the Supplemental Declaration. Subsequent to the recordation of the

Supplemental Declaration Declarant elected to participate in the Home Builder's Warranty Program (the "Warranty Program"). Declarant now desires to revise the Supplemental Declaration with respect to the Lots described in Recital A which are owned by Declarant to so that the claims procedure in the Supplemental Declaration is consistent with the procedures set forth in the Warranty Program.

- E. The covenants, restrictions, rights, duties, benefits and burdens set forth in this Revised Supplemental Declaration benefits and burdens each Lot and, if applicable, Common Area and all Owners and successive Owners thereto as covenants running with the land and equitable servitudes.

**DECLARANT DECLARES AS FOLLOWS:**

**1. Claims Procedures:**

This Revised Supplemental Declaration describes the procedures for filing claims against Declarant and certain other designated parties related to this Development. Any claim, dispute or other controversy between the Association and/or any Owner(s) and the Declarant or any director, officer, shareholder, partner, employee or agent of the Declarant or any contractor, subcontractor, design professional, engineer or other person that provided materials, labor or other services to the Development (collectively the "Declarant" for purposes of this Revised Supplemental Declaration) relating to this Declaration, the use or condition of any Lot or Common Area, and/or the design, specifications, surveying, grading, construction, installation and/or operation of any improvements or landscaping located thereon, including but not limited to any claims for violation of the construction standards set forth in Civil Code sections 896 and 897, whether based in contract, tort or statute violation, (individually and collectively the "Claim") shall be subject to the Claim procedures set forth in this Revised Supplemental Declaration.

**The procedures in this Revised Supplemental Declaration do not apply to Declarant's normal customer service procedures. Owners are encouraged to resolve any potential Claim first through Declarant's normal customer service procedures.** It is intended that the procedures in this Revised Supplemental Declaration become operative only if the Claim cannot be resolved in accordance with Declarant's normal customer service procedures; provided however, a Claim may be filed under the provisions in this Revised Supplemental Declaration without complying with Declarant's normal customer service procedures.

Declarant, the Association and each Owner covenant not to commence any litigation without complying with the procedures described in this Revised Supplemental Declaration. If any party breaches the foregoing, the other party may obtain an appropriate order compelling the breaching party to comply with the procedures. Except as is expressly authorized by law, nothing herein shall reduce or extend any applicable time frame within which legal action must be commenced, including applicable statutes of limitation or repose and time frames set forth in Civil Code Sections 896, 897 and 941.

Title 7 of Part 2 of Division 2 of the Civil Code (Civil Code sections 895 through 945.5) commonly known as "SB 800" sets forth functionality or construction standards that describe how the Improvements and landscaping within this Development should function (the "Functionality Standards"). SB 800 impacts the legal rights of the Association and each Owner. Civil Code sections 910 through 938 contain prelitigation procedures that Declarant may elect to use or Declarant may elect to use alternate procedures. Declarant's election is set forth in **Section 1**. The Association and Owner have certain rights under SB 800 if the Improvement or landscaping fails to meet a Functionality Standard during the applicable time period. These rights may be lost as described in Civil Code Section 945.5, including if the Association or Owner: (1) fails to follow the Declarant's or the manufacturer's reasonable recommendations regarding inspection and maintenance, including schedules; (2) fails to follow commonly accepted homeowner maintenance guidelines; (3) fails to provide Declarant with timely notice after a discovery of the violation of the Functionality Standard or to allow Declarant reasonable and timely access for repairs; or (4) unreasonably fails to minimize or prevent damages in a timely manner.

## 2. Nonadversarial Prelitigation Procedures:

(a) Warranty Program Claims. If a claim is a claim that is covered under the Warranty Program and the warranty period remains in effect, the claim shall be made in accordance with the procedures set forth in the Warranty Program, including the nonadversarial prelitigation mediation procedures described in the Warranty Program.

(b) Non-Warranty Program Claims. If a claim is not a claim covered under the Warranty Program or if the warranty period has expired, the Claim shall be subject to the nonadversarial prelitigation procedures set forth in this **Section 2**. Civil Code sections 910 through 938 set forth certain nonadversarial prelitigation procedures for the resolution of claims made for violation of the standards under Civil Code Sections 896 or 897. As authorized by Civil Code section 914, Declarant has elected not to use these procedures and to use instead the alternative nonadversarial prelitigation procedures set forth in this **Section 2**. The Claimant shall notify Declarant in writing of the Claim pursuant to the Claim notice requirements in **Section 4** of this Supplemental Declaration. The notice shall: (i) contain the Claimant's name and address, (ii) state that the Claimant elects to commence the procedures in this Revised Supplemental Declaration to resolve the Claim; and (iii) describe the nature and location of the Claim in reasonable detail (the "Claim Notice"). The Claim is subject to the following nonadversarial prelitigation procedures:

(i) Notice, Right to Inspect, and Right to Corrective Action. Within 30 days of Declarant's receipt of the Claim Notice, the Claimant and Declarant's representatives shall meet at the Claimant's Property to discuss the Claim. At such meeting or at such other mutually-agreeable time, Declarant's representatives shall have full access to the Property for the purposes of inspecting the Property and investigating the Claim. The parties shall negotiate in good faith in an attempt to resolve the Claim. If the Claimant and Declarant cannot agree on the validity of the Claim, the corrective action needed, the party to take the corrective action or any other matter related to the Claim within 60 days of Declarant's receipt of the Claim Notice or such longer time as may be mutually acceptable to the Claimant and Declarant, either party may commence the mediation procedures described in **Section 2(ii)** below. If the parties agree on any corrective action, Declarant's representatives shall be provided full access to the Property to take and complete corrective action. Declarant shall commence the corrective work no later than 30 days following the Claimant's acceptance of the proposed corrective action, and shall use commercially reasonable efforts to complete the work within 90 days. If Declarant fails to respond to the Claim Notice or fails to meet with the Claimant within the time period required herein, the Claimant is released from any further obligation to comply with the nonadversarial procedures in this **Section 2** and may proceed to initiate the binding adversarial procedures in **Section 3**.

(ii) Mediation. If the Claim is not resolved in accordance with the procedures described in **Section 2(i)** and except as otherwise provided in **Section 2(i)**, either the Claimant or the Declarant may submit the Claim to mediation under the mediation procedures adopted by the Judicial Arbitration and Mediation Services ("JAMS") or any successor thereto or to any other entity offering mediation services that is acceptable to the Claimant and the Declarant. The parties shall cooperate so that the mediation hearing can be held as soon as practicable. If the mediation hearing cannot take place within 90 days of Declarant's receipt of the Claims Notice or such later date as may be acceptable to Claimant and Declarant, the parties are released from any further obligation under this **Section 1(ii)** and either party may proceed to initiate the binding adversarial procedures described in **Section 3** of this Revised Supplemental Declaration:

Each party shall bear their own mediation expenses provided that the initial mediation administrative fee and the mediator's fee for a maximum of four hours shall be borne by Declarant and thereafter equally by the parties unless they agree otherwise. Any party to the mediation may at anytime after a minimum of four hours of mediation terminate the mediation by notifying the other parties and the mediator and proceed to the binding adversarial procedures described in **Section 3** of this Supplemental Declaration.

No person shall serve as a mediator who has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

Each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved within ten days of the selection of the mediator or within such time frame established by the mediator. The mediation shall be commenced within ten days following the submittal of the memoranda. The mediation shall be held in the county in which the Property is located or such other place as is mutually acceptable to the parties.

The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Claim. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Claim, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

The mediation shall be subject to the provisions of Evidence Code sections 1115 through 1128, or any successor statutes thereto, except as the parties may agree otherwise in writing or orally in accordance with the requirements of Evidence Code section 1118.

Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

If the Claim is not resolved in accordance with these nonadversarial prelitigation procedures, the Claim shall be resolved in accordance with the binding adversarial procedures set forth in **Section 3** of this Revised Supplemental Declaration.

### 3. Binding Adversarial Procedures:

If Claimant and Declarant cannot resolve the entire Claim in accordance with the procedures in **Section 2** of this Revised Supplemental Declaration or if corrective action is undertaken by Declarant and the parties disagree on the adequacy of the corrective action or any other claims arising from the corrective action, the portion of the Claim not resolved, including any unresolved claims arising out of the corrective action undertaken by Declarant or Declarant's agents, shall be resolved in accordance with the following binding adversarial procedure.

(a) Warranty Program Claims. If a claim is a claim that is covered under the Warranty Program and the warranty period remains in effect, the claim shall be made in accordance with the binding procedures set forth in the Warranty Program.

(b) Non-Warranty Program Claims. If a claim is not a claim covered under the Warranty Program or if the warranty period has expired, either party may commence binding arbitration by submitting the Claim to Construction Arbitration Services, Inc. ("CAS") for resolution in accordance with its arbitration rules in effect at the time of the arbitration. If the arbitration involves Professional Warranty Services Corporation ("PWC"), as the administrator of Declarant's limited warranty, and CAS is unwilling or unable to serve as the arbitrator, then PWC shall be entitled to select another reputable arbitration service, at its sole discretion, at the time the request for arbitration is submitted. If PWC selects an alternative arbitration service, the rules and procedures of such arbitration services in effect at the time of the request for arbitration is submitted shall be followed. **THE ARBITRATION WILL BE HEARD BY A SINGLE ARBITRATOR UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING. BUYER AND SELLER EACH WAIVES THE RIGHT TO A JURY TRIAL.**

Buyer and Seller agree that any Claim involving the design, specification, surveying, grading, construction, installation or operation of any Improvement or landscaping within the Property, including any Claim under Civil Code Sections 896 and 897, involves interstate commerce and is subject to and governed by the Federal Arbitration Act, notwithstanding any State or local laws or ordinances to the contrary and notwithstanding the fact the parties have elected to utilize certain State law arbitration procedures. The following provisions and procedures shall apply in all cases unless the parties agree otherwise in writing:

- (i) the proceedings shall be heard in the County in which the Property is located;
- (ii) the matter shall be heard by a single arbitrator who shall be a retired judge or attorney with at least five years experience in real estate matters;
- (iii) the fee to initiate the arbitration shall be paid by the Seller and the arbitrator's fees shall be borne equally by Seller and Buyer, unless Seller agrees in writing to advance the arbitrator's fees, provided that arbitration costs and fees, including any initiation fee and the arbitrator's fees, ultimately shall be borne as determined by the arbitrator
- (vi) each party shall bear its own attorneys' fees and costs (including expert costs) for the arbitration;
- (v) the arbitrator shall be appointed within 60 days of the administrator's receipt of a written request to arbitrate the dispute. In selecting the arbitrator, the provisions of section 1297.121 of the Code of Civil Procedure shall apply. The arbitrator appointed to serve shall be a neutral and impartial individual. The arbitrator may be challenged for any of the grounds listed therein or in section 1297.124 of the Code of Civil Procedure.
- (vi) the arbitrator may require one or more pre-hearing conferences;
- (vii) the parties shall be entitled to discovery to the extent allowed by section 1283.05 of the Code of Civil Procedure;
- (viii) the arbitrator shall be authorized to provide all recognized remedies available in law or equity;
- (ix) the arbitrator in his or her discretion may award costs (including the initiation fee and the arbitrator's fees) and/or attorneys' fees to the party that the arbitrator determines was the prevailing party;; and
- (x) the arbitrator's decision shall be final and binding on the parties unless corrected or validated under the grounds authorized in Code of Civil Procedure section 1286.2 or 1286.6; and
- (xi) The arbitrator's decision may be enforced in any court of competent jurisdiction.

If any provision of this **Section 3** shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

#### **4. Agent for Services of Claim Notice:**

Notice of any Claim made, including Civil Code Section 896 and 897 claims, or requests for information including requests for copies of the documents described in **Section 4** or for copies of the documents described in **Section 4**, may be served on Declarant's agent via certified mail, overnight mail or personal delivery. The name and address of Declarant's agent for this purpose is:

**Cy Hotovec**  
**404 Saratoga Avenue, Suite 100**  
**Santa Clara, CA 95050**

If the notice cannot be served on Declarant's agent at the above-referenced address because the agent is no longer located at the address or the agent has changed and Declarant has not provided the Claimant with an updated address or the name and/or address of the new agent, the Claimant may serve the claim notice on Declarant's agent for notice under Civil Code Section 912(e) on file with the California Secretary of State's Office in Sacramento, California. The current telephone numbers and website for the Secretary of State's Office are: (916) 657-5448 or (916)653-3984 and [www.ss.ca.gov](http://www.ss.ca.gov). Written request can be mailed to the California Secretary of State, Special Filings, P.O. Box 942877, Sacramento, California.

If the Claim notice is served via mail, it shall be assumed received by Declarant on the third business day following deposit into the U.S. Mails. If delivered via overnight mail, such as Federal Express or UPS, it shall be assumed received on the next business day. If delivered personally, it shall be assumed received on the date of personal delivery. These assumptions may be rebutted by Declarant if Declarant did not receive actual notice.

**5. Documents and Subsequent Owners:**

Declarant has or will provide copies of the following documents to the initial purchasers of homes in this Development:

- (i) inspection and maintenance schedules and guidelines;
- (ii) a limited fit and finish customer care program and manufacturers products' limited warranties;
- (iii) a copy of Title 7 of Part 2 of the Civil Code (SB 800);
- (iv) a Homebuilder's Limited Warranty

The initial purchasers shall retain the foregoing documents (the "Documents") and on transfer of title to the Property to a subsequent owner shall transfer the Documents or provide true and complete copies to the new owner(s) on or before transfer of title and instruct the new owner(s) that they are to retain the Documents and transfer or provide copies to any subsequent owner(s). **Replacement copies of the Documents may be obtained from Declarant by contacting Declarant at Declarant's principal place of business or through the agent for claim notice purposes described in Section 3 of this Revised Supplemental Declaration.** Declarant may charge a reasonable fee for providing replacement copies. Initial purchasers and subsequent owners, must comply with the inspection and maintenance guidelines provided by the Declarant and any manufacturer.

**6. Covenants:**

The covenants, restrictions, rights, duties, benefits and burdens benefit and bind each Lot and, if applicable, Common Area and each Owner and successive Owner thereto as covenants running with the land and equitable servitudes.

**7. Amendments:**

Notwithstanding anything in the Country Club Vista Declaration to the contrary: (i) the provisions in this Revised Supplemental Declaration may not be modified or waived without the prior written consent of Declarant; (ii) the provisions in this Revised Supplemental Declaration may be modified or waived with respect to any particular Claim with the written consent of Declarant and the Claimant or Claimants that made the Claim. The Board of Directors shall have full power and authority to approve any modifications or waivers with Declarant with respect to any Claim made by the Association.

8. **Annexations:**

Declarant may from time to time record a declaration of annexation, notice of addition or other appropriate document annexing additional lots and common area so that these additional properties are subject to the covenants, restrictions, rights, duties, benefits and burdens set forth in this Revised Supplemental Declaration.

9. **Claims Filing Period:**

Nothing herein shall be deemed to extend any time period in which a claim or action may be filed for a violation of the standards under Civil Code Sections 896 or 897 or otherwise extend any applicable statute of limitations or statute of repose, except as expressly authorized by law.

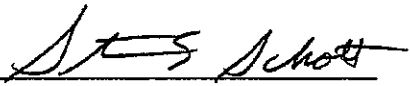
10. **Conflicts:**

If there is any conflict between this Revised Supplemental Declaration and the Country Club Vista Declaration, or the Supplemental Declaration this Revised Supplemental Declaration shall control.

11. **Effective Date and Term:**

The Revised Supplemental Declaration shall be effective on the date it is recorded in the County where the Development is located and shall terminate on the 15<sup>th</sup> anniversary of the date this Revised Supplemental Declaration is recorded in the county records or the date the last declaration of annexation or notice of addition is recorded in the County records, whichever occurs later.

DECLARANT: SCS Development Company

By: 

Its: Vice President



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

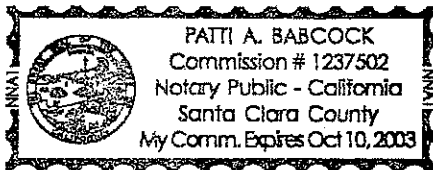
State of California

County of SANTA CLARA

} ss.

On AUGUST 27, 2003 before me, Patti A. Babcock, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")personally appeared STEPHEN E. SCHOTT

Name(s) of Signer(s)

☒ personally known to me☐ ~~proved to me on the basis of satisfactory evidence~~

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Patti A. Babcock  
Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

## Description of Attached Document

Country Club Vista - Revised Supplemental Declaration  
Title or Type of Document: of Restrictions (CCRS) Title 7- Claims Procedure

Document Date: August 26, 2003 Number of Pages: 9

Signer(s) Other Than Named Above: \_\_\_\_\_

## Capacity(ies) Claimed by Signer

Signer's Name: Stephen E. Schott☐ Individual☒ Corporate Officer — Title(s): Vice President☐ Partner — ☐ Limited ☐ General☐ Attorney-in-Fact☐ Trustee☐ Guardian or Conservator☐ Other: \_\_\_\_\_Signer Is Representing: SCS Development Co.

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

## CONSENT TO RECORD:

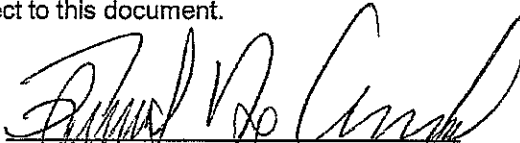
FIRST AMERICAN TITLE GUARANTY COMPANY, a California corporation, under holding agreement, holder of legal title of Lots 1, 2, 6, 95, 96, 139, 140, 142, 144, and 145 "Subdivision 8236 Parcel 3 at Park Ridge" filed for record on August 12, 1999 in Book 413 of Maps at pages 29 through 41 in the records of Contra Costa County, California, pursuant to the holding agreement with the Declarant, consents to the recordation of this document and acknowledges the property is subject to this document.

FIRST AMERICAN TITLE GUARANTY COMPANY, a California corporation, under holding agreement, holder of legal title of Lots 1-15, 38-55, and 71-97 "Subdivision 8234" filed for record on July 19, 2000 in Book 421 of Maps at pages 34 through 50 in the records of Contra Costa County, California, pursuant to the holding agreement with the Declarant, consents to the recordation of this document and acknowledges the property is subject to this document.

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By

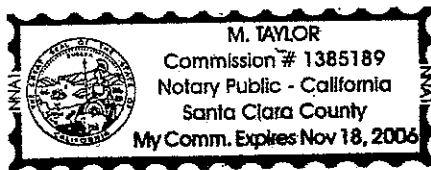
  
Fremont DeArmond, Vice-President

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Santa Clara } ss.On August 27, 2003 before me, M. Taylor  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")personally appeared Fremont DeArmond  
Name(s) of Signer(s)

☒ personally known to me  
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature of Notary Public

**OPTIONAL**

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**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**RIGHT THUMBPRINT  
OF SIGNER**  
Top of thumb here

**END OF DOCUMENT**

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FIRST AMERICAN TITLE

WHEN RECORDED, RETURN TO:

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**DECLARANT DECLARES AS FOLLOWS:**

**1. Claims Procedures:**

This Revised Supplemental Declaration describes the procedures for filing claims against Declarant and certain other designated parties related to this Development. Any claim, dispute or other controversy between the Association and/or any Owner(s) and the Declarant or any director, officer, shareholder, partner, employee or agent of the Declarant or any contractor, subcontractor, design professional, engineer or other person that provided materials, labor or other services to the Development (collectively the "Declarant" for purposes of this Revised Supplemental Declaration) relating to this Declaration, the use or condition of any Lot or Common Area, and/or the design, specifications, surveying, grading, construction, installation and/or operation of any improvements or landscaping located thereon, including but not limited to any claims for violation of the construction standards set forth in Civil Code sections 896 and 897, whether based in contract, tort or statute violation, (individually and collectively the "Claim") shall be subject to the Claim procedures set forth in this Revised Supplemental Declaration.

**The procedures in this Revised Supplemental Declaration do not apply to Declarant's normal customer service procedures. Owners are encouraged to resolve any potential Claim first through Declarant's normal customer service procedures.** It is intended that the procedures in this Revised Supplemental Declaration become operative only if the Claim cannot be resolved in accordance with Declarant's normal customer service procedures; provided however, a Claim may be filed under the provisions in this Revised Supplemental Declaration without complying with Declarant's normal customer service procedures.

Declarant, the Association and each Owner covenant not to commence any litigation without complying with the procedures described in this Revised Supplemental Declaration. If any party breaches the foregoing, the other party may obtain an appropriate order compelling the breaching party to comply with the procedures. Except as is expressly authorized by law, nothing herein shall reduce or extend any applicable time frame within which legal action must be commenced, including applicable statutes of limitation or repose and time frames set forth in Civil Code Sections 896, 897 and 941.

Title 7 of Part 2 of Division 2 of the Civil Code (Civil Code sections 895 through 945.5) commonly known as "SB 800" sets forth functionality or construction standards that describe how the Improvements and landscaping within this Development should function (the "Functionality Standards"). SB 800 impacts the legal rights of the Association and each Owner. Civil Code sections 910 through 938 contain prelitigation procedures that Declarant may elect to use or Declarant may elect to use alternate procedures. Declarant's election is set forth in **Section 1**. The Association and Owner have certain rights under SB 800 if the Improvement or landscaping fails to meet a Functionality Standard during the applicable time period. These rights may be lost as described in Civil Code Section 945.5, including if the Association or Owner: (1) fails to follow the Declarant's or the manufacturer's reasonable recommendations regarding inspection and maintenance, including schedules; (2) fails to follow commonly accepted homeowner maintenance guidelines; (3) fails to provide Declarant with timely notice after a discovery of the violation of the Functionality Standard or to allow Declarant reasonable and timely access for repairs; or (4) unreasonably fails to minimize or prevent damages in a timely manner.

## 2. Nonadversarial Prelitigation Procedures:

(a) Warranty Program Claims. If a claim is a claim that is covered under the Warranty Program and the warranty period remains in effect, the claim shall be made in accordance with the procedures set forth in the Warranty Program, including the nonadversarial prelitigation mediation procedures described in the Warranty Program.

(b) Non-Warranty Program Claims. If a claim is not a claim covered under the Warranty Program or if the warranty period has expired, the Claim shall be subject to the nonadversarial prelitigation procedures set forth in this **Section 2**. Civil Code sections 910 through 938 set forth certain nonadversarial prelitigation procedures for the resolution of claims made for violation of the standards under Civil Code Sections 896 or 897. As authorized by Civil Code section 914, Declarant has elected not to use these procedures and to use instead the alternative nonadversarial prelitigation procedures set forth in this **Section 2**. The Claimant shall notify Declarant in writing of the Claim pursuant to the Claim notice requirements in **Section 4** of this Supplemental Declaration. The notice shall: (i) contain the Claimant's name and address, (ii) state that the Claimant elects to commence the procedures in this Revised Supplemental Declaration to resolve the Claim; and (iii) describe the nature and location of the Claim in reasonable detail (the "Claim Notice"). The Claim is subject to the following nonadversarial prelitigation procedures:

(i) Notice, Right to Inspect, and Right to Corrective Action. Within 30 days of Declarant's receipt of the Claim Notice, the Claimant and Declarant's representatives shall meet at the Claimant's Property to discuss the Claim. At such meeting or at such other mutually-agreeable time, Declarant's representatives shall have full access to the Property for the purposes of inspecting the Property and investigating the Claim. The parties shall negotiate in good faith in an attempt to resolve the Claim. If the Claimant and Declarant cannot agree on the validity of the Claim, the corrective action needed, the party to take the corrective action or any other matter related to the Claim within 60 days of Declarant's receipt of the Claim Notice or such longer time as may be mutually acceptable to the Claimant and Declarant, either party may commence the mediation procedures described in **Section 2(ii)** below. If the parties agree on any corrective action, Declarant's representatives shall be provided full access to the Property to take and complete corrective action. Declarant shall commence the corrective work no later than 30 days following the Claimant's acceptance of the proposed corrective action, and shall use commercially reasonable efforts to complete the work within 90 days. If Declarant fails to respond to the Claim Notice or fails to meet with the Claimant within the time period required herein, the Claimant is released from any further obligation to comply with the nonadversarial procedures in this **Section 2** and may proceed to initiate the binding adversarial procedures in **Section 3**.

(ii) Mediation. If the Claim is not resolved in accordance with the procedures described in **Section 2(i)** and except as otherwise provided in **Section 2(i)**, either the Claimant or the Declarant may submit the Claim to mediation under the mediation procedures adopted by the Judicial Arbitration and Mediation Services ("JAMS") or any successor thereto or to any other entity offering mediation services that is acceptable to the Claimant and the Declarant. The parties shall cooperate so that the mediation hearing can be held as soon as practicable. If the mediation hearing cannot take place within 90 days of Declarant's receipt of the Claims Notice or such later date as may be acceptable to Claimant and Declarant, the parties are released from any further obligation under this **Section 1(ii)** and either party may proceed to initiate the binding adversarial procedures described in **Section 3** of this Revised Supplemental Declaration:

Each party shall bear their own mediation expenses provided that the initial mediation administrative fee and the mediator's fee for a maximum of four hours shall be borne by Declarant and thereafter equally by the parties unless they agree otherwise. Any party to the mediation may at anytime after a minimum of four hours of mediation terminate the mediation by notifying the other parties and the mediator and proceed to the binding adversarial procedures described in **Section 3** of this Supplemental Declaration.

No person shall serve as a mediator who has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

Each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved within ten days of the selection of the mediator or within such time frame established by the mediator. The mediation shall be commenced within ten days following the submittal of the memoranda. The mediation shall be held in the county in which the Property is located or such other place as is mutually acceptable to the parties.

The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Claim. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Claim, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

The mediation shall be subject to the provisions of Evidence Code sections 1115 through 1128, or any successor statutes thereto, except as the parties may agree otherwise in writing or orally in accordance with the requirements of Evidence Code section 1118.

Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

If the Claim is not resolved in accordance with these nonadversarial prelitigation procedures, the Claim shall be resolved in accordance with the binding adversarial procedures set forth in **Section 3** of this Revised Supplemental Declaration.

### 3. Binding Adversarial Procedures:

If Claimant and Declarant cannot resolve the entire Claim in accordance with the procedures in **Section 2** of this Revised Supplemental Declaration or if corrective action is undertaken by Declarant and the parties disagree on the adequacy of the corrective action or any other claims arising from the corrective action, the portion of the Claim not resolved, including any unresolved claims arising out of the corrective action undertaken by Declarant or Declarant's agents, shall be resolved in accordance with the following binding adversarial procedure.

(a) Warranty Program Claims. If a claim is a claim that is covered under the Warranty Program and the warranty period remains in effect, the claim shall be made in accordance with the binding procedures set forth in the Warranty Program.

(b) Non-Warranty Program Claims. If a claim is not a claim covered under the Warranty Program or if the warranty period has expired, either party may commence binding arbitration by submitting the Claim to Construction Arbitration Services, Inc. ("CAS") for resolution in accordance with its arbitration rules in effect at the time of the arbitration. If the arbitration involves Professional Warranty Services Corporation ("PWC"), as the administrator of Declarant's limited warranty, and CAS is unwilling or unable to serve as the arbitrator, then PWC shall be entitled to select another reputable arbitration service, at its sole discretion, at the time the request for arbitration is submitted. If PWC selects an alternative arbitration service, the rules and procedures of such arbitration services in effect at the time of the request for arbitration is submitted shall be followed. **THE ARBITRATION WILL BE HEARD BY A SINGLE ARBITRATOR UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING. BUYER AND SELLER EACH WAIVES THE RIGHT TO A JURY TRIAL.**



Buyer and Seller agree that any Claim involving the design, specification, surveying, grading, construction, installation or operation of any Improvement or landscaping within the Property, including any Claim under Civil Code Sections 896 and 897, involves interstate commerce and is subject to and governed by the Federal Arbitration Act, notwithstanding any State or local laws or ordinances to the contrary and notwithstanding the fact the parties have elected to utilize certain State law arbitration procedures. The following provisions and procedures shall apply in all cases unless the parties agree otherwise in writing:

- (i) the proceedings shall be heard in the County in which the Property is located;
- (ii) the matter shall be heard by a single arbitrator who shall be a retired judge or attorney with at least five years experience in real estate matters;
- (iii) the fee to initiate the arbitration shall be paid by the Seller and the arbitrator's fees shall be borne equally by Seller and Buyer, unless Seller agrees in writing to advance the arbitrator's fees, provided that arbitration costs and fees, including any initiation fee and the arbitrator's fees, ultimately shall be borne as determined by the arbitrator
- (vi) each party shall bear its own attorneys' fees and costs (including expert costs) for the arbitration;
- (v) the arbitrator shall be appointed within 60 days of the administrator's receipt of a written request to arbitrate the dispute. In selecting the arbitrator, the provisions of section 1297.121 of the Code of Civil Procedure shall apply. The arbitrator appointed to serve shall be a neutral and impartial individual. The arbitrator may be challenged for any of the grounds listed therein or in section 1297.124 of the Code of Civil Procedure.
- (vi) the arbitrator may require one or more pre-hearing conferences;
- (vii) the parties shall be entitled to discovery to the extent allowed by section 1283.05 of the Code of Civil Procedure;
- (viii) the arbitrator shall be authorized to provide all recognized remedies available in law or equity;
- (ix) the arbitrator in his or her discretion may award costs (including the initiation fee and the arbitrator's fees) and/or attorneys' fees to the party that the arbitrator determines was the prevailing party; and
- (x) the arbitrator's decision shall be final and binding on the parties unless corrected or validated under the grounds authorized in Code of Civil Procedure section 1286.2 or 1286.6; and
- (xi) The arbitrator's decision may be enforced in any court of competent jurisdiction.

If any provision of this **Section 3** shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

#### **4. Agent for Services of Claim Notice:**

Notice of any Claim made, including Civil Code Section 896 and 897 claims, or requests for information including requests for copies of the documents described in **Section 4** or for copies of the documents described in **Section 4**, may be served on Declarant's agent via certified mail, overnight mail or personal delivery. The name and address of Declarant's agent for this purpose is:

Cy Hotovec  
404 Saratoga Avenue, Suite 100  
Santa Clara, CA 95050

If the notice cannot be served on Declarant's agent at the above-referenced address because the agent is no longer located at the address or the agent has changed and Declarant has not provided the Claimant with an updated address or the name and/or address of the new agent, the Claimant may serve the claim notice on Declarant's agent for notice under Civil Code Section 912(e) on file with the California Secretary of State's Office in Sacramento, California. The current telephone numbers and website for the Secretary of State's Office are: (916) 657-5448 or (916)653-3984 and [www.ss.ca.gov](http://www.ss.ca.gov). Written request can be mailed to the California Secretary of State, Special Filings, P.O. Box 942877, Sacramento, California.

If the Claim notice is served via mail, it shall be assumed received by Declarant on the third business day following deposit into the U.S. Mails. If delivered via overnight mail, such as Federal Express or UPS, it shall be assumed received on the next business day. If delivered personally, it shall be assumed received on the date of personal delivery. These assumptions may be rebutted by Declarant if Declarant did not receive actual notice.

**5. Documents and Subsequent Owners:**

Declarant has or will provide copies of the following documents to the initial purchasers of homes in this Development:

- (i) inspection and maintenance schedules and guidelines;
- (ii) a limited fit and finish customer care program and manufacturers products' limited warranties;
- (iii) a copy of Title 7 of Part 2 of the Civil Code (SB 800);
- (iv) a Homebuilder's Limited Warranty

The initial purchasers shall retain the foregoing documents (the "Documents") and on transfer of title to the Property to a subsequent owner shall transfer the Documents or provide true and complete copies to the new owner(s) on or before transfer of title and instruct the new owner(s) that they are to retain the Documents and transfer or provide copies to any subsequent owner(s). **Replacement copies of the Documents may be obtained from Declarant by contacting Declarant at Declarant's principal place of business or through the agent for claim notice purposes described in Section 3 of this Revised Supplemental Declaration.** Declarant may charge a reasonable fee for providing replacement copies. Initial purchasers and subsequent owners, must comply with the inspection and maintenance guidelines provided by the Declarant and any manufacturer.

**6. Covenants:**

The covenants, restrictions, rights, duties, benefits and burdens benefit and bind each Lot and, if applicable, Common Area and each Owner and successive Owner thereto as covenants running with the land and equitable servitudes.

**7. Amendments:**

Notwithstanding anything in the Country Club Vista Declaration to the contrary: (i) the provisions in this Revised Supplemental Declaration may not be modified or waived without the prior written consent of Declarant; (ii) the provisions in this Revised Supplemental Declaration may be modified or waived with respect to any particular Claim with the written consent of Declarant and the Claimant or Claimants that made the Claim. The Board of Directors shall have full power and authority to approve any modifications or waivers with Declarant with respect to any Claim made by the Association.

**8. Annexations:**

Declarant may from time to time record a declaration of annexation, notice of addition or other appropriate document annexing additional lots and common area so that these additional properties are subject to the covenants, restrictions, rights, duties, benefits and burdens set forth in this Revised Supplemental Declaration.

**9. Claims Filing Period:**

Nothing herein shall be deemed to extend any time period in which a claim or action may be filed for a violation of the standards under Civil Code Sections 896 or 897 or otherwise extend any applicable statute of limitations or statute of repose, except as expressly authorized by law.

**10. Conflicts:**

If there is any conflict between this Revised Supplemental Declaration and the Country Club Vista Declaration, or the Supplemental Declaration this Revised Supplemental Declaration shall control.

**11. Effective Date and Term:**

The Revised Supplemental Declaration shall be effective on the date it is recorded in the County where the Development is located and shall terminate on the 15<sup>th</sup> anniversary of the date this Revised Supplemental Declaration is recorded in the county records or the date the last declaration of annexation or notice of addition is recorded in the County records, whichever occurs later.

DECLARANT: SCS Development Company

By: 

Its: Vice President

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

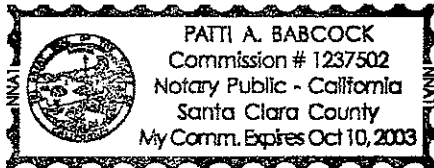
State of California

County of SANTA CLARA

} ss.

On AUGUST 27, 2003 before me, Patti A. Babcock, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")personally appeared STEPHEN E. SCHOTT

Name(s) of Signer(s)

☒ personally known to me☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Patti A. Babcock  
Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

## Description of Attached Document

Country Club Vista - Revised Supplemental Declaration  
Title or Type of Document: of Restrictions (CCRs) Title 7 - Claims Procedure

Document Date: August 26, 2003 Number of Pages: 9

Signer(s) Other Than Named Above: \_\_\_\_\_

## Capacity(ies) Claimed by Signer

Signer's Name: Stephen E. Schott☐ Individual☒ Corporate Officer — Title(s): Vice President☐ Partner — ☐ Limited ☐ General☐ Attorney-in-Fact☐ Trustee☐ Guardian or Conservator☐ Other: \_\_\_\_\_Signer Is Representing: SCS Development Co.

RIGHT THUMBPRINT  
OF SIGNER  
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## CONSENT TO RECORD:

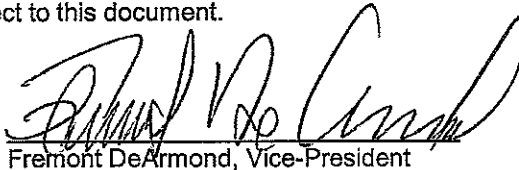
FIRST AMERICAN TITLE GUARANTY COMPANY, a California corporation, under holding agreement, holder of legal title of Lots 1, 2, 6, 95, 96, 139, 140, 142, 144, and 145 "Subdivision 8236 Parcel 3 at Park Ridge" filed for record on August 12, 1999 in Book 413 of Maps at pages 29 through 41 in the records of Contra Costa County, California, pursuant to the holding agreement with the Declarant, consents to the recordation of this document and acknowledges the property is subject to this document.

FIRST AMERICAN TITLE GUARANTY COMPANY, a California corporation, under holding agreement, holder of legal title of Lots 1-15, 38-55, and 71-97 "Subdivision 8234" filed for record on July 19, 2000 in Book 421 of Maps at pages 34 through 50 in the records of Contra Costa County, California, pursuant to the holding agreement with the Declarant, consents to the recordation of this document and acknowledges the property is subject to this document.

FIRST AMERICAN TITLE GUARANTY COMPANY, a California corporation, under holding agreement, holder of legal title of Lots 1-5, 10, and 16-67, "Subdivision 8235" filed for record on July 19, 2000 in Book 422 of Maps at pages 1 through 7 in the records of Contra Costa County, California, pursuant to the holding agreement with the Declarant, consents to the recordation of this document and acknowledges the property is subject to this document.

FIRST AMERICAN TITLE GUARANTY COMPANY, a California corporation, under holding agreement, holder of legal title of Lots 1-12, 28-67, 75-82, 96-101, 123-127, and 138-150, "Subdivision 8237" filed for record on July 19, 2000 in Book 422 of Maps at pages 1 through 7 in the records of Contra Costa County, California, pursuant to the holding agreement with the Declarant, consents to the recordation of this document and acknowledges the property is subject to this document.

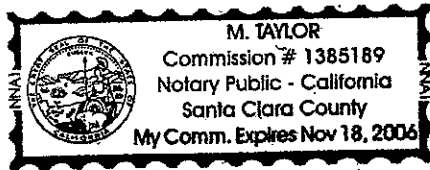
By



Fremont DeArmond, Vice-President

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Santa Clara } ss.On August 27, 2003 before me, M. Taylor  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")personally appeared Fremont DeArmond  
Name(s) of Signer(s)☒ personally known to me  
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature of Notary Public

**OPTIONAL***Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.***Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
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