WINDSOR SENIOR CENTER AGREEMENT

THIS AGREEMENT IS MADE ON JUNE 1, 1994, BETWEEN THE TOWN OF WINDSOR, AND THE TOWN OF WINDSOR WATER DISTRICT HEREINAFTER REFERRED TO COLLECTIVELY AS "WINDSOR" AND "BROOKSCREEK ASSOCIATES," A CALIFORNIA LIMITED PARTNERSHIP, HEREINAFTER REFERRED TO AS "OWNER."

RECITALS

A. WINDSOR IS THE OWNER OF REAL PROPERTY LOCATED IN THE TOWN OF WINDSOR, COUNTY OF SONOMA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED IN EXHIBIT A (HEREINAFTER REFERRED TO AS THE "REAL PROPERTY," THE "PROPERTY" OR THE "SITE").

B. OWNER IS PRESENTLY PLANNING TO DEVELOP AND IMPROVE A SUBDIVISION ADJACENT TO THE PROPOSED IMPROVEMENTS WITHIN THE TOWN OF WINDSOR AND KNOWN AS THE "BROOKSCREEK SUBDIVISION," THE PROPOSED SUBDIVISION WILL BE RESTRICTED TO SENIOR CITIZENS.

C. OWNER PROPOSES TO DEVELOP A PORTION OF THE REFERENCED PROPERTY AS A SENIOR CITIZENS CENTER, INCLUDING AN APPROXIMATE 4,000 SQUARE FOOT SENIOR CITIZENS CENTER BUILDING, POOL AND SPA, RELATED PARKING, AND LANDSCAPING, TO RESTORE PARTIALLY A HISTORICAL STRUCTURE KNOWN AS THE CUNNINGHAM HOUSE, AND TO DEMOLISH THE LANDMARK WINERY BUILDINGS ON THE SITE, ALL PURSUANT TO SITE PLANS, ELEVATIONS AND CONSTRUCTION PLANS PREPARED BY OWNER AT ITS' OWN COST.

D. WINDSOR HAS DETERMINED THAT DEVELOPMENT OF A SENIOR CENTER TO MEET THE NEEDS OF SENIORS IN THE WINDSOR COMMUNITY IS CONSISTENT WITH PARK AND RECREATION PURPOSES, AND PROVIDES A BENEFIT TO THE PUBLIC OF EXCEPTIONAL MERIT WITHIN THE MEANING

OF WINDSOR ORDINANCE NO. 92-29, SECTION 2(E), AND NO. 93-46, SECTION 2(C).

E. UPON COMPLETION OF THE IMPROVEMENTS DESCRIBED ABOVE AND ACCEPTANCE BY WINDSOR, OWNER SHALL DEDICATE SAME TO WINDSOR, FOR USE AS A SENIOR CITIZEN'S CENTER.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. BASIC OBLIGATION

1.1 OWNER SHALL, AT ITS OWN COST, CONSTRUCT A SENIOR CITIZENS' CENTER CONSISTENT WITH THE SITE PLAN, ELEVATIONS, AND FULL CONSTRUCTION PLANS CONTAINED IN EXHIBIT B, AND SUBJECT TO THE REQUIREMENTS OF THIS AGREEMENT (HEREINAFTER REFERRED TO AS THE "SENIOR CENTER").

1.2 OWNER AGREES THAT, AS PART OF THE WORK DESCRIBED IN EXHIBIT B, IT WILL DEMOLISH THE TWO EXISTING STRUCTURES ON WINDSOR'S PROPERTY COMMONLY KNOWN AS THE "LANDMARK WINERY" BUILDINGS, LOCATED OFF OF FOXWOOD DRIVE IN WINDSOR, CALIFORNIA. PART OF EXHIBIT B IS A SITE LAYOUT, SHOWING THE LANDMARK WINERY BUILDINGS TO BE DEMOLISHED PURSUANT TO THIS AGREEMENT.

1.3 WINDSOR AGREES THAT IT WILL WAIVE ALL BUILDING PERMIT FEES IN CONNECTION WITH THE PERMITS REQUIRED FOR THE CONSTRUCTION OF THE SENIOR CENTER, INCLUDING THE DEMOLITION AND RESTORATION WORK CONTEMPLATED BY THIS AGREEMENT. WAIVER OF BUILDING PERMIT FEES DOES NOT EXCUSE OWNER FROM COMPLYING WITH APPLICABLE BUILDING CODES IN CONSTRUCTING THE SENIOR CENTER OR OTHER PROVISIONS OF LAW WHICH MAY BE APPLICABLE TO OWNER IN CONSTRUCTING THE SENIOR CENTER.

1.4 EXCEPT TO THE EXTENT CAUSED BY FACTORS OUT OF THE REASONABLE CONTROL OF OWNER, THE WORK OF IMPROVEMENT CONTEMPLATED BY THIS AGREEMENT SHALL BE COMPLETED BEFORE ISSUANCE OF THE FIRST CERTIFICATE OF OCCUPANCY ON THE FIRST HOUSE ON THE FIRST PHASE OF THE BROOKSCREEK SUBDIVISION. FOR THE PURPOSE OF THIS AGREEMENT, THE TERM "FACTORS OUT OF THE REASONABLE CONTROL OF OWNER," SHALL MEAN, AND IS LIMITED TO, DELAYS CAUSED

DIRECTLY BY ACTS OF GOD; ACTS OF THE PUBLIC ENEMY; FIRES, RIOTS, INSURRECTIONS; EPIDEMICS; QUARANTINE RESTRICTIONS, STRIKES; LOCKOUTS; SITDOWNS; ACTS OF A GOVERNMENTAL AGENCY; PRIORITIES OR PRIVILEGES ESTABLISHED FOR THE MANUFACTURE, ASSEMBLY, OR ALLOTMENT OF MATERIALS NECESSARY IN THE WORK BY ORDER, DECREE OR OTHERWISE OF THE UNITED STATES OR BY ANY DEPARTMENT, BUREAU, COMMISSION, COMMITTEE, AGENT, OR ADMINISTRATOR OF ANY LEGALLY CONSTITUTED PUBLIC AUTHORITY; THE PREVENTION BY WINDSOR OF OWNER FROM COMMENCING OR PROSECUTING THE WORK BECAUSE OF THE ACTS OF OTHERS, EXCEPTING OWNER'S SUBCONTRACTORS; OR THE PREVENTION OF OWNER FROM COMMENCING OR PROSECUTING THE WORK BECAUSE OF A CITY-WIDE FAILURE OF PUBLIC UTILITY SERVICE; OR DELAY DUE TO CLEANUP AND REMEDIATION OF TOXIC AND HAZARDOUS SUBSTANCES ON THE SITE.

1.5 THE WORK CONTEMPLATED BY THIS AGREEMENT WILL BE BONDED BY OWNER, NO LATER THAN THE DATE THE OWNER COMMENCES THE WORK DESCRIBED IN PARAGRAPH 1.1. THE BONDING PROVIDED BY OWNER SHALL CONSIST OF A FAITHFUL PERFORMANCE BOND , A LABOR AND MATERIALS BOND, AND A ONE (1) YEAR MAINTENANCE BOND (TO BE IN EFFECT FOR THE ONE-YEAR PERIOD FOLLOWING ACCEPTANCE OF THE WORK). EACH BOND SHALL BE IN A FORM AND AN AMOUNT PRESCRIBED BY WINDSOR, AND SHALL BE ISSUED BY A COMPANY DULY AND LEGALLY LICENSED TO CONDUCT A GENERAL SURETY BUSINESS IN THE STATE OF CALIFORNIA. EACH BOND SHALL BECOME A PART OF THIS AGREEMENT. SAID BONDS SHALL BE IN AN AMOUNT SUFFICIENT TO COVER THE COSTS OF THE IMPROVEMENTS, CONSTRUCTION, DEMOLITION AND PARTIAL RESTORATION WORK CONTEMPLATED BY THIS AGREEMENT. THE MAINTENANCE BOND SHALL GUARANTEE THE WORK AGAINST ANY DEFECTIVE WORKMANSHIP OR DEFECTIVE MATERIALS FURNISHED IN THE PERFORMANCE OF THE WORK.

2. PARKING/TRAFFIC CONSTRAINTS

OWNER WILL, AT ITS OWN COST, PROVIDE PARKING BASED ON THE FOLLOWING REQUIREMENTS IN ACCORDANCE WITH THE TOWN OF WINDSOR'S ZONING ORDINANCE. THEY ARE AS FOLLOWS:

PER SECTION 26-162 (G) OF THE TOWN OF WINDSOR ZONING ORDINANCE (REQUIRED PARKING).

THE SPECIFIC PARKING REQUIREMENTS OF THE SENIOR CENTER ARE NOT ENUMERATED IN THE ZONING ORDINANCE. THEREFORE, IT IS AGREED THAT OWNER WILL MEET THE FOLLOWING MINIMUM PARKING REQUIREMENTS FOR THE SENIOR CENTER PROJECT, BASED ON INDIVIDUAL USE AREAS THAT COMPROMISE THE PROJECT:

SENIOR CENTER

BUILDING		
	ASSEMBLY SPACE	24.2
	OFFICE SPACE	2.4
POOL		20.5
TOTAL		47.1

3. USES

3.1 THE SENIOR CENTER WILL BE USED AS A SENIOR CENTER FACILITY FOR PERSONS AGE 55 OR OLDER, AND THEIR GUESTS, THEIR SPOUSES, THEIR CO-HABITANTS, OR PERSONS AGE 45 OR OLDER WHO ARE PROVIDING PRIMARY PHYSICAL OR ECONOMIC SUPPORT FOR SUCH PERSONS (HEREINAFTER REFERRED TO AS "SENIOR CITIZENS"). THE TOWN COUNCIL OF THE TOWN OF WINDSOR MAY, FROM TIME TO TIME, ALTER THIS DEFINITION OF "SENIOR CITIZEN" SO LONG AS THE ALTERATION OR MODIFICATION IS NOT ANYMORE RESTRICTIVE THAN ALLOWED UNDER STATE AND FEDERAL LAW FOR THE ADJOINING SENIOR CITIZEN HOUSING DEVELOPMENT KNOWN AS THE "BROOKSCREEK SUBDIVISION."

3.2 WINDSOR AGREES THAT THE FACILITY WILL NOT BE CHANGED TO ANY OTHER KIND OF PUBLIC FACILITY; PROVIDED, HOWEVER, OCCASIONAL USE BY OTHER GROUPS SHALL BE PERMITTED BY WINDSOR, AFTER CONSIDERING THE RECOMMENDATIONS OF THE SENIOR ADVISORY COMMITTEE; AND PROVIDED, FURTHER, SUCH USE SHALL BE SECONDARY AND ON AN "AS AVAILABLE" BASIS, SO AS NOT TO CONFLICT WITH THE PRIMARY PURPOSE OF THE FACILITY TO SERVE THE SENIOR CITIZENS OF WINDSOR.

3.3 WINDSOR AGREES TO ALLOW POOL USE FOR WINDSOR SWIM PROGRAM TO PERSONS WITH DISABILITIES OR FOR PEOPLE WHO ARE PHYSICALLY CHALLENGED. THE SCHEDULE OF THIS PROGRAM WILL BE DETERMINED IN ACCORDANCE WITH THE SENIOR POOL USE SCHEDULE.

APPROVAL WILL BE GRANTED AFTER TAKING INTO CONSIDERATION THE RECOMMENDATIONS OF THE SENIOR ADVISORY COMMITTEE.

3.4 WINDSOR AGREES THAT ANY AND ALL RESIDENTS OF BROOKSCREEK SUBDIVISION WHO MEET THE REQUIREMENTS OF PARAGRAPH 3.1 OF THIS AGREEMENT, AND THE GUESTS OF THE RESIDENTS OF BROOKSCREEK SUBDIVISION, SHALL BE ENTITLED TO USE THE SENIOR CENTER FACILITY, ITS EQUIPMENT, AND TO GENERAL USE OF THE SENIOR CENTER WITHOUT ANY FURTHER FEES OR COSTS; PROVIDED, HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED AS EXCUSING SUCH PERSONS FROM THE PAYMENT OF SPECIAL USE FEES RELATING TO A SPECIFIC ACTIVITY OR EVENT OR MEMBERSHIP DUES IN PRIVATE CLUBS, ASSOCIATIONS OR GROUPS OF SENIOR CITIZENS WHO ARE USING THE FACILITY.

3.5 EXCEPT AS SET FORTH IN PARAGRAPH 3.4, NOTHING IN THIS AGREEMENT SHALL PRECLUDE WINDSOR FROM CHARGING ANNUAL FEES FOR USE OF THE SENIOR CENTER TO TOWN OF WINDSOR RESIDENTS.

4. SENIOR ADVISORY COMMITTEE - STRUCTURE

4.1 THE TOWN COUNCIL OF WINDSOR WILL APPOINT A SENIOR ADVISORY COMMITTEE COMPRISED OF ELEVEN (11) SENIOR CITIZENS, INCLUDING:THREE (3) SUBDIVISION RESIDENTS OF THE BROOKSCREEK SUBDIVISION; TWO (2) RESIDENTS OF THE AREAS ADJACENT TO THE SENIOR CENTER (ALDEN WOODS AND CALIFORNIA CREEKSIDE) WHICH ARE NOW SERVED BY THE LANDMARK NEIGHBORHOOD ASSOCIATION; AND SIX (6) RESIDENTS OF THE TOWN OF WINDSOR, AT LARGE.

BROOKSCREEK REPRESENTATION MAY BE REDUCED OR ELIMINATED IF THE OBLIGATIONS IMPOSED ON THE BROOKSCREEK SUBDIVISION DESCRIBED IN SUBPARAGRAPH 6.1 OF THIS AGREEMENT AND RECEIVED BY WINDSOR GO BELOW THE FOLLOWING PERCENTAGES OF THE TOTAL COST TO OPERATE THE SENIOR CENTER:

PERCENTAGE OF COST	BROOKSCREEK REPRESENTATION
30%	2
20%	1
10%	0

NOTHING IN SUBPARAGRAPH 4.1 IS INTENDED TO LIMIT WINDSOR'S FREEDOM TO SELECT MORE BROOKSCREEK SUBDIVISION REPRESENTATIVES TO THE SENIOR ADVISORY COMMITTEE THAN REQUIRED ABOVE.

4.2 THE SENIOR ADVISORY COMMITTEE WILL MAKE RECOMMENDATIONS FOR THE USES OF THE SENIOR CENTER. SUCH RECOMMENDATIONS SHALL BE CONSISTENT WITH PARAGRAPH 3.1 OF THIS AGREEMENT, AND BE GIVEN TO STAFF AND THE TOWN COUNCIL, AS APPROPRIATE. TERMS OF OFFICE AND OTHER RIGHTS AND RESPONSIBILITIES OF THE SENIOR ADVISORY COMMITTEE SHALL BE AS SET BY THE TOWN COUNCIL OF WINDSOR.

4.3 UNTIL THE BROOKSCREEK SUBDIVISION IS COMPLETED, THE OWNER SHALL NOMINATE FOUR (4) REPRESENTATIVES IN THE FOLLOWING MANNER:

A. BROOKSCREEK REPRESENTATIVES. THE OWNER SHALL HAVE THE RIGHT TO NOMINATE THE ORIGINAL THREE (3) BROOKSCREEK SUBDIVISION REPRESENTATIVES. THE TOWN OF WINDSOR SHALL APPOINT SUCH REPRESENTATIVES. THE OWNER SHALL BE ENTITLED TO NOMINATE NO MORE THAN ONE (1), NON-SENIOR CITIZEN, AS A REPRESENTATIVE FOR BROOKSCREEK SUBDIVISION. THESE THREE (3) OWNER NOMINATED REPRESENTATIVES SHALL BE AT LARGE AND WITHOUT RESPECT TO TOWN OF WINDSOR RESIDENCY. WHEN 2/3 OF ANY PHASE OF THE BROOKSCREEK SUBDIVISION IS SOLD (I.E. ESCROW CLOSES), ONE OWNER APPOINTED REPRESENTATIVE SHALL RESIGN AND A REPRESENTATIVE FROM BROOKSCREEK SUBDIVISION SHALL BE SELECTED BY WINDSOR FOR REPLACEMENT, UNTIL ALL THREE (3) BROOKSCREEK SUBDIVISION REPRESENTATIVES ARE RESIDENTS FROM THAT SUBDIVISION. THEREAFTER THOSE REPRESENTATIVES SHALL SERVE AND BE SELECTED BY THE WINDSOR TOWN COUNCIL.

B. LANDMARK NEIGHBORHOOD REPRESENTATION. THERE SHALL BE TWO (2) REPRESENTATIVES WHO ARE RESIDENTS OF THE ALDEN WOODS AND CALIFORNIA CREEKSIDE NEIGHBORHOODS ADJACENT TO THE SENIOR CENTER AND THE BROOKSCREEK SUBDIVISION, WHICH NEIGHBORHOODS ARE NOW REPRESENTED BY THE LANDMARK NEIGHBORHOOD ASSOCIATION. THE TOWN OF WINDSOR SHALL APPOINT ONE

SUCH REPRESENTATIVE AND THE OWNER SHALL NOMINATE ONE SUCH REPRESENTATIVE. ONCE THE OWNER-NOMINATED REPRESENTATIVE IS APPROVED BY THE TOWN OF WINDSOR, HE OR SHE SHALL SERVE AND BE REPLACED AS DIRECTED BY THE TOWN OF WINDSOR.

5. SECURITY GATE

OWNER AGREES THAT, IF REQUIRED BY THE TOWN OF WINDSOR , OWNER WILL CONSTRUCT A SECURITY GATE AT THE PEDESTRIAN BRIDGE CONNECTING THE BROOKSCREEK SUBDIVISION WITH THE SENIOR CENTER PROPERTY. SUCH IMPROVEMENT, IF REQUIRED, WILL BE FULLY BONDED BY THE OWNER AT THE SAME TIME AND IN THE SAME MANNER AS THE OTHER BROOKSCREEK SUBDIVISION IMPROVEMENTS ARE BONDED, AS DESCRIBED IN PARAGRAPH 1.6 OF THIS AGREEMENT.

6. COMMITMENT OF FUNDS

6.1 BASIC OBLIGATION.

OWNER AGREES THAT THERE WILL BE IMPOSED ON THE BROOKSCREEK SUBDIVISION AN OBLIGATION (HEREINAFTER THE "OBLIGATION") TO PAY THE TOWN OF WINDSOR THE SUM OF TWO HUNDRED DOLLARS ($200) PER YEAR, PER APPROVED LOT UP TO A MAXIMUM OF NO MORE THAN FORTY THOUSAND DOLLARS ($40,000.00) PER YEAR (BASED ON THE ASSUMPTION OF $200 PER LOT TIMES 200 LOTS IN THE SUBDIVISION).

THE FUNDS GENERATED BY THIS OBLIGATION ARE TO BE USED BY TOWN OF WINDSOR SOLELY TO DEFRAY THE OPERATIONS AND MAINTENANCE COSTS ASSOCIATED WITH THE SENIOR CENTER, INCLUDING STAFFING AND RECREATION-RELATED EXPENSES.

6.2 PRORATION AND INTERIM PAYMENT.

THE OBLIGATION SHALL BE PRORATED OVER A FISCAL YEAR THAT COINCIDES WITH THE AD VALOREM REAL PROPERTY TAX ASSESSMENTS FOR THE COUNTY OF SONOMA [I.E. JULY 1 THROUGH JUNE 30]. THE OBLIGATION SHALL BE PRORATED FOR THE FIRST YEAR THE SENIOR CENTER IS IN OPERATION, FROM THE DATE THE TOWN OF WINDSOR ACCEPTS THE DEDICATION OF THE IMPROVEMENTS FROM THE OWNER AND TAKES OVER THE MAINTENANCE AND OPERATION OF THE SENIOR CENTER. ALL PRORATIONS SHALL BE CALCULATED

IN ACCORDANCE WITH ACCEPTED PRACTICES OF ESCROW COMPANIES IN SONOMA COUNTY, CALIFORNIA AT THE TIME THIS AGREEMENT IS SIGNED.

COMMENCING AS OF THE DATE WINDSOR ACCEPTS THE DEDICATION OF THE IMPROVEMENTS CONTEMPLATED BY THIS AGREEMENT, AND TAKES OVER RESPONSIBILITY FOR THE MAINTENANCE AND OPERATION OF THE SENIOR CENTER, THE OWNER WILL PAY THE OBLIGATION TO TOWN OF WINDSOR, IN THE SUM OF $40,000/YEAR, PRORATED FOR ANY PARTIAL YEAR. SUCH PAYMENT SHALL BE IN TWO EQUAL ANNUAL INSTALLMENTS, COINCIDING WITH THE TWO DEADLINES IMPOSED FOR THE AD VALOREM REAL PROPERTY TAXES LEVIED BY SONOMA COUNTY CALIFORNIA. FOR THE FIRST FISCAL YEAR (1994-1995) THE OBLIGATION, AS PRORATED, SHALL BE IMPOSED ON THE ONE LOT CURRENTLY OWNED BY OWNER (I.E., THE LAND WHICH ENCOMPASSES THE BROOKSCREEK SUBDIVISION, A.P. NO. 161-070-55) IN THE AMOUNT OF $40,000.00 (OR IF OWNER RECEIVES TENTATIVE MAP APPROVAL FOR FEWER THAN 200 LOTS, IN AN AMOUNT EQUAL TO THE NUMBER OF LOTS APPROVED MULTIPLIED BY $200.00).

THROUGH ESCROW ON THE SALE OF THE LOTS, OWNER MAY RECOVER EACH APPROVED LOT'S PROPORTIONATE SHARE OF THE OBLIGATION FOR THE FIRST OR SUCCEEDING FISCAL YEARS FROM THE PURCHASERS OF THE INDIVIDUAL LOTS UNTIL ALL APPROVED LOTS ARE SOLD. THE AMOUNT RECOVERED SHALL BE $200 PER LOT/HOUSE SOLD (I.E. CLOSED ESCROW) IN THE BROOKSCREEK SUBDIVISION, PRORATED AS OF THE DATE OF CLOSE OF ESCROW ON THAT LOT/HOUSE OVER THE REMAINING TERM OF THE TAX FISCAL YEAR DESCRIBED IN SUBPARAGRAPH 6.2 OF THIS AGREEMENT. ONCE THE OWNER'S OBLIGATION IS SO REDUCED, IT WILL NOT BE REVIVED, AS THE OBLIGATION FOR THAT PART OF THE ASSESSMENT WILL HAVE PASSED TO THE OWNER OF THE LOT/HOUSE SOLD.

NOTE: THE $200 PER LOT/HOUSE FIGURE DESCRIBED IN THIS SUBPARAGRAPH IS BASED ON A PRO RATION OF THE $40,000/YEAR OBLIGATION OVER THE ASSUMED 200 LOTS/HOUSES TO BE CONSTRUCTED IN PHASE I OF THE BROOKSCREEK SUBDIVISION [I.E. $40,000 ÷ 200 LOTS/HOUSES = $200 PER HOUSE]. IF THE TOTAL NUMBER OF LOTS/HOUSES ACTUALLY CONSTRUCTED IN PHASE I OF THAT SUBDIVISION IS LESS THAN 200, THEN THE PRO RATA REDUCTION OF THE OWNER'S $40,000/YEAR OBLIGATION DESCRIBED IN THIS SUBPARAGRAPH SHALL BE RECALCULATED ON THE BASIS OF THE ACTUAL NUMBER OF LOTS/HOUSES CONSTRUCTED.

6.3 ALLOCATION.

A. COVENANTS, CONDITIONS & RESTRICTIONS. THE SUM OF TWO HUNDRED DOLLARS ($200.00) SHALL BE ASSESSED AGAINST EACH LOT IN THE BROOKSCREEK SUBDIVISION THROUGH THE COVENANTS, CONDITIONS & RESTRICTIONS ("CC&RS") CREATED BY OWNER FOR THAT SUBDIVISION. THE CC&RS SHALL ALSO PROVIDE, *INTER ALIA*, THAT THE LOT OWNERS IN THE SUBDIVISION SHALL PAY THE ASSESSMENT TO THE TOWN OF WINDSOR, OR ITS DULY AUTHORIZED COLLECTION AGENT; THAT THE ASSESSMENT PROVISIONS OF THE CC&RS CANNOT BE AMENDED WITHOUT THE CONSENT OF TOWN OF WINDSOR; THAT THE ASSESSMENT CONSTITUTE A LIEN ON THE PROPERTY THAT, IF UNPAID, CAN BE FORECLOSED AS A LIEN FOR NON-PAYMENT; AND THAT THE TOWN OF WINDSOR OR ITS DULY AUTHORIZED AGENT SHALL HAVE THE AUTHORITY TO ENFORCE THE ASSESSMENT IMPOSED, INCLUDING THE RIGHT TO REASONABLE ATTORNEYS FEES AND COSTS INCURRED IN THE COLLECTION AND ENFORCEMENT OF THE OBLIGATION; AND THAT WINDSOR WILL HAVE THE RIGHT TO REIMBURSEMENT FROM A $10,000.00 TRUST FUND TO BE ESTABLISHED BY OWNER TO COVER LITIGATION TO ENFORCE THE CC&RS.

THE PORTION OF THE OBLIGATION IMPOSED UNDER THE CC&RS SHALL BE ADJUSTED ANNUALLY FOR INCREASES IN THE COST OF LIVING UNDER A CONSUMER PRICE INDEX FORMULA SET FORTH IN THE CC&RS. THE CC&RS SHALL BE REVIEWED AND APPROVED BY TOWN OF WINDSOR PRIOR TO ADOPTION; PROVIDED, HOWEVER, TOWN OF WINDSOR SHALL NOT UNREASONABLY WITHHOLD ITS APPROVAL.

B. IN THE EVENT THAT AN ASSESSMENT IS IMPOSED BY WINDSOR PURSUANT TO THE LANDSCAPE AND LIGHTING ACT OF 1972 (STREETS & HIGHWAYS CODE § 22500 ET.SEQ.) FOR MAINTENANCE OF THE SENIOR CENTER, THE $200 PER LOT ANNUAL ASSESSMENT REFERRED TO IN PARAGRAPH 6.3(A) ABOVE WILL BE REDUCED FOR THAT YEAR BY THE AMOUNT OF SUCH LANDSCAPE AND LIGHTING ACT ASSESSMENT AGAINST EACH LOT.

7. FUNDS AND OWNERSHIP

THE PARTIES RECOGNIZE THAT OWNER WILL CONSTRUCT THE SENIOR CENTER PROJECT WITH PRIVATE FUNDS AND THAT TITLE WILL BE OFFERED AND ACCEPTED BY WINDSOR UPON ISSUANCE OF CERTIFICATE OF OCCUPANCY FOR THE SENIOR CENTER AND

DETERMINATION BY WINDSOR THAT OWNER HAS MET THE REQUIREMENTS OF THIS AGREEMENT.

8. GENERAL CONDITIONS

OWNER MUST COMPLY WITH WINDSOR'S REQUIREMENTS AS DESCRIBED IN GENERAL PROVISIONS, EXHIBIT D.

9. TERMINATION OF AGREEMENT

THE AGREEMENT IS TERMINATED, WITH NO FURTHER OBLIGATION ON EITHER PARTY'S PART, IF THE REQUIRED APPROVALS FOR THE TENTATIVE SUBDIVISION MAP FOR THE OWNER'S BROOKSCREEK SUBDIVISION ARE NOT DULY AND PROPERLY GIVEN BY TOWN OF WINDSOR. THE ACT OF ENTERING INTO THIS AGREEMENT DOES NOT BIND WINDSOR TO APPROVE THE BROOKSCREEK SUBDIVISION.

10. TOXIC WASTE/HAZARDOUS MATERIALS

IF TOXIC WASTES OR HAZARDOUS MATERIALS ARE DISCOVERED ON THE REAL PROPERTY, THE OWNER IS NOT REQUIRED TO REMEDIATE OR TEST THE SITE UNLESS SUCH TOXIC WASTES OR HAZARDOUS MATERIALS ARE DEPOSITED ON THE SITE BY, OR ATTRIBUTABLE TO, THE OWNER'S ACTIVITIES, OR THOSE OF ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS., AS USED IN THIS PARAGRAPH, THE TERM "TOXIC WASTES OR HAZARDOUS MATERIALS" INCLUDES ANY SUBSTANCE, CHEMICAL OR MATERIAL (NATURAL OR ARTIFICIAL) FOR WHICH TESTING AND REMEDIATION IS REQUIRED UNDER LOCAL, STATE OR FEDERAL LAW.

WINDSOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS FROM THE COSTS OF ANY REMEDIATION OR TESTING DUE TO THE EXISTENCE ON THE REAL PROPERTY OF TOXIC WASTE OR HAZARDOUS MATERIALS WHICH WERE NOT DEPOSITED ON THE SITE BY, OR ATTRIBUTABLE TO, THE OWNER'S ACTIVITIES, OR TO THE ACTIVITIES OF OWNER'S AGENTS, EMPLOYEES, OR SUBCONTRACTORS.

IF THERE IS ANY DELAY IN COMPLETION OF THE IMPROVEMENTS REQUIRED OF OWNER UNDER THIS AGREEMENT DUE TO REMEDIATION AND/OR TESTING OF TOXIC WASTE OR HAZARDOUS MATERIALS WHICH ARE NOT SO ATTRIBUTABLE TO THE OWNER OR TO ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS, WINDSOR WILL NOT DELAY ISSUANCE OF THE CERTIFICATES OF OCCUPANCY

FOR LOTS WITHIN THE BROOKSCREEK SUBDIVISION UPON THE COMPLETION OF THE IMPROVEMENTS ON THOSE LOTS. THE ISSUANCE OF SUCH CERTIFICATES OF OCCUPANCY WILL NOT RELIEVE THE OWNER FROM THE OBLIGATION OF PROCEEDING DILIGENTLY TO THE COMPLETION OF THE WORK CONTEMPLATED BY THIS AGREEMENT, ONCE ALLOWED BY APPLICABLE LOCAL, STATE AND/OR FEDERAL LAW.

11. ARBITRATION

ALL QUESTIONS AND DISPUTES WITH RESPECT TO THE RIGHTS AND OBLIGATIONS OF THE PARTIES ARISING UNDER THE TERMS OF THIS AGREEMENT SHALL BE RESOLVED BY ARBITRATION. EITHER PARTY MAY DEMAND ARBITRATION BY SUBMITTING TO THE OTHER A WRITTEN DEMAND. THE ARBITRATION HEARING SHALL BE CONDUCTED WITHIN FORTY-FIVE (45) DAYS FOLLOWING THE DEMAND, AND THE DECISION ANNOUNCED WITHIN TEN (10) BUSINESS DAYS FOLLOWING THE CLOSE OF THE ARBITRATION HEARING. THE PARTIES SHALL JOINTLY AGREE ON ONE NEUTRAL ARBITRATOR. SHOULD EITHER PARTY REFUSE TO FURNISH THE ARBITRATOR WITH ANY PAPERS OR INFORMATION DEMANDED, OR TO APPEAR AT THE APPOINTED HEARING, THE ARBITRATOR MAY PROCEED TO HEAR AND DECIDE THE MATTER IN THE ABSENCE OF THE NON-PARTICIPATING PARTY. THE DECISION OF THE ARBITRATOR SHALL BE BINDING AND CONCLUSIVE ON THE PARTIES. THE COSTS OF THE ARBITRATION, INCLUDING ARBITRATORS' FEES, SHALL BE BORNE EQUALLY. EACH PARTY SHALL BEAR ITS OWN ATTORNEYS FEES AND COSTS. EXCEPT AS SET FORTH ABOVE, THE PROVISIONS OF THE CALIFORNIA ARBITRATION ACT [CODE OF CIVIL PROCEDURE SECTIONS 1280 ET. SEQ.] SHALL GOVERN.

12. ACCESS TO THE REAL PROPERTY AND RELATED MATERIALS

COMMENCING ON THE EFFECTIVE DATE OF THIS AGREEMENT, AND CONTINUING UNTIL SUCH TIME AS THE SENIOR CENTER IS COMPLETED AND WINDSOR ACCEPTS IT AND THE DEDICATION OF THAT WORK OF IMPROVEMENT, WINDSOR GIVES OWNER AND THE AGENTS, EMPLOYEES AND SUBCONTRACTORS OF THE OWNER, PERMISSION AND A LICENSE TO ENTER UPON THE REAL PROPERTY AT ALL TIMES AND AT OWNER'S OWN COST AND RISK, TO CONDUCT SUCH TESTING, ANALYSIS, CONSTRUCTION, DEMOLITION AND OTHER WORK AS IS REASONABLY REQUIRED TO PERFORM THIS AGREEMENT.

WINDSOR AGREES TO DELIVER TO OWNER, UPON REQUEST, ALL INFORMATION IN WINDSOR'S POSSESSION OR CONTROL PERTAINING TO THE CONDITION OF THE PROPERTY, INCLUDING ENGINEERING AND ENVIRONMENTAL REPORTS, STUDIES, TESTS, MONITORING RESULTS, AND RELATED DOCUMENTATION.

OWNER SHALL INDEMNIFY AND DEFEND WINDSOR AGAINST AND HOLD WINDSOR HARMLESS FROM ALL LOSSES, COSTS, DAMAGES, LIABILITIES, AND EXPENSES, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY FEES, ARISING IN CONNECTION WITH OWNER'S ENTRY ONTO THE PROPERTY TO DO THE WORK DESCRIBED HEREIN, INCLUDING ANY INSPECTION AND INVESTIGATION OF THE PROPERTY. ANY ENTRY ONTO THE PROPERTY BY OWNER SHALL BE AT REASONABLE TIMES.

13. REMEDIES AND ENFORCEMENT

ONLY THE NAMED PARTIES TO THIS AGREEMENT ARE ENTITLED TO SEEK REMEDIES TO ENFORCE THE AGREEMENT. THE TOWN OF WINDSOR WILL HAVE THE SOLE AND EXCLUSIVE RIGHT TO ENFORCE THE AGREEMENT ON BEHALF OF THE PUBLIC BENEFICIARIES.

14. GOVERNING LAW

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

15. PARTIAL INVALIDITY

IF ANY PART OF THIS AGREEMENT IS HELD TO BE INVALID OR UNENFORCEABLE BY A COURT OF COMPETENT JURISDICTION, THE REMAINDER OF THE AGREEMENT SHALL BE ENFORCED TO THE FULLEST EXTENT POSSIBLE.

DATED: 6-22, 1994

TOWN OF WINDSOR

BY: _____
BERTON WILLS, TOWN MANAGER

WINDSOR WATER DISTRICT

BY: _____
BERTON WILLS, MANAGER

DATED: June 22, 1994

BROOKSCREEK ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP, BY GALLAHER CONSTRUCTION, INC., ITS GENERAL PARTNER

BY: _____
WILLIAM GALLAHER, PRESIDENT

RECOMMENDED FOR APPROVAL:

BY: _____
DIANE LEWIS
COMMUNITY SERVICES COORDINATOR

BY: _____
DAVID WOLTERING
TOWN PLANNING DIRECTOR