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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

AND RESERVATION OF EASEMENTS

FOR

WOODS COVE

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national original, or ancestry, that restriction violates state and federal fair housing laws and is void and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

**TABLE OF CONTENTS**

**FOR**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**AND RESERVATION OF EASEMENTS**

**FOR**

**WOODS COVE**

<u>DESCRIPTION</u>	<u>PAGE</u>
ARTICLE I - DEFINITIONS AND INTERPRETATION .....	2
1.1.    DEFINITIONS. ....	2
1.2.    INTERPRETATION .....	8
ARTICLE II - RESIDENCE AND USE RESTRICTIONS .....	9
2.1.    SINGLE FAMILY RESIDENCE .....	9
2.2.    BUSINESS OR COMMERCIAL ACTIVITY .....	9
2.3.    NUISANCES .....	10
2.4.    SIGNS .....	10
2.5.    PARKING AND VEHICULAR RESTRICTIONS. ....	11
2.6.    ANIMAL REGULATIONS. ....	12
2.7.    AUTHORIZED ANTENNAE. ....	12
2.8.    TRASH. ....	13
2.9.    INSTALLATIONS. ....	13
2.10.   FURTHER SUBDIVISION. ....	15
2.11.   DRAINAGE. ....	15
2.12.   WATER SUPPLY SYSTEM. ....	15
2.13.   WATER CONSERVATION. ....	15
2.14.   VIEW OBSTRUCTIONS. ....	15
2.15.   SOLAR ENERGY SYSTEMS. ....	15
2.16.   INSTALLATION OF FRONT YARD LANDSCAPING. ....	16
2.17.   RIGHTS OF DISABLED. ....	16
2.18.   TEMPORARY BUILDINGS. ....	16
2.19.   COMMON AREA. ....	16
2.20.   DRILLING. ....	16
2.21.   POLLUTANT CONTROL. ....	16
2.22.   OAK TREE PRESERVATION. ....	18

**TABLE OF CONTENTS (Cont.)**

<u>DESCRIPTION</u>	<u>PAGE</u>
ARTICLE III - DISCLOSURES .....	18
3.1. NO REPRESENTATIONS OR WARRANTIES. ....	19
3.2. ACCESS FACILITIES. ....	19
3.3. SECURITY AND PRIVACY DISCLAIMER. ....	19
3.4. EFFECT OF EXPANSIVE SOIL. ....	19
3.5. GRADING .....	20
3.6. ELECTRIC POWER LINES. ....	20
3.7. OFFERS OF DEDICATION. ....	21
3.8. PROPERTY LINES. ....	21
3.9. SPECIAL TAX ASSESSMENT OR MELLO-ROOS COMMUNITY FACILITIES DISTRICTS. ....	21
3.10. COUNTY SERVICES AREA .....	21
3.11. CHANGE IN PLANS. ....	22
3.12. ADDITIONAL PROVISIONS. ....	22
3.13. NATURAL HAZARD ZONES. ....	22
3.14. USE OF OPEN SPACE PARCELS. ....	23
ARTICLE IV - THE WOODS COVE HOMEOWNERS ASSOCIATION .....	23
4.1. GENERAL DUTIES AND POWERS .....	23
4.2. SPECIFIC DUTIES AND POWERS .....	23
4.3. STANDARD OF CARE, NONLIABILITY. ....	27
4.4. MEMBERSHIP .....	28
4.5. VOTING RIGHTS .....	30
4.6. REPAIR AND MAINTENANCE .....	30
ARTICLE V - DESIGN REVIEW COMMITTEE .....	34
5.1. MEMBERS OF COMMITTEE .....	34
5.2. POWERS AND DUTIES .....	34
5.3. REVIEW OF PLANS AND SPECIFICATIONS .....	35
5.4. MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE ...	36
5.5. NO WAIVER OF FUTURE APPROVALS .....	36
5.6. COMPENSATION OF MEMBERS .....	36
5.7. INSPECTION OF WORK .....	36
5.8. VARIANCES .....	37
5.9. PRE-APPROVALS .....	37
5.10. APPEALS .....	37

**TABLE OF CONTENTS (Cont.)**

<u>DESCRIPTION</u>	<u>PAGE</u>
ARTICLE VI - PROPERTY EASEMENTS AND RIGHTS .....	38
6.1. EASEMENTS .....	38
6.2. RIGHT TO GRANT EASEMENTS .....	39
6.3. DELEGATION OF USE .....	39
6.4. RIGHT OF ENTRY. ....	39
ARTICLE VII - ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS .....	40
7.1. PERSONAL OBLIGATION TO PAY ASSESSMENTS .....	40
7.2. ASSOCIATION FUNDS .....	40
7.3. PURPOSE OF ASSESSMENTS .....	41
7.4. WAIVER OF USE .....	41
7.5. LIMITS ON ANNUAL ASSESSMENT INCREASES .....	41
7.6. COMMENCEMENT AND COLLECTION OF ANNUAL ASSESSMENTS ..	42
7.7. CAPITAL IMPROVEMENT ASSESSMENTS .....	43
ARTICLE VIII - INSURANCE .....	44
8.1. DUTY TO OBTAIN INSURANCE; TYPES. ....	44
8.2. WAIVER OF CLAIM AGAINST ASSOCIATION .....	45
8.3. RIGHT AND DUTY OF OWNERS TO INSURE .....	45
8.4. NOTICE OF EXPIRATION REQUIREMENTS .....	45
8.5. TRUSTEE FOR POLICIES. ....	45
8.6. ACTIONS AS TRUSTEE .....	46
8.7. ANNUAL INSURANCE REVIEW .....	46
8.8. REQUIRED WAIVER .....	46
ARTICLE IX - DESTRUCTION OF IMPROVEMENTS .....	47
9.1. RESTORATION OF THE PROPERTIES .....	47
9.2. DAMAGE TO RESIDENCES-RECONSTRUCTION. ....	47
9.3. NOTICE TO OWNERS AND LISTED MORTGAGEES .....	47
ARTICLE X - EMINENT DOMAIN .....	48
10.1. CONDEMNATION OF COMMON AREA .....	48
10.2. CONDEMNATION OF LOTS .....	48
10.3. NOTICE TO OWNERS AND MORTGAGEES .....	48

**TABLE OF CONTENTS (Cont.)**

<u>DESCRIPTION</u>	<u>PAGE</u>
ARTICLE XI - RIGHTS OF MORTGAGEES .....	48
11.1. GENERAL PROTECTIONS. ....	48
11.2. ADDITIONAL RIGHTS. ....	48
ARTICLE XII - ENFORCEMENT .....	50
12.1. ENFORCEMENT OF RESTRICTIONS. ....	50
12.2. NONPAYMENT OF ASSESSMENTS. ....	51
12.3. ENFORCEMENT OF BONDED OBLIGATIONS .....	54
12.4. DISPUTE WITH DECLARANT PARTIES .....	55
ARTICLE XIII - DURATION AND AMENDMENT .....	59
13.1. DURATION .....	59
13.2. TERMINATION AND AMENDMENT .....	60
ARTICLE XIV - GENERAL PROVISIONS .....	61
14.1. MERGERS OR CONSOLIDATIONS .....	61
14.2. NO PUBLIC RIGHT OR DEDICATION .....	62
14.3. NOTICES .....	62
14.4. CONSTRUCTIVE NOTICE AND ACCEPTANCE .....	62
ARTICLE XV - DECLARANT'S RIGHTS AND RESERVATIONS .....	62
15.1. CONSTRUCTION RIGHTS .....	62
15.2. SALES AND MARKETING RIGHTS .....	62
15.3. CREATING ADDITIONAL EASEMENTS .....	63
15.4. ARCHITECTURAL RIGHTS .....	63
15.5. USE RESTRICTION EXEMPTION. ....	63
15.6. ASSIGNMENT OF RIGHTS .....	63
15.7. AMENDMENTS .....	63
15.8. EXERCISE OF RIGHTS .....	63
15.9. USE OF PROPERTIES .....	63
15.10. PARTICIPATION IN ASSOCIATION .....	64
15.11. DECLARANT APPROVAL OF ACTIONS .....	64
15.12. MARKETING NAME. ....	64



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
WOODS COVE**

THIS DECLARATION is made by STANDARD PACIFIC CORP., a Delaware corporation. The capitalized terms used in the Preamble are defined in Article I.

**P R E A M B L E:**

A. Declarant is the owner of real property located in an unincorporated area of Santa Cruz County, California, described as follows:

Lots 1 through 11, inclusive, 15 through 30, inclusive, and Lots 61 and 62 of Tract No. 1339, as shown on a Subdivision Map, Filed on June 21, 2001, in Volume 100, at Page 6 of Maps, in the Office of the Santa Cruz County Recorder.

B. Declarant intends to create a "planned development," as defined in Section 1351(k) of the California Civil Code, to create a "subdivision" as defined in Section 11000 of the California Business and Professions Code, and to impose mutually beneficial restrictions under a general plan for subdividing, maintaining, improving and selling the Lots in the Properties for the benefit of all the Lots pursuant to the Davis-Stirling Common Interest Development Act.

C. The Properties are to be held, conveyed, encumbered, leased, used and improved subject to covenants, conditions, restrictions and easements in this Declaration, all of which are in furtherance of a plan for subdividing, maintaining, improving and selling the Lots in the Properties. All provisions of this Declaration are imposed as equitable servitudes on the Properties. All covenants, conditions, restrictions and easements in this Declaration shall (i) run with and burden the Properties, and (ii) be binding on and for the benefit of all of the Properties and all Persons acquiring any interest in the Properties.

D. It is presently contemplated that Local Government Agencies such as the County and Graham Hill CSA No. 57 shall maintain certain areas and Improvements within the Properties described below as Maintenance Areas. However, each Local Government Agency may be unwilling or unable to maintain the Maintenance Area in the future. In light of the uncertain future status of the Local Government Agency with respect to its maintenance of a Maintenance Area, the County and Declarant intend, wherever possible, to vest ownership of fee title to the Maintenance Area in the Association. At the Local Government Agency's discretion, responsibility for the Maintenance Area shall be transferred to the Association, which shall thereafter manage and maintain the Maintenance Area. Following transfer to the Association, the Maintenance Area shall constitute Common Area as described in this Declaration.

E. Declarant intends to protect and manage those portions of the Properties designated as "Preservation Easements" as habitat mitigation areas. The Preservation Easements shall be held in perpetuity subject to the restrictions set forth in this Declaration, and they shall be managed and monitored in accordance with the Habitat Mitigation Plan on file with the County.

## ARTICLE I DEFINITIONS AND INTERPRETATION

1.1. **DEFINITIONS.** Unless otherwise expressly provided, the following words and phrases when used in this Declaration have the following meanings.

1.1.1. **Annexable Territory.** Annexable Territory means the real property described in *Exhibit A* which may be made subject to this Declaration pursuant to Article XVI. Any references in this Declaration to Annexable Territory are references to the Annexable Territory as a whole and to portions thereof.

1.1.2. **Annual Assessment.** Annual Assessment means a charge against the Owners and their Lots representing their share of the Common Expenses. The Annual Assessment is a regular assessment as described in California Civil Code Section 1366.

1.1.3. **Articles.** Articles means the Articles of Incorporation of the Association currently in effect. A copy of the Articles is attached as *Exhibit B*.

1.1.4. **Assessment.** Assessment means any Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment and Special Assessment.

1.1.5. **Association.** Association means WOODS COVE HOMEOWNERS ASSOCIATION, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law), and its successors. The Association is an "association" as defined in Section 1351(a) of the California Civil Code.

1.1.6. **Association Maintenance Funds.** Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article VII.

1.1.7. **Board or Board of Directors.** Board or Board of Directors means the Association's Board of Directors.

1.1.8. **Budget.** Budget means a written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.

1.1.9. **Bylaws.** Bylaws means the Bylaws of the Association as currently in effect. A copy of the Bylaws as initially adopted by the Board is attached as *Exhibit C*.

1.1.10. **Capital Improvement Assessment.** Capital Improvement Assessment means a charge against the Owners and their Lots representing their share of the Association's cost for installing or constructing capital Improvements on the Common Area. Capital Improvements Assessments shall be levied in the same proportion as Annual Assessments.

1.1.11. **Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Lot pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE.

1.1.12. **Common Area.** Common Area means real or personal property and Improvements designated by the Declarant as Common Area and therefore made subject to the restrictions on Common Area established in the Restrictions. Common Area may include real property owned by the Association in fee, by lease or by easements or licenses granted to the Association for maintenance of real property. Common Area is intended to include Improvements such as parkway and cul-de-sac landscaping, access roads both on easements over private Lots and across property owned by the Association in fee, private streets, private street lights, private storm drain and sewer Improvements (subject to Section 1.1.32), asphalt bicycle trails, clustered mailboxes or mailbox kiosks, address identification signs, monumentation, mailbox trellises, fencing and retaining walls. Common Area may also include controlled access gates. The Association shall have no right to exercise or enjoy any easement or license in a Phase of Development until the first Close of Escrow for the sale of a Lot in such Phase. The Association shall have no obligation to perform any maintenance of the real property or Improvements affected by an easement or license except pursuant to the terms of the reservation or grant of such easement or license. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. Additional Common Area may be annexed to the Properties pursuant to Article XVI. The Common Area located in Phase 1 includes (a) Lots 61 and 62 of Tract No. 1339 (b) portions of the Property Wall and other Improvements on Lots 5, 6, 7 and 8 of Tract No. 1339, all as depicted in *Exhibit D* to this Declaration, (c) a non-exclusive easement over a portion of Lot 7 for utilities and emergency access as shown on the Map of Tract No. 1339 together with the landscaping lying within the easement area, and (c) such easements as are described in this Declaration or in the Grant Deed of Common Area for Phase 1. After the Transfer Date, any Maintenance Area, or portions thereof, that are conveyed or transferred shall constitute Common Area as described herein and shall thereafter be subject to the restrictions on Common Area described in the Restrictions.

1.1.13. **Common Expenses.** Common Expenses means those costs and expenses for which the Association is responsible under this Declaration. Common Expenses include the actual and estimated costs of and reserves for: (a) maintaining, managing, and operating the Common Area (including utilities and equipment serving the Common Area, and services such as gardening and street sweeping); (b) commonly-metered utilities serving individual Lots; (c) trash collection and removal (as applicable); (d) managing and administering the Association; (e) compensation of the Manager, accountants, attorneys, and employees of the Association; (f) all insurance covering the Properties and the Directors, officers, and agents of the Association; (g) bonding the members of the Board; (h) taxes paid by the Association; (i) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Properties;

(j) amounts incurred for maintenance imposed on the Association by this Declaration; (k) unpaid Special Assessments, Reconstruction Assessments, and Capital Improvement Assessments; and (l) all other expenses which are incurred by the Association for the common benefit of the Owners. Upon the Association's assumption of responsibility for the Preservation Easements, Common Expenses shall also include the costs of maintenance and monitoring of habitat and vegetation in the Coastal Prairie Preservation Easements and monitoring of the Oak Woodland/Redwood Forest Mosaic in accordance with the Habitat Mitigation Plan dated June 15, 1995, on file with the County.

1.1.14. **County.** County means Santa Cruz County, California, and its various departments, divisions, employees and representatives. If the Properties are annexed into an incorporated city, then the term "County" includes the city in which the Properties are located.

1.1.15. **Declarant.** Declarant means STANDARD PACIFIC CORP., a Delaware corporation, its successors and any Person to which it shall have assigned any of its rights by an express written assignment. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration. Declarant is a "builder" as described in California Civil Code Section 1375.

1.1.16. **Declaration.** Declaration means this instrument as currently in effect.

1.1.17. **Design Guidelines.** Design Guidelines mean the rules or guidelines setting forth procedures and standards for submission of plans for Design Review Committee approval. The Design Review Committee shall adopt Design Guidelines which contain County-required provisions summarized on *Exhibit F*.

1.1.18. **Design Review Committee or Committee.** Design Review Committee or Committee means the Design Review Committee created in accordance with Article V.

1.1.19. **DRE.** DRE means the California Department of Real Estate and any department or agency of the California state government which succeeds to the DRE's functions.

1.1.20. **Family.** Family means natural individuals, related or not, who live as a single household in a Residence.

1.1.21. **FHA.** FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and its successors.

1.1.22. **FHLMC.** FHLMC means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970 and its successors.

1.1.23. **Fiscal Year.** Fiscal Year means the fiscal accounting and reporting period of the Association.

1.1.24. **FNMA.** FNMA means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968 and its successors.

1.1.25. **GNMA.** GNMA means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development and its successors.

1.1.26. **Habitat Mitigation Plan.** Habitat Mitigation Plan means the Comprehensive Habitat Mitigation Plan dated July 15, 1995 and approved by Subdivision Permit No. 90-1245 imposed on the Properties by the County. The Habitat Mitigation Plan imposes maintenance and monitoring responsibilities for portions of the Common Area subject to Preservation Easements in the areas depicted on *Exhibit E*. The purpose of the Habitat Mitigation Plan is to stabilize habitat size, plant population and viability and long-term management of prairie, oak woodland, redwood forest, and seasonal wetland habitat. The Habitat Mitigation Plan requires the Declarant to establish certain habitat areas in the Preservation Easements and eventually turn over responsibility for the Preservation Easements to the Association. After turnover to the Association, the cost of complying with the Habitat Mitigation Plan will be borne by the Owners as a Common Expense. Copies of the Habitat Mitigation Plan are on file with the County. The Habitat Mitigation Plan as amended from time to time is incorporated herein by reference; provided, however, that such amendment may take place independently of this Declaration.

1.1.27. **Improvement.** Improvement means any structure and any appurtenance thereto including a building, walkway, irrigation system, garage, controlled access facility, road, driveway, parking area, fence, any type of wall, awning, stairs, deck, any type of landscaping and planting, antenna, windbreak, storm drain facility, the exterior surface of any visible structure and the paint on such surface, pole, sign, exterior air conditioning and water softener fixture or equipment. The Design Review Committee may identify additional items that are Improvements.

1.1.28. **Include.** Whether capitalized or not, include means "include without limitation."

1.1.29. **Local Government Agency.** Local Government Agency means the County, Graham Hill County Services Area No. 57, and any local or municipal governmental entity or agency including any county services area, school district, special assessment district, maintenance district or community facilities district

1.1.30. **Lot.** Lot means any residential Lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of the Properties, except the Common Area owned in fee simple by the Association.

1.1.31. **Maintain.** Whether capitalized or not, maintain means maintain, repair and replace.

1.1.32. **Maintenance Area.** Maintenance Area means any real property, including any Improvements or landscaping thereon, within the Properties which is either owned or maintained by a Local Government Agency and for which the Association has "back-up" maintenance responsibilities, as described in this Declaration. The Maintenance Area in the Properties shall include equestrian trails (maintained by the County), private sewer (but not including laterals installed on individual Lots), storm drain facilities located within the Properties, including trash racks and sediment and grease filters, and emergency access easements over a portion of Parcel B of Tract No. 1339 (all maintained by Graham Hill CSA No. 57). Additional Maintenance Areas may be designated as such in a Notice of Addition or Supplemental Declaration. After any Transfer Date, those portions of Maintenance Area that have been conveyed or transferred to the Association for maintenance purposes shall constitute Common Area, as described herein and shall thereafter be subject to the restrictions on Common Area described in the Restrictions. Any references in this Declaration to Maintenance Area are references to the Maintenance Area as a whole and to portions thereof.

1.1.33. **Manager.** Manager means the Person retained by the Association to perform management functions of the Association as limited by the Restrictions and the terms of the agreement between the Association and the Person.

1.1.34. **Membership.** Membership means the voting and other rights, privileges, and duties established in the Restrictions for members of the Association.

1.1.35. **Mortgage.** Mortgage means any Recorded document, including a deed of trust by which a Lot, Lots, or Common Area is hypothecated to secure performance of an obligation.

1.1.36. **Mortgagee.** Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee's rights under the Mortgage by a Recorded assignment. For purposes of this Declaration, the term Mortgagee shall include a beneficiary under a deed of trust.

1.1.37. **Mortgagor.** Mortgagor means a person who has mortgaged his property. For purposes of this Declaration, the term Mortgagor shall include a Trustor under a deed of trust.

1.1.38. **Notice and Hearing.** Notice and Hearing means written notice and a hearing before the Board as provided in the Bylaws.

1.1.39. **Notice of Addition.** Notice of Addition means an instrument Recorded pursuant to Article XVI to annex additional real property to the Properties. A Notice of Addition may include a Supplemental Declaration.

1.1.40. **Owner.** Owner means the Person or Persons, including Declarant, holding fee simple interest to a Lot. Each Owner has a Membership in the Association. The term "Owner" includes sellers under executory contracts of sale but excludes Mortgagees. The term "Owner" may be expanded in a Supplemental Declaration to include other Persons.

1.1.41. **Person.** Person means a natural individual or any legal entity recognized under California law. When the word "person" is not capitalized, the word refers only to natural persons.

1.1.42. **Phase.** Phase means each of the following: (a) Phase 1, and (b) all the real property covered by a Notice of Addition for which a Final Subdivision Public Report has been issued by the DRE, unless "Phase" is otherwise defined in such Notice of Addition.

1.1.43. **Phase 1.** Phase 1 means all of the real property described in Paragraph A of the Preamble of this Declaration.

1.1.44. **Preservation Easements.** Preservation Easements means portions of the Common Area depicted on *Exhibit E* that are subject to maintenance and monitoring requirements imposed under the Habitat Mitigation Plan. The Preservation Easements consist of (a) Biotic Preservation Easements, and (b) Forest Preservation Easements, all of which affect portions of Parcel A of Tract No. 1339. The Preservation Easements are described in more detail in the Habitat Mitigation Plan.

1.1.45. **Properties.** Properties means (a) Phase 1, and (b) each Phase described in a Notice of Addition. The Properties are a "common interest development" and a "planned development" as defined in Sections 1351(c) and 1351(k) of the California Civil Code. Any references in this Declaration to the Properties are references to the Properties as a whole and to portions thereof.

1.1.46. **Property Wall.** Property Wall means any wall (including soundwall on Lots 5 through 8, inclusive, of Tract No. 1339) or fence designated as such in either *Exhibit D* to this Declaration or in a Notice of Addition.

1.1.47. **Reconstruction Assessment.** Reconstruction Assessment means a charge against the Owners and their Lots representing their share of the Association's cost to reconstruct any Improvements on the Common Area. Such charge shall be levied among all Owners and their Lots in the same proportions as Annual Assessments. Reconstruction Assessments are "special assessments" as described in California Civil Code Section 1366.

1.1.48. **Record or File.** Record or File means, with respect to any document, the entry of such document in official records of the County Recorder.

1.1.49. **Residence.** Residence means a building located on a Lot designed and intended for use and occupancy as a residence by a single Family.

1.1.50. **Restrictions.** Restrictions means this Declaration, the Articles, Bylaws, Design Guidelines, Rules and Regulations, Supplemental Declarations and Notices of Addition.

1.1.51. **Rules and Regulations.** Rules and Regulations means the current rules and regulations for the Properties.

1.1.52. **Special Assessment.** Special Assessment means a charge against an Owner and his Lot representing a reasonable fine or penalty, including reimbursement costs, as provided for in this Declaration.

1.1.53. **Supplemental Declaration.** Supplemental Declaration means an instrument which imposes conditions, covenants, or restrictions or reserves easements. A Supplemental Declaration may affect one or more Lots. Declarant may Record a Supplemental Declaration so long as Declarant owns all of the real property to be encumbered by the Supplemental Declaration. A Supplemental Declaration may modify this Declaration as it applies to the property encumbered by the Supplemental Declaration.

1.1.54. **Telecommunication Facilities.** Telecommunication Facilities means equipment, cables, conduits, inner ducts, vaults, connecting hardware, wires, poles, transmitters, towers, antennae and other facilities and structures necessary for, or used in, the provision of Telecommunication Services.

1.1.55. **Telecommunications Services.** Telecommunications Services means Telecommunication Facilities, Improvements, and services for cable television, communications, telecommunications, antenna, high-speed data, telephony and all related vertical services, intranet, internet, information transfer, transmission, video and other similar services. Declarant may expand this definition in any Supplemental Declaration.

1.1.56. **Transfer Date.** Transfer Date means any one or more dates on which the Local Government Agency conveys or transfers either ownership of, or the maintenance obligations for, all or a portion of the Maintenance Area to the Association. Following such date, such transferred Maintenance Area shall constitute Common Area, as described herein, and shall thereafter be subject to the restrictions on Common Area established in the Restrictions.

1.1.57. **VA.** VA means the Department of Veterans Affairs of the United States of America and its successors.

## 1.2. INTERPRETATION.

1.2.1. **General Rules.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for subdividing, maintaining, improving and selling the Properties. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

1.2.2. **Articles, Sections and Exhibits.** The Article and Section headings are inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. *Exhibits D, E, F, and G* attached to this Declaration are incorporated in this Declaration by this reference.

1.2.3. **Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Rules and Regulations, or a Supplemental Declaration, then the provisions of this Declaration shall prevail.

1.2.4. **Severability.** The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

1.2.5. **Statutory References.** All references made in this Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

## ARTICLE II RESIDENCE AND USE RESTRICTIONS

The Properties shall be held, used and enjoyed subject to the following restrictions and the exemptions of Declarant set forth in this Declaration and any Supplemental Declarations.

2.1. **SINGLE FAMILY RESIDENCE.** Each Lot shall be used as a dwelling for a single Family and for no other purpose. Subject to any Owner occupancy requirements separately imposed by Declarant, an Owner may rent his Lot to a single Family provided that the Lot is rented pursuant to a lease or rental agreement which is (a) in writing, and (b) subject to this Declaration.

2.2. **BUSINESS OR COMMERCIAL ACTIVITY.** No part of the Properties may be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license. This Section does not preclude any of the above-described activities provided that: (a) the activity complies with the law; (b) the patrons or clientele of the activity do not visit the Lot or park automobiles or other vehicles in the Properties; (c) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the boundaries of the Lot; (d) the activity does not increase the Association's liability or casualty insurance obligation or premium; and (e) the activity is consistent with the residential character of the Properties and this Declaration.

2.3. **NUISANCES.** Noxious or offensive activities are prohibited on the Properties and on any public street abutting or visible from the Properties. All horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence or a vehicle and its contents, are also prohibited. Noisy, unsightly, unusually painted or smoky vehicles, large power equipment and large power tools (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), off-road motor vehicles, or items which may unreasonably interfere with television or radio reception to any Lot, and objects which create or emit loud noises or noxious odors may not be located or used in the Properties or on any public street abutting the Properties, or exposed to the view of other Owners without the Board's prior written approval. All power construction equipment must be muffled and shielded at the intakes and exhausts, and all impact tools must be shrouded to reduce noise from operations. The Board is entitled to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Owner may permit or cause anything to be done or kept on the Properties or on any public street abutting the Properties which may increase the rate of insurance in the Properties, or result in cancellation of such insurance. Each Owner shall comply with all laws regarding occupancy and use of a Lot. No plants or seeds infected with noxious insects or plant diseases or contaminated with seeds of exotic invasive plants may be brought upon, grown or maintained on the Properties.

2.4. **SIGNS.** Subject to Civil Code Sections 712 and 713, no sign, advertising device or other display of any kind shall be displayed in the Properties or on any public street in or abutting the Properties except for the following signs:

2.4.1. entry monuments, community identification signs, and traffic or parking control signs maintained by the Association;

2.4.2. for each Lot, one (1) nameplate or similar Owner name or address identification sign which complies with Design Review Committee rules;

2.4.3. for each Lot, one (1) sign advising of the existence of security services protecting a Lot which complies with Design Review Committee rules;

2.4.4. for each Lot, one (1) sign advertising the Lot for sale or lease that complies with the following requirements:

(a) the sign is not larger than eighteen inches (18") by thirty inches (30") in size;

(i) the sign is attached to the ground by a conventional, single vertical stake which does not exceed two inches (2") by three inches (3") in diameter (i.e., posts, pillars, frames or similar arrangements are prohibited);

(ii) the top of the sign is not more than three feet (3') in height above the ground level;

(b) the sign is of a color and style and location authorized by the Design Review Committee; and

2.4.5. other signs or displays authorized by the Design Review Committee.

## 2.5. PARKING AND VEHICULAR RESTRICTIONS.

2.5.1. **Authorized Vehicles.** The following vehicles are "Authorized Vehicles": standard passenger vehicles including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles, and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Properties intended for parking of motorized vehicles; however, no Owner may park a vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over driveways, streets or sidewalks in the Properties, or extends beyond the limits of the space where the vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations and to adapt this restriction to other types of vehicles.

2.5.2. **Prohibited Vehicles.** The following vehicles are "Prohibited Vehicles": (a) recreational vehicles (e.g., motorhomes, travel trailers, camper vans, boats, etc.), (b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (c) buses or vans designed to accommodate more than ten (10) people, (d) vehicles having more than two (2) axles, (e) trailers, (f) inoperable vehicles or parts of vehicles, (g) aircraft, (h) any vehicle or vehicular equipment deemed a nuisance by the Board, and (i) any other vehicle not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept on any public or private street in, adjacent to or visible from the Properties or any other Common Area parking area except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board. Prohibited Vehicles may only be parked in an Owner's fully enclosed garage with the door closed so long as their presence on the Properties does not otherwise violate this Declaration.

2.5.3. **General Restrictions.** Subject to the restriction on Prohibited Vehicles, all vehicles owned or operated by or under the control of an Owner or a resident of an Owner's Lot and kept in the Properties must be parked in the garage of that Owner to the extent of the space available; provided that each Owner shall ensure that such garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant. No maintenance or restoration of any vehicle may be conducted on the Properties except in an enclosed garage when the garage door is closed, provided such activity is not undertaken as a business, and provided that such activity may be prohibited entirely by the Board if the Board determines that it constitutes a nuisance.

2.5.4. **Parking Regulations.** The Scotts Valley Fire Protection District has designated all streets in the Properties as fire lanes. Therefore, no Person may park any vehicle in

any street. The Board may establish additional regulations regarding any parking areas not assigned to individual Lots, including designating "parking," "guest parking," and "no parking" areas. The Board may take all actions necessary to enforce all parking and vehicle use regulations for the Properties including removing violating vehicles from the Properties pursuant to California Vehicle Code Section 22658.2 or other applicable law. If the Board fails to enforce any of the parking or vehicle use regulations, the County may enforce such regulations.

**2.6. ANIMAL REGULATIONS.** The only animals that may be raised, bred or kept on any Lot are dogs, cats, fish, birds, reptiles and other usual household pets (each, a "Domestic Animal"), provided that they are not kept, bred, or raised for commercial purposes, or in unreasonable quantities or sizes or in violation of the Restrictions. As used in the Declaration, "unreasonable quantities" ordinarily means more than two (2) Domestic Animals per Residence; however, the Association may determine that a reasonable number in any instance may be more or less. The Association may limit the size of Domestic Animals and may prohibit maintenance of any Domestic Animal which, in the Association's opinion, constitutes a nuisance to any other Owner. Every Domestic Animal in the Properties must either be kept in an enclosed area or on a leash held at all times by a Person capable of controlling the animal. Each Owner is liable for unreasonable noise and for damage to person or property caused by any Domestic Animal brought to or kept on the Properties by such Owner or by the Owner's family or guests. Every Person who brings a Domestic Animal onto the Properties shall clean up at all times after such animal, and shall indemnify, defend and hold harmless the Properties, and the Association, its officers, directors, contractors, agents, and employees from any claim brought by any Person against the Association, its officers, directors, agents and employees for personal injuries or property damage caused by such animal. In accordance with the Habitat Mitigation Plan, each Owner must at all times take precautions to prevent Domestic Animals under the Owner's ownership or control do not enter any portion of the Preservation Easements on the Common Area.

**2.7. AUTHORIZED ANTENNAE.** No Person may install on the exterior of any Residence or in a yard any antenna or over-the-air receiving device except for an "Authorized Antenna." An Authorized Antenna is (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, or (ii) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one meter or less in diameter or diagonal measurement, or (iii) an antenna designed to receive television broadcast signals, and includes (iv) a mast supporting an antenna described in items (i), (ii), or (iii) above.

**2.7.1 Restrictions on Installation.** The Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Lots. Such restrictions may designate one or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements. However, no restriction imposed by the Committee may (i) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase

the cost of installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception.

**2.7.2 Prohibitions on Installation.** The Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Committee's opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Committee. The Committee may also prohibit an Owner from installing an Authorized Antenna on any real property which such Owner does not own or is not entitled to exclusively use or control under the Restrictions. The Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna above.

**2.7.3 Review after Installation.** The Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section 2.7 and applicable law.

**2.7.4 Restatement of Applicable Law.** This Section is intended to be a restatement of the authority granted to the Committee under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna or other over-the-air receiving device shall be interpreted to amend, modify, restate or interpret this Section.

**2.8. TRASH.** No trash may be kept or permitted upon the Properties or on any public street abutting or visible from the Properties except in containers located in appropriate areas screened from view. Such containers may be exposed to the view of neighboring Lots only when set out at a location approved by the Design Review Committee for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours).

## **2.9. INSTALLATIONS.**

**2.9.1. Generally.** Except for subsection 2.9.4, this Section 2.9 does not apply to Improvements installed (a) as a part of the original construction of the Properties by Declarant, (b) by the Association, or (c) with the approval of the Design Review Committee. No Owner may cause or permit any mechanic's lien to be filed against the Properties for labor or materials alleged to have been furnished or delivered to the Properties or any Lot for such Owner and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

**2.9.2. Outside Installations.** The following outside installations are prohibited: (a) clotheslines, balcony, patio or deck covers, wiring, air conditioning equipment,

water softeners, other machines and other similar Improvements, (b) Improvements protruding through the walls or roofs of buildings, and (c) other exterior additions or alterations to any Lot. Outdoor patio or lounge furniture, plants and barbecue equipment may be kept in accordance with the Rules and Regulations. No outdoor fires are permitted, except in barbecue grills and fire pits designed and used in such a manner that they do not create a fire hazard. No clothing, fabrics or unsightly articles may be hung, dried or aired on or over any Lot. Landscaping outside the development envelopes shall be approved by the Design Review Committee prior to installation and shall consist of plant materials that are compatible with existing native vegetation. Tree plantings shall be limited to native species already present at the Properties and shall be from container stock grown from propagation materials collected on-site, to the maximum extent possible.

**2.9.3. Development Envelope Restrictions.** All outside surface Improvements must remain inside the "development envelope" defined by the County, except that a single driveway limited to the existing dimensions as installed by the Declarant, or 15 feet in width, whichever is more restrictive, and subsurface Improvements such as water and sewage lines may extend beyond the development envelope. Trees outside of the development envelope may be removed in accordance with the Habitat Mitigation Plan. Minor adjustments to approved development envelopes may be permitted if approved by the Design Review Committee and the County in accordance with procedures for amending subdivision maps as set forth in the County Code.

**2.9.4. Geological Restrictions on Construction.** All structures must be set back at least 75 feet from all mapped landslides or major break-in slope, whichever is closer to the proposed development site, unless a closer location is approved by a registered engineering geologist. In addition, dwelling construction plans and any associated grading plans shall be reviewed and approved by a registered geotechnical engineer to determine that site conditions have not changed since the time of the original geotechnical report for the Properties. Identified geologic changes will require an addendum to the project geologic report prepared by a registered engineering geologist and approved by the County. The addendum will address the new condition and identify specific mitigation measures and remediation techniques in areas where slope activity is a concern. All predevelopment reports shall be reviewed by a registered engineering geologist and a structural engineer. Structures shall be constructed under the latest edition of the Uniform Building Code.

**2.9.5. Inside Installations.** All exposed window coverings are subject to the Design Review Committee's approval of types and color. The Board has the right to specify in the Design Guidelines the types and colors of window coverings that may be visible from streets or other Lots in the Properties. Owners shall at all times maintain separate dead-bolt locks on the exterior doors of all Residences.

**2.9.6. Indemnity.** Neither the Declarant nor the Association are liable or responsible for any damage that results from Improvements constructed or modified by an Owner. Improvements should not be installed, constructed or modified without the assistance of qualified consultants.

2.10. **FURTHER SUBDIVISION.** Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide his Lot in any manner, including dividing such Owner's Lot into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease his entire Lot by a written lease or rental agreement subject to this Declaration; (b) sell such Owner's Lot; or (c) transfer or sell any Lot to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by the tenant of the Lot to comply with the Restrictions constitutes a default under the lease or rental agreement.

2.11. **DRAINAGE.** No one may interfere with or alter the established drainage pattern over any Lot unless an adequate alternative provision is made for proper drainage with the Board's prior written approval. For the purpose of this Section, "established" drainage means, for any Phase, the drainage which (a) exists at the time of the first Close of Escrow in such Phase, or (b) is shown in any plan approved by the Board. Established drainage includes drainage from the Lots onto the Common Area and from the Common Area onto the Lots.

Each Owner, by accepting a grant deed to his Lot, acknowledges and understands that in connection with the development of the Properties, Declarant may have installed one or more "sub-drains" beneath the surface of such Owner's Lot. The sub-drains and all appurtenant Improvements constructed or installed by Declarant ("Drainage Improvements"), if any, provide for subterranean drainage of water from and to various portions of the Properties. Drainage Improvements, if any, shall not be modified, removed or blocked without first making alternative drainage arrangements approved by the Board. Drainage should be directed away from roots of oak trees and away from unstable slopes to a suitable point of disposal.

2.12. **WATER SUPPLY SYSTEM.** No individual water supply, sewage disposal or water softener system is permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements of the Design Review Committee and all applicable governmental authorities.

2.13. **WATER CONSERVATION.** To conserve water, all replacement plumbing fixtures shall be designed to conserve water (where feasible), including ultra-low flush toilets (maximum 1.6 gallons per flush) and low-flow shower heads (maximum 2.5 gallons per minute).

2.14. **VIEW OBSTRUCTIONS.** Each Owner acknowledges that (a) there are no protected views in the Properties, and no Lot is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping or other installation of Improvements by Declarant or other Owners may impair the view from any Lot, and each Owner hereby consents to such view impairment.

2.15. **SOLAR ENERGY SYSTEMS.** Each Owner may install a solar energy system on his Lot which serves his Residence so long as (a) the design and location of the solar energy system meet the requirements of all applicable governmental ordinances, and (b) the design and location receive the prior written approval of the Design Review Committee.

**2.16. INSTALLATION OF FRONT YARD LANDSCAPING.** Each Owner shall complete the installation of landscaping on the front and rear yards within the development envelopes of such Owner's Lot in accordance with a plan approved by the Design Review Committee within four (4) months after the Close of Escrow. Each Owner shall obtain all permits necessary and shall comply with all requirements of the County. Owners shall avoid aggressive exotic species, and inappropriate landscaping, such as lawns or other water-dependent landscaping. Owners shall maximize the use of native plants in landscaping inside the development envelope. No Owner shall grade within the drip line of large oaks. Landscaping must be designed to minimize concealed areas. All landscaping installed by or on behalf of an Owner shall conform with this Declaration, the Design Guidelines adopted by the Design Review Committee in accordance with Article V, *Exhibit F*, and the Habitat Management Plan.

**2.17. RIGHTS OF DISABLED.** Subject to Article VIII, each Owner may modify his Residence and the route over the Lot leading to the front door of his Residence, at his sole expense to facilitate access to his Residence by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons, in accordance with California Civil Code Section 1360 or any other applicable law.

**2.18. TEMPORARY BUILDINGS.** No outbuilding, tent, shack, shed or other temporary building or Improvement may be placed upon any portion of the Properties either temporarily or permanently, without the prior written consent of the Design Review Committee. No garage, carport, trailer, camper, motor home, recreation vehicle or other vehicle in the Properties may be used for residential purposes, either temporarily or permanently.

**2.19. COMMON AREA.** The Common Area may not be altered without the Board's prior written consent. The Preservation Easement portion of the Common Area may not be altered in any way that conflicts with the provisions of the Oak Woodland/Redwood Forest Preservation Easement recorded at the Office of the Santa Cruz County Recorder on June 25, 2001 as Instrument No. 2001-0038710, the Biotic Preservation Easement recorded at the Office of the Santa Cruz County Recorder on June 15, 2001 as Instrument No. 2001-0038711 and the Forest Preservation Easement recorded in connection therewith.

**2.20. DRILLING.** No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind may be conducted on the Properties, nor are oil wells, tanks, tunnels or mineral excavations or shafts permitted upon the surface of any Lot or within five hundred (500) feet below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil, geothermal heat or natural gas may be erected, maintained or permitted on any Lot.

**2.21. POLLUTANT CONTROL.** The Association and the Owners shall comply with all County pollutant control guidelines and NPDES requirements and the BMP guidelines (as defined below), as they apply to the Properties.

**2.21.1. NPDES Requirements.** The Properties are subject to all Federal, State and local requirements of the National Pollutant Discharge Elimination System ("NPDES") adopted pursuant to the Federal Clean Water Act. Pursuant to a NPDES General Permit adopted by the State Water Resources Control Board and the County NPDES Storm Water Permit Program, the County has adopted a Water Quality Management Plan for the Properties that identifies certain Best Management Practices ("BMPs") to reduce the discharge of pollutants to storm water facilities, before, during and after construction on the Properties is completed. The Association and the Owners shall comply with all applicable BMPs and perform all maintenance imposed by the Water Management Plan, as amended. The costs of the Association's portion of such maintenance, if any, shall be treated as Common Expenses.

**2.21.2. BMP Guidelines.** The Properties drain into the San Lorenzo River and into sensitive coastal terrace prairie areas. Declarant, the Association and the Owners shall ensure that all construction and other activities on the Properties accord with BMPs for controlling the quality of runoff. Accordingly:

- (a) no Person shall store any junked automobiles or other equipment anywhere in the Properties,
- (b) no Person shall allow any construction or project-related materials or fluids into the coastal terrace prairie areas, the San Lorenzo River, or any retained wetland communities;
- (c) no Person shall perform any auto repair work in any driveway or street (except in emergencies),
- (d) no Person shall dump used crankcase oil, paint, or other pollutants into gutters or storm drains,
- (e) no Person shall dump trash or other litter into street areas,
- (f) no Person shall leave or allow pet waste to remain on the ground or in areas where it may be washed into storm drains,
- (g) all Owners and the Association shall make provision in their landscape plans for water sensors and programmable irrigation times allowing for short cycles if irrigation is necessary,
- (h) all Owners and the Association shall use planting materials similar to those installed by Declarant and with similar water requirements in order to reduce excess irrigation runoff and to promote surface filtration,
- (i) Owners or the Association (as applicable) shall maintain all permanent slopes with required native landscaping,

(j) after the Transfer Date, the Association shall keep major drainage channels free of debris,

(k) after the Transfer Date, the Association shall clean sediment and grease traps prior to the rainy season at the end of major drainage channels,

(l) the Association shall revegetate stripped or graded areas in the Common Area as soon as possible following construction, and in no case later than October 15 of each year, and

(m) after the Transfer Date, the Association shall inspect all storm drains for damage and accumulated sediment before October 15 and between April 15 and May 15 and during rainy months from November through March.

**2.21.3. Educational Materials.** Declarant shall prepare educational materials concerning sensitive habitat and special status plant species. Declarant shall distribute such materials to employees, contractors and subcontractors prior to construction activities and obtain signed receipts from each recipient, stating that the person has received the materials, and that they can be held personally responsible for impacts to special status plant species or coastal terrace prairie habitat due to worker negligence.

**2.21.4. Biodegradable Herbicides and Pesticides.** Each Owner shall use only biodegradable herbicides and pesticides for landscape maintenance.

**2.21.5. Stoves and Fireplaces.** Owners desiring to install fireplaces or wood-burning stoves shall install only EPA-certified devices that comply in all respects with any applicable Design Guidelines.

**2.22. OAK TREE PRESERVATION.** Construction and landscaping activities on the Properties are subject to County requirements in place to protect oak trees. The County has imposed detailed requirements governing the protective measures that must be in place prior to construction. Owners of Lots with oak trees must guard against fungal root infections that may result from overwatering or accumulation of surface waters at the base of trees. Accordingly, landscape plans shall include measures to divert drainage away from trees. No Owner shall install any irrigation until consulting with the County to determine which protective measures are appropriate before commencing approved construction.

### **ARTICLE III DISCLOSURES**

Because much of the information included in this Article (a) was obtained from other sources (e.g., governmental and other public agencies and public records) and (b) is subject to change for reasons beyond the control of Declarant and the Association, the Declarant and the Association do not guarantee the accuracy or completeness of any of the information in this

Article. Further, neither Declarant nor the Association undertakes to advise any Person of any changes affecting the disclosures in this Article.

**3.1. NO REPRESENTATIONS OR WARRANTIES.** No representations or warranties, express or implied, have been given by Declarant, the Association or their agents regarding the Properties, the Properties' physical condition, zoning, compliance with law, fitness for intended use, subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Properties as a planned unit development, except as provided in this Declaration, filed by Declarant with the DRE, or provided by Declarant to the first Owner of a Lot.

**3.2. ACCESS FACILITIES.** Vehicular access into the Properties may be controlled by entry gates located at the private street entrances into the Properties. There are no assurances that any entry gates will be installed or staffed. If staffing is provided, the schedule for commencing staffing operations and the hours of staffing will be subject to change as development progresses and will be affected by the construction and marketing access requirements of Declarant. Until the last Close of Escrow occurs in the Properties, (a) the access gate may be open to the general public, (b) Declarant may change the hours of access gate operation in its sole discretion without notice to accommodate construction and marketing activities, (c) interim access gate staffing may be provided or eliminated, and (d) operation of the access gate may be limited. Public access on the equestrian trail through the Properties located on Parcel E of Tract No. 1339 is not controlled.

**3.3. SECURITY AND PRIVACY DISCLAIMER.** Access gates and their staffing are not intended to provide security or privacy for persons, personal property or Lots in the Properties. Neither Declarant nor the Association undertakes to provide security or privacy for the Properties or Owners, nor do they make any representations or warranties concerning the security or privacy of the Properties or Owners.

**3.4. EFFECT OF EXPANSIVE SOIL.** The soil in the Properties may be composed of materials that have "expansive" characteristics. Owners should perform soils testing, use special construction techniques and take precautions when constructing new Improvements or modifying existing Improvements because the soil expands when it is wet and can cause Improvements to lift and crack. Owners should consider the following information and recommendations before making or modifying any Improvements:

**3.4.1. Concrete and Masonry Improvements.** Special attention is required in designing concrete and masonry Improvements such as masonry walls and planters, concrete slabs, pools, spas and decking. For example, steel reinforcing bars may be required in lieu of steel mesh in concrete patio slabs. Block walls may require extra horizontal and vertical steel reinforcing bars. Pools and spas located at the top or bottom of a slope or on expansive soils may require special designs.

**3.4.2. Drainage and Irrigation.** Owners must use adequate drainage and irrigation control. The construction or modification of Improvements should not result in ponding of water. The landscape irrigation system should be designed and operated to prevent excessive

saturation of soils. Water must drain away from footings and other Improvements and obstructions such as walls should not be constructed across swales unless adequate replacement drainage Improvements have been installed or created. Planters should be lined with an impervious surface and should contain outlets to drain excess water.

**3.4.3. Slope Creep.** While horizontal and vertical movement (often described as "slope creep") is generally minor in nature and does not always occur, it may affect Improvements such as pools, spas, patios, walls, slabs, planters, decking and the like. Slope creep can cause pools, spas and walls to tilt and crack and may cause cracking or lifting in brickwork or concrete in a manner that will allow these Improvements to function yet not meet the Owner's cosmetic expectations. Professional soils and structural engineers should be retained to design such Improvements to mitigate the effects of slope creep and to ensure compliance with special rules for such Improvements that are required under the Uniform Building Code or other applicable regulations. If possible, Improvements should not be constructed within ten (10) feet of the edge, top or toe of a slope. Even with professional assistance, minor lifting and cracking can occur.

**3.5. GRADING.** The grading and drainage design in the Properties should not be altered in the course of installing Improvements in a manner that will redirect surface water flow toward the Residences or onto adjacent property or that will trap water so that it ponds or floods. In addition, grading should be minimized to preserve clay-rich surface soils, which act as an aquitard to percolating surface waters. Drainage devices such as concrete ditches, area drain lines and gutters should be carefully designed and installed with professional assistance then maintained in an unobstructed condition. Drainage devices installed by Declarant and designed to serve more than one Lot or the Common Area should not be altered in any manner that will redirect or obstruct the drainage through these drainage devices. Grading and drainage modifications are subject to law, approval by the Board, and the terms of any Recorded drainage easements.

**3.6. ELECTRIC POWER LINES.** Underground or overhead electric transmission and distribution lines and transformers are located in and around the Properties. Power lines and transformers produce extremely low-frequency electromagnetic fields ("ELF-EMF") when operating. For some time, there has been speculation in the scientific community about health risks associated with living near ELF-EMF sources. In 1992, the United States Congress authorized the Electric and Magnetic Fields Research and Public Information Dissemination Program ("EMF-RAPID Program") to perform research on these issues and to analyze the existing scientific evidence in order to clarify the potential for health risks from exposure to ELF-EMF. In May of 1999, the National Institute of Environmental Health Sciences ("NIEHS") issued a report to Congress summarizing its review of scientific data from over three hundred studies on ELF-EMF health risks. The ELF-EMF studies consist of both epidemiological studies (studies of exposure in human populations) and controlled laboratory experiments on animal and cell models. While some epidemiological studies suggested some link between certain health effects and exposure to ELF-EMF, the laboratory experiments did not support such a link. According to the NIEHS report, the scientific evidence shows no clear pattern of health hazards from ELF-EMF exposure, and the NIEHS report did not find evidence of any link sufficient to recommend widespread changes in the design or use of electrical transmission equipment.

However, because the evidence does not clearly rule out any effect, NIEHS advocated continuing inexpensive and safe reductions in exposure to ELF-EMF and endorsed current utility practices regarding design and siting of new transmission and distribution lines. Further information on this subject is available from the Electric and Magnetic Fields Program, California Department of Health Services, 1515 Clay Street, 17th Floor, Oakland, California 94612, at (510) 622-4500. Additional information on ELF-EMF and copies of the NIEHS report are available from the EMF-RAPID website at <http://www.niehs.nih.gov/emfrapid/home.htm>.

**3.7. OFFERS OF DEDICATION.** Portions of the Common Area are subject to irrevocable offers of dedication as shown on the Recorded tract maps for the Properties. The County may accept the offer of dedication and assume responsibility for maintaining these portions of the Common Area at any time.

**3.8. PROPERTY LINES.** The boundaries of each Lot in the Properties and the Common Area owned in fee simple by the Association are delineated on subdivision (tract) maps, lot line adjustments or parcel maps that are public records and are available at the County Recorder's office.

**3.9. SPECIAL TAX ASSESSMENT OR MELLO-ROOS COMMUNITY FACILITIES DISTRICTS.** The Properties lie within the boundaries of the Scotts Valley Fire Protection District, which was formed to provide fire protection to the Properties and other real property. The Scotts Valley Fire Protection District has the power to impose a special tax on each Lot for repayment of bond indebtedness. The tax will appear on each Owner's County property tax bill. The Properties may lie within the boundaries of other special tax assessment districts and Mello-Roos Community Facilities Districts which require the levy of a special tax for repayment of bonds issued for the purpose of paying the cost of services or capital improvements. The amount of the special tax and any other information pertaining to any such district can be obtained from the County Assessor's office.

**3.10. COUNTY SERVICES AREA.** The Properties are or may be annexed into the Graham Hill County Services Area ("CSA") No. 57, which will have the responsibility to maintain the Maintenance Area in the Properties, including drainage facilities in the Properties, and sewer and pump station facilities in the Properties up to the service laterals on individual Lots. The CSA will have the power to assess a special tax against the Lots in the Properties and other real property within the jurisdiction of the CSA to pay for maintenance services. The special taxes will constitute a continuing lien on each Owner's Lot and will appear as a charge on each Owner's County real estate tax bill. In the event an Owner shall fail to pay his special taxes when due, the County or applicable authority may exercise its legal remedy to foreclose on such Owner's Residence. By accepting a deed to a Lot, each Owner agrees to support and not oppose the annexation of any portion of the Properties into the CSA. Declarant and other developers of real property within the jurisdiction of the proposed CSA may be required to advance the cost of the sewer and drainage Improvements to be maintained by the CSA. At least some of the costs advanced by Declarant may be reimbursed by the CSA from special taxes or from funds received by the CSA from state or federal sources. Any right to reimbursement flowing from funds advanced by Declarant shall belong exclusively to Declarant, and no Owner of a residential Lot in

the Properties (except for Declarant) shall have the right to any such reimbursement by the CSA. By accepting a deed to a Lot in the Properties, each Owner waives any and all claim to any such reimbursement which may accrue by virtue of ownership of a portion of the Properties..

**3.11. CHANGE IN PLANS.** Declarant has the right to develop the Annexable Territory with Improvements that may be different in design, size, character, style and price from those in Phase 1 or any other Phase.

**3.12. ADDITIONAL PROVISIONS.** There may be provisions of various laws, including the Davis-Stirling Common Interest Development Act codified at Sections 1350 et seq. of the California Civil Code and the federal Fair Housing Act codified at Title 42 United States Code, Section 3601 et seq., which may supplement or override the Restrictions. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Restrictions.

**3.13. NATURAL HAZARD ZONES.**

**3.13.1. Special Flood Hazard Area.** A portion of the Properties lying alongside the San Lorenzo River is located in a Special Flood Hazard Area ("SHFA") designated as a Zone A or Zone V by the Federal Emergency Management Agency ("FEMA"). FEMA is required by Federal law to compile Flood Insurance Rate Maps identifying areas of potential flooding. Property located within a SFHA is subject to a one percent (1%) or greater chance of complete or partial flooding in any given year. FEMA defines this type of flood as the "base flood" which is more commonly known as a "100 year flood." A 100 year flood has a 26% chance of occurring during any 30 year period. Further information is available from FEMA and the County. According to FEMA maps current as of the date of Recordation hereof, no residential Lot is located within the SHFA.

**3.13.2. Area of Potential Flooding.** A portion of the Properties lying alongside the San Lorenzo River is located in an Area of Potential Flooding ("APF"). Pursuant to California Government Code Section 8589.4, dam inundation maps must be prepared, delivered and approved by the state Office of Emergency Services. These maps show areas of potential flooding in the event of sudden or total failure of any dam, the failure of which would result in death or personal injury. Dam inundation maps depict a best estimate of water flow in the event of dam failure. Projected water flow is based on a scenario in which a full reservoir completely empties itself and does not account for run-off from other sources. Dam inundation maps do not identify areas of potential flooding resulting from storms and other causes. A parcel of property located outside of an area of potential flooding may still be subject to severe flooding. Further information is available from the state Office of Emergency Services and the County. According to dam inundation maps current as of the date of Recordation hereof, no residential Lot is located within the APF.

**3.13.3. State Responsibility Area.** Parcel A of Tract 1339 is located in a State Responsibility Area, which is a wildland area that may contain substantial forest fire risks and hazards, as determined by the California State Board of Forestry pursuant to California Public

Resources Code Section 4125. There may be substantial forest fire risks and hazards; and each Owner is subject to the imposition of fire mitigation measures set forth in Article IV and the Public Resources Code which may substantially impact and limit construction and remodeling of improvements and landscaping. Further information is available from the State Board of Forestry and the County.

3.14. **USE OF OPEN SPACE PARCELS.** Parcels B, C, D, and E of Tract No. 1339 (collectively, the "Park Parcels") are subject to a separate Declaration of Restrictions ("Horsemen's Declaration") recorded on June 21, 2001, as Instrument No. 2001-0037986 in Official Records of the County. The Horsemen's Declaration will provide that the Santa Cruz County Horsemen's Association will operate and manage the Park Parcels, and it restricts the uses to which the Park Parcels may be put, limiting such uses to Horsemen's Association activities, including equestrian, fund-raising and social events. Residents of the Properties may experience noise and traffic over certain access roads during use of the Park Parcels by the Horsemen's Association. Declarant shall have the power to enforce the Horsemen's Declaration until such time as it turns over fee ownership of the Park Parcels to the Association, when the Association shall have the enforcement powers. Owners of Lot in the Properties are required to bring grievances under the Horsemen's Declaration to the Board in accordance with the enforcement provisions of the Horsemen's Declaration. Each Owner, by accepting a deed to a Lot in the Properties, acknowledges having read and understood the foregoing and having received and read a copy of the Recorded Horsemen's Declaration.

#### **ARTICLE IV THE WOODS COVE HOMEOWNERS ASSOCIATION**

4.1. **GENERAL DUTIES AND POWERS.** The Association has the duties and powers listed in the Restrictions and also has the general and implied powers of a nonprofit mutual benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the general welfare of the Owners, subject only to the limits on the exercise of such powers listed in the Articles, Bylaws, this Declaration, and the Supplemental Declarations. Unless otherwise indicated in the Articles, Bylaws, this Declaration, or the Supplemental Declarations, the powers of the Association may be exercised by the Board.

4.2. **SPECIFIC DUTIES AND POWERS.** In addition to its general powers and duties, the Association has the following specific powers and duties.

4.2.1. **Common Area.** The power and duty to accept, maintain and manage the Common Area. The Association may install or remove capital Improvements on the Common Area. The Association may reconstruct, replace or refinish any Improvement on the Common Area.

4.2.2. **Preservation Easements.** The power and duty to accept, maintain and manage portions of the Common Area subject to the Preservation Easements. The Declarant will maintain and monitor the Preservation Easements for the first five years following implementation

of the Habitat Mitigation Plan or until the performance standards of the Habitat Mitigation Plan are achieved if not met at the end of year five. Thereafter, the Association will assume the management and monitoring obligations of Declarant under the Habitat Mitigation Plan.

4.2.3. **Utilities.** The power and duty to obtain all commonly metered water, gas and electric services, and the power but not the duty to provide for trash collection and cable or master television service.

4.2.4. **Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Common Area owned in fee simple by the Association, to the extent any such grant is reasonably required (a) for Improvements to serve the Properties, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant or the Association, (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use of the Properties. The Association may deannex any portion of the Properties from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

4.2.5. **Employ Personnel.** The power to employ Persons necessary for the effective operation and maintenance of the Common Area, including legal, management and accounting services.

4.2.6. **Insurance.** The power and duty to keep insurance for the Common Area.

4.2.7. **Maintenance Area.** The power and duty to maintain all or any portion of the Maintenance Area, such as equestrian trails (including erosion control measures), private sewer, or storm drains, that is turned over to the Association by a Local Government Agency on and after the Transfer Date.

4.2.8. **Rules and Regulations.** The power but not the duty to establish, amend, restate, delete, and create exceptions to, the Rules and Regulations.

(a) **Effective Date.** All changes to the Rules and Regulations will become effective fifteen (15) days after they are either (i) posted in a conspicuous place in the Properties or (ii) sent to the Owners via first-class mail or by any system or technology designed to record and communicate messages.

(b) **Areas of Regulation.** The Rules and Regulations may concern use of the Properties, signs, parking restrictions, minimum standards of property maintenance, and any other matter under the Association's jurisdiction; however, the Rules and Regulations are enforceable only to the extent they are consistent with the Articles, Bylaws, Declaration, any Supplemental Declarations and any Notices of Addition.

(c) **Limits on Regulation.** The Rules and Regulations must apply uniformly to all Owners. The rights of Owners to display religious, holiday and political signs,

symbols and decorations inside their Residences of the kinds normally displayed in single family residential neighborhoods shall not be abridged, except the Association may adopt time, place and manner restrictions for such displays if they are visible outside of the Residence. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was on a Lot before adoption of such modification if such personal property was in compliance with all rules previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to (i) subsequent Owners who take title to the Lot after the modification is adopted, or (ii) clarifications to the Rules and Regulations.

4.2.9. **Borrowings.** The power, but not the duty, to borrow money for purposes authorized by the Articles, Bylaws, Declaration, any Supplemental Declarations or any Notice of Addition, and to use the Common Area owned in fee simple by the Association as security for the borrowing.

4.2.10. **Contracts.** The power but not the duty to enter into contracts. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Properties and elsewhere which the Association is not otherwise required to provide or maintain by this Declaration. In addition, the Association shall have the power and duty to assume the obligations of the "lessor" under a lease agreement with the County for the lease of Parcel C of Tract No. 1339.

4.2.11. **Indemnification.**

(a) **For Association Representatives.** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, Design Review Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the Person's Association duties ("Official Act"). Board members, Association officers, Design Review Committee members, and all other Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

(b) **For Other Agents of the Association.** To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

(c) **Provided by Contract.** The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

4.2.12. **Annexing Additional Property.** The power but not the duty to annex, pursuant to Article XVI, additional property to the Properties encumbered by this Declaration.

4.2.13. **Vehicle Restrictions.** The power granted in Section 2.5 to identify Authorized Vehicles or Prohibited Vehicles and to modify the restrictions on vehicles.

4.2.14. **License and Use Agreements.** The Association may enter into agreements with Declarant or any homeowners association having jurisdiction over the Annexable Territory to share facilities located on the Common Area with the owners of residences on Annexable Territory that is not annexed to the Properties. Any such agreement shall be in form and content acceptable to Declarant, the Board of Directors (without the approval of Owners) and the board of directors of any adjacent homeowners association and shall include provisions regarding use and sharing of maintenance costs for the shared facility.

4.2.15. **Educational Materials.** The Association shall provide educational materials to all Owners regarding the need for proper use of landscaping chemicals and the adverse environmental consequences of improper use. Such information shall be provided annually, and the cost of such materials shall be a Common Expense.

4.2.16. **Timber Harvesting.** The Association shall have the power and exclusive right, but not the duty, to grant temporary licenses permitting Persons to enter onto and use portions of the Common Area designated by the County as a "Timber Production Zone" for the harvesting of timber. Such licenses must be temporary and the rights conveyed thereby must accord with County regulations, the provisions of the Forest Preservation Easement, and approvals applicable to the Timber Production Zone. No licensed use may, in the sole discretion of the Board, unreasonably interfere with the use and enjoyment of the Properties. For each license granted, the Association shall have the right to charge and collect from the licensee a reasonable license fee in addition to royalties or other proceeds from the sale of timber products. If the Association conducts a harvest, then it shall be required to produce monitoring reports in accordance with the Habitat Management Plan. Any timber harvesting shall only be done in accordance with a Timber Harvest Plan, which shall include at a minimum the provisions set forth on *Exhibit G*. All provisions of the Forest Preservation Easement document recorded in the Office of the Santa Cruz County Recorder on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ are hereby incorporated into this Declaration.

4.2.17. **Prohibited Functions.**

(a) **Property Manager.** The Association shall not hire any employees, furnish offices or other facilities, or use any Common Area for an "on-site" Manager. The Association's Manager shall at all times be a professional manager employed as an independent contractor or agent working at its own place of business.

(b) **Off-site Nuisances.** The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Properties.

(c) **Political Activities.** The Association shall not (i) participate in federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Properties (e.g., endorsement or support of (A) legislative or administrative actions by a Local Government Agency, (B) candidates for elected or appointed office, or (C) ballot proposals, or (ii) conduct, sponsor, participate in or expend funds or resources toward any activity, campaign or event, including any social or political campaign, event or activity which is not directly and exclusively pertaining to the authorized activities of the Association. There shall be no amendment of this Section so long as Declarant owns the Properties or Annexable Territory.

#### 4.3. STANDARD OF CARE, NONLIABILITY.

##### 4.3.1. Scope of Powers and Standard of Care.

(a) **General Scope of Powers.** Rights and powers conferred on the Board, the Design Review Committee or other committees or representatives of the Association by the Restrictions are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Restrictions or law. Unless a duty to act is imposed on the Board, the Design Review Committee or other committees or representatives of the Association by the Restrictions or law, the Board, the Design Review Committee and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future.

(b) **Business Affairs.** This Section 4.3.1(b) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances, and Design Review Committee member actions. Each Board member shall perform his duties in good faith, in a manner the Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(i) One or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(ii) Counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or

(iii) A committee of the Board upon which the Board member does not serve, as to matters under its designated authority, which committee the Board member believes to merit confidence, so long as the Board member acts in good faith, after reasonable inquiry when the need is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This Section 4.3.1(b) is intended to be a restatement of the business judgement rule established in applicable law. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this Section 4.3.1(b).

(c) *Association Governance.* This Section 4.3 applies to Board actions and Design Review Committee decisions in connection with interpretation and enforcement of the Restrictions, architectural and landscaping control, regulation of uses within the Properties, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

#### 4.3.2. **Nonliability.**

(a) *General Rule.* No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Properties unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

(b) *Nonliability of Volunteer Board Members and Officers.* A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all applicable conditions specified in Section 1365.7 of the California Civil Code are met.

#### 4.4. **MEMBERSHIP.**

4.4.1. *Generally.* Every Owner shall automatically acquire a Membership in the Association and retain the Membership until such Owner's Lot ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Lot is the sole qualification for Membership. Memberships are not assignable except to the Person to whom title to the Lot is transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of such Lot.

4.4.2. *Transfer.* The Membership of any Owner may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Lot, and then only to the transferee or Mortgagee of such Lot. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold his Lot to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Association

before the contract purchaser may vote. The contract seller shall remain liable for all Assessments attributable to the contract seller's Lot which accrue before title to the Lot is transferred. If the contract seller fails or refuses to delegate his Membership rights to the contract purchaser before the Close of Escrow, the Association may record the transfer to the contract purchaser in the Association's records. However, no contract purchaser will be entitled to vote at Association meetings during the term of a purchase contract without satisfactory evidence of the delegation of the contract seller's Membership rights to the contract purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Lot (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

4.4.3. **Classes of Membership.** Members of the Association are Declarant, for so long as Declarant is entitled to cast a Class C vote pursuant to this Section, and each Owner (including Declarant) of one (1) or more Lot in the Properties. Membership in the Association is subject to the Restrictions. Except for the Class C Membership, all Memberships in the Association held by Owners are appurtenant to the Lot owned by each Owner. The Association classes of voting Membership are as follows:

**Class A.** Class A members are all Owners except Declarant for so long as a Class B Membership exists. Class A members are entitled to one (1) vote for each Lot owned and subject to Assessment. Declarant shall become a Class A member on conversion of Declarant's Class B Membership. The vote for each Lot shall be exercised in accordance with Section 4.5.1, but no more than one (1) Class A vote may be cast for any Lot.

**Class B.** The Class B member is Declarant. The Class B member is entitled to three (3) votes for each Lot owned by Declarant and subject to Assessment. The Class B Membership shall convert to Class A Membership on the first to occur of the following events:

- (1) The second anniversary of the first Close of Escrow in the most recent Phase; or
- (2) The fifth (5<sup>th</sup>) anniversary of the first Close of Escrow in Phase 1.

**Class C.** The Class C member shall be Declarant (whether or not Declarant is an Owner). The Class C Membership shall not be considered a part of the voting power of the Association. The Class C member is entitled to select a majority of the members of the Board of Directors until the Class C Termination Date. The "Class C Termination Date" shall be the earlier to occur of the following events:

- (1) The Close of Escrow for the sale of fifty-six (56) Lots in the Properties and Annexable Territory;

(2) The fifth (5<sup>th</sup>) anniversary of the first Close of Escrow in the Phase for which a Final Subdivision Public Report was most recently issued by the DRE; or

(3) The tenth (10<sup>th</sup>) anniversary of the first Close of Escrow for the sale of a Lot in the Properties.

#### 4.5. VOTING RIGHTS.

4.5.1. **Limits.** Except as provided in Section 12.3 of this Declaration and Section 4.8 of the Bylaws, as long as there is a Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of each class of Membership. Except as provided in Section 12.3 of this Declaration and Section 4.8 of the Bylaws, on termination of the Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both (1) the Association's total voting power, and (2) the Association's voting power represented by Owners other than Declarant.

4.5.2. **Joint Ownership.** When more than one (1) Person holds an interest in any Lot ("co-owners"), each co-owner may attend any Association meeting, but only one (1) co-owner shall be entitled to exercise the single vote to which the Lot is entitled. Co-owners owning the majority interests in a Lot may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed. The vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation is revoked, the vote for the Lot shall be exercised as the co-owners owning the majority interests in the Lot agree. Unless the Association receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with his co-owners' consent. No vote may be cast for any Lot if the co-owners present in person or by proxy owning the majority interests in such Lot fail to agree to the vote or other action. The nonvoting co-owner or co-owners are jointly and severally responsible for all obligations imposed on the jointly-owned Lot and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Restrictions are binding on all Owners and their successors in interest.

#### 4.6. REPAIR AND MAINTENANCE.

##### 4.6.1. By Owners.

(a) **The Lot.** Each Owner shall maintain, at his sole expense, all of his Lot, and the Residence and all other Improvements on the Owner's Lot (except for areas designated for maintenance by the Association) in a clean, sanitary and attractive condition. Each Owner shall maintain any landscape strip lying in the area between the front property line of the

residential Lots and the back of curbs. Each Owner shall pay when due all charges for any utility service separately metered to his Lot. Parcel A of Tract No. 1339 is designated a State Responsibility Area by the State Board of Forestry. In accordance with maintenance requirements for State Responsibility Areas, Owners shall remove all highly flammable vegetation and maintain a cleared area 30 feet around all structures. All buildings backing up to Parcel A of Tract No. 1339 shall be provided with a 100 foot clearance of highly flammable vegetation (e.g., manzanita).

(b) **Party Walls.** Each wall or fence placed on the dividing line between adjacent Lots (the "Party Wall") is a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions apply thereto.

(i) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots connected by such Party Wall. However, each Owner shall be solely responsible for repainting the side of any Party Wall facing his Lot.

(ii) Destruction by Fire or Other Casualty. Unless covered by a blanket insurance policy maintained by the Association under Section 8.1, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot affected thereby shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

(iii) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements or to deteriorate or require repair or replacement shall bear the whole cost of furnishing the necessary protection against such elements or the necessary repairs or replacement.

(iv) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article is appurtenant to the land and passes to such Owner's successors in title.

(c) **Other Responsibilities.** Each Owner whose Lot utilizes a sewer system lateral is responsible for the maintenance and repair of that portion of the lateral which exclusively serves such Owner's Lot. Each Owner of a Lot on which a portion of the Property Wall is constructed shall be responsible for maintaining the cap and structural integrity of such portion of the Property Wall, together with the surface facing such Owner's Lot. The Property Wall in Phase 1 is depicted on **Exhibit D**. Additional portions of the Property Wall will be depicted in the Notice of Addition of Supplemental Declaration for the applicable Phase of Development.

#### 4.6.2. By Association.

(a) *Commencement of Obligations.* The Association's obligation to maintain the Common Area in a Phase composed solely of Common Area shall commence on conveyance of such Common Area to the Association. The Association's obligation to maintain the Common Area in any Phase that includes Lots commences on the date Annual Assessments commence on Lots in the Phase. Until the Association is responsible for maintaining the Common Area, Declarant shall maintain the Common Area. The Association's obligation to maintain a given portion of the Maintenance Area shall commence on the Transfer Date for such portion; thereafter, the transferred Maintenance Area shall constitute Common Area, as described in this Declaration. Until the Transfer Date, the Local Government Agency having jurisdiction over and control of the Maintenance Area shall maintain the Maintenance Area. The Association's obligation to maintain and monitor the Preservation Easements shall commence when the County has determined that Declarant has met the performance standards in the Habitat Mitigation Plan, and control may be turned over to the Association. Coastal Prairie maintenance shall occur on an annual basis and shall include seasonal mowing and removal of invasive plants. Monitoring activities in the Coastal Prairie community shall be conducted on a biennial basis. The Association's obligation to perform Coastal Prairie maintenance and monitoring will last through 2019. The Association's obligation to perform monitoring of the Oak Woodlands/Redwood Forest Mosaic will last up to four years, commencing at buildout of the Properties.

(b) *Maintenance Standards.* Subject to Articles IX and X, the Association shall maintain the Common Area and Improvements thereon in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget. Subject to applicable County regulations, the Board shall determine, in its sole discretion, the level and frequency of maintenance provided by the Association. After the Transfer Date for a given Maintenance Area, the Association shall maintain the Maintenance Area in a manner that guarantees service at a level previously provided by the Local Government Agency.

(c) *Maintenance Items.* The Association shall maintain all Common Area that is owned in Fee by the Association or designated for maintenance by the Association. Should the applicable Local Government Agency fail to fulfill its maintenance obligations as to any portion of the Maintenance Area or any Improvements located thereon, the Association shall undertake such maintenance. If the Association removes or damages any landscaping Improvements on an Owner's Lot while maintaining any Common Area or Maintenance Area, the Association is not responsible for replacing the landscaping Improvements. The Association shall assume all maintenance and monitoring activities of Declarant under the Habitat Mitigation Plan on the approval of the County. The Association shall also monitor retained trees adjacent to Improvements for a period of five (5) years following the construction of the Improvements. The Association shall also perform annual erosion control maintenance on steep slopes within Parcel A of Tract No. 1339, with particular attention to preventing damage to the equestrian trail located on Parcel E of said Tract. Such maintenance shall be performed prior to October 15 of each year and shall include repair of washouts, installation of earthen water berms as necessary, maintenance

and replacement of ground cover plantings to stabilize unstable areas directly upslope and downslope of the equestrian trail, as reasonably necessary to achieve appropriate drainage flow.

**4.6.3. Inspection of the Properties.** The Association shall have the Common Area and all Improvements thereon inspected at least once every three (3) years to (a) determine whether the Common Area is being maintained adequately in accordance with the standards of maintenance established in Section 4.6.2, (b) identify the condition of the Common Area and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions to reduce potential future maintenance costs. The Association may employ such experts and consultants it deems necessary to perform the inspection and make the report required by this Section. The Board shall keep Declarant fully informed of the Board's activities under this Section 4.6.3. The Association shall prepare a report of the results of the inspection. The report shall be furnished to Owners and Declarant within the time set for furnishing the Budget to the Owners, and to the County Planning Department for at least the first ten (10) years after Recording this Declaration. The report must include at least the following:

- (a) a description of the condition of the Common Area, including a list of items inspected, and the status of maintenance of all such items;
- (b) a description of all maintenance planned for the ensuing Fiscal Year and included in the Budget;
- (c) if any maintenance is to be deferred, the reason for such deferral;
- (d) a summary of all reports of inspections performed by any expert or consultant employed by the Association to perform inspections;
- (e) a report of the status of compliance with the maintenance needs identified in the inspection report for preceding years; and
- (f) such other matters as the Board considers appropriate.

**4.6.4. Damage by Owners.** Each Owner is liable to the Association for any damage to the Properties caused by the act of an Owner, his Family, guests, tenants or invitees, or any other persons deriving their right to use the Properties from the Owner, or such Owner's Family, tenants and guests. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made on the Association's insurance, and (b) levy a Special Assessment equal to the cost of repairing the damage or any deductible paid and the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom such Owner may be liable as described in this Declaration. If a Lot is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint owners to the contrary. After Notice and Hearing, the cost of correcting the damage shall be a Special Assessment against such Owner.

## ARTICLE V DESIGN REVIEW COMMITTEE

5.1. **MEMBERS OF COMMITTEE.** The Design Review Committee shall be composed of three (3) members. The initial members of the Design Review Committee shall be representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("Public Report") for the Properties ("First Anniversary"). After the First Anniversary the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may appoint and remove a majority of the members of the Design Review Committee and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) of all the Lots in the Properties, or (b) the fifth anniversary of the original issuance of the Public Report for the Properties, after which the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Owners, but Design Review Committee members appointed by Declarant need not be Owners. Board members may serve as Design Review Committee members.

### 5.2. POWERS AND DUTIES.

5.2.1. **General Powers and Duties.** The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in progress to assure conformance with plans approved by the Design Review Committee, and shall perform such other duties as the Board assigns to it.

5.2.2. **Issuance of Standards.** The Design Guidelines originally approved by the County as part of Subdivision Permit No. 90-1245 shall be used by the Design Review Committee in reviewing plans for construction on individual Lots. The Design Review Committee shall issue and update its Design Guidelines. However, updates to the Design Guidelines must be approved by the County, the consideration of which is commenced by the Committee making a permit application with the County to amend Subdivision Permit No. 90-1245. The Design Guidelines shall contain the provisions set forth in *Exhibit F*. In addition, the Design Guidelines may require a fee to accompany each application for approval, and may identify additional factors which the Design Review Committee will consider in reviewing submissions. The Design Review Committee may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner. The Design Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors.

5.2.3. **Retaining Consultants.** The Design Review Committee has the power but not the duty to retain design professionals and other Persons to advise its members in connection with decisions; however, the Design Review Committee does not have the power to delegate its decision-making power except in accordance with Section 5.4 below.

### 5.3. REVIEW OF PLANS AND SPECIFICATIONS.

5.3.1. **Improvements Requiring Approval.** No construction, installation or alteration of an Improvement, including landscaping, in the Properties may be commenced until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location thereof have been submitted to and approved in writing by the Design Review Committee; however, any Improvement may be repainted without Design Review Committee approval so long as the Improvement is repainted the identical color which it was last painted. The provisions of this Article apply to construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714, the County Building Code, zoning regulations, and other laws.

5.3.2. **Application Procedure.** Until changed by the Board, the address for the submission of such plans and specifications is the Association's principal office. The form of application used by the Design Review Committee may include spaces allowing "Adjacent Owners" to sign or initial the application confirming that they have been notified of the application. The Design Review Committee may establish a definition of "Adjacent Owners" in its design guidelines. Applications will be complete and may be approved or disapproved by the Design Review Committee even if all of the Adjacent Owners do not initial the applications so long as the Owner submitting plans and specifications ("Applicant") certifies that the Applicant has asked the Adjacent Owners to sign the applications.

The Design Review Committee may reject the application for approval if it determines that the Applicant's plans and specifications are incomplete. The Design Review Committee shall transmit its decision and the reasons therefor to the Applicant at the address listed in the application for approval within forty-five (45) days after the Design Review Committee receives all required materials. Any application submitted shall be deemed approved unless the Design Review Committee transmits written disapproval or a request for additional information or materials to the Applicant within forty-five (45) days after the date the Design Review Committee receives all required materials.

5.3.3. **Standard for Approval.** The Design Review Committee shall approve plans and specifications submitted for its approval only if it determines that (a) installation, construction or alterations of the Improvements in the locations indicated will conform to the standards of the Design Guidelines as summarized in *Exhibit F*, and will not be detrimental to the appearance of the surrounding area of the Properties as a whole, (b) the appearance of any structure affected by the proposed Improvements will be in harmony with the surrounding structures, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Properties or the enjoyment thereof by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association, and (e) the proposed Improvements are consistent with this Declaration.

The Design Review Committee may condition its approval of proposals or plans and specifications for any Improvement on any of the following: (i) the Applicant's furnishing the

Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Properties as a result of such work, (ii) such changes therein as the Design Review Committee considers appropriate, (iii) the Applicant's agreement to grant easements made necessary by the Improvement to the Association, (iv) the Applicant's agreement to install water, gas, electrical or other utility meters to measure any increased consumption, (v) the Applicant's agreement to reimburse the Association for the cost of such maintenance, or (vi) the Applicant's agreement to complete the proposed work within a stated period of time. The Design Review Committee may require submission of additional plans and specifications or other information before approving or disapproving material submitted. The Applicant shall meet any review or permit requirements of the County before making any construction, installation or alterations permitted under this Declaration.

The Design Review Committee shall obtain the services of design professionals as reasonably necessary to assist in its review of applications. However, the Design Review Committee's approval or disapproval shall be based solely on the considerations listed in this Article. The Design Review Committee is not responsible for reviewing, nor may its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

#### **5.4. MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE.**

The Design Review Committee shall meet as necessary to perform its duties. So long as a majority of the members of the Design Review Committee are Declarant representatives, the Design Review Committee may, by resolution unanimously adopted in writing, designate a Design Review Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Design Review Committee except the granting of variances. In the absence of such designation, the vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee. All approvals issued by the Design Review Committee must be in writing. Verbal approvals issued by the Design Review Committee, any individual Design Review Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person.

**5.5. NO WAIVER OF FUTURE APPROVALS.** The Design Review Committee's approval of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any matter requiring the Design Review Committee's approval does not waive the right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

**5.6. COMPENSATION OF MEMBERS.** The Design Review Committee's members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

**5.7. INSPECTION OF WORK.** The Design Review Committee or its duly authorized representative may inspect any work for which approval of plans is required under this Article ("Work"). The right to inspect includes the right to require any Owner to take such action

as may be necessary to remedy any noncompliance with the Design Review Committee-approved plans for the Work or with the requirements of this Declaration ("Noncompliance").

5.7.1. **Time Limit.** The Design Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Work is completed and the Design Review Committee receives written notice on a form provided by the Committee from the Owner that the Work is completed. If the Design Review Committee fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

5.7.2. **Remedy.** If an Owner fails to remedy any Noncompliance within sixty (60) days after the date of notice from the Design Review Committee, the Design Review Committee may take action as authorized in Section 12.1.1.

5.8. **VARIANCES.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Design Review Committee, and become effective on Recordation. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board must approve any variance recommended by the Design Review Committee before any such variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Lot. Notwithstanding the provisions of this subsection, it is acknowledged that any variance from the Design Guidelines must also be approved by the County when construction plans are submitted to the County for a building permit application.

5.9. **PRE-APPROVALS.** The Design Review Committee may authorize pre-approval of specified types of construction activities if, in the exercise of the Design Review Committee's judgment, such preapproval is appropriate in carrying out the purposes of the Restrictions.

5.10. **APPEALS.** So long as Declarant has the right to appoint and remove a majority of the Design Review Committee's members, the Design Review Committee's decisions are final. There is no appeal to the Board. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board may adopt policies and procedures for appeal of Design Review Committee decisions to the Board. The Board has no obligation to adopt or implement any appeal procedures. In the absence of Board adoption of appeal procedures, all Design Review Committee decisions are final.

**ARTICLE VI  
PROPERTY EASEMENTS AND RIGHTS**

**6.1. EASEMENTS.**

6.1.1. **Utility Easements.** Declarant reserves easements to install and maintain utilities in the Common Area for the benefit of the Owners and their Lots. Declarant reserves the right to grant additional easements and rights-of-way throughout the Properties to utility companies and public agencies as it deems necessary for the proper development of the Properties. Declarant's right shall expire on the Close of Escrow for the sale of the last Lot in the Properties and the Annexable Territory.

6.1.2. **Encroachments.** Declarant reserves, for its benefit and for the benefit of Owners and their Lots, a reciprocal easement appurtenant to each Lot over the other Lots and the Common Area to accommodate (a) any existing encroachment of any wall or any other Improvement installed by Declarant or approved by the Architectural Committee, and (b) shifting, movement or natural settling of the Residences or other Improvements.

6.1.3. **Completion of Improvements.** Declarant reserves the right and easement to enter the Properties to complete any Improvement which Declarant considers desirable to implement Declarant's development plan.

6.1.4. **Owners' Easements in Common Area.** Declarant reserves, for the benefit of every Owner, his Family, tenants and guests, nonexclusive easements for (a) use and enjoyment of the Common Area owned in fee simple by the Association, and (b) vehicular and pedestrian access over the Common Area owned in fee simple by the Association. This easement is appurtenant to and passes with title to every Lot in the Properties.

6.1.5. **Easement Over Maintenance Area and Common Area on Lots.** Declarant reserves, for the benefit of the Association and applicable Local Government Agencies owning or maintaining any portion of the Maintenance Areas, nonexclusive easements over each Lot as necessary for access and maintenance of Common Area and Maintenance Area located on each Lot as applicable, and for emergency vehicles over portions of Lot 7 and Parcels A, B, and G of Tract No. 1339, as depicted in this Declaration or in a Notice of Addition. Declarant also reserves a nonexclusive easement for storm drain purposes and for vehicular and pedestrian access and maintenance over a portion of Parcel F of Tract No. 1339, together with the right to grant the same to an adjoining Owner in accordance with the terms. No Owner may interfere with the Local Government Agency or the Association's exercise of its rights under the easement reserved in this Section. Declarant may grant additional emergence access easements in a Supplemental Declaration.

6.1.6. **Access Easements - Private Street Lots.** Declarant reserves for its benefit and for the benefit of the Owners of Residences that may be constructed in the Annexable Territory (whether annexed to the Properties or not) easements for pedestrian and vehicular access over all streets and driveways located within the Properties.

6.1.7. **Drainage Easements.** Declarant reserves for the benefit of the Properties, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and on the Properties.

6.1.8. **Master Telecommunications Easement.** Declarant reserves blanket easements ("Telecommunications Easements") over the Properties for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing Telecommunications Facilities ("Telecommunications Purposes") for the benefit of Declarant and the Properties. Such easements are freely transferable by Declarant to any other Person and their successors and assigns. No one, except for Declarant, and Declarant's transferees may use the Properties for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Properties does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. Exercise of Telecommunications Easements shall not unreasonably interfere with the reasonable use and enjoyment of the Properties by the Owners. If the exercise of any Telecommunications Easement results in damage to the Properties, the holder of the Telecommunications Easement shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements in a Phase to another Person before the first Close of Escrow in that Phase, then Declarant hereby grants the Telecommunications Easements for that Phase to the Association effective as of the first Close of Escrow in the Phase.

6.2. **RIGHT TO GRANT EASEMENTS.** Declarant reserves easements over the Common Area owned in fee simple by the Association. Any such easement may be conveyed by the Declarant before the last Close of Escrow for sale of a Lot in the Properties and the Annexable Territory. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Common Area affected, the Lot to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

6.3. **DELEGATION OF USE.** Any Owner may delegate his right to use the Common Area owned in fee simple by the Association in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to regulation by the Board.

#### 6.4. **RIGHT OF ENTRY.**

6.4.1. **Association.** The Association has the right to enter the Lots to inspect the Properties, and may take whatever corrective action it determines to be necessary or proper. Entry onto any Lot under this Subsection may be made after at least three (3) days' advance written notice to the Owner of the Unit except for emergency situations, which shall require not require notice. Any damage to the Lot caused by entry under this Subsection shall be repaired by the Association. Nothing in this subsection shall limit the right of an Owner to exclusive occupancy and control over that portion of the Lot that is not Maintenance Area or Common Area.

6.4.2. **Declarant.** The Declarant has the right to enter the Lot (i) to complete and repair any Improvements as determined necessary or proper by the Declarant, in its sole discretion, (ii) to comply with requirements for the Recordation of the Map or the grading or construction of the Properties, and (iii) to comply with requirements of applicable governmental agencies. Declarant shall provide reasonable notice to Owner prior to entry into the Owner's Lot under this Subsection except for emergency situations, which shall not require notice. Any damage to the Lot caused by entry under this Subsection shall be repaired by the Declarant. Unless otherwise specified in the initial grant deed of the Unit from the Declarant, this right of entry shall automatically expire ten (10) years from the Recordation of this Declaration.

6.4.3. **Owners.** Each Owner shall permit other Owners, and their representatives, to enter his Lot to perform installations, alterations or repairs to the mechanical or electrical services to a Lot if (a) requests for entry are made in advance; (b) entry is made at a time reasonably convenient to the Owner whose Lot is to be entered; and (c) the entered Lot is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Lot caused by entry under this Subsection shall be repaired by the entering Owner.

## ARTICLE VII ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

7.1. **PERSONAL OBLIGATION TO PAY ASSESSMENTS.** Each Owner covenants to pay to the Association Assessments established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments, together with late payment penalties, interest, costs, and reasonable attorney fees for the collection thereof, are a charge and a continuing lien on the Lot against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Lot when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner unless expressly assumed by the new Owner or unless the Owner has actual or constructive knowledge of such delinquent Assessments, whether by virtue of the Recordation of a Notice of Delinquent Assessment or receipt from the Association of a certificate pursuant to Section 1368(a)(4) of the California Civil Code.

7.2. **ASSOCIATION FUNDS.** The Association shall establish no fewer than two (2) separate Association Maintenance Funds into which shall be deposited all money paid to the Association and from which disbursements shall be made. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses, (b) an adequate Reserve Fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains, and (c) any other funds which the Association may establish.

**7.3. PURPOSE OF ASSESSMENTS.** The Assessments shall be used exclusively to (a) promote the Owners' welfare, (b) operate, improve and maintain the Common Area, and (c) discharge any other Association obligations under the Declaration. Disbursements from the Operating Fund shall be made by the Association for such purposes as are necessary for the discharge of its responsibilities in this Declaration for the common benefit of all Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in Section 1365.5(c) of the California Civil Code.

**7.4. WAIVER OF USE.** No Owner may exempt himself from personal liability for Assessments, nor release such Owner's Lot from the liens and charges thereof, by waiving use and enjoyment of the Common Area or by abandoning such Owner's Lot.

**7.5. LIMITS ON ANNUAL ASSESSMENT INCREASES.**

**7.5.1. Maximum Authorized Annual Assessment For Initial Year of Operations.** During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Lot in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Properties in the most current Budget filed with and approved by the DRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Lots are represented ("Increase Election"). This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

**7.5.2. Maximum Authorized Annual Assessment For Subsequent Fiscal Years.** During the Fiscal Years following the Fiscal Year in which Annual Assessments commence, the Board may levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year only as follows:

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (i) have distributed the Budget for the current Fiscal Year in accordance with Section 1365(a) of the California Civil Code, or (ii) obtain the approval of Owners casting a majority of votes in an Increase Election; or

(b) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Owners casting a majority of votes in an Increase Election.

This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

**7.5.3. Supplemental Annual Assessments.** If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount

less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.5, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot. To minimize the need for frequent adjustments in the amount of the Annual Assessments during the development of the Properties, the Board may stabilize the amount of the Annual Assessments invoices to the Owners at a level amount calculated to defray annual Common Expenses during the time that Annual Assessments are fluctuating due to their periodic annexation of Lots and Common Area.

**7.5.4. Automatic Assessment Increases.** Despite any other provisions of this Section 7.5, on Declarant's annexation of the Annexable Territory, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Common Area identified in the Notice of Addition as a part of the Phase that includes the Annexable Territory so long as (a) the annexation is permitted by the DRE, and (b) the amount of such increase does not result in the levy of an Annual Assessment which is greater than the maximum potential Annual Assessment disclosed in all Final Subdivision Public Reports for the Properties.

**7.5.5. Emergency Situations.** For purposes of Sections 7.5.1, 7.5.2 and 7.7, an "Emergency Situation" is any one of the following:

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

(b) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible where a threat to personal safety on the Properties is discovered; and

(c) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget, including any de-funding of a Local Government Agency which results in the Association's assumption of maintenance and the cost of maintenance of a Maintenance Area. Before imposing or collecting an Assessment pursuant to this Subparagraph (c), the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of the assessment.

**7.6. COMMENCEMENT AND COLLECTION OF ANNUAL ASSESSMENTS.** Upon the first day of the first calendar month following the first Close of Escrow in a Phase, Annual Assessments shall commence as to the Lots in that Phase only. All Annual Assessments shall be assessed uniformly and equally against the Owners and their Lots based on the number of Lots owned by each Owner, except as may be otherwise provided in a Supplemental Declaration. Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Lots for which Annual Assessments have

commenced. 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. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due.

The Board has the power to require that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Properties as a planned development, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

The Board may, at its sole discretion, in accordance with the Budget and Section 1366.1 of the California Civil Code, exempt Declarant, and any other Owner of a Lot on which a Residence has not been constructed, from payment of that portion of the Annual Assessment which is allocated to defraying expenses and reserves directly attributable to the existence and use of the Residence. If granted, such exemption shall remain in effect only until the earlier to occur of (a) the Recordation of a notice of completion of the Residence, or (b) the occupation or use of the Residence, or (c) completion of all Improvements on the Lot that the Association is obligated to maintain.

The Board may, at its sole discretion, exempt each Owner (including Declarant) from paying that portion of any Annual Assessment allocated to defraying expenses and reserves directly attributable to the existence and use of any Improvement on the Common Area the construction of which has not yet been completed. If granted, such exemption shall continue until the earlier to occur of (i) the Recordation of a notice of completion of such Improvement, or (ii) the placement of such Improvement into use.

Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association may charge that expense to the Owner. The Association does not have to apportion the expense among all Owners as a part of Annual Assessments. Each installment of Annual Assessments may be paid to the Association in one check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (1) is less than the amount assessed and (2) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

**7.7. CAPITAL IMPROVEMENT ASSESSMENTS.** The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment to defray, in whole

or in part, the cost of any construction, repair or replacement of a capital Improvement to the Common Area. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners casting a majority of votes at an Increase Election. The Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 7.5.5.

## ARTICLE VIII INSURANCE

**8.1. DUTY TO OBTAIN INSURANCE; TYPES.** The Association shall obtain and keep in effect at all times the following insurance coverages:

**8.1.1. Public Liability.** Adequate public liability insurance (including coverage for medical payments), with limits acceptable to FNMA and as required by Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the activities of the Association and the Owners on the Common Area. The limit of the public liability insurance shall not be less than One Million Dollars (\$1,000,000) for claims arising from a single occurrence for bodily injury, death and property damage.

**8.1.2. Fire and Casualty Insurance.** Fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of all insurable Improvements on the Common Area. The casualty insurance shall not include earthquake coverage unless the Board is directed to obtain earthquake coverage by a majority of the Association's voting power.

**8.1.3. Fidelity Insurance.** Fidelity insurance coverage for any Person handling funds of the Association, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance. The aggregate amount of the fidelity insurance coverage may not be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Lots in the Properties, plus reserve funds.

**8.1.4. Insurance Required by FNMA, GNMA and FHLMC.** Casualty, flood, liability and fidelity insurance meeting the insurance requirements for planned unit developments established by FNMA, GNMA and FHLMC, so long as any of these entities is a Mortgagee or Owner of a Lot in the Properties, except to the extent such coverage is not reasonably available or has been waived in writing by the entity requiring the insurance coverage.

**8.1.5. Other Insurance.** Such other insurance insuring other risks customarily insured by associations managing planned unit developments similar in construction, location and

use. Such additional insurance shall include director's and officer's errors and omissions insurance. Upon hiring employees, the Association shall obtain workers compensation coverage.

8.1.6. **Beneficiaries.** The Association's insurance shall be kept for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insureds, subject, however, to loss payment requirements established in this Declaration.

8.2. **WAIVER OF CLAIM AGAINST ASSOCIATION.** All policies of insurance kept by or for the benefit of the Association and the Owners must provide that the Association and the Owners waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of the Persons.

8.3. **RIGHT AND DUTY OF OWNERS TO INSURE.** Each Owner is responsible for insuring his personal property and all other property and Improvements on his Lot. Nothing in this Declaration precludes any Owner from carrying any public liability insurance he considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

8.4. **NOTICE OF EXPIRATION REQUIREMENTS.** If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten (10) days' prior written notice to any insurance trustee named pursuant to Section 8.5 and to each FNMA servicer who has filed a written request with the carrier for such notice.

8.5. **TRUSTEE FOR POLICIES.** The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for filing claims, all claims must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any Association insurance policies must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent the Board desires, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 9.4. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured,

including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

8.6. **ACTIONS AS TRUSTEE.** Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

8.7. **ANNUAL INSURANCE REVIEW.** The Board shall review the Association's insurance policies at least annually. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Common Area, without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

8.8. **REQUIRED WAIVER.** All of the Association's insurance policies insuring against physical damage must provide, if reasonably possible, for waiver of:

8.8.1. Subrogation of claims against the Owners and tenants of the Owners;

8.8.2. Any defense based on coinsurance;

8.8.3. Any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association;

8.8.4. Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;

8.8.5. Any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

8.8.6. Notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Lot;

8.8.7. Any right to require any assignment of any Mortgage to the insurer;

8.8.8. Any denial of an Owner's claim because of negligent acts by the Association or other Owners; and

8.8.9. Prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

## ARTICLE IX DESTRUCTION OF IMPROVEMENTS

9.1. **RESTORATION OF THE PROPERTIES.** Except as otherwise authorized by the Owners, if any portion of the Properties which the Association is responsible for maintaining is destroyed, the Association shall restore the same to its former condition as promptly as practical. The Association shall use the proceeds of its insurance for reconstruction or repair of the Properties unless otherwise authorized in this Declaration or by the Owners. The Board shall commence such reconstruction promptly. The Properties shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by the Owners. If the insurance proceeds amount to at least ninety-five percent (95%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds amount to less than ninety-five percent (95%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("Conditions to Reconstruction") have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Properties is approved by the Owners, and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("Reconstruction Certificate"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than ninety-five percent (95%) of the estimated cost of restoration and repair, then the Board shall deposit the funds in the Operating Fund.

9.2. **DAMAGE TO RESIDENCES-RECONSTRUCTION.** If all or any portion of any Residence or other Improvements on a Lot is damaged or destroyed by fire or other casualty, the Owner of such Lot shall rebuild, repair or reconstruct the Residence and Improvements in a manner which will restore them substantially to their appearance and condition immediately before the casualty or as otherwise approved by the Design Review Committee. The Owner of any damaged Lot or Residence and the Design Review Committee shall proceed with all due diligence, and the Owner shall cause reconstruction to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. The transfer of a damaged Lot or a Lot with a damaged Residence to another Person will not extend the time allowed in this Section for commencement and completion of reconstruction by the transferee. However, no such transferee will be required to commence or complete reconstruction in less than thirty (30) days from the date the transferee acquired title to the Lot.

9.3. **NOTICE TO OWNERS AND LISTED MORTGAGEES.** The Board, immediately on having knowledge of any damage or destruction affecting a material portion of the Common Area owned in fee simple by the Association, shall promptly notify all Owners and

Mortgagees, insurers and guarantors of first Mortgages on Lots in the Properties who have filed a written request for such notice with the Board.

## **ARTICLE X EMINENT DOMAIN**

The term "taking" as used in this Article means condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

**10.1. CONDEMNATION OF COMMON AREA.** If there is a taking of the Common Area owned in fee simple by the Association, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

**10.2. CONDEMNATION OF LOTS.** If there is a taking of a Lot, the award in condemnation shall be paid to the Owner of the Lot; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Lot, in order of priority.

**10.3. NOTICE TO OWNERS AND MORTGAGEES.** The Board, on learning of any condemnation proceeding affecting a material portion of the Common Area, or any threat thereof, shall promptly notify all Owners and those Mortgagees, insurers and guarantors of Mortgages on Lots in the Properties who have filed a written request for such notice with the Association.

## **ARTICLE XI RIGHTS OF MORTGAGEES**

**11.1. GENERAL PROTECTIONS.** No amendment or violation of this Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering one (1) or more Lots made in good faith and for value, provided that after the foreclosure of any such Mortgage, such Lot(s) will remain subject to this Declaration. For purposes of this Declaration, "first Mortgage" means a Mortgage with first priority over other Mortgages or Deeds of Trust on a Lot, and "first Mortgagee" means the Mortgagee of a first Mortgage. For purposes of any provisions of the Restrictions which require the vote or approval of a specified percentage of first Mortgagees, such vote or approval is determined based on one (1) vote for each Lot encumbered by each such first Mortgage.

**11.2. ADDITIONAL RIGHTS.** In order to induce VA, FHA FHLMC, GNMA and FNMA to participate in the financing of the sale of Lots, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Restrictions, these added provisions control):

11.2.1. **Notices.** Each Mortgagee, insurer and guarantor of a Mortgage encumbering one (1) or more Lots, upon filing a written request for notification with the Board, is entitled to written notification from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Properties or the Lot(s) securing the respective first Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Restrictions, including the payment of assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage, which notice each Owner hereby consents to and authorizes; and (c) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond kept by the Association.

11.2.2. **Right of First Refusal.** Each Owner, including each first Mortgagee of a Mortgage encumbering any Lot who obtains title to such Lot pursuant to (a) the remedies provided in such Mortgage, (b) foreclosure of the Mortgage, or (c) deed or assignment in lieu of foreclosure, is exempt from any "right of first refusal" created or purported to be created by the Restrictions.

11.2.3. **Unpaid Assessments.** Each first Mortgagee of a first Mortgage encumbering any Lot who obtains title to such Lot pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage, shall take title to such Lot free and clear of any claims for unpaid assessments or charges against such Lot which accrued before the time such Mortgagee acquires title to such Lot.

11.2.4. **Association Records.** All Mortgagees, insurers and guarantors of first Mortgages, on written request to the Association, shall have the right to:

- (a) examine current copies of the Association's books, records and financial statements and the Restrictions during normal business hours; and
- (b) receive written notice of all meetings of Owners; and
- (c) designate in writing a representative who shall be authorized to attend all meetings of Owners.

11.2.5. **Payment of Taxes.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area, and the Association shall immediately reimburse first Mortgagees who made such payments.

11.2.6. **Intended Improvements.** All intended Improvements in any Phase other than Phase 1 shall be substantially consistent with the Improvements in Phase 1 in structure type and quality of construction. The requirements of this Section are for the benefit of and may be enforced only by FNMA.

11.2.7. **Contracts.** The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of VA, FHA, FHLMC, FNMA, GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Lots improved with Residences. Each Owner hereby agrees that it will benefit the Association and the Owners, as a class of potential Mortgage borrowers and potential sellers of their Lots, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations. Each Owner hereby authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

## ARTICLE XII ENFORCEMENT

12.1. **ENFORCEMENT OF RESTRICTIONS.** All violations of the Restrictions, other than those described in Sections 12.2 and 12.3 or regulated by Civil Code Section 1375, shall be resolved as follows:

12.1.1. **Violations Identified by the Association.** If the Board or the Design Review Committee determines that there is a violation of the Restrictions, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. If an Owner does not perform corrective action as within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment.

12.1.2. **Violations Identified by an Owner.** If an Owner alleges that another Person is violating the Restrictions (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1354 of the California Civil Code, or litigation for relief.

12.1.3. **Legal Proceedings.** Failure to comply with any of the terms of the Restrictions by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Section 1354 of the California Civil Code and in Sections 12.1.1 and 12.1.2 must first be followed, if they apply.

12.1.4. **Additional Remedies.** The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Restrictions. Such fines or penalties may only be assessed after Notice and Hearing. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against a Lot owned by

any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Lot and shall specify the provision of the Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

12.1.5. **No Waiver.** Failure to enforce any provision of this Declaration does not waive the right to enforce that provision, or any other provision of this Declaration.

12.1.6. **Right to Enforce.** The Association and any Owner may enforce the Restrictions as described in this Article, subject to Section 1354 of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.7. **Limit on Expenditures.** The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of a majority of the voting power of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Section 1354 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the architectural and landscaping control provisions contained in Article V, (c) to collect any unpaid Assessments levied pursuant to the Restrictions, (d) for a claim, the total value of which is less than Five Hundred Thousand Dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

## 12.2. NONPAYMENT OF ASSESSMENTS.

12.2.1. **Delinquency.** Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(d)(2). The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

## 12.2.2. Creation and Release of Lien.

(a) **Priority of Lien.** All liens levied in accordance with this Declaration shall be prior and superior to (i) any declaration of homestead Recorded after the Recordation of this Declaration, and (ii) all other liens, except (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) against the assessed Lot was Recorded.

(b) **Prerequisite to Creating Lien.** Before the Association may place a lien on an Owner's Lot to collect a past due Assessment, the Association shall send a written notice to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges and the method of calculation, any attorneys' fees, (iii) the collection practices used by the Association, and (iv) a statement that the Association may recover the reasonable costs of collecting past due Assessments.

(c) **Notice of Delinquent Assessment.** The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("Notice of Delinquent Assessment") as provided in Section 1367 of the California Civil Code. The Notice of Delinquent Assessment must identify (i) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (ii) the amount of collection costs incurred, including reasonable attorneys' fees, (iii) a sufficient description of the Lot that has been assessed, (iv) the Association's name and address, (v) the name of the Owner of the Lot that has been assessed, and (vi) if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required by Section 2924b of the California Civil Code to the Owner of record of the Lot no later than ten (10) calendar days after Recordation. The lien relates only to the individual Lot against which the Assessment was levied and not to the Properties as a whole.

(d) **Exceptions.** Assessments described in Section 1367(c) of the California Civil Code and Section 2792.26(c) of the California Code of Regulations may not become a lien against an Owner's Lot enforceable by the sale of the Lot under Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

(e) **Release of Lien.** On payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release

as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

**12.2.3. Enforcement of Liens.** The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Lot may be enforced by foreclosure and sale of the Lot after failure of the Owner to pay any Assessment or installment thereof as provided in this Declaration. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Lot at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value for the Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

**12.2.4. Priority of Assessment Lien.** Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Lot does not affect the Assessment lien, except that the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage extinguishes the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer relieves such Lot from liens for any Assessments thereafter becoming due. No Person who obtains title to a Lot pursuant to a judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Lot which became due before the acquisition of title to the Lot by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person. The Association may take such action as is necessary to make any Assessment lien subordinate to the interests of the Department Veterans Affairs of the State of California under its Cal-Vet loan contracts as if the Cal-Vet loan contracts were first Mortgages of record.

**12.2.5. Alternative Dispute Resolution.** An Owner may dispute the Assessments imposed by the Association if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all fees and costs associated with preparing and filing a Notice of Delinquent Assessment (including mailing costs and attorneys' fees not to exceed the maximum amount allowed by law), and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved

through alternative dispute resolution as established in Civil Code Section 1354. The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years unless the Owner and the Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through (d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

12.2.6. **Receivers.** In addition to the foreclosure and other remedies granted the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Lot, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Lot or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Lot, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

12.3. **ENFORCEMENT OF BONDED OBLIGATIONS.** If (a) the Common Area Improvements in any Phase are not completed before issuance of a Final Subdivision Public Report for such Phase by the DRE, and (b) the Association is obligee under a bond or other arrangement ("Bond") required by the DRE to secure performance of Declarant's commitment to complete such Improvements, then the following provisions of this Section will be applicable:

12.3.1. The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area Improvement, then the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

12.3.2. A special meeting of Owners for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the

Board's failure to consider and vote on the question shall be held no fewer than thirty-five (35) nor more than forty-five (45) days after the Board receives a petition for such a meeting signed by Owners representing five percent (5%) of the Association's total voting power. A vote of a majority of the Association's voting power (excluding 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 such decision by initiating and pursuing appropriate action in the Association's name.

**12.4. DISPUTE WITH DECLARANT PARTIES.** The following dispute resolution procedure is implemented for the Properties in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Sections 1-16) which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings. The dispute resolution procedure in this Section is to be interpreted and enforced as authorized by the Federal Arbitration Act. Parties interpreting this Section shall follow the federal court rulings which provide, without limitation, that the Federal Arbitration Act (1) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding substantive or procedural state policies to the contrary, (2) requires that federal and state courts rigorously enforce agreements to arbitrate, and (3) requires that the scope of arbitrable issues be resolved in favor of arbitration. Specifically, this Section is to be interpreted in accordance with Allied-Bruce Terminix Companies, Inc. v. Dobson, 115 S.Ct. 834 (1995), and other federal court rulings. References in this Section to California Code Sections are not to be interpreted as a waiver of rights created under the Federal Arbitration Act.

Any disputes (each, a "Dispute") between (a) the Association or any Owners, and (b) Declarant, or any director, officer, partner, shareholder, member, employee, representatives, contractor, subcontractor, design professional or agent of the Declarant (collectively "Declarant Parties") arising under this Declaration or relating to the Properties, including disputes regarding latent or patent construction defects, but excluding actions taken by the Association against Declarant to collect delinquent Assessments, and any action involving any Common Area completion bonds, where the amount in controversy is greater than Five Thousand Dollars (\$5,000), shall be subject to the following provisions:

**12.4.1. Notice.** Any Person with a Dispute shall give written notice of the Dispute by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 to the party to whom the Dispute is directed ("Respondent") describing the nature of the Dispute and any proposed remedy (the "Dispute Notice").

**12.4.2. Right to Inspect and Correct.** Commencing on the date the Dispute Notice is delivered to the Respondent and continuing until the Dispute is resolved, the Respondent and its representatives have the right to (i) meet with the party alleging the Dispute at a reasonable time and place to discuss the Dispute, (ii) enter the Properties to inspect any areas that are subject to the Dispute, and (iii) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Properties to take and complete the corrective action. Respondent is not obligated to take any

corrective action. Respondent, with the consent of Declarant, has the right to select the corrective action Respondent believes is appropriate. The right to inspect and correct granted in this Section is in addition to the rights granted in California Civil Code Section 1375 ("Calderon Act"). The procedures established in the Calderon Act may be implemented, before, during or after the procedure in this Section is implemented.

12.4.3. **Mediation.** If the Dispute is not resolved within ninety (90) days after the Respondent receives the Dispute Notice, any party may submit the Dispute to mediation by delivering a request for mediation ("Mediation Notice") in the same manner as allowed for delivery of the Dispute Notice. The Dispute shall be mediated pursuant to (i) the American Arbitration Association ("AAA") mediation procedures in existence when the Dispute Notice is delivered, as modified by this Section, or (ii) the mediation procedures of any successor to the AAA in existence when the Dispute Notice is delivered, as modified by this Section, or (iii) mediation procedures approved by the parties of any entity offering mediation services that is acceptable to the parties to the Dispute ("Parties"). Except as provided in Section 12.4.5, no Person shall commence litigation regarding a Dispute without complying with this Section 12.4.3.

(a) **Selection of Mediator.** The mediator shall be selected within sixty (60) days from delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No Person shall serve as a mediator in any Dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(b) **Position Letter; Pre-Mediation Conference.** No later than sixty (60) days after selection of the mediator, each party to the Dispute shall submit a letter ("Position Statement") containing (i) a description of the party's position concerning the issues that need to be resolved, (ii) a detailed description of the defects allegedly at issue, and (iii) a suggested plan of repair, remediation or correction. The mediator may schedule a pre-mediation conference. All Parties shall attend unless otherwise mutually agreed. The mediation shall be commenced within twenty (20) days after submittal of all Position Statements and shall be concluded within fifteen (15) days after the mediation began unless either (a) the mediator extends the mediation period, or (b) the Parties mutually agree to extend the mediation period. The mediation shall be held in the County or another place mutually acceptable to the parties.

(c) **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate to achieve the goal of settling the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. The mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties agree to and do assume the expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the Parties.

(d) **Application of Evidence Code.** The provisions of California Evidence Code Sections 1115 through 1128 shall be applicable to the mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these sections, including the sections which preclude use of material in future proceedings and the sections which provide for confidentiality of material.

(e) **Parties Permitted at Mediation.** Persons other than the Parties, their liability insurers, Declarant, attorneys for the Parties, the liability insurers and Declarant and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator. Declarant has the right to attend the mediation session even if Declarant is not one of the Parties.

(f) **Record.** There shall be no stenographic, video or audio record of the mediation process.

(g) **Expenses.** Each Party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator, shall be borne equally by each of Declarant and the Declarant Parties to whom the Dispute is directed, unless the Parties agree otherwise. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

12.4.4. **Judicial Reference.** If a Dispute remains unresolved after the mediation required by 12.4.3 is completed, any of the Parties may file a lawsuit, provided that the Association must obtain the vote or written consent of Owners other than Declarant who represent not less than sixty-seven percent (67%) of the Association's voting power (excluding the voting power of Declarant) prior to filing a lawsuit in a Dispute with Declarant or a Declarant Party. All lawsuits regarding Disputes must be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1, as modified by this 12.4.4. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No party shall be required to participate in the judicial reference proceeding if all parties against whom such party would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding. The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other Person unless (a) all parties to the judicial reference proceeding consent, or (b) the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected in accordance with 12.4.4(b) solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

(a) **Place.** The proceedings shall be heard in the County.

(b) **Referee.** The referee shall be a retired judge who served on the Superior Court of the State of California in the County with substantial experience in the type of matter in dispute and without any relationship to the Parties or interest in the Properties, unless the Parties agree otherwise. The parties to the judicial reference proceeding shall meet to select the referee no later than thirty (30) days after service of the initial complaint on all defendants named in the complaint. Any dispute regarding selecting the referee shall be resolved by the court in which the complaint is filed.

(c) **Commencement and Timing of Proceeding.** The referee shall commence the proceeding at the earliest convenient date and shall conduct the proceeding without undue delay.

(d) **Pre-hearing Conferences.** The referee may require pre-hearing conferences.

(e) **Discovery.** The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (i) witness lists, (ii) expert witness designations, (iii) expert witness reports, (iv) exhibits, (v) reports of testing or inspections, and (vi) briefs. Any other discovery authorized in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of all parties to the judicial reference proceeding.

(f) **Motions.** The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. The referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(g) **Record.** A stenographic record of the hearing shall be made which shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(h) **Statement of Decision.** The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision pursuant to California Code of Civil Procedure Section 632. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.

(i) **Remedies.** The referee may grant all legal and equitable remedies and award damages in the judicial reference proceeding.

(j) **Post-hearing Motions.** The referee may rule on all post-hearing motions in the same manner as a trial judge.

(k) *Appeals.* The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the Court.

(l) *Expenses.* Each party shall bear its own attorneys' fees and cost incurred in connection with the judicial reference proceeding. All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of the stenographic record, shall be advanced equally by each of Declarant and the Declarant Parties to whom the Dispute is directed. However, the referee shall have the power to reallocate such fees and costs among the Parties in the referee's final ruling. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between Declarant and the Declarant Party.

12.4.5. **Statutes of Limitation.** Nothing in this Section 12.4 shall be considered to toll, stay, reduce or extend any applicable statute of limitations, provided, however, that Declarant, the Declarant Parties, the Association and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 12.4.

12.4.6. **Agreement to Dispute Resolution; Waivers of Jury Trial.**  
**DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 12.4 TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 12.4, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY, PURSUANT TO THE FEDERAL ARBITRATION ACT. THIS SECTION 12.4 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.**

12.4.7. **Civil Code Section 1354.** Section 12.4 governs only the resolution of Disputes with Declarant Parties and shall not affect the subject matter of such Disputes. Unless the subject matter of a Dispute expressly involves enforcement of the Restrictions, such Dispute shall not be governed by the provisions of California Civil Code Section 1354, or any successor statute. Enforcement of Section 12.4 shall not entitle the prevailing party in any Dispute with a Declarant Party to recover attorney's fees or costs.

### **ARTICLE XIII DURATION AND AMENDMENT**

13.1. **DURATION.** This Declaration shall continue in full force unless a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 13.2 is Recorded.

## 13.2. TERMINATION AND AMENDMENT.

13.2.1. **Amendment Approval.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than an Amendment described in Section 15.7) must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (i) sixty-seven percent (67%) of the voting power of each Class of the Association and (ii) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment.

13.2.2. **Mortgagee Consent.** In addition to the consents required by Section 13.2.1, the Mortgagees of fifty-one percent (51%) of the first Mortgages on all the Lots in the Properties who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Declaration which is of a material nature, as follows:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of first Mortgages.

(b) Any amendment which would require a Mortgagee after it has acquired a Lot through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Lot not being separately assessed for tax purposes.

(d) Any amendment relating to (i) the insurance provisions in Article VIII, (ii) the application of insurance proceeds in Article IX, or (iii) the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Lot is proposed to be transferred.

13.2.3. **Termination Approval.** Termination of this Declaration requires approval of the Owners as provided in Section 13.2.1.

13.2.4. **Notice to Mortgagees.** Each Mortgagee of a first Mortgage on a Lot in the Properties which receives proper written notice of a proposed amendment or termination of this Declaration with a return receipt requested is deemed to have approved the amendment or

termination if the Mortgagee fails to submit a response to the notice within thirty (30) days after the Mortgagee receives the notice.

**13.2.5. Certificate.** A copy of each amendment must be certified by at least two (2) Association officers. The amendment becomes effective when a Certificate of Amendment is Recorded. The certificate, signed and sworn to by two (2) Association officers that the requisite number of Owners and Mortgagees have approved the amendment, when Recorded, is conclusive evidence of that fact. The Association shall keep in its files for at least four (4) years the record of all such approvals. The certificate reflecting any termination or amendment which requires the written consent of any of the Mortgagees of first Mortgages must include a certification that the requisite approval of such first Mortgagees was obtained.

**13.2.6. Unilateral Amendment by Declarant.** Notwithstanding any other provisions of this Section, at any time prior to the first Close of Escrow in Phase 1, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. Notwithstanding any other provisions of this Section, Declarant (for so long as Declarant owns any portion of the Properties or the Annexable Territory) may unilaterally amend this Declaration by Recording a written instrument signed by Declarant in order to (i) conform this Declaration to applicable law, (ii) conform this Declaration to the requirements of VA, FHA, DRE, FNMA, GNMA, FHLMC, the County or the County, (iii) correct typographical errors, (iv) change any exhibit to this Declaration or portion of an exhibit depicting property that is not part of a Phase for which assessments have commenced, and (v) change any exhibit to this Declaration or portion of an exhibit to conform to as-built conditions.

**13.2.7. Amendment by the Board.** Notwithstanding any other provisions of this Section, the Board may amend this Declaration by Recording a written instrument signed by two officers of the Association certifying that the Board approved the amendment in order to (i) conform this Declaration to applicable law, (ii) correct typographical errors, and (iii) change any exhibit to this Declaration or portion of an exhibit to conform to as-built conditions. So long as Declarant owns any portion of the Properties or the Annexable Territory, the Board must obtain Declarant's consent to any amendment the Board approves pursuant to this Section.

#### **ARTICLE XIV GENERAL PROVISIONS**

**14.1. MERGERS OR CONSOLIDATIONS.** In a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Properties, together with the covenants and restrictions established on any other property, as one (1) plan.

14.2. **NO PUBLIC RIGHT OR DEDICATION.** Nothing in this Declaration is a gift or dedication of all or any part of the Properties to the public, or for any public use.

14.3. **NOTICES.** Except as otherwise provided in this Declaration, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-Owners, or any general partner of a partnership owning a Lot, constitutes delivery to all Owners. Personal delivery of such notice to any officer or agent for the service of process on a corporation or limited liability company constitutes delivery to the corporation or limited liability company. Such notice may also be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address has been furnished, to the street address of such Owner's Lot. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Owners or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed and circulated to all Owners.

14.4. **CONSTRUCTIVE NOTICE AND ACCEPTANCE.** Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties consents and agrees to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such person acquired an interest in the Properties.

## ARTICLE XV DECLARANT'S RIGHTS AND RESERVATIONS

If there is a conflict between any other portion of the Restrictions and this Article, this Article shall control.

15.1. **CONSTRUCTION RIGHTS.** Declarant has the right to (a) subdivide or re-subdivide the Properties, (b) complete or modify Improvements to and on the Common Area or any portion of the Properties owned or leased solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Properties and the Annexable Territory, including designating and redesignating Phases, reshaping the Lots and Common Area, and constructing Residences of larger or smaller sizes, values, and of different types, and (e) construct such additional Improvements as Declarant considers advisable in the course of development of the Properties so long as any Lot in the Properties or the Annexable Territory remains unsold.

15.2. **SALES AND MARKETING RIGHTS.** Declarant's rights under this Declaration include the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing construction and disposing of the Lots and the Annexable Territory. Declarant may use any Lots in the Properties as model home complexes, real estate sales offices or leasing offices.

**15.3. CREATING ADDITIONAL EASEMENTS.** At any time before acquisition of title to a Lot in the Properties by a purchaser from Declarant, Declarant has the right to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the Properties' proper development and disposal.

**15.4. ARCHITECTURAL RIGHTS.** Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration need not seek or obtain Design Review Committee approval of any Improvements constructed anywhere on the Properties by Declarant or such Person. Declarant may exclude portions of the Properties from jurisdiction of the Design Review Committee in the applicable Notice of Addition or Supplemental Declaration. Declarant, may, at its option, establish an additional design review committee for any area exempted from the jurisdiction of the Design Review Committee.

**15.5. USE RESTRICTION EXEMPTION.** Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration is exempt from the restrictions established in Article II.

**15.6. ASSIGNMENT OF RIGHTS.** Declarant may assign its rights under the Restrictions to any successor in interest to any portion of Declarant's interest in the Properties by a written assignment.

**15.7. AMENDMENTS.** No amendment may be made to this Article without the prior written approval of Declarant. At any time before the first Close of Escrow in Phase 1, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. For so long as Declarant owns any portion of the Properties or the Annexable Territory, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant to (a) conform this Declaration to the rules, regulations or requirements of VA, FHA, DRE, FNMA, GNMA or FHLMC, (b) amend Article III, (c) amend any of the Exhibits to this Declaration that depict portions of the Properties in a Phase in which Assessments have not commenced, (d) comply with any laws, and (e) correct any typographical errors.

**15.8. EXERCISE OF RIGHTS.** Each Owner grants an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

**15.9. USE OF PROPERTIES.** Declarant and its prospective purchasers of Lots are entitled to the nonexclusive use of the Common Area owned in fee simple by the Association without further cost for access, ingress, egress, use or enjoyment, to (a) show the Properties to prospective purchasers, (b) dispose of the Properties as provided in this Declaration, and (c) develop and sell the Annexable Territory. Declarant, and prospective purchasers, are also entitled to the nonexclusive use of any portions of the Properties which are private streets, drives and walkways for construction access and accommodating vehicular and pedestrian traffic to and from

the Properties and the Annexable Territory. The use of the Common Area by Declarant may not unreasonably interfere with the use thereof by the other Owners.

**15.10. PARTICIPATION IN ASSOCIATION.** The Association shall provide Declarant with written notice of the transfer of any Lot and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until the later to occur of the date on which Declarant (a) no longer owns a Lot in the Properties or (b) cannot unilaterally annex property to the Properties, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings ("Declarant's Representative"). The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

**15.11. DECLARANT APPROVAL OF ACTIONS.** Until Declarant no longer owns any Lots in the Properties or the Annexable Territory, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

- (a) Any amendment or action requiring the approval of first Mortgagees;
- (b) The annexation to the Properties of real property other than the Annexable Territory pursuant to Section 16.2;
- (c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant;
- (d) Any significant reduction of Association maintenance or other services; or
- (e) Any modification or termination of any provision of the Restrictions benefitting Declarant or which would impair or diminish Declarant's rights to complete the Properties or the Annexable Territory or sell or lease dwellings therein.

**15.12. MARKETING NAME.** The Properties shall be marketed under the general name "WOODS COVE." Declarant may change the marketing name of the Properties or designate a different marketing name for any Phase at any time in Declarant's sole discretion. Declarant shall notify the DRE of any change in or addition to the marketing name or names of the Properties or any Phase.

**ARTICLE XVI  
ANNEXATION OF ADDITIONAL PROPERTY**

Additional real property may be annexed to the Properties and become subject to this Declaration by any of the following methods:

**16.1. ADDITIONS BY DECLARANT.** Declarant may add the Annexable Territory to the Properties and bring such added territory under the general plan of this Declaration without the approval of the Association, the Board, or Owners, so long as Declarant owns any portion of the Annexable Territory.

**16.2. OTHER ADDITIONS.** Additional real property may be annexed to the Properties and brought under the general plan of this Declaration upon the approval by vote or written consent of Members entitled to exercise no less than two-thirds (2/3) of the Association's voting power.

**16.3. RIGHTS AND OBLIGATIONS-ADDED TERRITORY.** Subject to the provisions of Section 16.4, when a Notice of Addition containing the provisions required by this Section is Recorded, all provisions in this Declaration will apply to the real property described in such Notice of Addition (the "Added Territory") in the same manner as if the real property were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the Owners, lessees and occupants of Lots in the Added Territory, as well as in the property originally subject to this Declaration, will be the same as if the Added Territory were originally covered by this Declaration. After the first day of the month following the first Close of Escrow in the Added Territory, the Owners of Lots located in the Added Territory shall share in the payment of Assessments to the Association. Voting rights attributable to the Lots in the Added Territory do not vest until Annual Assessments have commenced on such Lots.

**16.4. NOTICE OF ADDITION.** The additions authorized under Sections 16.1 and 16.2 must be made by Recording a Notice of Addition which will extend the general plan of this Declaration to such Added Territory. The Notice of Addition for any addition under Section 16.1 must be signed by Declarant. The Notice of Addition for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify that the Owner approval required under Section 16.2 was obtained. On Recordation of the Notice of Addition, the Added Territory will be annexed to and constitute a part of the Properties and will become subject to this Declaration; the Owners of Lots in the Added Territory will automatically acquire Membership. No Notice of Addition or Supplemental Declaration may revoke the covenants, conditions, restrictions, reservation of easements, or equitable servitudes in this Declaration as the same pertain to the real property originally covered by this Declaration. In a Notice of Addition under Section 16.1, Declarant shall have the right, if it determines in the exercise of its sole discretion that the Added Territory will not benefit from Improvements or services which are Common Expenses of the Association, to designate that such Common Expense items will not be shared by the Added Territory, provided that such designation is also identified in the current Association Budget approved by the DRE for the Added Territory annexed, and provided that such

designation does not result in an increase in Common Assessments in excess of the limit set in this Declaration.

**16.5. DEANNEXATION AND AMENDMENT.** Declarant may amend a Notice of Addition or delete all or a portion of a Phase from coverage of this Declaration and the Association's jurisdiction so long as Declarant is the owner of all of such Phase and (a) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the applicable Notice of Addition was Recorded, (b) Declarant has not exercised any Association vote with respect to any portion of such Phase, (c) Assessments have not yet commenced with respect to any portion of such Phase, (d) Close of Escrow has not occurred for the sale of any Lot in such Phase, and (e) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase.

***[SIGNATURES ON FOLLOWING PAGE]***



## EXHIBIT A

### LEGAL DESCRIPTION OF ANNEXABLE TERRITORY

All that certain real property in an unincorporated area of the County of Santa Cruz, California, consisting of the following:

#### PARCEL 1 - WOODS COVE TRACT 1339.

Tract No. 1339, as shown on a Subdivision Map filed June 21, 2001 in Volume 100, Page 6, of Maps, in the Office of the Santa Cruz County Recorder, EXCEPTING THEREFROM, the real property described in paragraph A of the Preamble.

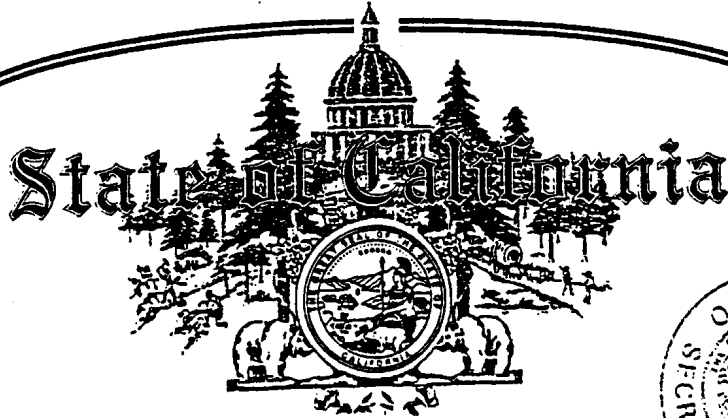
#### PARCEL 2 - CASTLE LOTS

BEING a portion of the lands conveyed to Paradise Park Masonic Club, Inc. by Deed recorded in Volume 114 at Page 216 of Official Records of Santa Cruz County and described as follows:

BEGINNING at an angle point in the easterly boundary of said lands of Paradise Park, being also the westerly boundary of the lands formerly owned by S.H. Cowell Foundation as shown upon that certain Record of Survey Map recorded in Volume 78 of Maps at Page 61, Records of Santa Cruz County, said angle point being marked by a 60" diameter redwood tree with a blaze marked "Cor. 19"; thence from said point of beginning along the common boundary of above mentioned lands, South 05° 43' 03" East 326.22 feet; thence leaving the last mentioned boundary and along the top of a steep slope the following courses and distances, North 55° 00' 00" West 400.00 feet, North 81° 00' 00" West 50.00 feet, North 10° 00' 00" West 105.00 feet; North 08° 00' 00" East 175.00 feet, North 33° 00' 00" East 70.00 feet, North 60° 00' 00" East 125.00 feet and North 10° 00' 00" East 110.21 feet to a point on the said common boundary from which the point of beginning bears South 22° 25' 12" East 453.36 feet distant; thence along the said common boundary South 22° 25' 12" East 453.36 feet to the point of beginning.

**EXHIBIT B**

**ARTICLES OF INCORPORATION OF THE ASSOCIATION**



SECRETARY OF STATE



I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

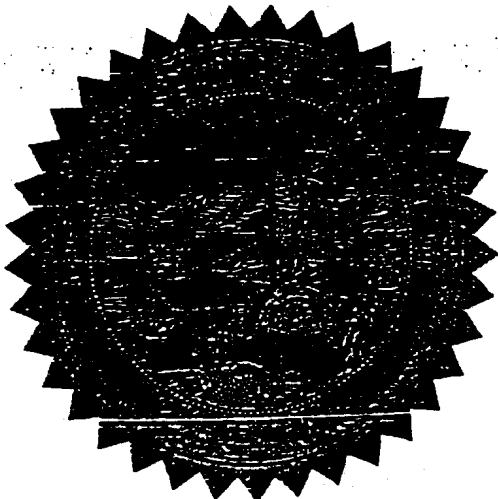
That the attached transcript of  1  page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

*IN WITNESS WHEREOF*, I execute this certificate and affix the Great Seal of the State of California this day of

JUN 20 2001

*Bill Jones*

Secretary of State



ARTICLES OF INCORPORATION  
OF  
TERRAVEL HOMEOWNERS ASSOCIATION

JUN 12 2001 -

BILL JONES, Secretary of State

ONE: The name of this corporation ("Corporation" herein) is TERRAVEL HOMEOWNERS ASSOCIATION.

TWO: This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

THREE: The Corporation's initial agent for service of process is Peter Dunne, whose business address is 42 West Campbell Avenue, Suite 300, Campbell, California 95008.

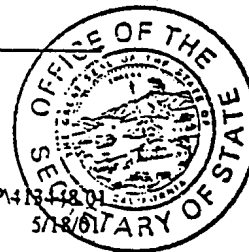
FOUR: The Corporation is organized and operated exclusively as a welfare organization within the meaning of Section 23701f of the California Revenue and Taxation Code and shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Graham Hill Road and Deer Path Road, in an unincorporated area of Santa Cruz, County, California 95060-0000.

FIVE: The classes of Membership and the voting and other rights and privileges of Members shall be as set forth in the Bylaws. So long as there are two classes of Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, and (ii) Members representing a bare majority of the voting power of each class of Members. After conversion of the Class B Membership to Class A Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, (ii) Members representing a bare majority of the total voting power of the Members, and (iii) Members representing a bare majority of the voting power of the Members other than the Subdivider of the Project ("Declarant").

SIX: The Corporation has no managing agent.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on June 4, 2001.

  
PETER DUNNE



**CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF INCORPORATION  
OF  
TERRAVEL HOMEOWNERS ASSOCIATION  
a California Nonprofit Mutual Benefit Corporation**

The undersigned certify that:

1. They are the president and secretary, respectively, of **TERRAVEL HOMEOWNERS ASSOCIATION**, a California nonprofit mutual benefit corporation.

2. Article One of the Articles of Incorporation of this corporation is amended to read as follows:

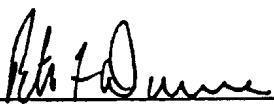
ONE: The name of this corporation ("Corporation" herein) is **WOODS COVE HOMEOWNERS ASSOCIATION**.


3. The foregoing amendment of Articles of Incorporation has been duly approved by the board of directors.

4. The foregoing amendment of Articles of Incorporation has been duly approved by the required vote of the members.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: January 11, 2002

  
\_\_\_\_\_  
Peter Dunne, President

  
\_\_\_\_\_  
Robert DeWaters, Secretary

**EXHIBIT C**

**BYLAWS OF THE ASSOCIATION**

**BYLAWS**  
**OF**  
**WOODS COVE HOMEOWNERS ASSOCIATION**

**TABLE OF CONTENTS**  
**FOR BYLAWS**  
**OF**  
**WOODS COVE HOMEOWNERS ASSOCIATION**

<u>DESCRIPTION</u>	<u>PAGE</u>
ARTICLE I - PLAN OF OWNERSHIP .....	1
1.1 DEFINITIONS AND INTERPRETATION. ....	1
1.2 NAME. ....	1
1.3 APPLICATION. ....	1
ARTICLE II - BOARD OF DIRECTORS .....	1
2.1 NUMBER. ....	1
2.2 QUALIFICATIONS FOR HOLDING OFFICE .....	1
2.3 ELECTION. ....	2
2.4 TERM OF OFFICE .....	2
2.5 VACANCIES. ....	2
2.6 REMOVAL OF DIRECTORS. ....	3
2.7 COMPENSATION .....	3
2.8 POWERS AND DUTIES .....	3
2.9 SPECIAL POWERS AND DUTIES. ....	3
2.10 DISTRIBUTION OF INFORMATION. ....	5
2.11 MEETINGS .....	8
2.12 ACTION WITHOUT MEETING. ....	10
2.13 QUORUM AND ADJOURNMENT. ....	10
2.14 COMMITTEES. ....	10
ARTICLE III - OFFICERS .....	11
3.1 DESIGNATION .....	11
3.2 ELECTION OF OFFICERS. ....	11
3.3 REMOVAL OF OFFICERS. ....	11
3.4 COMPENSATION. ....	11
3.5 PRESIDENT. ....	11
3.6 VICE PRESIDENT. ....	11
3.7 SECRETARY. ....	12
3.8 TREASURER. ....	12

**TABLE OF CONTENTS (Cont.)**

**PAGE**

**DESCRIPTION**

ARTICLE IV - OWNERS .....	12
4.1 VOTING RIGHTS. ....	12
4.2 MAJORITY OF QUORUM. ....	12
4.3 QUORUM. ....	12
4.4 PROXIES. ....	13
4.5 PLACE OF MEETINGS OF OWNERS .....	13
4.6 ANNUAL MEETINGS OF OWNERS. ....	13
4.7 SPECIAL MEETINGS OF OWNERS. ....	13
4.8 NOTICE. ....	13
4.9 RECORD DATES. ....	14
4.10 ADJOURNED MEETINGS. ....	14
4.11 ORDER OF BUSINESS. ....	14
4.12 ACTION WITHOUT MEETING. ....	14
4.13 CONSENT OF ABSENTEES. ....	15
4.14 MINUTES, PRESUMPTION OF NOTICE. ....	15
ARTICLE V - AMENDMENTS .....	15
ARTICLE VI - MISCELLANEOUS .....	16
6.1 CHECKS, DRAFTS AND DOCUMENTS. ....	16
6.2 CONFLICTS. ....	16
6.3 EXECUTION OF DOCUMENTS. ....	16
6.4 AVAILABILITY OF ASSOCIATION DOCUMENTS. ....	16
6.5 FISCAL YEAR. ....	17
ARTICLE VII - NOTICE AND HEARING PROCEDURE .....	17
7.1 INITIAL COMPLAINT. ....	17
7.2 SCHEDULING HEARINGS. ....	17
7.3 CONDUCT OF HEARING. ....	18
7.4 IMPOSITION OF SANCTIONS. ....	18
7.5 LIMITS ON REMEDIES. ....	18
CERTIFICATE OF SECRETARY .....	19

**BYLAWS**  
**OF**  
**WOODS COVE HOMEOWNERS ASSOCIATION**

**ARTICLE I**  
**PLAN OF OWNERSHIP**

1.1 **DEFINITIONS AND INTERPRETATION.** Unless otherwise provided in these Bylaws, the capitalized terms used in these Bylaws have the same meanings as in the Declaration. These Bylaws shall be interpreted in accordance with Section 1.2 of the Declaration.

1.2 **NAME.** The name of the corporation is Woods Cove Homeowners Association. The principal office of the Association shall be located in the County.

1.3 **APPLICATION.** These Bylaws apply to the planned residential development known as Woods Cove, located in the County. All Persons who use the facilities of the Properties in any manner, are subject to the regulations in these Bylaws and in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Woods Cove Recorded in the Official Records of the County against the Properties. Use of any Lot in the Properties signifies acceptance and ratification of these Bylaws.

**ARTICLE II**  
**BOARD OF DIRECTORS**

2.1 **NUMBER.** Until the first annual meeting of the Owners, the property, business and affairs of the Association shall be governed and managed by a Board of Directors composed of three (3) persons. Beginning with the first annual meeting of the Owners, the property, business and affairs of the Association shall be governed and managed by a Board of Directors composed of five (5) persons, each of whom, except for those appointed and serving as first Directors, must be either an Owner or an agent of Declarant until Declarant no longer owns a Lot or any of the Annexable Territory. The authorized number of Directors may be changed by a duly adopted amendment to these Bylaws.

2.2 **QUALIFICATIONS FOR HOLDING OFFICE.** Directors are encouraged to satisfy the following requirements while they serve in office:

- (a) Not be absent from three (3) consecutive meetings of the Board;
- (b) Attend at least seventy five percent (75%) of the Board meetings held each year and attend the entire meeting each time;

(c) Exhibit respect, professionalism and courteous behavior to Owners, committee members, vendors, the Manager and its staff, and any other Persons associated with or retained by the Association;

(d) For non-Declarant Board members, be an Owner in good standing.

## 2.3 ELECTION.

2.3.1 **General Procedure.** At the first annual meeting of the Owners, and at each annual meeting thereafter, the Owners shall elect new Directors to fill vacancies on the Board. If an annual meeting is not held, or all positions on the Board are not filled at the annual meeting, Board members may be elected in accordance with the procedures of Section 2.5 below.

2.3.2 **Voting.** Voting shall be by secret written ballot. An Owner may cumulate his votes for any candidate for the Board in any election in which more than two (2) Directors are to be elected if (a) the candidate's name has been placed in nomination before the voting, and (b) an Owner has given notice at the meeting before the voting of such Owner's intent to cumulate votes. If an Owner cumulates his votes, such Owner may cast a number of votes equal to the Owner's share of the voting power multiplied by the number of Directors to be elected.

2.3.3 **Special Election Requirement.** So long as either (a) Declarant is entitled to exercise a Class B or Class C vote, or (b) Declarant is entitled to exercise a majority of the Association's voting power, not less than twenty percent (20%) of the members of the Board must be elected solely by the votes of Owners other than Declarant.

2.4 **TERM OF OFFICE.** Each Director shall hold office until the earlier to occur of (a) the end of the Director's term of office after a successor has been elected, or (b) his death, resignation, removal or judicial adjudication of mental incompetence. At the first annual meeting, the term of office of the three (3) Directors appointed by Declarant shall be three (3) years and the term of office of the two (2) Directors receiving the highest number of votes shall be two (2) years. The term of office of each Director elected to fill a vacancy created by expiration of a Director's term of office shall be two (2) years. The term of office of each Director elected or appointed to the Board for any other reason shall be the balance of the unserved term. Any person serving as a Director may be reelected. There is no limit on the number of terms which a Director may serve.

2.5 **VACANCIES.** A vacancy on the Board is deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director or if the Owners fail to elect the full number of authorized Directors at any meeting at which a Directors election is to take place. Vacancies on the Board caused by any reason other than the removal of a Director may be filled by either (a) vote of a majority of the remaining Directors, even though they may constitute less than a quorum, or (b) by vote of the Owners at a meeting. Any vacancy caused by the removal of a Director must be filled by a vote of the Owners. Until the Class C Termination Date, a vacancy in the office of a Director appointed by Declarant shall be filled only by an appointee of the Declarant. A Director may resign at any time by giving notice to the

President, the Secretary or the Board. Any Director who ceases to be an Owner, or an agent of Declarant is deemed to have resigned from the Board.

**2.6 REMOVAL OF DIRECTORS.** At any meeting of the Owners, any individual Director or the entire Board may be removed before the expiration of their terms of office with or without cause as follows: (a) for so long as fewer than fifty (50) Lots are included in the Properties, by the vote of Owners representing a majority of the Association's total voting power (including votes attributable to Declarant), and (b) once fifty (50) or more Lots are included in the Properties, by the vote of Owners representing a majority of a quorum of Owners.

However, if the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting. If any Directors are removed, new Directors may be elected at the same meeting. However, any Director elected to office solely by the votes of Owners other than Declarant pursuant to Section 2.3.3 may be removed only by the vote of at least a simple majority of the Association's voting power represented by Owners other than Declarant. Any Director elected to office solely by votes of Declarant may only be removed by Declarant, and the vacancy filled only by a Director elected by the votes of Declarant.

**2.7 COMPENSATION.** Directors may not receive any compensation for their services as Directors unless such compensation is first approved by Owners representing at least a majority of the Association's voting power. However, (a) nothing in these Bylaws precludes any Director from serving the Association in some other capacity and receiving compensation therefor, and (b) any Director may be reimbursed for actual expenses incurred in performance of Association duties, and (c) no officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as a Director of the Association.

**2.8 POWERS AND DUTIES** The Board has the powers and duties necessary to administer the Association's affairs. All the Association's powers shall be exercised by the Board except those powers specifically reserved to the Owners.

**2.9 SPECIAL POWERS AND DUTIES.** Without limiting the scope of the Board's general powers and duties, the Board is granted the following powers and duties:

**2.9.1 Officers, Agents and Employees.** The power and duty to select, appoint and remove all Association officers, agents and employees, to prescribe such powers and duties for them as may be consistent with law and with the Restrictions, to fix their compensation, to require from them such security for faithful service as the Board considers advisable, and to contract to provide them with such indemnification as the Board determines is appropriate.

**2.9.2 Contracts.** The power to enter into contracts. This includes contracts (a) for maintenance, landscaping, and common utilities services, (b) materials, supplies and other Common Expenses relating to the Lots, (c) employing personnel necessary to manage the Properties, including legal and accounting services, and (d) paying for Improvements on the Common Area. The Board may not enter into any contract with a term in excess of one (1) year, without the vote or written consent of Owners representing at least a majority of the Association's voting power, except for the following:

(a) a contract with a public utility company for a term that does not exceed the shortest term for which the public utility company will contract at the regulated rate if the rates charged for the materials or services are regulated by the California Public Utilities Commission;

(b) prepaid casualty or liability insurance policies of not more than three (3) years' duration provided that the policies permit short-term cancellation by the Association;

(c) agreements for television services and equipment, satellite dish services and equipment, communication services and equipment, and comparable technology, services and equipment with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%);

(d) agreements for sale, lease or installation of burglar alarm and fire alarm equipment and related services with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%);

(e) a contract approved by the DRE;

(f) a contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause or penalty or other obligation on ninety (90) days written notice of termination to the other party;

(g) contracts in which the Association enters into litigation or any alternative dispute resolution procedure when the Association's obligation to pay for services is set in whole or in part on a contingency basis only if they are (i) contracts for collection of assessments or other accounts receivable, (ii) or contracts involving evaluation of services, or (iii) contracts with a total amount to be paid by the Association not in excess of Forty Thousand Dollars (\$40,000.00); or

(h) a management contract with a term not to exceed three (3) years, the terms of which have been approved by the VA or FHA.

**2.9.3 Enforcement.** The power to enforce the Restrictions and any agreements entered into by the Association and to impose sanctions against Owners for violating the Restrictions.

**2.9.4 Principal Office, Place of Meetings, Seal.** The power but not the duty to move the Association's principal office from one location to another in the County; to designate any place in the County for holding any meetings of Owners consistent with the provisions of Section 4.5; and to adopt and use a corporate seal and to alter the form of such seal.

**2.9.5 Assessments.** The power and duty to fix and levy Assessments and identify the due date for payment of Assessments. The Board may incur Common Expenses. The Association's funds shall be held in trust for the Owners.

**2.9.6 Insurance.** The power and duty to contract and pay for insurance in accordance with the Declaration, covering and protecting against such damages or injuries as the Board considers advisable (which coverage may include medical expenses of persons injured on the Common Area). The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on the Association's behalf.

**2.9.7 Delegation.** The power but not the duty to delegate its powers according to law.

**2.9.8 Bylaws.** The power and duty to adopt these Bylaws.

**2.9.9 Records.** The power and duty to keep a complete record of Association acts and corporate affairs.

**2.9.10 Sale of Property.** The power but not the duty to sell property of the Association. Approval from Owners representing at least a majority of the Association's voting power must be obtained before property of the Association having an aggregate fair market value greater than five percent (5%) of the Association's budgeted gross expenses for the Fiscal Year is sold in a single Fiscal Year.

**2.9.11 Manager.** The power to engage a professional Manager for the Association at a compensation established by the Board to perform such duties and services as the Board authorizes.

**2.9.12 Agreements with Declarant.** The power but not the duty to negotiate and enter into agreements with Declarant.

**2.10 DISTRIBUTION OF INFORMATION.** The Board shall distribute the following financial information to all Owners (and any Beneficiary, insurer and guarantor of a first Mortgage on request), regardless of the number of Owners or the amount of assets of the Association:

**2.10.1 Budget.** A pro forma operating budget for each Fiscal Year consisting of at least the following information must be distributed not less than forty-five (45) nor more than sixty (60) days before the beginning of the Fiscal Year:

(a) Estimated revenue and Common Expenses computed on an accrual basis.

(b) A summary of the Association's reserves based on the most recent review or study conducted pursuant to Section 1365.5 of the California Civil Code, which must be printed in bold type and include all of the following:

(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component of the Common Area for which the Association is responsible.

(ii) As of the end of the Fiscal Year for which the study is prepared:

1) The current estimate of the amount of cash reserves necessary to restore or maintain the major components of the Common Area for which the Association is responsible ("Estimated Reserves").

2) The current amount of accumulated cash reserves actually set aside to restore or maintain the major components of the Common Area for which the Association is responsible ("Actual Reserves").

(iii) The percentage that the Actual Reserves is of the Estimated Reserves.

(c) A statement of whether the Board has determined or expects that the levy of one or more Capital Improvement or Reconstruction Assessments will be required to repair, replace, or restore any major component of the Common Area for which the Association is responsible or to provide adequate reserves therefor.

(d) A general statement setting forth the procedures used by the Board in calculating and establishing reserves to defray the costs of repair and replacement of, or additions to, major components of the Common Area and facilities for which the Association is responsible. The Board may distribute a summary of the Budget instead of the Budget itself, so long as the Board complies with the provisions of Section 1365(c) of the California Civil Code.

**2.10.2 Financial Report.** A report consisting of the following must be distributed within one hundred twenty (120) days after the close of the Fiscal Year.

(a) A balance sheet as of the end of the Fiscal Year.

- (b) An operating (income) statement for the Fiscal Year.
- (c) A statement of changes in financial position for the Fiscal Year.
- (d) Any information required to be reported under Section 8322 of the California Corporations Code.
- (e) For any Fiscal Year in which the Association's gross income exceeds \$75,000, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.
- (f) A statement of the place where the names and addresses of the current Owners are located.

If the report referred to in Section 2.10.2 is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Association officer stating that the statement was prepared from the Association's books and records without independent audit or review.

**2.10.3 Insurance Information.** The Association shall distribute to all Owners a summary of the Association's property, general liability, and earthquake and flood insurance policies within sixty (60) days before the beginning of the Fiscal Year, that includes all of the following information: (a) the name of the insurer, (b) the type of insurance, (c) the limits of coverage, and (d) the amount of the deductibles, if any.

(a) The Association shall, as soon as reasonably practical, notify the Owners by first-class mail if any of the policies described above have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described above, the Association shall immediately notify the Owners if replacement coverage will not be in effect by the date the existing coverage will lapse.

(b) To the extent that any of the information required to be disclosed is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Owners.

(c) The summary distributed above shall contain, in at least 10-point boldface type, the following statement:

**"This summary of the Association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions in the actual policies of insurance. Any Association member may, on request and provision of reasonable notice, review the Association's**

insurance policies and, on request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association keeps the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur in or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."

**2.10.4 Enforcement Policies.** In addition to financial statements, the Board shall annually distribute within sixty (60) days before the beginning of the Fiscal Year a statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Assessments, including the recording and foreclosing of liens against Lots.

**2.10.5 Accounts.** On at least a quarterly basis, the Board shall: (a) cause to be completed and review a current reconciliation of the Association's operating and reserve accounts, (b) review the current Fiscal Year's actual reserve revenues and expenses compared to the Budget for the then current Fiscal Year, (c) review the income and expense statement for the Association's operating and reserve accounts, (d) review the most current account statements prepared by the financial institutions where the Association keeps its operating and reserve accounts, and (e) fulfill any additional duties established by Civil Code Section 1365.5. The signatures of either (i) two (2) Directors, or (ii) one (1) Director and one (1) Association officer (who is not also a Director) are required for the withdrawal of money from the Association's reserve accounts. As used in this Subsection, the term "reserve accounts" means Budgeted funds that the Board has designated for use to defray the future repair and replacement of, or additions to, those major components of the Common Area which the Association is obligated to maintain.

**2.10.6 Reserve Study.** The Board shall cause a study of the reserve account requirements of the Properties to be conducted in accordance with Section 1365.5(e) of the California Civil Code. As used in this Subsection, "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components of the Common Area which the Association is obligated to maintain.

## **2.11 MEETINGS.**

**2.11.1 Organization Meeting.** The first regular ("organization") meeting of a newly elected Board must be held within ten (10) days of election of the Board, at such place as is fixed and announced by the Directors at the meeting at which such Directors were elected, to organize, elect officers and transact other business. No notice is necessary to the newly elected Directors to hold such meeting; provided that (a) a majority of the whole Board is present when the time and place are announced at the annual meeting and (b) the meeting is held on the same

day and at the same place as the annual meeting of the Owners at which the newly constituted Board was elected.

**2.11.2 Regular Meetings.** Regular meetings may be held at such time and place in the Properties as is determined by a resolution adopted by a majority of a quorum of the Directors; however, regular meetings must be held no less frequently than quarterly. Notice of the time and place of regular meetings of the Board shall be given to each Director at least four (4) days before the date of the meeting. Notices may be given personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means or posted at a prominent place or places in the Common Area.

**2.11.3 Special Meetings.** Special meetings may be called by the President or by any two (2) Directors by posting notice at least four (4) days before such meeting at a prominent place or places in the Common Area or on four (4) days' notice by first-class mail or forty-eight (48) hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The notice must state the time, place and the purpose of the meeting.

**2.11.4 Executive Sessions.** The Board may convene in executive session to discuss and vote upon personnel matters, litigation, matters relating to the formation of contracts with third parties, or Owner discipline. The nature of business to be considered in executive session must first be announced in an open session and must be generally noted in the minutes of the Board. In any matter relating to the discipline of an Owner, the Board shall meet in executive session if requested by that Owner. The Owner may attend the executive session.

**2.11.5 Other Meetings.** Any congregation of a majority of the members of the Board at the same time and place to hear, discuss, or deliberate on any item of business scheduled to be heard by the Board, except those matters that may be discussed in executive session, shall constitute a meeting of the Board. All Owners shall have the right to attend any regular, special or other meeting of the Board, except an executive session. Owners who are not Directors may not participate in any deliberation or discussion at such meetings unless authorized by a vote of a majority of a quorum of the Board. However, at each Board meeting, except for executive sessions, the Board must set aside time for Owners to speak, subject to reasonable limits imposed by the Board.

**2.11.6 Notice to Owners.** Generally, if a meeting of the Board is not a regular or special meeting, Owners shall be given notice of the time and place of the meeting at least four (4) days before the meeting. Notice required by this Section may be given by posting the notice in a prominent place or places in the Common Area, by mail or delivery of the of the notice to each Lot in the Properties, or by newsletter or other similar means of communication. If there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board and which of necessity make it impractical to provide notice to the Owners, then an emergency meeting of the Board may be called by the President or any two other members of the Board without providing notice to the Owners.

**2.11.7 Waiver of Notice.** Before or at any meeting of the Board, any Director may, in writing, waive personal notice of such meeting. Attendance by a Director at any Board meeting waives the requirement of personal notice. If all Directors are present at a Board meeting, no notice to Directors is required and any business may be transacted at such meeting. The transactions of any Board meeting, however called and noticed or wherever held, are valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Owners of such meeting was posted as provided in Sections 2.11.2, 2.11.3 or 2.11.6, and (c) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the Minutes thereof. The Secretary shall file all such waivers, consents and approvals with the Association's records or make them a part of the Minutes of the meeting.

**2.12 ACTION WITHOUT MEETING.** The Board may act without a meeting if all Directors consent in writing to such action. Written consents must be filed with the minutes of the Board. Each action by written consent has the same effect as a unanimous vote of such Directors. Within three (3) days after the written consents of all Directors have been obtained, an explanation of any action taken by unanimous written consent without a meeting must be either (a) posted by the Board in a prominent place or places in the Common Area, or (b) communicated to the Owners by other means the Board determines to be appropriate.

**2.13 QUORUM AND ADJOURNMENT.** Except as otherwise expressly provided in these Bylaws, at all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. At any meeting of the Board when less than a quorum present, the majority of those present may adjourn the meeting to another time. At any such reconvened meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice if a quorum is present.

**2.14 COMMITTEES.** The Board may by resolution establish such committees as it desires, and may establish the purposes and powers of each such committee created. The resolution establishing the committee must (a) provide for the appointment of its members and a chairman, (b) state the purposes of the committee, and (c) provide for reports, termination and other administrative matters as the Board considers appropriate.

## ARTICLE III OFFICERS

3.1 **DESIGNATION.** The Association's principal officers are a President, a Vice President, a Secretary, and a Treasurer, all elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as it determines to be necessary. Officers other than the President need not be Directors. Any person may hold more than one office.

3.2 **ELECTION OF OFFICERS.** The Board shall annually elect the Association's officers at the new Board's organization meeting. Each officer shall hold his office at the pleasure of the Board, until he resigns or is removed, is otherwise disqualified to serve or a successor is elected and qualified to serve.

3.3 **REMOVAL OF OFFICERS.** On an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and a successor elected at any meeting of the Board. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of such notice or at any later time specified therein. Unless specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective.

3.4 **COMPENSATION.** No officer may receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of Owners representing at least a majority of the Association's voting power; however (a) nothing in these Bylaws precludes any officer from serving the Association in some other capacity and receiving compensation therefor, and (b) any officer may be reimbursed for actual expenses incurred in the performance of Association duties. Appointment of any officer does not create contractual rights of compensation for services performed by such officer. No officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as an officer of the Association.

3.5 **PRESIDENT.** The President is the chief executive officer of the Association and shall (a) preside at all Association and Board meetings, (b) have the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power to appoint committees from among the Owners as the President decides is appropriate to assist in the conduct of the Association's affairs, and (c) subject to the control of the Board, have general supervision, direction and control of the Association's business. The President is ex officio a member of all standing committees and has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.6 **VICE PRESIDENT.** The Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled, fails or refuses to act. If neither the President nor the Vice President is available to perform the President's duties, the Board shall appoint another member of the Board to do so on an interim basis. The Vice President has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.7 **SECRETARY.** The Secretary shall (a) keep the Minutes of all meetings of the Board and of the Association at the Association's principal office or at such other place as the Board may order, (b) keep the Association's seal in safe custody, (c) have charge of such books and papers as the Board may direct, (d) in general, perform the duties incident to the office of Secretary, (e) give, or cause to be given, notices of meetings of the Owners and of the Board required by these Bylaws or by law to be given, (f) keep a record book of Owners, listing the names, mailing addresses and telephone numbers of Owners, as furnished to the Association ("Membership Register"), and (g) record in the Membership Register the termination or transfer of ownership by any Owner, together with the date of the transfer. The Secretary has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.8 **TREASURER.** The Treasurer is the Association's chief financial officer and is responsible for Association funds. The Treasurer shall (a) keep, or cause to be kept, full and accurate accounts and tax and business records of the Association, including accounts of all assets, liabilities, receipts and disbursements, (b) be responsible for the deposit of all funds in the name of the Association in such depositories as the Board designates, (c) disburse the Association's funds as ordered by the Board, and (d) render to the President and Directors, on request, an account of all transactions as Treasurer and of the Association's financial condition. The Treasurer has such other powers and duties as may be prescribed by the Board or these Bylaws.

#### ARTICLE IV OWNERS

4.1 **VOTING RIGHTS.** The Association has three (3) classes of voting Membership, as described in the Declaration. Except as provided in Section 2.3.3, any provision of the Bylaws which requires the vote or written consent of a specified percentage of the Association's voting power before action may be undertaken (i.e., other than actions requiring merely the vote or written consent of a majority of a quorum) requires the approval of such specified percentage of (a) each class of Membership so long as a Class B Membership exists, and (b) both the Association's total voting power and the Association's voting power represented by Owners other than Declarant.

4.2 **MAJORITY OF QUORUM.** Unless otherwise provided in the Restrictions, any action which may be taken by the Association may be taken by a majority of a quorum of the Owners.

4.3 **QUORUM.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least twenty-five percent (25%) of the Association's voting power constitutes a quorum of the Membership. Owners present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, despite the withdrawal of enough Owners to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of a quorum. If a meeting is actually attended, in person or by

proxy, by Owners having less than one-third (1/3) of the Association's voting power, then no matter may be voted on except matters which were generally described in the notice of the meeting. No action by the Owners on any matter is effective if the votes cast in favor are fewer than the minimum number of votes required by the Restrictions to approve the action.

4.4 **PROXIES.** Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary in advance of each meeting. Every proxy is revocable and automatically ceases after completion of the meeting for which the proxy was filed. Any form of proxy or written ballot distributed by any Person to the Owners must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the Owner specifies a choice, the vote shall be cast in accordance with that choice. The proxy must also identify the person authorized to exercise the proxy and the length of time it will be valid. No proxy is valid with respect to a vote on any matter described in Section 7613(g) of the California Corporations Code unless the general nature of the proposal was described in the proxy.

4.5 **PLACE OF MEETINGS OF OWNERS.** Meetings of the Owners shall be held on the Properties, or such other suitable place as proximate thereto as practical and convenient to the Owners, as designated by the Board.

4.6 **ANNUAL MEETINGS OF OWNERS.** The first annual meeting of Owners shall be held within six (6) months after the Close of Escrow for the sale of the first Lot in Phase. Thereafter, the annual meetings shall be held on or about the anniversary date of the first annual meeting. Each first Mortgagee may designate a representative to attend all annual meetings.

4.7 **SPECIAL MEETINGS OF OWNERS.** The Board shall call a special meeting of the Owners (a) as directed by resolution of a majority of a quorum of the Board, (b) by request of the President of the Association, or (c) on receipt of a petition signed by Owners representing at least five percent (5%) of the Association's total voting power. The Secretary shall give notice of any special meeting within twenty (20) days after adoption of such resolution or receipt of such request or petition. The notice must state the date, time and place of the special meeting and the general nature of the business to be transacted. The special meeting must be held not less than thirty-five (35) nor more than ninety (90) days after adoption of such resolution or receipt of such request or petition. No business may be transacted at a special meeting except as stated in the notice. Each first Mortgagee may designate a representative to attend all special meetings.

4.8 **NOTICE.** The Secretary shall send to each Owner of record, and to each first Mortgagee who has filed a written request for notice with the Secretary, a notice of each annual or special meeting. The notice must be sent by first-class mail, at least ten (10) but not more than thirty (30) days before the meeting. The notice must state the purpose for the meeting as well as the day, hour and place where it is to be held. The notice may establish time limits for speakers and nominating procedures for the meeting. The notice must specify those matters the Board intends to present for action by the Owners, but, except as otherwise provided by law, any proper matter may be presented for action at the meeting. The notice of any meeting at which Directors

are to be elected must include the names of all nominees when the notice is given to the Owners. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, forty-eight (48) hours after the notice has been deposited in a regular depository of the United States mail. Such notice must be posted in a conspicuous place on the Common Area and is deemed served on an Owner on posting if no address for such Owner has been then furnished the Secretary.

Notwithstanding any other provision of these Bylaws, approval by the Owners of any of the following proposals, other than by unanimous approval of those Owners entitled to vote, is not valid unless the general nature of the proposal was stated in the notice or in any written waiver of the notice: (a) removing a Director without cause; (b) filling vacancies on the Board; (c) approving a contract or transaction between the Association and one or more Directors, or between the Association and any entity in which a Director has a material financial interest; (d) amendment of the Articles; or (e) electing to wind up and dissolve the Association.

**4.9 RECORD DATES.** The Board may fix a date in the future as a record date for determining which Owners are entitled to notice of any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for notice to Owners, the record date for notice is the close of business on the business day preceding the day on which notice is given. In addition, the Board may fix a date in the future as a record date for determining the Owners entitled to vote at any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for determining Owners entitled to vote, Owners on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

**4.10 ADJOURNED MEETINGS.** If a quorum is not present at the time and place established for a meeting, a majority of the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the original meeting date, at which meeting the quorum requirement is the presence in person or by proxy of Owners holding at least twenty-five percent (25%) of the Association's voting power. Such an adjourned meeting may be held without the notice required by these Bylaws if notice thereof is given by announcement at the meeting at which such adjournment is taken.

**4.11 ORDER OF BUSINESS.** Meetings of Owners must be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. The order of business at all meetings of the Owners is as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of election (at annual meetings or special meetings held for such purpose); (g) election of Directors (at annual meetings or special meetings held for such purpose); (h) unfinished business; and (i) new business.

**4.12 ACTION WITHOUT MEETING.** Except for election of Directors, any action which may be taken at a meeting of the Owners may be taken without a meeting by written ballot

of the Owners. Ballots must be solicited in the same manner as provided in these Bylaws for giving of notice of meetings to Owners. Such solicitations must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, and (c) the time by which ballots must be received to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Owner specifies a choice, the vote shall be cast in accordance therewith. Receipt within the time period specified in the solicitation of (i) ballots which equal or exceed the quorum which would be required if the action were taken at a meeting, and (ii) approvals which equal or exceed the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot.

**4.13 CONSENT OF ABSENTEES.** The actions taken at any meeting of Owners, however called and noticed, are valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present either in person or by proxy, and (b) either before or after the meeting, each of the Owners not present in person or by proxy signs (i) a written waiver of notice, (ii) a consent to the holding of such meeting, or (iii) an approval of the minutes thereof. The Secretary shall file all such waivers, consents or approvals with the corporate records or make them a part of the minutes of the meeting.

**4.14 MINUTES, PRESUMPTION OF NOTICE.** Minutes or a similar record of the proceedings of meetings of Owners, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters described therein. A recitation in the Minutes executed by the Secretary that proper notice of the meeting was given constitutes prima facie evidence that such notice was given.

## ARTICLE V AMENDMENTS

These Bylaws may be amended by the vote or written consent of Owners representing at least (a) a majority of the voting power of each class of the Owners, and (b) a majority of the Association's voting power represented by Owners other than Declarant; provided that the specified percentage of each class of Owners necessary to amend a specific provision of these Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. These Bylaws may be amended by a majority of the entire Board, (i) at any time before the Close of Escrow for the sale of the first Lot, or (ii) if the amendment is within the Board's power to adopt without Owner approval pursuant to the California Corporations Code and either (a) the proposed amendment conforms the Bylaws to California law or the requirements of VA, FHA, DRE, FNMA, GNMA or FHLMC, or (b) the proposed amendment corrects a typographical error in the Bylaws. Any amendment to these Bylaws which materially affects matters listed in Article XII or Section 13.2 of the Declaration must be approved by the Beneficiaries of that percentage of first Mortgages on the Lots which is specified in the affected provision of Article XII or Section 13.2 of the Declaration, respectively. If an amendment to these Bylaws materially affects matters listed in both Article XII and Section 13.2 of the

Declaration, the amendment must be approved pursuant to the requirements of both Article XII and Section 13.2. So long as there exists a Class B Membership, and the VA or FHA has made or is insuring a Mortgage on a Lot in the Properties, the prior approval of VA or FHA (whichever entity has made or is insuring a Mortgage) is required for any amendment to these Bylaws to (1) terminate the Bylaws, (2) dissolve the Association (except pursuant to merger or consolidation), or (3) convey the Common Area. A draft of the proposed amendment must be submitted to VA and FHA for approval before its approval by the Membership.

## ARTICLE VI MISCELLANEOUS

**6.1 CHECKS, DRAFTS AND DOCUMENTS.** All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association must be signed or endorsed in the manner and by the person or persons the Board designates by resolution, subject to the requirements of Section 2.10.5 for withdrawing money from the Association's reserve accounts.

**6.2 CONFLICTS.** If any of these Bylaws conflict with any laws of the State of California, such conflicting Bylaws shall be void on final court determination to such effect, but all other Bylaws shall remain in full force. In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**6.3 EXECUTION OF DOCUMENTS.** The Board may authorize any officer or officers, agent or agents to enter into any contract or execute any instrument in the name and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent, committee member or employee may bind the Association by any contract or pledge its credit or render it liable for any purpose in any amount.

### 6.4 AVAILABILITY OF ASSOCIATION DOCUMENTS.

**6.4.1 Records To Be Maintained.** The Association shall keep at its principal office (or at such other place in or near the Properties as the Board may prescribe) the Restrictions and the Association's books of account; minutes of meetings of Owners, the Board and committees; and the Membership Register (collectively, the "Association Documents"), each of which shall be made available for inspection and copying by any Owner or the Owner's duly appointed representative for a purpose reasonably related to the Owner's interest as an Owner.

**6.4.2 Limits on Availability.** The Board may establish reasonable rules regarding (a) notice to be given to the custodian of the Association Documents by the Owner desiring to make the inspection. (b) hours and days of the week when such an inspection may be made, and (c) payment of the cost of copying any of the Association Documents requested by an Owner; provided that every Director may at any reasonable time inspect all Association

Documents and the physical properties owned or controlled by the Association, and make extracts and copies of documents.

**6.4.3 Time of Availability.** The minutes, minutes that are proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board (other than an executive session) must be available to Owners within thirty (30) days of the meeting. The minutes, proposed minutes or summary minutes must be distributed to any Owner on request and on reimbursement of the Association's cost in making that distribution.

**6.4.4 Distribution to Owners.** No later than ten (10) days after the Association receives written request from any Owner, the Association shall provide to that Owner a copy of each of the documents listed in California Civil Code Section 1368(a) that have been requested by the Owner. Owners must be notified in writing when the budget required in Section 2.10.1 is distributed or at the time of any general mailing to the entire Association Membership of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

**6.5 FISCAL YEAR.** The Board shall select the Association's Fiscal Year. The Fiscal Year is subject to change as the Board determines.

## ARTICLE VII NOTICE AND HEARING PROCEDURE

**7.1 INITIAL COMPLAINT.** Persons who believe a violation of the Restrictions has occurred may file a complaint with a Person designated by the Board on a form approved by the Board. The Board will commence the enforcement process. In its discretion, the Board may issue one or two violation letters to the Person alleged to have committed the violation ("respondent") or set a hearing described in Section 7.2 below. The Board may direct the Manager to assist the Board in any of the steps the Board chooses to take in enforcing the Restrictions except that decisions made at hearings must be made by the Board.

**7.2 SCHEDULING HEARINGS.** A hearing before the Board to determine whether a sanction should be imposed may be initiated by the Board after receipt of at least one complaint. To initiate a hearing, the Board must deliver to the respondent a notice which includes the following:

**7.2.1 Complaint.** A written statement setting forth in ordinary and concise language the acts or omissions with which the respondent is charged,

**7.2.2 Basis for Violation.** A reference to the specific provisions of the Restrictions which the respondent is alleged to have violated,

**7.2.3 Hearing Schedule.** The date, time and place of the scheduled hearing,

**7.2.4 Sanctions.** A list of sanctions which may be imposed at the hearing.

The date for the hearing may be no less than fifteen (15) days after the date the notice of hearing is mailed or delivered to the respondent. The respondent is entitled to attend the hearing, submit a statement of defense to the Board in advance of the hearing, or present a statement of defense and supporting witnesses at the hearing. If the respondent does not attend the hearing, the respondent waives these rights.

**7.3 CONDUCT OF HEARING.** The Board shall conduct the hearing in executive session, affording the respondent a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard must be placed in the minutes of the meeting. Such proof is adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Association officer or Board member who mailed or delivered such notice. The record of the meeting must contain a written statement of the results of the hearing and the sanction, if any, imposed.

**7.4 IMPOSITION OF SANCTIONS.** After affording the respondent an opportunity for a hearing before the Board, the Board may impose any one or more of the following sanctions: (a) levy a Special Assessment as authorized in the Declaration; (b) suspend or condition the respondent's right to use any recreational facilities the Association owns, operates or maintains commencing on a date in the future selected by the Board; (c) suspend the respondent's voting privileges established under the Declaration; (d) enter upon a Lot to perform maintenance which, according to the Declaration, is the responsibility of the respondent; or (e) record a notice of noncompliance if allowed by law. Any suspension of Membership privileges may not be for a period of more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent) may be imposed for so long as the violation continues. Written notice of any sanctions to be imposed must be delivered to the respondent personally, by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means, via first class mail or certified mail return receipt requested, or any combination of the foregoing. No action against the respondent arising from the alleged violation may take effect prior to five (5) days after the hearing.

**7.5 LIMITS ON REMEDIES.** The Board's failure to enforce the Restrictions does not waive the right to enforce them. The remedies provided by the Restrictions are cumulative and not exclusive. However, any individual Owner must exhaust all available internal Association remedies prescribed by the Restrictions before that Owner may resort to a court of law for relief with respect to any alleged violation of the Restrictions by another Owner.


**CERTIFICATE OF SECRETARY**

I, the undersigned, certify that:

1. I am the duly elected and acting Secretary of WOODS COVE HOMEOWNERS ASSOCIATION, a California nonprofit corporation ("Association"); and

2. The foregoing Bylaws comprising 20 pages including this page constitute the Bylaws of the Association duly adopted by Consent of Directors in Lieu of First Meeting dated February 5, 2002.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Association this 5<sup>th</sup> day of February, 2002.

  
\_\_\_\_\_  
Robert DeWaters, Secretary

(SEAL)

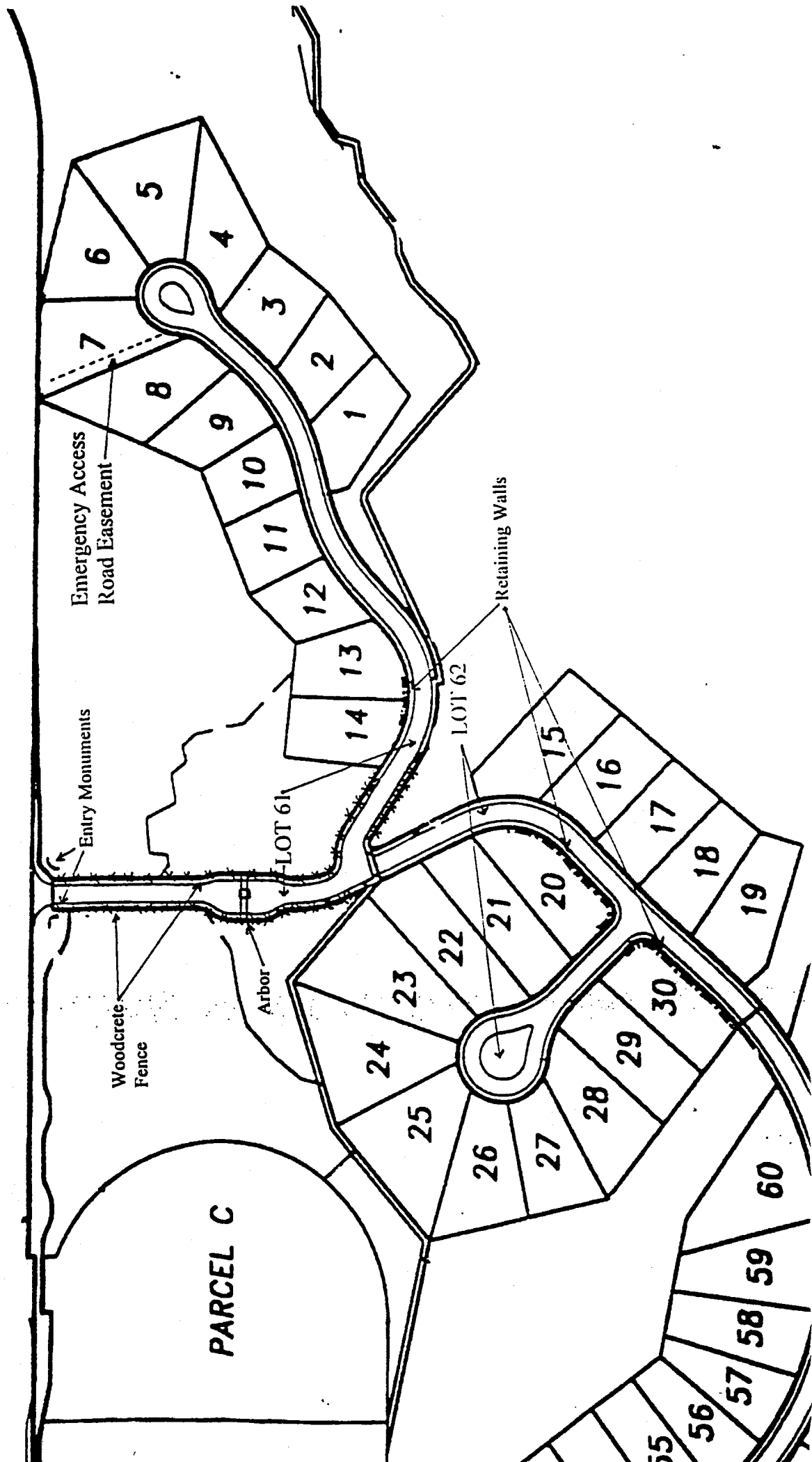
**EXHIBIT D**

**DRAWING SHOWING APPROXIMATE LOCATION  
OF COMMON AREA IMPROVEMENTS IN PHASE 1**

# WOODS COVE - TRACT 1339

COUNTY OF SANTA CRUZ, CALIFORNIA

## WOODS COVE HOMEOWNERS ASSOCIATION PHASE 1 COMMON AREA IMPROVEMENTS

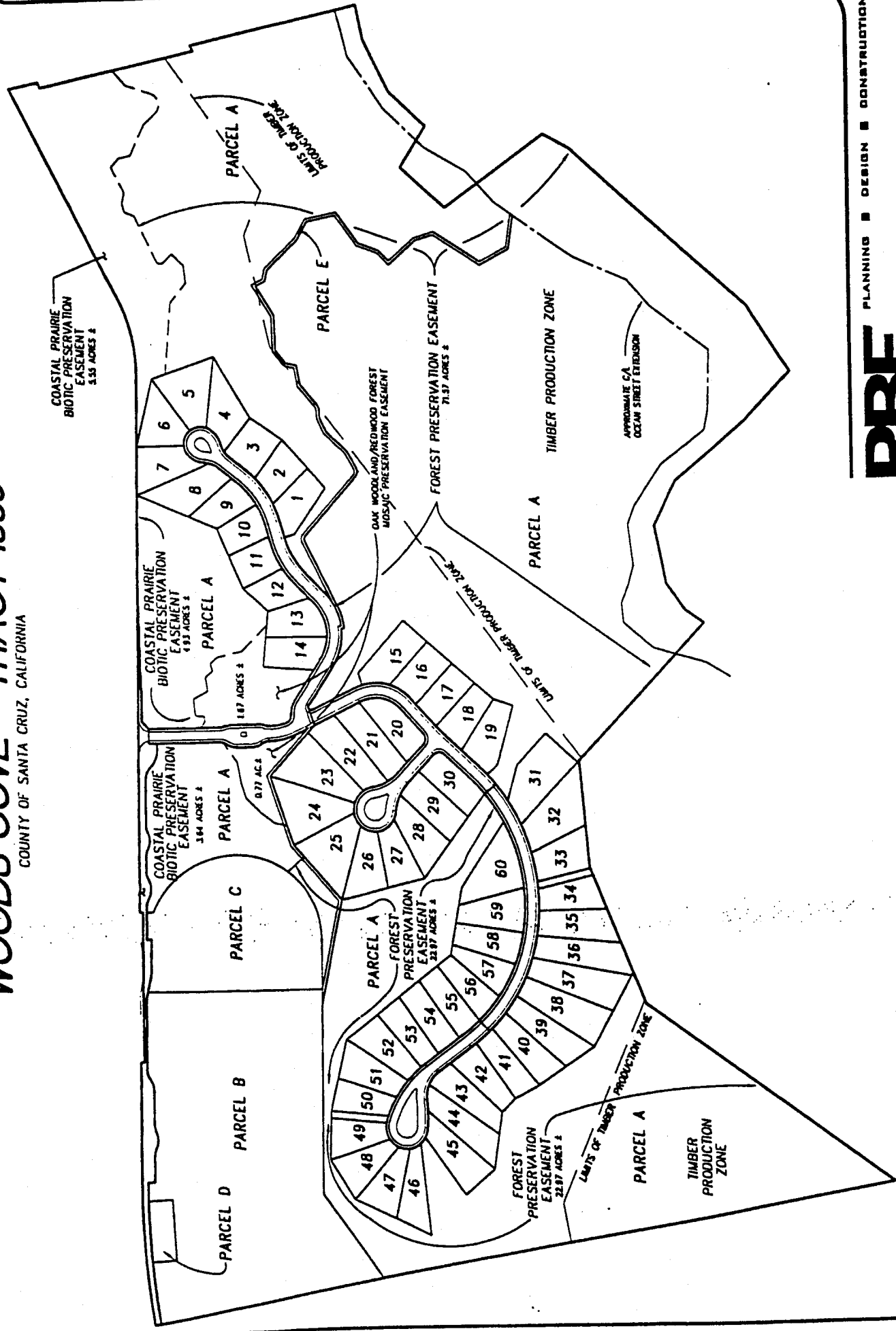


**EXHIBIT E**

**DRAWING SHOWING APPROXIMATE LOCATIONS OF  
PRESERVATION EASEMENTS IN THE PROPERTIES**

# WOODS COVE - TRACT 1339

COUNTY OF SANTA CRUZ, CALIFORNIA



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**RBF**  
CONSULTING

PLANNING ■ DESIGN ■ CONSTRUCTION

1981 N. BROADWAY, SUITE 235  
WALNUT CREEK, CALIFORNIA 94596-3817  
925.908.1460 • FAX 925.908.1465 • www.RBF.com

## EXHIBIT F

### COUNTY REQUIREMENTS FOR DESIGN GUIDELINES

Design Guidelines for the Properties shall contain, at a minimum, the following provisions:

1. **PURPOSE OF GUIDELINES.** The design concept of this development is to preserve and expand the combination of the natural open meadow and forest. In order to accomplish this in developed areas the project has been designed and initially constructed to introduce new meadow into forested areas which will enhance solar access and open space for building sites within the forest. The establishment of the forest/interior meadow framework is embodied in the project landscape plan. This is to be generally accomplished by removing small and unhealthy trees and seeding these areas with native grasses which are to be left natural. Redwood trees and major trees of other species will be retained leaving a meadow and forest environment in developed areas of more open meadow and healthier trees than presently exists. It is within this environment that roads and buildings will be placed, and it is the purpose of these guidelines to set the necessary standards and controls to insure that, as development and occupancy of the site occurs, the most desirable aspects of the natural forest and existing and new meadow environments will be preserved over time. All future construction in the Properties shall conform to development standards for the "R-1-15" zone district contained in Section 13.10.323 of the Santa Cruz County Code ("*County Code*") (including, but not limited to floor area ratio, maximum height, and maximum parcel coverage) and the Design Guidelines. If a conflict exists between the County Code and the Design Guidelines, the most restrictive measure will apply.
2. **DESIGN REVIEW COMMITTEE.** In order to meet these objectives the Association has established a Design Review Committee to review and administer all improvements on Lots and the Common Area and participate in the review of all improvements on adjacent parcels (parcels B, C, D, and E on the tentative map). It is the intent of the Design Review Committee to preserve the existing natural beauty of the site as development occurs and to achieve maximum design quality in the development of private Lots. Design Review Committee review will therefore involve design professionals to assist the Committee in reviewing all applications. Applicants are encouraged to retain qualified architects and design professionals in order to meet the high level of design sensitivity which will be required. Applications which do not meet these standards will be denied and will require resubmittal (see Design Review Committee Review procedures in Article V of the Declaration).
3. **SITE DEVELOPMENT GUIDELINES.**
  - a. **Land Use.**
    - (1) **Common Area.** The Common Area consists of all open space, roads, trails, and drainage channels. The Developer has installed the necessary improvements in the Common Area in a manner consistent with the design objectives of the development. The Common Area shall

be maintained by the Association over time in a manner that preserves this area as designed and constructed by the Developer.

(2) **Private Lots.** Private Lots have been preserved by the Developer to insure a combination of meadow or forest clearing and existing forest for each Lot. Development on private Lots shall be restricted as defined below.

b. **Development Envelopes.** Development envelopes will be determined by applicable setbacks including compliance with the setbacks from the 30% slope line which has been recommended by the geo-technical engineer. This setback line may be adjusted subject to approval of the County, the geo-technical engineer and the Design Review Committee. All outside surface Improvements must be contained within development envelopes, including buildings, accessory structures, garden walls, pools, etc., except that a single driveway limited to 15 feet in width and subsurface Improvements such as water and sewage lines may extend beyond the development envelope. Minor adjustments to approved development envelopes may be permitted if approved by the Design Review Committee and the County in accordance with procedures for amending subdivision maps specified in the Minor Variation procedures set forth in Section 18.10.134 of the County Code. In addition, all structures must be set back 75 feet from all mapped landslides or major break-in slope, whichever is closer to the proposed development site, unless approved by a registered engineering geologist.

c. **Grading and Trenching.** Structures shall be designed to relate to existing trees, sun orientation, and topography. Mass grading or level benching of the entire development envelope is not intended or allowed. Benching to accommodate the footprint of the house for perimeter or slab foundation design will be allowed based on site specific design in a relation to natural topography, subject to approval of the Design Review Committee. Minor grading will be allowed, subject to approval of the Design Review Committee. No grading or trenching is allowed outside of development envelopes except for driveways, utilities and other infrastructure. Grading and trenching shall be done in a manner which preserves all trees which are designated to remain.

d. **Building Siting.** Buildings shall be located within development envelopes. Building fonus shall relate to topography and tree forms, encourage solar access, and reflect consideration for neighboring structures and unimproved Lots.

e. **Preservation of Existing Trees and Open Space.** Common Area meadow (both existing and new) shall be maintained in their natural condition and shall not be irrigated. All maintenance including mowing of meadows (including those on portions of private Lots) shall be performed by the Association to insure that meadows are consistent and property lines through meadows are not visible. Certain trees within Lots may be removed, subject to the prior approval of the Design Review Committee using the following criteria: (1) issues of fire safety and safety to structures from falling trees; (2) diseased trees may be removed regardless of (1) above; and (3) demonstrated need to enhance solar access. This may entail replacement with native trees in non-sensitive areas. The intent is to preserve healthy specimen trees and to remove unhealthy and deformed trees. In all cases, tree removal shall be conducted in full compliance with applicable County ordinances. All trees at the fringes of existing meadows and specimen redwood trees shall be preserved subject to the above criteria. Trees outside of development envelopes may be removed

in accordance with the Habitat Management Plan approved pursuant to applicable County ordinances.

f. **Landscaping.** New landscaping within the development envelopes shall consist of plant materials which are compatible with existing vegetation unless shielded from the street. In general, most smaller plant specimens (6' maximum height) which are not visible from the street are allowed. Trees shall be limited to species which already exist in the forest in order to preserve the existing forest over time. Vegetable gardens, specialty gardens, etc. are allowed provided they are not visible from the street. No non-native landscaping is allowed, outside of development envelopes. All new landscaping shall be approved by the Design Review Committee prior to installation.

g. **Fencing.** Fencing shall be limited to the following:

(1) No fencing, walls or structures of any kind are allowed in meadowed areas, except for property line fencing around Parcels B and C and along Graham Hill Road.

(2) Garden walls, screen walls, etc. shall be used to screen trash, service, and pool areas; shall be of the same material as building exterior; and shall be connected to principal buildings.

(3) Security fencing may be installed on property lines within forested areas and shall match existing security fencing installed by the Developer

h. **Driveways and Walkways.** Driveways and walkways from existing streets shall be asphalt paving or natural gravel without curbs or gutters. Walkways adjacent to buildings and within development envelopes may be of other materials subject to approval of the Design Review Committee.

i. **Pools, Shelters and Accessory Buildings.** All accessory structures shall be located within development envelopes and shall have the same design character and materials as the principal structure. High activity areas, such as swimming pools, shall be located to reduce impact on adjacent lots. Minor adjustments to development envelopes to allow such improvements shall be permitted if approved by the Design Review Committee.

j. **Lighting.** Lighting of driveways and buildings shall be subject to the approval of the Design Review Committee and shall be low level, shielded fixtures from minimum off-site impact from the street. One set of lighted house numbers per lot shall be allowed.

k. **Signs, Graphics.** The Developer has prepared a master sign and graphics program for the development. Future revisions or additions shall use the same system. House numbers, mailboxes, etc. shall comply with this program. Temporary construction signs shall also comply.

4. **BUILDING DESIGN GUIDELINES.** It is the intent of these guidelines to allow individual lot buyers diversity of choice in their homes, and to insure that buildings and landscaping are sensitive to the land and that over time new buildings and landscaping blend with, rather than dominate and change, the natural meadow and forest landscape. Therefore, neutral colors, common

materials and simple building forms will be encouraged to achieve a development that is appropriate to the natural setting. Design of residences shall comply with the following conditions:

a. **Architectural Style.** The style of individual residences may vary, but shall be indigenous (growing from the land) and should be appropriate for a natural forest setting. Dominant styles are not permitted.

b. **Building Form.** All buildings shall have sloped rooftops. Pitch of roofs may vary from 4 inches in 12 to 8 inches in 12, but principal roofs on any lot shall be the same pitch. In general, gabled roof forms are preferred to shed roof forms. Buildings shall adjust to topography. On sloping sites, building forms should relate to the land form, stepping up or down the terrain.

c. **Building Scale.** Buildings shall be human scale. Two story facades should be broken with indentations, projecting bays, etc. The use of bay windows, trellises, garden walls, etc. to help blend structures into the landscape is encouraged. Building forms should be articulated to avoid large massive structures.

d. **Building Orientation.** Buildings shall be oriented to relate to the edge of forest and the new meadow. This edge may be adjusted within development envelopes, as noted above, provided the final design places the principal structure within the forest or at the edge of the new meadow. Design for solar access is encouraged subject to applicable County ordinances. The forest edge at the new meadow may be adjusted to achieve increased solar exposure within the limitations noted above. Buildings shall also be oriented to preserve privacy between adjacent lots. Window and door placement shall be designed to avoid views into neighboring windows or the private outdoor space of adjacent lots.

e. **Materials.** Materials shall be neutral color, natural type to avoid high reflectivity or dominant colors. Glazing shall be transparent, not reflective. Roofs shall be a dark color, window and door frames shall be wood or dark anodized aluminum. Wall surfaces shall be limited to a maximum of two materials and the same design shall carry around the entire perimeter. Artificial facades on one side are prohibited. Garden walls and accessory buildings and structures shall be of the same materials as principal structures.

f. **Screening of Equipment.** All equipment, apparatus, etc., whether fixed or movable, shall be screened from view from the street and from adjacent lots. Solar collectors shall be installed to not be visible from the street and shall follow roof slopes.

g. **Exterior Lighting.** Exterior lighting shall be shielded, low level type which conceals the light source. Lighting which is visible from the street or adjacent lots shall be controlled to avoid glare. Floodlighting of any kind is prohibited.

5. **WOOD-BURNING STOVES AND FIREPLACES.** All wood burning stoves and fireplaces installed by any Owner shall be EPA-certified.

6. **LANDSCAPING.** Approved plant palettes for the Properties include a list of plant material that has been selected based on visual and aesthetic considerations as well as appropriateness for the Properties. In selecting plants and installing landscaping, special care shall be taken not to increase the soil moisture from irrigation, use of inappropriate landscaping and runoff from Improvements, as these increase root-rotting fungi. In addition, no Owner shall install water-dependent landscaping such as lawns, nor shall any Owner grade within the drip line of large oaks.

## EXHIBIT G

### COUNTY REQUIRED PROVISIONS FOR TIMBER HARVESTING PLANS

Proposed Timber Harvesting Plans for the Properties shall contain the following provisions as required by the County:

A. Provide a no-cut or lighter-cut buffer zone of 150 feet along the entire western edge of the subdivision boundary, with a graduated buffer where the lightest cutting is immediately adjacent to the subdivision boundary and the intensity of marking gradually increases to the edge of the 150-foot zone where the silvicultural prescription for the stand is achieved.

B. Requirements for slash and debris disposal shall exceed those of the local forest practice rules. This is primarily for aesthetic purposes and, to a lesser degree, for fire prevention. The entire area shall be lopped and scattered to a height of 24 inches rather than the 30 inches allowed by law. Within 50 feet of the hiking trail and 150 feet of the subdivision boundary, lop or crunch slash with the metal tracks of a tractor down to a height of 12 inches. Burying or chipping of slash are other options in appropriate areas.

C. Require extensive grass seeding, strawing, and mulching of bare areas. This is especially important for bare areas visible from the hiking trail, subdivision, and Ocean Street Extension.

D. Tree removal shall be for habitat management purposes only. No harvesting specifically for commercial purposes is allowed.

E. Interplant coniferous seedlings after harvest is recommended in the areas where the canopy has been opened.

F. Close the hiking trail during the period of active harvesting.

G. Limit the hours of timber harvesting operation from 7:30 a.m. to 4:00 p.m., and prohibit weekend work.

H. Initiate an education and publicity program directed toward users of the trail and residents of the adjacent subdivisions. This shall be carried out at least one or two years prior to harvest through mailings and public meetings. Input and recommendations from concerned neighbors shall be sought, and where feasible, incorporated into the Timber Harvesting Plan.

I. Timber harvesting shall be done in a sustainable and ecologically sound manner, all in accordance with the requirements and restrictions of the Forest Preservation Easement and the Comprehensive Habitat Mitigation Plan.