

SECTION 17.5 OF THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT.

DRAFT

**PROPOSED AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
SPYGLASS RIDGE VILLAS HOMEOWNERS ASSOCIATION,
A Planned Development
Pismo Beach, California
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**PROPOSED AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
SPYGLASS RIDGE VILLAS HOMEOWNERS ASSOCIATION,
A Planned Development
Pismo Beach, California**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions of SPYGLASS RIDGE VILLAS HOMEOWNERS ASSOCIATION, a California non-profit mutual benefit corporation, is made this ____ day of _____, 20____, by the undersigned with reference to the following:

RECITALS

A. A Declaration of Covenants, Conditions, and Restrictions (“Original Declaration”) was executed by Damon B. Stanley, Suzanna L. Stanley, Christi Huneycutt-Hasbun, and Harry C. Huneycutt, and recorded on August 18, 1988, in Book 3188, Pages 116 through 164, inclusive, as Document No.: 47636 in the Official Records of San Luis Obispo County, for the real property legally described as:

All of Tract No. 1307 – Unit Two, Phase I, in the City of Pismo Beach, County of San Luis Obispo, State of California, as shown on Map recorded in Book 13, Page 73, in the office of the County Recorder of San Luis Obispo County. Excepting Lot 3 of said Tract.

B. A First Declaration of Amendments Spyglass Ridge Villas Tract No. 1307 Unit 1 Phase II (“First Amendment”) was executed by Spyglass Ridge Villas Homeowners Association, and recorded on July 23, 1996, as Instrument No. 1996-036650 in the Official Records of San Luis Obispo County, for said real property.

C. A Second Declaration of Amendments Spyglass Ridge Villas Tract No. 1307 Unit 1 Phase II (“Second Amendment”) was executed by Spyglass Ridge Villas Homeowners Association, and recorded on July 24, 1996, as Instrument No. 1996-036832 in the Official Records of San Luis Obispo County, for said real property.

D. A Declaration of Annexation Spyglass Ridge Villas Phase 2 (“First Declaration of Annexation”) was executed by Corea & Corea J.V., Damon V, Stanley, Suzanna L. Stanley, Christi Huneycutt-Hasbun, and Harry C. Huneycutt and recorded on September 29, 1988, in Volume 3207, Pages 741 through 745, inclusive, as Instrument No. 1988057127 in the Official Records of San Luis Obispo County, for the real property legally described as:

All of said Tract 1567 in the City of Pismo Beach, County of San Luis Obispo, State of California, as shown on Map recorded in Book 14, Page 58, in the office of the County Recorder of San Luis Obispo County.

Lots 5,6, and 7 (only) of Tract 1307, Unit Two, Phase II in the City of Pismo Beach, County of San Luis Obispo, State of California, as shown on Map recorded in Book 14, Page 62, in the office of the County Recorder of San Luis Obispo County.

Common Area Lots 4, 15, and 26 Tract 1567, together with the streets shown thereon as Calle Valencia, Barcelona, Calle Granada, Calle Consuetta, Calle Corea, and Calle Cordova, and the street shown on said Tract 1307 Unit Two Phase II as Costa Brava.

E. A Declaration of Annexation Spyglass Ridge Villas Phase 3 (“Second Declaration of Annexation”) was executed by Damon B. Stanley, Suzanna L. Stanley, Christi Huneycutt-Hasbun, and Harry C. Huneycutt and recorded on April 5, 1989, in Volume 3296, Pages 85 through 87, inclusive, as Instrument No. 20612 in the Official Records of San Luis Obispo County, for the real property legally described as:

All of said Tract 1307, Unit Three in the City of Pismo Beach, County of San Luis Obispo, State of California, as shown on Map recorded in Book 14, Page 57, in the Office of the County Recorder of San Luis Obispo County.

Portion of the street shown as Costa Brava on the map of said Tract 1307, Unit Three shall be Common Area.

F. A Declaration of Annexation Spyglass Ridge Villas Phase 4 (“Third Declaration of Annexation”) was executed by Damon B. Stanley, Suzanna L. Stanley, Christi Huneycutt-Hasbun, and Harry C. Huneycutt and recorded May 16, 1989, in Volume 3316, Pages 399 through 403, inclusive, as Instrument No. 30608 in the Official Records of San Luis Obispo County, for the real property legally described as:

Lots 1 – 9 inclusive of Tract No. 1588 in the City of Pismo Beach, County of San Luis Obispo, State of California, as shown on Map recorded in Book 14, Page 62, in the Office of the County Recorder of San Luis Obispo County.

Common Area Lot 1 of Tract 1588, together with the street shown on the Map of Tract 1307 Unit Two Phase II, per map recorded January 21, 1987, in Book 13, Page 74 of Maps as Costa del Sol.

G. A Declaration of Annexation Spyglass Ridge Villas Phase 5 (“Fourth Declaration of Annexation”) was executed by Damon B. Stanley, Suzanna L. Stanley,

Christi Huneycutt-Hasbun, and Harry C. Huneycutt and recorded May 16, 1989, in Volume 3316, Pages 395 through 398, inclusive, as Instrument No. 30607 in the Official Records of San Luis Obispo County, for the real property legally described as:

Lot 8 of said Tract No. 1307 Unit Two Phase II in the City of Pismo Beach, County of San Luis Obispo, State of California, as shown on Map recorded in Book 13, Page 74 in the Office of the County Recorder of San Luis Obispo County.

H. A Declaration of Annexation Spyglass Ridge Villas Phase 6 (“Fifth Declaration of Annexation”) was executed by Corea & Corea J.V. and recorded August 24, 1989, Volume 3371, Pages 444 through 447, inclusive, as Instrument No. 57647 in the Official Records of San Luis Obispo County, for the real property legally described as:

Tract No. 1307, Unit 1, Phase II in the City of Pismo City Beach, County of San Luis Obispo, State of California, as shown on Map recorded in Book 14, Page 58, in the Office of the County Recorder of San Luis Obispo County.

I. A Certificate of First Amendment to Declaration of Annexation Spyglass Ridge Villas Phase 4 was executed by the Spyglass Ridge Villas Homeowners Association, a California nonprofit mutual benefit corporation and recorded on January 2, 2003, as Document Number 2003000094 in the Official Records of San Luis Obispo County.

J. A Certificate of First Amendment to Declaration of Annexation Spyglass Ridge Villas Phase 6 was executed by the Spyglass Ridge Villas Homeowners Association, a California nonprofit mutual benefit corporation and recorded on January 2, 2003, as Document Number 2003000095 in the Official Records of San Luis Obispo County.

K. The undersigned certify and confirm that the necessary percentage of the Owners of the Separate Interests required by the Declaration, as amended or restated, have approved this Amended and Restated Declaration of Covenants, Conditions and Restrictions, which follows.

L. All provisions of the Original Declaration and amendments described above are hereby deleted, canceled, and revoked in their entirety, and the following new provisions inserted in their place to supersede said Declaration, as amended.

M. All real property in the Development shall be held, conveyed, leased, rented, used, occupied, hypothecated, encumbered, and improved, subject to the covenants, conditions, restrictions, and easements set forth in this Declaration, for the purpose of enhancing and protecting the value, desirability and attractiveness of the

Development, all of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

APPLICATION AND CONSTRUCTION

1.1 Application. This Declaration applies to all Common Areas and Separate Interests within the Development, as well as their respective Owners, Tenants, Residents, and Invitees. Any Lease shall provide that all Tenants, Residents, and Invitees are bound by the Governing Documents. All present and future Owners, Tenants, Residents, and Invitees shall be subject to, and shall observe, comply with and abide by, each and every provision of the Governing Documents, as defined herein, for the purpose of protecting the interests of all Owners and the Common Areas. The acceptance of a deed, Lease, or contract of sale with respect to any Separate Interest, or occupancy of any Separate Interest, shall constitute consent and agreement that each and all of the provisions of the Governing Documents, as defined herein, shall be binding and that said person(s) will observe and comply with them.

1.2 Term. This Declaration and its provisions shall continue to run with, benefit, and burden the Separate Interests and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, and their respective successors in interest, for a term of sixty (60) years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial 60-year term or any such 10-year extension period, a written instrument, approved by seventy-five percent (75%) of all Owners terminating the effectiveness of this Declaration shall be recorded in the Official Records of San Luis Obispo County.

1.3 Conflicts. In the case of any conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. The Rules, Architectural Guidelines, Board Resolutions, and all other policies are subordinate to, and shall not be inconsistent with or materially alter, any provision of the other Governing Documents.

1.4 General Plan. The Governing Documents create and perpetuate a general plan of development for the Development, and may be supplemented by additional covenants, restrictions, and easements applicable to particular areas within the Development, which may be more restrictive than the provisions of this Declaration, in which case the more restrictive provisions shall control as to the encumbered area. The Association may enforce any such additional covenants, restrictions, or other instruments, but unless required by this Declaration, shall be under no obligation to do so.

1.5 Construction of Declaration.

A. Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property, as set forth in this Declaration.

B. Restrictions Severable. Notwithstanding the provisions of Paragraph A above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

**ARTICLE II
DEFINITIONS**

2.1 "Architectural Guidelines" means those Rules adopted pursuant to Article VII hereof, to govern alterations and improvements to Separate Interests, Common Areas.

2.2 "Architectural Review Committee" or "ARC" refers to any committee established to govern alterations and improvements to the Development pursuant to Article VII hereof, or to the Board, if serving in that capacity.

2.3 "Articles" refers to the Articles of Incorporation of the Association, as filed with the California Secretary of State.

2.4 "Assessment" means any Regular, Special, or Special Individual Assessment levied or imposed by the Association against an Owner and his or her Separate Interest in accordance with this Declaration.

2.5 "Association" means Spyglass Ridge Villas Homeowners Association, a California non-profit mutual benefit corporation, its successors and assigns. The Association is an "association" as defined by applicable law.

2.6 "Board" means the Board of Directors of the Association.

2.7 "Bylaws" means the Bylaws of the Association, as the same may be amended from time to time.

2.8 "Common Area" means (i) all real property (including any Improvements thereon) owned or to be owned by the Association for the common use and enjoyment of the Owners and (ii) all real property (including the Improvements thereon) over which the Association or the Owners own or will own or an easement for the maintenance of the

area for the benefit of the Owners. The Common Area owned by the Association at the time of recordation of this Declaration is defined pursuant to Civil Code Section 4095, or its amendments, including without limitation, Lots 1, 2, B and C of Tract 1307, Unit 2, Phase 1, Lots 4, 15, and 26 of Tract 1567 and Lot 1 of Tract 1588. Common Area shall also include the following the private streets: the streets designated on Tract 1307, Unit 2, Phase 1 as Barcelona, Costa Brava, and Costa del Sol; the private streets designated as Calle Valencia, Barcelona, Calle Granada, Calle Consuetta, Calle Corea, of Tract 1567 and the street shown on Tact 1307 Unit Two Phase II as Costa Brava; the portion of the street shown as Costa Brava on the map of Tract 1307, Unit Three; and the street shown on the map of Tract 1307 Unit Two Phase II as Costa del Sol. Common Area does not include any common areas of sub-associations within the Development.

2.9 "Common Expense" means any use of Common Funds authorized by this Declaration, by law, or by the Bylaws, including without limitation, expenditures for the administration, management, operation, insurance, maintenance, improvement, replacement, repair, addition, alteration or reconstruction of all or any portion of the Common Area; any amounts estimated to be reasonably necessary for reserves for anticipated long-term maintenance, repair and replacement of capital improvements upon the Common Area (the cost of which would not ordinarily be incurred on an annual basis); taxes paid by the Association; expenditures for the discharge of any lien or encumbrance levied against any Common Area; expenditures in collecting Assessments, including amounts expended to purchase a Separate Interest in connection with the foreclosure of an Assessment lien against such Separate Interest; unpaid Assessments; contingencies; and the service obligations of the Association, including costs for water, sewer, garbage, electrical, communications, gas, and other utilities services for the Common Area and (if not separately metered or charged) for the individual Separate Interests. Common Expenses, however, shall not include the cost of any new construction, or unanticipated repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto.

2.10 "Common Funds" means all funds collected or received by or on behalf of the Association and/or due and payable to the Association, including but not limited to the proceeds from insurance carried or obtained by the Association which are payable to or received by the Association for the benefit of the Owners or otherwise.

2.11 "Condominium Unit" means an estate in real property as defined by applicable law and consisting of: a separate fee interest in a unit; the rights to use any Exclusive Use Common Area; any other separate interests in the Property as described in this Declaration, any condominium plan, or the deed conveying the Condominium Unit; and an interest in the Subassociation Common Area. Where the context indicates "Condominium Unit" shall include any Exclusive Use Common Areas appurtenant to the Condominium.

2.12 "Declarant" refers to the original Developer of the Development, i.e., Damon B. Stanley, Suzanna L. Stanley, Christi Huneycutt-Hasbun, and Harry C. Huneycutt.

2.13 "Declaration" means this instrument, as it may be amended or restated from time to time.

2.14 "Development" means the Property, and all Improvements on the Property, which are intended to create a planned development as described by applicable law.

2.15 "Exclusive Use Common Area" means a portion of the Common Area designated for the exclusive use of one or more, but fewer than all, of the Owners of the Association.

2.16 "Good Standing" shall mean those Members who are current in the payment of Assessments, fees, and fines, and who are not in violation of the Governing Documents. Members who are more than thirty (30) days delinquent in the payment of their Assessments, fees or fines, or have been found in violation of the Governing Documents, following notice and hearing as described in the Bylaws, shall be in Good Standing only at such time as all Assessments, fees and fines are paid, any violations of the Governing Documents are cured.

2.17 "Governing Documents" means and refers to all of the following, collectively: this Declaration and recorded amendments and supplemental declarations, if any; the Subdivision Map; the Articles; the Bylaws; the Rules and Architectural Guidelines; and any Resolutions of the Board; all as the same may be lawfully amended or modified from time to time.

2.18 "Improvement" includes, without limitation, any buildings, walls, fences, swimming pools, landscaping, landscape structures, solar heating equipment, spas, saunas, utility lines, or any physical structure of any kind, or to the construction, installation, alteration, or remodeling of any such structure. In no event shall the term "Improvement" be interpreted to include improvement projects that are restricted entirely to the interior of any Residence and which involve no modification of or entry into the roof, foundation or slab, or Party Walls or other load bearing walls, nor any alteration, modification, or additional stress upon any physical portion or mechanical system (including plumbing or electrical systems) of the Common Area or of any other Residence.

2.19 "Invitee" means any person or entity entering any part of the Development for purposes relating to a Separate Interest, or to any Owner, Tenant, or Resident thereof, including without limitation guests, vendors, contractors, housekeepers, child care providers, health care providers, and any other visitor to a Separate Interest.

2.20 "Lease" refers to an agreement between an Owner and a Tenant, as defined herein, for occupancy of a Separate Interest or any part thereof. "Lease" includes any

lease, rental agreement, occupancy agreement, contract of sale, or any other form of agreement providing for occupancy of a Separate Interest by any person other than the Owner and his or her co-resident family members.

2.21 "Lot" shall mean any plot of land or parcel in the Development that is not part of the Common Area, as shown on any recorded Subdivision Map for the Development. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other Improvements constructed or to be constructed on a Lot.

2.22 "Manager" shall mean any person or company employed or retained by the Association to administer the operation, maintenance, and management of the Association and the Development.

2.23 "Member" means every person or entity who owns or exercises a Membership in the Association. The Members are the Owners of each of the one hundred and seven (107) Separate Interests which are located on the Property, as further described herein and in the Bylaws.

2.24 "Membership" refers to the legal relationship and status of being a Member of the Association, and an entitlement to the rights and privileges appurtenant thereto as defined herein and in the Bylaws. Membership rights and privileges may be limited or suspended as provided in the Governing Documents and by applicable law. "Membership" may also refer to the Members collectively.

2.25 "Mortgagee" shall mean a holder of a mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by sublease or assignment) given as security for the repayment of a loan or other financing which encumbers a Separate Interest, made in good faith and for value. Mortgagee shall also include the beneficiary of a deed of trust that constitutes a Mortgage.

2.26 "Owner" means any person or entity in which title to a Separate Interest is vested as shown by the Official Records of San Luis Obispo County. Family members and entity officials in whom title to a Separate Interest is not so vested are not "Owners" for purposes of this Declaration, notwithstanding their occupancy of the Separate Interest.

2.27 "Property" means all land described in **Recitals "A" – "H."**

2.28 "Record," and/or its variants, refer to a complete, valid, lawful, and verifiable document evidencing rights or title to any part of the Property, including without limitation a Separate Interest, recorded in the Official Records of San Luis Obispo County, or to the process of recording a document in said Official Records.

2.29 "Residence" means a private, single family dwelling designed, constructed, or to be constructed on a Lot, together with garages, structures and other Improvements on the same Lot or Condominium.

2.30 "Resident" means any natural person residing in a Separate Interest or any part thereof, for any duration, including any Owner, Tenant, family member, guest, or otherwise.

2.31 "Residential Use" means occupancy and use of a Separate Interest for single family dwelling purposes, and recreational and other purposes incidental to such purposes, in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy residential dwellings.

2.32 "Rules" or "Rules and Regulations" means any and all written operating rules, regulations, architectural standards or guidelines (including the Architectural Guidelines), and other policies lawfully adopted by the Board, all as the same may be in effect from time to time.

2.33 "Separate Interest" means a separately owned Lot or Condominium as defined herein.

2.34 "Subassociation" means the Pismo Beach Villas Antigua Homeowners Association governed by the Declaration of Covenants, Conditions and Restrictions recorded on August 11, 1988 as Document No. 45983 in the Official Records of San Luis Obispo County.

2.35 "Subassociation Common Area" means the area designated on the Subdivision Map a Unit 2, Phase 1, excepting the individual Condominium Units. The Subassociation Common Area includes, without limitation: land, buildings, stairways, driveways, parking areas, landscaping, irrigation systems, utilities, drainage areas, walls, fences, outdoor lighting.

2.36 "Subdivision Map" means the Map recorded in Book 13, Page 73 inclusive of Maps, in the Official Records of San Luis Obispo County, respecting the Property, and any amendments thereto pursuant to applicable law. A copy of the Subdivision Map may be obtained from the County Recorder.

2.37 "Tenant" means any natural person or entity occupying a Separate Interest, except the Owner and his or her immediate nuclear family members (i.e., persons related to the Owner by marriage, domestic partnership, or direct lineal relationship, such as parents, children, grandchildren and grandparents) residing with the Owner, with or without the payment of rent.

2.38 “Civil Code”, “Corporations Code” and similar references shall refer to those California statutes so referenced and any and all comparable superseding statutes.

ARTICLE III

PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS

3.1 Separate Interest Ownership. Each Separate Interest within the Development includes a fee simple interest in the Separate Interest; a Membership in the Association; and any exclusive or nonexclusive easement(s) appurtenant to such Separate Interest over the Common Area as described in the Declaration, the Subdivision Map, and the deed to the Separate Interest. The fee title to all such elements of the respective Separate Interest shall conclusively be deemed to be conveyed, transferred or encumbered with its respective Separate Interest even though the description in the instrument of conveyance or encumbrance may refer only to a Separate Interest.

A. Joint Ownership. In the event of joint ownership of any Separate Interest, the obligations and liabilities of such Owners shall be joint and several. Joint and several liability shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments. All Owners may exercise rights to use and enjoy the Separate Interest and Common Areas, subject to the provisions and limitations herein.

B. Entity Ownership. If fee title to a Separate Interest is owned by any LLC, corporation, partnership, or other impersonal entity, the entity shall be responsible for the obligations and liabilities of the Owner. Unless the entity designates a natural person to exercise the rights and privileges of Membership, such rights and privileges may be exercised only by the president, proprietor, managing partner, or similarly empowered executor of such entity’s interests; however, the entity shall be deemed to delegate its rights to use and enjoy the Common Areas to any Tenant(s) or Resident(s).

3.2 Ownership of Common Areas. The Common Areas shall be owned in fee by the Association.

3.3 Prohibition of Partition or Severance. No Owner shall have any right to partition, subdivide, or sever his or her Separate Interest from the Development, except as such partition may be provided for in provisions of this Declaration relating to destruction or condemnation, or as otherwise provided by applicable law. Nothing herein shall prevent partition of a co-tenancy in a Separate Interest.

3.4 Power of Attorney for Partition after Destruction or Condemnation. Each Owner hereby irrevocably appoints the Association as attorney-in-fact for partition of the Common Areas, when the same may lawfully be partitioned in cases of destruction and condemnation, and irrevocably grants to the Association full power in the Owner’s name

and stead to sell the Common Areas, and to execute deeds and conveyances to it in one or more transactions, for the benefit of all Owners. Such power of attorney shall: (a) be binding on all Owners, whether they assume the obligations under this Declaration or not; (b) be exercisable by a majority of the Board acting on behalf of the Owners, subject to the prior approval by vote or written consent of a majority of the Members and institutional first Mortgagees; and (c) be exercisable only after Recordation of a certificate, executed by those who have power to exercise the power of attorney, confirming that the power of attorney is properly exercisable under applicable law. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

3.5 Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area, abandonment of the Separate Interest, or otherwise, may avoid the burdens and obligations imposed by the Governing Documents, including, without limitation, the payment of Assessments.

3.6 Termination of Obligations. Upon the conveyance, sale, assignment or other transfer of a Separate Interest, the transferor Owner shall not be liable for any Assessments respecting such Separate Interest which become due after the date of Recording of the instrument evidencing said transfer and, upon such Recording, all Membership rights possessed by the transferor by virtue of the ownership of said Separate Interest shall cease.

3.7 Duty to Notify Association of Sales and Delegations. Each Owner shall notify the Association in writing of any pending or proposed sale of a Separate Interest, including the identity of any escrow company, proposed purchaser, or contract purchaser for the Separate Interest. Each Owner or contract purchaser shall also notify the Association of the names of any person(s) to whom such Owner or contract purchaser has delegated any rights to use and enjoy the Property, and the relationship that each such person bears to the Owner or contract purchaser.

3.8 Prohibition on Further Subdivision, Duplexes and Lot Splitting. No Lot may be subdivided, split or divided into two or more parcels and only one Residence is permitted on a parcel. A Residence shall not consist of more than one residential unit. This section shall not preclude an Accessory Dwelling Unit as defined by Section 8.22 from being constructed on the Lot with the prior written approval of the Association.

3.9 Prohibition on Separate Sale of Accessory Dwelling Unit. An Accessory Dwelling Unit (defined by Section 8.22) shall not be separately sold or conveyed from the Lot on which the Accessory Dwelling Unit is constructed. Owners shall not record a condominium plan to create a common interest development required to effectuate the sale of an Accessory Dwelling Unit.

ARTICLE IV
LEASING OF SEPARATE INTERESTS

4.1 Delegation of Use and Leasing of Separate Interests. Any Owner may lease or otherwise convey the rights to use and enjoy the Separate Interest and the Common Area to Tenants or other Occupants, subject to the following. During any period when a Separate Interest has been Leased, the Owner, his or her family and Invitees shall not be entitled to use and enjoy the Common Areas, unless the Owner is residing in his or her Residence along with the Tenant(s) or in any other Residence within the Development, and except to the extent reasonably necessary to perform any responsibilities with respect to the Development or Association. Each Owner shall provide any Tenant with a current copy of all Governing Documents and shall be responsible for compliance by the Tenant with all of the provisions of the Governing Documents during the Tenant's occupancy and use of the Separate Interest.

A. Minimum Lease Term. Any Lease (which includes any rental agreement or contract of sale, as defined in Section 2.19) must be for a term not less than thirty (30) days.

B. Lease Requirements. Any Lease shall be in writing, shall require that the property must be used for Residential Use only and shall clearly require the Tenant to comply with the Governing Documents, all of which shall be deemed incorporated in the Lease, and clearly provide that any failure to abide by the Governing Documents shall be a default under the Lease. The Lease shall require the Tenant to maintain renter's insurance, and proof of such insurance shall be provided to the Association prior to Tenant's taking possession. The Owner shall provide to the Association a copy of the written Lease, which shall identify all Tenants and Occupants, within ten (10) days of its execution and upon written request; however, the Owner may redact financial or similar information necessary to protect business or other confidentiality interests.

C. Common Area Use Rights. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of Assessments or performance of the obligations of the Governing Documents.

4.2 Eviction by Association. Subject to Section 4.7, in the event that any Tenant fails to honor the provisions of any Governing Document, the Association shall be entitled to take corrective action as it deems necessary or appropriate under the circumstances, which may include initiation of an action against the Owner to compel the Owner to evict the Tenant, or initiation of an eviction proceeding in accordance with this Article, or the imposition of disciplinary fines and penalties against the Owner and/or Tenant.

A. Whether or not such right is stated in any Lease, every Owner who Leases his or her Separate Interest, or any portion thereof, automatically grants to the Association the right to determine a Tenant's default under the Governing Documents, which may result in terminating the tenancy and evicting the Tenant in the case of nuisance or damage as described herein. If the Board takes such eviction action, either in its own name or in the Owner's name, either directly against the Tenant or against the Owner, the Owner shall be responsible for all costs thereof, including reasonable attorney's fees, and shall reimburse the Association upon demand for the entire amount of such costs. If the Owner refuses to make such reimbursement, the sums shall be levied as a Special Individual Assessment.

B. The Association's right to maintain an eviction action hereunder is derived from applicable law and shall only arise if the Tenant's conduct causes damage to or destruction of Common Areas, improvements or other property of the Association, or the property of other Owners or Residents, or constitutes a nuisance or unreasonable interference with the quiet enjoyment of other Residents, or if such Tenant has occupied the premises without the Owner's permission and consent or without a written Lease.

4.3 Security Deposit. Through its rule-making power, the Board is hereby authorized and empowered to establish and implement an Association security deposit procedure to protect the Association and the Common Area from negligence, damage and/or destruction caused by Tenants, their Residents and Invitees. Said security deposit, if required, shall be payable by the Owner and shall be fixed in an amount not to exceed the greater of \$500 or one (1) or two (2) month's Regular Assessment and need not be held by the Association in a separate security deposit fund. Within two weeks following receipt of notice from the Owner that the Separate Interest is no longer being Leased, the Association shall furnish the Owner with an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and shall return the remainder, if any, to the Owner.

4.4 Recoverable Costs and Expenses. In the event of: (i) damage to, or destruction of, Common Areas by a Tenant or the Owner of a Leased Separate Interest; (ii) the imposition of a fine or penalty against an Owner as a result of any act or omission of his or her Tenant; or (iii) expenses incurred by the Association in the successful prosecution of an eviction proceeding pursuant to this Declaration, the Association shall be entitled to apply the security deposit to recover its costs and expenses. The Owner shall thereupon immediately reimburse the security deposit fund in an amount equal to the sums thus applied. Upon termination of the Lease and notification to the Association of such termination, the security deposit, or the balance thereof, if any, shall be refunded to the Owner without interest. As a condition to the Association's right to apply security deposit funds in the manner provided in Section 4.3 above, the Association must give the Owner the notice and hearing rights specified in this Declaration and/or in the Bylaws.

4.5 Assignment of Rents. In the event of a default by the Owner in the payment of Assessments, late charges, fines, and collection costs, the Owner grants, conveys, and confers to the Association the right, power and authority to collect the rents from the Tenant and assigns such rents to the Association to be retained by the Association to pay such delinquent sums, which may include current Assessments. This assignment shall not become effective until after the Association has provided the Owner with notice and hearing rights specified in this Declaration and/or in the Bylaws. After complying with such notice and hearing procedures, the Association shall give written notice to the Tenant that all future rental payments shall be paid directly to the Association until the delinquent Assessment(s), fines, and collection costs are paid in full and, at the option of the Board, the Tenant may thereafter be required to deduct from rental payments paid to the Owner, the amount of the Assessment(s) due for each month and to pay that amount directly to the Association to be credited to the Owner's account.

A. Prior to any default in the payment of assessments, late charges, and fines, the Owner shall retain the right, power and authority to collect and retain all rents collected from the Separate Interest.

B. The Association may exercise its right to collect rents through its Board, Manager, agents, attorneys, or through a receiver to be appointed by the Court.

4.6 Discipline of Tenants. Subject to Paragraph 4.7 below, in the event that any Tenant fails to honor the provisions of any Governing Document, the Association may, but shall not be obligated to, take such corrective action as it deems necessary or appropriate under the circumstances, which may include, but is not limited to suspension of the Tenant's privileges to use any recreational Common Area, or the imposition of fines and penalties against the Owner and/or Tenant.

Any fine or penalty levied pursuant to this Section shall be considered a Special Individual Assessment, but shall not be enforced by foreclosure of a lien. If a Special Individual Assessment is imposed as a result of the conduct of a Tenant, the Tenant agrees to be personally obligated for the payment of such assessments in the event the Owner fails to pay the assessments prior to the delinquency date. This provision, however, shall not be interpreted to release the Owner from any obligation, including the obligation to pay any duly imposed Special Individual Assessments for which such Owner would otherwise be responsible. Any Tenant charged with a violation of the Governing Documents is entitled to the same notice and hearing rights to which the Owner is entitled as provided in Section 4.7 below. Every Owner shall be responsible for assuring his or her Tenant's compliance with the Governing Documents.

4.7 Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Property or to preserve the rights of quiet enjoyment of other Owners

and Residents, the Association shall have no right to initiate disciplinary action against an Owner or Tenant on account of the misconduct of the Tenant unless and until the following conditions have been satisfied:

A. The Owner has received written notice from the Board, Manager or authorized representative detailing the nature of the Tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter. Such written notice shall be deemed satisfied by sending it to the Owner's address, as it appears in the Association's records.

B. The Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, not less than ten (10) days from the date of the notice.

C. The Owner has failed to prevent or correct the Tenant's objectionable actions or misconduct, or evict the Tenant.

4.8 Exemptions and Exceptions. Any Owner whose title pre-dates the date of recording of this provision shall be exempt from compliance with any provisions hereof that prohibit rental of his or her Separate Interest. Furthermore, the Board may, in its sole and reasonable discretion, allow exceptions to any requirement(s) of this Section based upon death, illness, or dire emergency rendering an Owner unable to occupy his or her Separate Interest, or in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships. Any request for such an exception shall be in writing, and shall include all relevant explanation and/or documentation of the circumstances supporting the request. The Board shall follow the procedures for notice and hearing described in Civil Code Section 5855 or any comparable or superseding law, when considering the request. Any decision on such a request shall be documented in writing, either in the minutes of a meeting or by formal resolution. If the Board does not respond in writing within sixty (60) days of any such request, the request shall be deemed denied. If the Board grants such an exception, no violation of the governing documents shall be deemed to have occurred, but an exception to any particular requirement hereof shall not be deemed to waive any of the remaining terms hereof.

ARTICLE V

SPYGLASS RIDGE VILLAS HOMEOWNERS ASSOCIATION

5.1 Association Membership. One Membership shall be appurtenant to each Separate Interest. Every Owner of a Separate Interest shall be deemed a Member of the Association, except as described in this Declaration or the Bylaws. The Association shall have one class of Membership and the rights, duties, obligations and privileges of the Members shall be uniformly as set forth herein and in the Bylaws.

5.2 Transfer of Memberships. No Membership may be transferred, encumbered, pledged or alienated in any way, except upon the sale, transfer, or encumbrance of the Separate Interest to which it is appurtenant and then only to the purchaser or transferee. In the case of a sale, inheritance, or other transfer, the Membership transfers automatically to the transferee upon recording of a deed evidencing transfer of title to the Separate Interest. In the case of an encumbrance, Membership does not transfer to a Mortgagee until Recording of a foreclosure or deed in lieu thereof. Delegation of rights does not constitute a transfer of Membership. Any attempt to make a prohibited transfer is void. In the event any Owner should fail or refuse to transfer his or her Membership to the lawful purchaser or other transferee, the Association shall have the right to record the transfer upon its books and thereupon any Membership in the name of the transferor shall be null and void.

5.3 Voting Rights of Members. Each Membership shall be entitled to one vote in any Membership action, or to one vote for each vacancy to be filled in an election, as provided in the Bylaws. In no event shall more than one such vote per action, or per vacancy, be cast with respect to any Separate Interest. Voting rights may be temporarily suspended, following the notice and hearing procedures herein or in the Bylaws, for non-payment of Assessments or other violations of the Governing Documents, to the extent permitted under applicable law.

5.4 Powers and Authority of the Association.

A. Powers Generally. The Association shall have the power, and responsibility, to manage and maintain the Common Areas and to discharge the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a non-profit corporation organized under the laws of the State of California in the ownership and management of the Property and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and Board shall have the power to do any and all lawful acts which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The Association shall have the power to establish, fix and levy Assessments against the Separate Interests and to collect and enforce payment thereof in accordance with the provisions of this Declaration and applicable law. Specific powers and limitations of the Association shall be as set forth in the Bylaws.

B. Association's Limited Right of Entry. The Association, and/or its agents, shall have the right, when necessary, to enter any Separate Interest to perform the Association's obligations under this Declaration, including: (i) exterior maintenance or

repair obligations; (ii) obligations to enforce the Governing Documents; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Areas; or (iv) after ten (10) days written notice, to make necessary repairs (including landscaping) to a Separate Interest, Residence that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, any property, health, or welfare of the Association or other Owners.

In case of an emergency originating in or threatening the Separate Interest where entry is required, or any adjoining Separate Interests or Common Areas, the Association's rights of entry hereunder shall be immediate and the entry and repair may be performed whether or not the Owner, Tenant, or Resident of the Separate Interest is present. In all other situations, the Association or its agents shall furnish the Owner, and any Tenant or other Resident, with at least 24 hours' written notice of its intent to enter the Separate Interest, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to schedule and perform its entry and work in a manner that respects the privacy of the Resident(s). **In no event shall the Association's right of entry, for non-emergency situations, be construed to permit the Association or its agents to enter any Separate Interest without the Owner's express permission.**

C. Security.

(1) Owners, Residents, and Invitees of a Separate Interest are responsible for their own personal safety and the security of their property in the Development. The Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to enhance the level of safety or security which each person provides for himself and his property, but neither the Association nor any board member, Manager, agent or employee, shall in any way be considered an insurer or guarantor of safety or security within the Development, nor shall such parties be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(2) No representation or warranty is made that any systems or measures, including any mechanism, gate, or other system for limiting access to the Development, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing all Tenants, Residents and Invitees of its Separate Interest that the Association, its Board and committees, are not insurers or guarantors of safety and security and that each person within the Development assumes all risks of personal injury and loss or damage to property, including Separate Interests and the contents of Separate Interests and Residences, resulting from acts of third parties.

D. Enforcement of Association's Rights. The Association shall have the right to institute, defend, settle or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to the following:

- (1) Enforcement of the Governing Documents.
- (2) Damage to the Common Area.
- (3) Damage to the Lots that the Association is obligated to maintain or repair.
- (4) Damage to the Lots that arises out of, or is integrally related to, damage to the Common Area or Lots that the Association is obligated to maintain or repair.

5.5 Association Rules.

A. Rule-Making Power. The Board may, from time to time, propose, enact, amend, or repeal reasonable Rules and Regulations. Such Rules may concern, but are not limited to: (i) the management and use of the Common Area by Owners, Tenants, Residents, and Invitees; (ii) use of a Separate Interest, including pets, conduct, leasing/rental of Separate Interests and any aesthetic or architectural standards; (iii) discipline, including any procedure for conducting disciplinary proceedings and schedule(s) of monetary or other penalties for violation of the Governing Documents; (iv) standards and procedures for resolution of Assessment disputes, including for delinquent Assessment payment plans; (v) restrictions on the use and parking of vehicles within the Property; and any other matter within the authority of the Association as provided in the Governing Documents.

B. Adoption and Amendment of Rules.

(1) Notice. The Board shall provide written notice to the Members of a proposed rule change, except for an emergency rule change, at least twenty-eight (28) days before making the rule change. The notice shall include the text of, and a description of the purpose and effect of, the proposed rule change.

(2) Adoption. A decision on a proposed rule change shall be made at a meeting of the Board, after consideration of any comments made by Members.

(3) Distribution of Rules. As soon as possible, but not more than fifteen (15) days, after making a rule change, the Board shall mail or otherwise deliver notice of the rule change to each Member and each Separate Interest. If an emergency

rule change is made under paragraph (4), the notice shall include the text of the rule change, a description of the purpose and effect of the rule change, and the date that the rule change expires.

(4) Emergency Rule Change. If the Board determines that an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make an emergency rule change without prior notice to the Members. An emergency rule change is effective for 120 days, unless the rule change provides for a shorter effective period. An emergency rule change made may not be readopted.

C. Reversal of Rule Change.

(1) Five percent (5%) or more of the Members may call a special meeting of the Members to reverse a rule change (other than an emergency rule change) by delivering a written request to the President or Secretary not more than thirty (30) days after notice of the rule change. Upon receipt of such request, the Board shall either notice and hold a Membership meeting, or distribute a written ballot to each Member, in conformity with applicable law and the Bylaws, to vote on reversal of the rule change.

(2) Not more than fifteen (15) days after the close of voting, the Board shall mail or otherwise deliver notice of the results to each Member and each Separate Interest.

(3) The rule change may be reversed by a majority of a quorum of Members present in person, or by ballot at the meeting. If the rule change is reversed by this procedure, the rule change may not be readopted for one year after the date of the reversal; however, the Board may adopt a different rule on the same subject.

D. All Rules must be in writing. Any duly adopted Rule or amendment to the Rules shall become effective immediately following the date of adoption and distribution by the Board to the Owners and Tenants.

5.6 Breach of Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in this Declaration.

5.7 Limitation on Liability of Association's Directors and Officers.

A. Claims Regarding Breach of Duty. No director, officer, committee member, Manager, employee, or other agent of the Association shall be personally liable to any of the Association's Members, or to any other party, including the Association, for any error, negligence, or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided

that such director or other actor has, upon the basis of such information as may be possessed by the director or actor, acted in good faith, in a manner that such person 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.

B. Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) and/or property damage as a result of the tortious act or omission of a volunteer director or officer of the Association shall recover damages from such director or officer if all of the following conditions are satisfied:

(1) The act or omission was performed within the scope of the volunteer director's or officer's Association duties;

(2) The act or omission was performed in good faith;

(3) The act or omission was not willful, wanton, or grossly negligent; and

(4) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one or more policies of insurance that include coverage for general liability of the Association in a sum not less than \$3,000,000 and individual liability of the officers and directors of the Association for negligent acts or omissions in their official capacities, with minimum coverage of insurance being not less than \$1,000,000.

(a) The reimbursement of actual expenses incurred by a director or officer in the execution of that person's Association duties shall not affect that person's status as a volunteer for the purposes of this section.

(b) The provisions of this paragraph B are intended to reflect the protections accorded to volunteer directors and officers of community associations under applicable law. In the event that any applicable law providing such liability protections is amended or superseded by another similar provision of the California statutes, this paragraph B shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor statutory provision.

ARTICLE VI ASSESSMENTS

6.1 Covenant to Pay Assessments. Each Owner, by acceptance of the deed to the Owner's Separate Interest, is deemed to covenant and agree to pay to the

Association Regular, Special and Special Individual Assessments levied pursuant to the provisions of this Declaration. Each such Assessment shall be established and collected as hereinafter provided. The Owner may not waive or otherwise escape liability for these assessments by non-use of the Common Area or abandonment of the Owner's Separate Interest.

A. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the persons who were the Owners of the Separate Interest at the time the Assessment was levied. Each Owner who acquires title to a Separate Interest (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Separate Interest so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

B. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Separate Interest and shall be a continuing lien upon the Separate Interest against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this article may be subject to foreclosure as provided in this Declaration.

6.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote, protect, enhance and maintain the recreation, health, safety and welfare of the residents in the Development and for the improvement, maintenance, replacement, repair and operation of the Common Area and the improvements and personal property in the Common Area that are owned or maintained by the Association, as set forth in this Declaration, and to further any other purpose that is for the common benefit of the Owners in their use and enjoyment of the Development.

6.3 Regular Assessments.

A. Preparation of Annual Budget: Establishment of Regular Assessments. Not less than thirty (30) nor more than ninety (90) days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Area) by preparing and distributing to all Association Members a budget satisfying the requirements of the Bylaws and this Declaration. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase Regular

Assessments for that fiscal year unless the Board first obtains the approval of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with the Bylaws.

B. Establishment of Assessments; Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in this Declaration otherwise, the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, conducted in accordance with applicable law.

C. Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. For purposes of this subparagraph (c), an "emergency situation" is defined by applicable law, and includes the following:

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

(2) An extraordinary expense necessary to repair or maintain the Common Areas or any portion of the separate interests which the Association is obligated to maintain where a threat to personal safety is discovered.

(3) An extraordinary expense necessary to repair or maintain the Common Areas or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Paragraph A, above, provided that, prior to the imposition or collection of an assessment under this Subparagraph (3), the Board shall adopt a Resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Resolution shall be distributed to the Members together with the notice of assessment.

6.4 Mailing Notice of Assessment. The Board of Directors shall mail to each Owner (or send by electronic means, if consent has been given by the Owner pursuant to Civil Code Section 4040), at the street address of the Owner's Separate Interest, or at such other address as the Owner may from time to time designate in writing to the Association, notice of any increase or decrease in the amount of the Regular or Special Assessments for the next succeeding fiscal year no less than thirty (30) days nor more than ninety (90) days prior to the increased assessment becoming due.

6.5 Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made for that year, shall be assessed against each Owner and his or her Separate Interest on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

6.6 Reserve Funds. Each annual regular assessment shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement, or additions to the major components of the Common Area Improvements that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and the signatures of at least two persons who shall either be Members of the Board, or one officer who is not a Member of the Board and a Member of the Board, shall be required to withdraw money from the reserve account. Except as provided below, no money shall be transferred from a reserve fund to the Association's general operating fund and reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of major components that the Association is obligated to maintain or as otherwise permitted by applicable law.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short term cash flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Association, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve accounts, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by applicable law. This special assessment is subject to the limitations imposed by applicable law and the restrictions imposed herein. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of any unpaid special assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of the Association of that decision in the next available mailing to all Members pursuant to applicable law and of the availability of an accounting of those expenses. Unless the Governing Documents impose more stringent standards, the Association shall

make an accounting of expenses related to the litigation on at least a monthly basis. The accounting shall be made available for inspection by Members at the Association's office.

6.7 Installment Payment of Assessments. The Regular Assessment levied against each Owner and his or her Separate Interest shall be due and payable in advance to the Association in equal monthly installments on the first day of each month. Installments of Regular Assessments shall be delinquent if not paid by the 15th day of the month in which the Assessment is due.

6.8 Allocation of Assessments. Regular and Special Assessments shall be allocated among, assessed against, and charged to each Owner so that each Separate Interest bears an equal share of the total Assessment with the exception of costs attributable to maintenance of the sewer lift station. The portions of Association costs attributable to maintenance of the sewer lift station (including replacement of the sewer lift pump) shall be assessed only to those Lots actually served thereby ("Sewer Lift Station Cost Center").

6.9 Special Assessments.

A. Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in paragraph B below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Separate Interests for the following purposes, among others:

(1) **Regular Assessment Insufficient in Amount.** If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then the Board of Directors may levy and collect a Special Assessment, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.

(2) **Capital Improvements.** The Board may levy Special Assessments for capital improvements within the Common Area.

(3) **Loan Repayments.** The Board may levy Special Assessments to repay disaster loans or loans obtained for the purpose of repairing Common Area facilities or financing litigation.

(4) **Litigation.** The Board may levy Special Assessments to fund litigation.

B. Special Assessments Requiring Owner Approval. No Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is

levied shall be made without the vote or written assent of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address “emergency situations” as defined above.

C. Special Assessments for purposes described in this Section shall be due as a separate debt of each Owner and a lien against his or her Separate Interest.

6.10 Special Individual Assessments.

A. Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 6.7, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the following circumstances, after the Owner has been given the notice and hearing rights to which the Owner is entitled, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association’s Governing Documents.

(1) Damage to Common Area. If any damage or destruction of any portion of the Development is caused by the willful misconduct or negligent act or omission of any Owner, Tenant, or Resident, or any Invitee, servant, or employee thereof, which causes the Association to incur any costs and expenses to repair, all such costs and expenses incurred in connection therewith shall be assessed and charged solely to and against such Separate Interest as a Special Individual Assessment.

(2) Expenses Incurred in Gaining Member Compliance. If the Association incurs any costs or expenses to (a) obtain the compliance with any provision of the Governing Documents (including to remedy any noncompliance) of a Separate Interest’s Owner Tenant, Resident, or Invitee, and/or the Separate Interest itself, or to (b) accomplish any repair, maintenance or replacement to any portion of the Property that the Owner is responsible to maintain but has failed to undertake or complete after at least fifteen (15) days’ written notice, the amount incurred by the Association (including without limitation fines and penalties, accounting fees, management fees, court costs and reasonable attorney’s fees, including those incurred prior to filing a lawsuit) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(3) Attorneys’ Fees. Any reasonable attorneys’ fees and costs incurred by the Association in the enforcement of the Governing Documents with respect to a Separate Interest, or its Owner, Tenant, Resident or Invitee, or to determine the rights or duties of a Member under the Governing Documents, may be levied against that Member as a Special Individual Assessment which may be collected in any manner provided for by the Governing Documents or by law.

B. Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied, notice of such Special Individual Assessment shall be mailed to the affected Owner(s) and shall thereafter be due as a separate debt of the Owner(s) payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment, or within such other time period as the Board may determine.

6.11 Maintenance of Assessment Funds. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees.

6.12 Collection of Assessments; Enforcement of Liens.

A. Delinquent Assessments. If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within fifteen (15) days after the same becomes due, such payment shall be delinquent and may, at the Board's election, bear interest at the rate of twelve percent (12%) per annum, or any other percentage provided by law, beginning thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to impose a late charge for any delinquent Assessments not exceeding ten percent ten percent (10%) of the delinquent assessment or \$10.00, whichever is greater, or such other amount as provided by law.

B. Effect of Nonpayment of Assessments.

(1) Creation and Imposition of a Lien for Delinquent Assessments. As more particularly provided by applicable law, the amount of any delinquent Regular Assessment, Special Assessment, Special Individual Assessment (pursuant to Section 6.13 of this Article), or Emergency Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) shall become a lien upon the Separate Interest of the Owner so assessed when the Association causes to be recorded, in the Office of the County Recorder, a Notice of Delinquent Assessment (or equivalent) executed by the Board or an representative of the Association authorized by the Board. The Association shall record the lien in accordance with and pursuant to applicable statutory law.

(2) Remedies Available to the Association to Collect Assessments. After the expiration of the statutory time period, prescribed by applicable

law, following the recording of Notice of Delinquent Assessment, the Association may initiate legal action against the Owner personally obligated to pay the delinquent Assessment for a money judgment and/or foreclosure of said lien against the Owner's Separate Interest, or accept a deed in lieu of foreclosure, in a manner consistent with applicable statutory law. Foreclosure by the Association of said lien may be by judicial or non-judicial foreclosure.

6.13 Limitation on Right to Lien Separate Interests for Special Individual Assessments. A Special Individual Assessment imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Areas for which the Owner, or his or her Tenants, Residents, or Invitees were responsible may become a lien against the Separate Interest enforceable by the sale of the Separate Interest pursuant to applicable law. However, other Special Individual Assessments imposed by the Association pursuant to Section 6.10A(2), as a disciplinary measure for failure to comply with the Governing Documents, such as for fines, levied pursuant to this Declaration and/or applicable law, except for late payment penalties for delinquent Assessments, may not be characterized nor treated as an Assessment that may become a lien against the Separate Interest that is enforceable by sale pursuant to applicable law. Special Individual Assessments relating to delinquent Assessments shall be subject to imposition of a lien and enforceable through foreclosure or sale under a power of sale for failure of an Owner to pay such Assessment, all as more particularly provided in herein.

6.14 Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent, or any lien is imposed against the Owner's Separate Interest.

6.15 Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area, abandonment of the Owner's Separate Interest or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Separate Interest pursuant to this Declaration.

6.16 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (i) the Association is not properly exercising its duties and powers as provided in this Declaration; (ii) a Member has made or elects to make no use of the Common Areas; or (iii) any construction or maintenance performed or not performed by the Association shall in any way postpone Assessments or entitle a Member to claim any such offset or reduction.

ARTICLE VII

ARCHITECTURAL CONTROL

7.1 Generally. No exterior Improvement of any kind shall be erected, commenced, or maintained within the Property, nor shall any exterior or structural addition, change or alteration be made in or to any portion of the Common Area, any Residence, or Separate Interest, without the prior written approval of the Association as provided herein.

7.2 Exterior Improvements. No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, improvement, or structure of any kind shall be commenced, installed, erected, painted or maintained upon the Development, nor shall any alteration or improvement of any kind be made thereto, or to the exterior of any Residence, until the same has been approved in writing as set forth herein. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of its Residence or to paint the interior of its Residence any color desired. Under no circumstances shall any Owner undertake any activity or work that will impair the structural soundness, mechanical systems, or integrity of the Owner's Residence, nor impair any easement. No Owner shall undertake the joining of adjacent Residences.

7.3 Architectural Guidelines. The Board may adopt, amend and repeal, under the procedures set forth in Section 5.5 hereof, rules and regulations to be known as Architectural Guidelines. Said Guidelines shall interpret and implement the provisions of this Declaration by setting forth particular standards and procedures for review and approval of proposed Improvements; guidelines for architectural design; placement of any Improvement; color schemes; exterior finishes; materials; and similar features, which are approved for use within the Property. Said Guidelines shall not conflict with, nor be in derogation of, the standards required by this Declaration.

7.4 Architectural Character. The character of all Improvements within the Development shall be of a Mediterranean style. Architectural designs on single family Lots should take advantage of grades by building and stepping the Residences into the slope of the hillside and encouraging the use of terracing in those areas not enclosed within buildings.

7.5 Specific Architectural Requirements. The following specific architectural requirements shall apply to any Improvement within the Development.

A. Mattie Road Setback. All portions of all structures shall be set back a minimum of fifty feet (50') from the right of way along Mattie Road;

B. Collector Road Setbacks. All garages facing any collector road shall set back a minimum of fifteen feet (15') from the edge of pavement. All other portions of

single family residential structures and garages oriented parallel to the street wherein access is not direct to the street may be set back a minimum of ten feet (10');

C. Setbacks From Open Space Easement. Residential structures may have zero setback from adjoining areas covered by open space easements.

D. Yard Setbacks. Except as otherwise set forth in this Section, single family residential structures shall be set back a minimum of three feet (3') from interior side and rear property lines, and ten feet (10') from roadway side yard areas (with the exception of duplex units joined by a common wall and having zero setback);

E. Common Access Driveway Setbacks. The garages of single-family residences served by common access driveways shall be set back a minimum of fifteen feet (15') from the edge of pavement of the common access driveway, or shall have their individual drives designed to allow for one space of tandem parking between the end of the pavement of the common access drives and the opening to their garage. Other portions of a single-family residential structures served by common access drives may be situated within five feet (5') of the edge of pavement of common access drives.

F. Coverage Requirements. For all single-family Lots west of the collector road, the maximum area contained within the residential structures shall not exceed seventy percent (70%) of the Lot area.

G. Building Height Requirements. Structures developed on single family Lots shall not exceed a building height of twenty-five feet (25') above the grade existing prior to the development of the tract.

H. Minimum Square Footage; Garages. All houses shall have a minimum square footage of 1,650 square feet, to include a minimum of a two-car garage.

I. Solar Access. All Separate Interests shall be furnished with solar access as required by applicable City criteria.

J. Exterior Materials. Exterior materials and colors shall be limited to those allowed by applicable conditions of approval for the Development, and as noted Section 7.5 above.

K. Roof Colors. All tile roofs shall be of Spanish-style tile material with a color range of orange and red.

7.6 Architect. The Board may retain the services of an architect and one or more consultants to assist the ARC in its duties. Compensation for the consultant's services shall be fixed by the Board. The cost of such consultants and any related expenses may

be charged to those Owners submitting plans for alterations, modifications, changes and/or Improvements to their Separate Interests.

7.7 Review by Board or Committee. In accordance with the Bylaws, the Board may appoint an Architectural Review Committee ("ARC"), consisting of Members in Good Standing, to review proposed Improvements. Members of the ARC shall serve for a one (1) year term, unless removed earlier therefrom by resignation, disqualification, or the vote of a majority of the Board. If the Board does not appoint an ARC, the Board shall exercise the Association's review authority as described herein.

A. Compensation of ARC Members. Unless the members of the ARC are professional consultants hired to perform review services, the members of the ARC shall receive no compensation for services rendered, other than reimbursement for actual expenses incurred by them in the performance of their duties hereunder. In no event may a director or officer of the Association receive compensation for service on the ARC, notwithstanding any professional qualifications he or she may possess.

B. Meetings of the ARC. The ARC shall meet as necessary to perform its duties hereunder, in accordance with any provisions of the Governing Documents governing committee functions. The ARC may from time to time, in accordance with such provisions of the Governing Documents and subject to the Board's direction, designate an ARC member to perform any delegated actions or duties of the ARC, except the approval of requests or the granting of variances. In the absence of such delegations, the vote or written consent of a majority of the ARC shall constitute an act of the ARC.

7.8 Submission of Plans. A Member proposing an Improvement shall submit a written request in accordance with this Declaration and any Guidelines, together with plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials, and location of the same. The Board or ARC may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Said requests and plans may be submitted by personal delivery, or certified mail, to the Secretary or Manager. The term "plans and specifications" as used in this Article may include:

(1) A professionally prepared plot plan, which indicates: (a) the size of the Lot; (b) Lot contour lines; (c) the location of all existing and proposed Improvements; (d) setbacks from Lot lines of all existing and proposed Improvements; (e) the proposed drainage plan for the Lot, as improved; (f) the location of all trees and vegetation which are to be removed as part of the construction plan; and (g) the location of all proposed utility installations.

(2) A professionally prepared (prepared by an architect or licensed building designer) set of plans showing all: (a) elevations (including foundation);

(b) floor plans; (c) location of all heating and/or cooling equipment; (d) decking; (e) screening devices; and (f) retaining walls.

(3) Description of exterior materials (if not included with above plans) and samples of roofing material and exterior colors, if appropriate.

(4) A complete and professionally prepared landscape plan which includes the names, location, and sizes of all proposed trees, shrubbery, and lawn area(s), identifies any trees scheduled for removal, and describes the Owner's plans for replanting trees and vegetation and for stabilizing slopes during and after construction.

(5) The Owner's proposed construction schedule. If the contemplated Improvement project is of a nature that does not merit extensive plans and specifications, the ARC may (but shall not be obligated to) waive or modify any of the above plan and specification requirements upon receipt of a written request from the applicant to do so.

7.9 Review and Decision. The ARC shall fairly, reasonably and expeditiously render decisions regarding Members' requests for approval, after consideration of compliance with the Declaration and Guidelines, quality of workmanship and materials, aesthetic appearance, harmony of external design and location in relation to surrounding structures, setback lines, topography and finish grade elevation.

A. All decisions regarding proposed Improvements shall be in writing. In the event the ARC fails to approve or disapprove a request within forty-five (45) days after said plans and specifications have been submitted, the request shall be deemed approved, unless the delay is a result of the Board or ARC request for additional information regarding the request or for additional plans and specifications.

B. The ARC may condition its approval of proposals or plans and specifications for any improvement: (1) upon the Member furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Common Area as a result of such work; (2) on such changes to the request and/or plans and specifications as it deems appropriate; (3) upon the Member's agreement to grant appropriate rights of entry to the Association for the maintenance of Improvements; (4) upon the Member's agreement to reimburse the Association for any increase in Common Expenses as a result of such Improvement; (5) upon the Member's agreement to install (at its sole cost) water, gas, electrical, or other utility meters to measure any increased consumption; (6) upon the Member's agreement to complete the proposed work within a stated period of time; or (7) upon any reasonable condition as deemed appropriate by the Board within its discretion.

C. The ARC shall approve a request if it deems: (i) that the installation, construction, alterations or additions contemplated thereby in the locations indicated are

of a quality of workmanship and materials as similar Improvements to the Properties, will not be detrimental to the appearance of the surrounding area of the Properties as a whole and will not interfere with the reasonable enjoyment of any other Owners or his or her property; (ii) that the appearance of any structure affected thereby will be in harmony with the external design of surrounding structures, including size, and with the natural topography and landscaping within the Properties, considering the location of the proposed Improvement with respect to topography and other structures and finished grade elevation, the nature of other Improvements in the area, other land uses in the area, the adequacy of site dimensions and all other criteria which, in the opinion of the ARC, should be evaluated in making such determination; (iii) that the installation or construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Area or the enjoyment thereof by the Members; and (v) with respect to an irrigation system, that the ARC determines, in its sole discretion, that the proposed system and drainage pattern is designed to recognize water conservation on all Lots.

D. If a request is disapproved, the written decision reflecting same shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration or appeal of the decision by the Board. Appeals from decisions of the ARC may be made to the Board, who must hear the appeal and either affirm, reverse or modify the decision at an open meeting. An appeal must be submitted in writing not more than thirty (30) days following the final decision of the ARC. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. This does not require reconsideration of a decision made by the Board or a body/committee that has the same membership as the Board. The Rules or Guidelines may include additional fair, reasonable and expeditious procedures to process appeals.

7.10 Inspection of Work. The ARC may at any time inspect any work for which approval is required under this Article and may require any Owner to take such action as may be necessary to remedy any noncompliance with the approved plans or with the requirements of this Declaration.

7.11 Review Fees. The Board may establish a schedule of fees which may be charged against the submitting party to defray any costs incurred by the Association including architectural and/or engineering consultant fees, legal fees, and expenses for reviewing plans.

7.12 Enforcement. In the event of an architectural violation, the Board shall have the right to suspend the right to use Common Areas, suspend the Member's voting rights, and levy fines against the Member (or Tenant, if applicable), after notice and the opportunity to be heard is provided. The Board may also pursue such legal remedies as the Board deems appropriate, including, but not limited to, an action for a temporary restraining order and/or injunction to compel the Member (or Tenant) to bring its Separate Interest into compliance with the Governing Documents, including architectural decisions

made by the ARC pursuant to this Section. The Association shall have no duty to identify architectural violations, and any failure of the Association, its Board, its officers, its Manager or any agent or employee to detect and identify an architectural violation shall not operate to waive the Association's rights or remedies with respect to any such violation, unless (1) the Board or Manager shall have been notified in writing of the violation and (2) no remedial or enforcement action shall have been taken by the Association within five (5) years following such notice, except as otherwise provided by law.

7.13 Variations. The Board, in its sole discretion, shall be entitled to allow reasonable variances from these requirements in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships.

7.14 Limitation on Liability. Neither the Association, Board, ARC, if any, nor any member thereof, shall be liable to any Member (or Tenant) for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance in connection with the approval or disapproval of any plans, drawings and specifications, whether or not defective, or the construction or performance of any Improvement, whether or not pursuant to approved plans, drawings or specifications.

7.15 Compliance With Governmental Regulations. Review and approval of any requests, proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Member who desires to construct, install or modify the Improvement.

7.16 No Waiver of Future Approvals. The approval of the ARC or Board in any matter described in this Article shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar matter subsequently submitted for approval.

ARTICLE VIII

RESTRICTIONS ON USE OF SEPARATE INTERESTS AND COMMON AREA

In addition to the restrictions established by law and the Rules, which are not inconsistent with this Declaration, the following restrictions are hereby imposed upon the use of Separate Interests, Common Areas within the Property.

8.1 Residential Use. The Separate Interests and Residences are restricted to Residential Use except as provided herein.

8.2 Business Activities. No business or commercial activities of any kind whatsoever shall be conducted upon or in any Separate Interest, Residence, or Common Areas. No restrictions contained herein shall be interpreted to prohibit any Owner or

Tenant from maintaining a home office, nor from conducting any other activities within the Separate Interest otherwise compatible with Residential Use and the provisions of this Declaration which are permitted under applicable zoning laws, and health ordinances, resolutions, Rules and Regulations of the County of San Luis Obispo without the necessity of a special use permit or governmental authorization, unless other Residents are disturbed by an unreasonable number of visitors to the Property, excessive noise, or additional traffic and provided further there shall be no signs advertising their home office, profession or other activity allowed by this Section.

The Common Areas shall not be used by any Owner, Tenant, Occupant or Invitee to provide any service (including without limitation tutorial or filming services) in exchange for any monetary or non-monetary compensation.

8.3 Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried on or conducted within the Property, including within any Residence, nor shall anything be done within the Property which is or could become an unreasonable annoyance or nuisance to other Residents nor otherwise interfere with the quiet enjoyment of the Property by other Residents. Without limiting the foregoing, no Owner shall permit unreasonable noise, including, but not limited to, the operation of excessively noisy air conditioners, stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from Separate Interest or from activities within the Common Area, which would unreasonably disturb any other Resident's enjoyment of his or her Residence or the Common Area.

8.4 Behavior of Persons on the Property. Each Owner and Tenant of a Separate Interest shall be accountable for the conduct and behavior of all Residents and Invitees of such Owner or Tenant, and shall be liable to the Association and to other Owners, Residents, and Invitees, for any property damage or nuisance caused by such persons.

8.5 Damage to Common Area. No Owner, Tenant, Resident, Invitee, or contractor employed by anyone other than the Board may make any Improvement to the Common Area, nor remove or alter any furnishings, structures, improvements or landscaping materials therein. The Common Area shall not be obstructed by any person. Each Owner shall be liable to the remaining Owners for any damage to the Common Area that may be sustained by reason of the negligent or willful conduct of said Owner, or that Owner's family members, contract purchasers, Tenants, Residents, or Invitees. Each Owner, by acceptance of his or her deed, agrees personally and for family members, contract purchasers, Tenants, Residents, and Invitees, to indemnify each and every other Owner, and to hold every other Owner harmless from, and to defend him or her against any claim of any person for personal injury or property damage occurring within the Separate Interest of the Owner, except to the extent that the injury or damage occurred by reason of the willful or negligent act or omission of the Association or of an Owner, Tenant, Resident, or Invitee of another Separate Interest.

8.6 Activities Affecting Insurance. Nothing shall be done or kept within any Separate Interest or the Common Area which will increase the rate of insurance on any policy maintained by the Association without the prior written consent of the Association and no Owner shall permit anything to be done or kept within his or her Separate Interest or the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Separate Interest or any part of the Common Area.

8.7 Pets. Owners or Occupants of Separate Interests may keep no more than two (2) dogs, or two (2) cats, or one (1) dog and one (1) cat, within a Separate Interest, and may keep a reasonable number (as determined by the Board) of other ordinary household pets and fish that are kept in cages or aquariums, provided that no such dogs, cats or other animal or fish may kept, bred, board, or maintained for any commercial purposes. Exotic pets, including without limitation snakes, will not be permitted at any time within the Development. Notwithstanding the foregoing, no animals may be kept in the Development which result in an annoyance or nuisance, or which are threatening or obnoxious to Residents. The Board, in its sole discretion, shall have the right to determine what are reasonable numbers and what constitutes a threat or nuisance. Pet owners shall be responsible for the prompt disposal of waste deposited by their pets in the Property. Every Owner shall be liable for any damage, nuisance, or unreasonable noise or odors, caused to any person or property by any animals brought or kept upon the Property by any other Owner, Resident, Tenant, or Invitee of his or her Separate Interest.

A. Leash Required. No Owner, Tenant, Resident or Invitee who possesses a dog or other animal shall permit, allow, or cause the animal to run, stray, be uncontrolled or in any manner be in, upon, or at large upon any part of the Common Area, unless it is restrained by a substantial leash and under the control of a person responsible for and capable of controlling the animal.

B. Dangerous Animals.

(1) Notwithstanding the foregoing, no domestic dogs or other animals shall be within the Common Area that are deemed by the Board to be vicious or potentially dangerous. All vicious and potentially dangerous animals must be kept indoors or in a securely fenced area within the Separate Interest from which it cannot escape, and into which children or other individuals cannot trespass. An animal shall be deemed "vicious" for purposes of this Section if, when unprovoked: (i) it has bitten a person (however, an animal may be vicious even though it is not proven to have bitten any person); (ii) in an aggressive manner, it inflicts severe injury on or kills a human being; or (iii) it is previously determined to be and currently listed as a potentially dangerous animal (as determined by the Board or governmental authority) and, after its owner or keeper has been notified of this determination, it continues to engage in behavior deemed potentially dangerous. For purposes of determining if an animal is "vicious," "severe

injury” means any physical injury to a human being that results in muscle tears, disfiguring lacerations, or requires multiple sutures or corrective or cosmetic surgery.

(2) An animal shall be deemed “potentially dangerous” if, when unprovoked: (i) on two separate occasions within the prior 36-month period, it engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the animal are off the property of its owner or keeper; (ii) it bites a person causing a less “severe injury” than as defined above; or (iii) on two separate occasions within the prior 36-month period, it has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal off the property of its owner or keeper.

8.8 Garbage and Unsightly Items. No rubbish, trash, or garbage shall be allowed to accumulate within or outside of any Separate Interest. No Owner or Tenant shall allow an accumulation of trash, debris, paper, or other items which would create a fire, safety, or health hazard, including any infestation of vermin, contamination by noxious substance or biohazard, obnoxious odors or related nuisance. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Property to a public dump or trash collection area by the Owner or Tenant at his or her expense. All refuse containers, wood piles, stored areas, machinery and equipment shall be prohibited upon any Residence and Separate Interest unless obscured from view of adjoining Separate Interests, streets or portions of the Property. Refuse containers may be set out for a reasonable period of time before and after scheduled trash pick-up times.

8.9 Temporary Structures. No structure of a temporary character, trailer, mobilehome, camper, tent, shack, garage or other outbuilding shall be used on any Separate Interest at any time as a Residence, either temporarily or permanently.

8.10 Storage. Storage of personal property shall only be within a Separate Interest. Absolutely no hazardous materials shall be stored within the Development, including without limitation any explosives, ammunition, accelerants, corrosives, or biohazard, which either by its nature or by unreasonable accumulation thereof may result in a threat to health or safety of persons or property in the Development.

8.11 Clotheslines. Except as authorized by law, no exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes in a manner which is visible from any neighboring Separate Interest, street, or Common Area. The Board may adopt reasonable Rules and Regulations to regulate the drying or laundering of clothes or the use of exterior clotheslines or drying racks.

8.12 Window Covers. Curtains, drapes, blinds, shutters, and shades may be installed as interior window covers. No window shall be covered, on the interior or exterior, by tint, paint, foil, sheets or similar items. The Board may adopt rules regulating

the type, color and design of window covers. Absolutely no sunshades, awnings, canvass, ornamental screens, or any other window covering shall be installed on the exterior of a Residence, including the exterior walls within the Patio or balcony areas, without the prior written permission of the Board.

8.13 Signs.

A. **Commercial Signs.** No advertising signs or billboards shall be displayed on any building containing Residences nor posted within or upon any portion of the Common Area, except that Owners may display one sign which advertises their Separate Interests "For Rent," "For Lease", "For Sale", or "For Exchange" or advertise directions to the Separate Interest on a common sign post to be reasonably located in plain view of the public. The sign shall be of reasonable dimensions and design.

B. Noncommercial Signs.

(1) Noncommercial signs, posters, flags, or banners may be posted or displayed on or in an Owner's Separate Interest, except as required for the protection of public health or safety or if the posting or display would violate a local, state, or federal law.

(2) For purposes of this section, a noncommercial sign, poster, flag, or banner may be made of paper, cardboard, cloth, plastic, or fabric, and may be posted or displayed from the window, door, balcony, or outside wall of the Residence, but may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component, or include the painting of architectural surfaces.

(3) Noncommercial signs and posters may not be more than nine (9) square feet in size and noncommercial flags or banners may not be more than fifteen (15) square feet in size.

C. The Board may adopt reasonable rules and regulations governing placement and display of signs consistent with the law and this Declaration.

8.14 Antennas and Similar Devices. In order to ensure adequate aesthetic controls and to maintain the general attractive appearance of the Property, no Owner or Tenant shall place or maintain any objects, such as masts, towers, poles, television and radio antennas, or television satellite reception dishes, on or about the roof or exterior of any building or on any Common Area within the Property, except as authorized by law. The Board may establish guidelines on the placement of satellite dishes which are consistent with applicable law.

8.15 Solar Energy. The Board shall not restrict or prohibit the installation or use of a solar energy system that is protected by law, including, without limitation, Civil Code sections 714, 714.1 and 801.5, except that it may adopt reasonable restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

8.16 Machinery and Equipment. Unless otherwise approved by the Board in writing or by the adoption of Rules and Regulations, no machinery or equipment of any kind shall be placed, operated or maintained upon any Separate Interest or the Common Area, except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a Separate Interest or appurtenant structures within the Property. No hobby or carpenter shops are permitted on the Property.

8.17 Parking and Vehicle Restrictions. Owners, Tenants, and Residents shall park in their garage areas or driveway area or other locations approved in the Association's parking Rules and Regulations. Owners, Tenants, and Residents shall not park, without Board approval, in parking spaces provided for guests, if any. In addition, the following parking and vehicle restrictions shall apply within the Property:

A. The Board shall have the authority to make reasonable rules and restrictions regarding parking, use, washing, and maintenance of vehicles within the Property as may be deemed prudent and appropriate. The Board shall have the authority to tow, at the Owner's expense, any vehicle parked or stored in violation of any restriction in this Section or any parking or vehicle Rules adopted by the Board. The Board shall post such notices or signs within the Common Area as may be required by law to effectuate this towing provision.

B. No boat, trailer, house trailer, motor home, camper, bus, truck, or other commercial or recreational vehicle shall be parked, except temporarily, or stored in any open area, Common Area, street, driveway, roadway, or guest parking area, other than any such area specifically designated for the parking of such vehicles, except as permitted in writing by the Board. No motor vehicle shall be dismantled, repaired, painted or restored upon any portion of the Development which is visible from the streets or roadways surrounding the Development, except for emergency work needed to move the vehicle to an appropriate repair facility. Temporary parking shall mean parking of vehicles belonging to Invitees, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services and parking of vehicles belonging to or being used by Owners for loading or unloading purposes.

C. The parking of commercial, recreational, and oversized vehicles must conform at all times to local governmental laws and ordinances.

8.18 Garage Doors. When garages are not in use, garage doors shall be kept closed. Garages shall be used only for the purpose of parking vehicles and equipment and storing an Owner's household goods, and shall not be converted for living or recreational activities without the prior written approval of the Board. No garage doors shall be permitted to remain open except for a temporary purpose, and the Board may adopt rules for the regulation of the opening of garage doors, including the imposition of disciplinary fines or other penalties on Owners Residents, Tenants, or Invitees who violate such rules.

8.19 Sports Apparatus. Unless otherwise permitted by Rules adopted by the Board, no sports apparatus, whether portable or fixed, including without limitation basketball standards or skateboard ramps shall be permitted within the Development. As used in this Section, term "sports apparatus" does not include bicycles, roller skates, roller blades or any other similar unpowered wheeled equipment, provided that the Board of Directors shall have the discretion to adopt Rules governing the use of such unpowered wheeled equipment.

8.20 Oil and Mineral Rights. No oil, mineral, or water drilling, development operations, refining, quarrying, or mining operations of any kind shall be permitted upon or in the Property nor, subsequent to the recording of this Declaration, shall wells, tanks, tunnels, or excavations or shafts be installed upon the surface of the Property or within five hundred (500) feet below the surface of such properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon the Property.

8.21 Drainage. No person shall do or cause anything to be done that would alter or interfere with the drainage patterns or block or alter the natural flow or engineered flow of surface water or interfere with drainage patterns within the Development. An easement over and under each Lot as the servient tenement is reserved in favor of each other Lot as the dominant tenement for the purpose of allowing the Association's agents to enter the Lot to maintain that portion of an in-tract storm drainage system located thereon. No Owner or Occupant shall commit any act that would interfere with the operation of any drainage system (including drainage swales) installed on the Owner's Lot. The Owner shall maintain the system free of debris and other obstacles at all times. Reciprocal appurtenant easements between each Lot and the Common Area and between adjoining Lots are reserved for the flow of surface water.

8.22 Accessory Dwelling Unit. No Accessory Dwelling Unit shall be constructed, installed, modified or altered without the prior written approval of the Association. For purposes of this Section, an "Accessory Dwelling Unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. Accessory Dwelling Units shall not be sold separate from the sale of the Residence on the Lot. An Owner must apply to the Board of Directors or, if applicable, the ARC for approval to install, construct or modify an Accessory Dwelling Unit. All

applications for approval shall be processed and approved by the Board or ARC in the same manner as required by and outlined in Article VII. The Association may adopt additional reasonable regulations consistent with applicable law regarding the construction, installation or modification of Accessory Dwelling Units.

8.23 Variances. Upon application by any Owner, the Board shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article, if specific application of the restriction will, in the sole discretion of the Board, either deny a substantial right of the affected Owner or Tenant, or cause an undue hardship to the affected Owner or Tenant, or fail to further or preserve the common plan and scheme of development contemplated by this Declaration.

ARTICLE IX

MAINTENANCE RESPONSIBILITIES

9.1 Association's Responsibilities. The Association shall be solely responsible for all maintenance, repair, upkeep and replacement of the Common Area, as required by applicable law, and to keep the same in good order and repair. No person other than the Association or its duly authorized representatives shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. The Association's maintenance, repair and replacement obligations, which may differ from any applicable law are specifically set forth, in detail, in the Maintenance Responsibility Check List, attached hereto as Exhibit "A" and incorporated by this reference. In the event of any ambiguities or conflicts regarding maintenance, repair or upkeep obligations, the Maintenance Responsibility Check List shall control. Without limiting the foregoing, the Association shall be responsible for:

A. The maintenance, reconstruction, replacement, or refinishing of any Common Area Improvements, including sewer, water, telephone, plumbing and electrical lines located under or within the Common Area.

B. The maintenance, construction, reconstruction, replacement, refinishing of any road, driveway, or surface upon any portion of Common Area, excepting therefrom the portions maintained by Owners as set forth in Section 9.2 of this Declaration.

C. The maintenance, replacement and planting of Common Area landscaping, trees, shrubs, ground covering and other vegetation, and the maintenance and replacement of Common Area irrigation equipment, debris-detention basins and utilities. Any natural slope areas within the Common Area shall be maintained in a natural condition and in such a manner as to prevent noxious or dangerous weeds, sagebrush, chaparral or any other brush or weeds from such growth as to become, when dry, a fire

menace or public nuisance. Without limitation, the Association shall repair, replace and reconstruct any Common Area which is damaged as the result of, or in connection with, the use of, or the exercise of any rights under the easements reserved, if any.

D. The placement, maintenance and replacement of such signs as the Board may deem necessary for the identification of the Development, the regulation of traffic or parking, the regulation and use of Common Area and for the health, welfare and safety of Owners, tenants and guests. Any such signs to be placed within the street area shall be subject to City and County approval.

E. The Association shall be responsible for maintaining and cultivating landscaping on the Common Areas, all landscaping on any private Lots which is located southerly of the area shown on the map as “50-foot buffer” to Mattie Road, and the green break at the Development perimeter. On Owner property within the buffer, the Association will maintain up to the retaining wall for 2729, 2717, 2705 and 2681 Barcelona and will maintain up to the top of the slope or the Owner’s private fence for 2669, 2657, 2645, 2633, 2621, 2609, 2597, 2585, 2573 Barcelona and 2081, 2071, 2061 and 2051 Costa Del Sol.

F. The Association shall be responsible for maintaining, repairing and replacing the sewer lift station and related components.

9.2 Owner Maintenance, Repair and Replacement Responsibilities.

A. Each Owner of a Separate Interest shall be responsible for the maintenance, repair, and upkeep of his or her Separate Interest and Residence, except as the Association may be responsible for exterior maintenance and repair, in a clean, sanitary and attractive condition and good state of repair. No Improvements (including but not limited to Residences, garages, carports, walls and fences) shall be permitted to fall into disrepair and all Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In addition each Owner shall have the right, at his or her sole cost and expense, to paint, tile, finish, alter, substitute, add, or remove any fixtures within such Owner’s Residence; however, no Owner may interfere with or damage any Common Area, Maintenance Area or interfere with the use and enjoyment of the Common Areas or the Separate Interests or any other part of the Development.

Each Owner’s maintenance, repair and replacement obligations, which may differ from any such applicable law are specifically set forth, in detail, in the Maintenance Responsibility Check List (**Exhibit “A”**). In the event of any ambiguities or conflicts in regards to maintenance, repair or upkeep obligations, the Maintenance Responsibility Check List shall control.

B. Notwithstanding any other provision in this Declaration, Owners are responsible for maintaining, repairing, and replacing their utility lines, driveways,

entryways, sidewalks, walkways, and any other structure or component designed to serve one or more but fewer than all Separate Interests whether on the Owner's Separate Interest, the Common Area, or an adjacent Owner's Separate Interest. If a component serves more than one Separate Interest, but fewer than all, the costs to maintain, repair, and replace shall be shared equally by the owners who are served by the component. The cost to maintain, repair, and replace any such components that service a Separate Interest, whether within that Separate Interest, the Common Area, or an adjacent Separate Interest, shall be the responsibility of the Owner of the Separate Interest that is serviced by the component. All Common Areas and/or adjacent Separate Interest shall be restored by the Owner to as good condition, or better, by a qualified, properly licensed and insured, contractor. If the restoration work to the Common Area is not completed to the satisfaction of the Board of Directors, the Association shall make the repairs and assess the Owner for all costs related to the necessary repairs. The Board may require an architectural application for any work performed on the Common Area or an adjacent Separate Interest.

C. No Owner or Resident shall alter or obstruct a natural drainage course, or materially add to the natural water volume of said drainage course without making adequate provisions with respect to neighboring Separate Interests and Common Areas. Any such alterations, obstructions, or additions to water volume shall be subject to prior review and approval by the Architectural Review Committee.

9.3 Obligation To Permit Entry by Association and Adjacent Owners. Each Owner shall be obligated to permit the Owners or representatives of adjacent Separate Interests to enter the Owner's Separate Interest for purposes of performing installations, alterations, maintenance or repairs to utilities, mechanical or electrical services, including installation of television antennas and related cables, which are reasonably necessary for the use and enjoyment of the adjacent Separate Interest, provided that requests for entry are made at least twenty-four (24) hours in advance and that entry is at a time convenient to the Owner whose Separate Interest is being entered, except in the event of an emergency when no notice shall be required. Each Owner shall also honor the right of the Association and its agents to enter his or her Separate Interest as provided in this Declaration for maintenance, repairs and/or to gain compliance with this Declaration.

9.4 Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

9.5 Non-Responsibility for Consequential Damages/Mold Remediation/Re-construction. Except for those damages for which the Association has received insurance funds, neither the Association nor its Board of Directors, officers, manager or its employees or agents shall be liable to any Owner, or any other person, for injury, damage or loss to any Owner or any Owners' property, or any other persons or property, in the

Properties resulting from any casualty, or from any water, rain, dust, sand, or any other element which may leak or flow from outside of any Separate Interest, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, provided the Association, such Board Members or other persons have, upon the basis of such information as may be possessed by them, acted in good faith, and without willful or intentional misconduct. The Association's Non-Responsibility for Consequential Damages, as herein stated, includes, but is not limited to, fixtures, cabinets, paint, wall coverings, window coverings and floor coverings, costs necessary to test for the presence of mold, abate the same, and reconstruct Separate Interests damaged by said damages.

9.6 Party Walls. Each wall or fence placed on the dividing line between the Separate Interests shall constitute 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 shall apply thereto.

A. Use of Party Wall. Owners whose Separate Interests are separated by a party wall shall equally have the right to use such party wall, except that each shall have the right to the exclusive use of the surface of the wall on his side. Neither such Owner shall use any portion of such party wall so as to interfere with the use and enjoyment of the other Owner.

B. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and the other adjoining Owner shall contribute to the cost of restoration thereof in equal proportion to such use without prejudice, however, subject to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE X EASEMENTS

10.1 Owners' Nonexclusive Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas within the Property, including ingress and egress to and from his or her Separate Interest, which shall be appurtenant to and shall pass with the title to every Separate Interest, subject to the following rights and restrictions:

A. The right of the Association to assign, rent, lease, and to otherwise designate and control the use of any unassigned parking and storage spaces within the Common Area, and to limit the number of guests who may use any Common Areas.

B. The right of the Association to adopt Rules regulating the use and enjoyment of the Property for the benefit and well-being of the Owners in common, which may include, without limitation, temporarily suspending the right to use Common Areas consistent with orders issued by federal, state and/or local governmental agencies, or when necessary to protect against immediate threats to life, safety and/or property, arising from an emergency. In the event of the breach of such rules or any provision of any Governing Documents by any Owner, Tenant, Resident, or Invitee of a Separate Interest, the Board may temporarily suspend the voting rights and/or right to use the Common Areas, other than parking and roads, by any person and any other Owner or Resident of the Separate Interest, subject to compliance with due process requirements (to the extent permitted by law).

C. The right of the Association to enter into or upon any Separate Interest when such access is essential for the maintenance of the Common Area or to enforce the provisions of the Governing Documents, subject to Section 5.4(B) hereof.

D. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property; provided, however, that the rights of any such Mortgagee in said properties shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered a Common Expense.

E. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least three-fourths of the voting power of the Members, and their First Mortgagees, consenting to such dedication or transfer has been recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Separate Interest. Said instrument may be executed in counterparts so long as each counterpart is in recordable form.

F. The right of the Board or ARC, if any, to approve any proposed alteration or modification to the Common Area or any Separate Interest.

10.2 Encroachment Easements. If any portion of the Common Area encroaches on any Separate Interest or if any portion of a Separate Interest encroaches on the Common Area, regardless of the cause which may include but is not limited to settlement or shifting of the building, except to the extent any encroachment is due to the willful conduct of an Owner or other party, a valid easement exists for such encroachment and

for the maintenance of it as long as it remains, and all Separate Interests and the Common Area are made subject to such easements.

10.3 Blanket Utility Easement. There is hereby created a blanket easement upon, across, over and under all of the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephones, drainage and electricity and the master television antenna or cable television system, if any. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Property except as initially designed and approved by the Declarant or thereafter approved by the Board. The easements provided for in this Section shall in no way effect any other recorded easement on the Property.

10.4 Other Easements. Each Separate Interest and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Property and each Separate Interest and Common Area.

10.5 Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any Manager or contractor selected by the Board, to enter in or to cross over the Common Area and any Separate Interest to perform the duties of maintenance and repair of the Common Area, Maintenance Areas, or any other area required or permitted to be maintained by the Association, provided that any entry by the Association or its agents shall only be undertaken in strict compliance with this Declaration.

ARTICLE XI INSURANCE

11.1 Fire and Casualty Insurance. The Association shall obtain and maintain a policy of fire and casualty insurance naming as parties insured the Association and any Mortgagee of the Common Area, and containing the standard extended coverage and replacement cost endorsements and, in the Board's discretion, such other or special endorsements as will afford protection and insure, for the full insurable, current replacement cost, all Common Area and Maintenance Areas that the Association is required to repair or restore in the event of partial or total destruction thereof and, also in the Board's discretion, all or portions of the Separate Interests, and the personal property of the Association for or against the following:

A. Loss or damage by fire or other risks covered by the standard extended coverage endorsement;

- B. Loss or damage from theft, vandalism or malicious mischief; and
- C. Such other risks, perils or coverage as the Board may determine.

Such policy or the endorsement made a part thereof shall, to the extent available, provide that the insurer issuing the policy agrees to abide by the decision of the Association made in accordance with the provisions of this Declaration as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Area. If available for a reasonable cost, the insurance policy shall include building code upgrade coverage.

The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be reevaluated on an annual basis.

11.2 General Liability and Property Damage Insurance. The Association shall obtain and maintain a policy of commercial general liability and property damage insurance naming as parties insured the Association, each member of the Association's Board of Directors, any manager, the Owners of all Separate Interests, and such other persons as the Board may determine and agreed upon by the respective carrier. The policy shall insure each named party against liability incident to the ownership, maintenance, and repair of the Common Area and any other Association-owned or maintained real or personal property. The limits of such insurance shall not be less than three million dollars (\$3,000,000.00) covering all claims for death, personal injury, and property damage arising out of a single occurrence, or in such other minimum amount as required by applicable law to protect Owners from civil liability arising solely by reason of their ownership interest in the Common Area.

11.3 Directors and Officers Liability Insurance. The Association shall obtain and maintain Directors and Officers Liability Insurance covering prior acts in order to ensure that past Board Members are protected for decisions made during their term of service. The policy shall name as insureds not only the current Board Members but also volunteer committee members, if such insurance is available. The limits of such insurance shall not be less than one million dollars (\$1,000,000.00), or in such other minimum amount as required by applicable law to protect volunteer officers or directors from personal liability in excess of the insurance coverage. If commercially available for a reasonable price, such Directors of Officers Liability coverage shall include an endorsement extending coverage for the acts, errors, and omissions committed by the Association's Manager.

11.4 Fidelity Bond and Other Insurance.

A. The Board shall obtain and maintain fidelity bonds or insurance, in an amount equal to at least three (3) months operating expenses plus Reserves. Any such policies or bonds must include coverage for computer fraud and fund transfers fraud,

pursuant to Civil Code Section 5806, and contain an endorsement that includes as covered individuals under said policies or bonds any non-compensated Board members and also the Association's Manager.

B. To the extent such insurance is reasonably obtainable or required by any institutional First Mortgagee, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limitation, demolition insurance, flood insurance, worker's compensation, commercial umbrella coverage, and boiler and machinery coverage.

11.5 Coverage Not Available. If any insurance policy or endorsement required herein is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above.

11.6 Copies of Policies. Copies of all insurance policies shall be retained by the Association and shall be available for inspection by any Owner in accordance with applicable law.

11.7 Individual Owner Insurance. Each Owner is required to obtain and maintain, at the Owner's sole expense, property insurance with fire and casualty coverage for one hundred percent (100%) of current replacement cost of all improvements on its Separate Interest. All such individually carried insurance shall contain a waiver of subrogation by the carrier as to the other Owners and the Association. If the Residence, or any improvements or landscaping on any Separate Interest other than a Common Area lot are damaged or destroyed by fire or other casualty, the Owner of such Separate Interest shall repair or reconstruct the damaged improvement in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or as authorized by the Architectural Review Committee.

11.8 Trustee. All insurance proceeds payable pursuant to policies maintained by the Association may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests appear. Said trustee shall be a commercial bank, escrow company, title company, or other person or institution with trust powers within the County that agrees in writing to accept such trust.

11.9 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried by the Association. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

11.10 Board's Discretion to Submit Insured Losses. The Board shall have the discretion as to whether or not it is in the best interests of the Association to submit an insurance claim to its insurer.

11.11 Losses Solely Attributable to a Separate Interest; Deductibles. Each Owner shall be responsible to pay the deductible for any claims made under the Association's policies of insurance for losses solely attributable to the respective Owner's Separate Interest.

ARTICLE XII

DAMAGE OR DESTRUCTION

12.1 Destruction of Common Area. If there is a destruction of some or all of the Common Area, resulting from any casualty loss, including without limitation fire, earthquake, wind, rain, subsidence, flood, or any other cause, the procedures in this Article shall be followed. For purposes of this Article, "destruction" applies to any Improvements that are rendered unsafe for any human habitation by being razed, destroyed, or annihilated, but not merely unsatisfactory for habitation by a particular individual, regardless of sensitivity to particular conditions.

A. If the proceeds of insurance maintained by the Association is at least eighty-five percent (85%) of the projected costs of the repair, the Common Area shall be repaired to its former condition as promptly as is practical and in a lawful and workmanlike manner. Available insurance proceeds shall be used for such purpose and the Board shall levy a uniform Special Assessment at such time and in such amount as is necessary to cover any costs in excess of insurance proceeds.

B. If such proceeds of insurance is less than eighty-five percent (85%) of the projected costs of the repair, the Common Area shall nevertheless be repaired unless, within ninety (90) days from the date of destruction, Members holding at least seventy-five percent (75%) of the total voting power of the Association object in writing to such repair. In such event, the Common Area shall be cleared and landscaped for community park use; provided, however, that there shall exist in such Common Area adequate vehicular and pedestrian rights of way to ensure lawful access to the Separate Interests. The costs of such clearing and landscaping shall be paid for with available insurance proceeds, and any deficiency shall be raised by the levy of Special Assessments in an amount determined by the Board. In the event any excess insurance proceeds remain, the Board may, in its discretion, retain such funds in the Common Funds or distribute pro rata all or a portion of such sums to the Owners, subject to any prior rights of mortgagees whose interests may be protected by the insurance policies.

12.2 Minor Restoration and Repair Work. The Association shall order restoration or repair work without complying with the other provisions of this Article whenever the estimated cost of the work does not exceed \$50,000.00. If insurance proceeds are unavailable or insufficient, the Association shall levy a Special Assessment for the cost of the work.

12.3 Destruction of Residences.

A. Obligation to Rebuild. It shall be the duty of the Lot Owner to rebuild, repair or reconstruct said Residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty, or to remove any damaged structures from the Lot without unreasonable delay.

B. Association Approval. Any Owner who has suffered damage shall apply to the ARC for approval of plans for the reconstruction, rebuilding, or repair of his or her Residence pursuant to Article VII hereof. Such application shall be made in writing together with full and complete plans, specifications, working drawings and elevations showing the proposed reconstruction and the end result thereof. The ARC shall grant such approval only if the design proposed by the Owner would result in a finished Residence in harmony with the exterior design of other Residences within the Properties.

C. Time Limitation. The Owner(s) of any damaged Residence(s) and the ARC shall be obligated to proceed expeditiously to discharge their respective obligations. Unless otherwise waived, the Owner(s) shall commence reconstruction or removal of the damaged or destroyed structure within ninety (90) days after the casualty occurs and complete the same within six (6) months after the casualty occurs.

ARTICLE XIII CONDEMNATION

13.1 Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

13.2 Representation by Board in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Common Areas, the Members hereby appoint the Board, and such persons as the Board may delegate, as attorney-in-fact to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

13.3 Inverse Condemnation. The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

13.4 Award for Common Area. Any awards received on account of the taking of Common Areas shall be paid to the Association. The Board may in its sole discretion retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Members. The rights of an Owner and the Mortgagee of his Residence as to any pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Residence.

ARTICLE XIV RIGHTS OF LENDERS

14.1 Rights of First Lenders. No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any of its lien provisions, shall render invalid the lien of any First Lender on any Separate Interest made in good faith and for value, but all of those covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale, or otherwise. For purposes of this Article XIV, the following definitions shall apply:

A. "First Lender" shall mean any person, entity, bank, savings and loan association, insurance company, or other financial institution holding a recorded First Mortgage on any Separate Interest.

B. "Eligible Mortgage Holder" shall mean a holder, insurer, or guarantor of a First Mortgage on a Separate Interest which has requested timely written notices from the Association, in a written request that includes the name and address of the Eligible Mortgage Holder, and the Separate Interest address.

C. "Eligible Insurer or Guarantor" shall refer to an insurer or governmental guarantor of a First Mortgage.

D. "First Mortgage" shall mean any Mortgage recorded in the County made in good faith and for value on a Residence with first priority over other Mortgages encumbering the Separate Interest.

E. "Foreclosure" shall refer to the legal process by which a Separate Interest owned by an Owner who is in default under a Mortgage is sold pursuant to California Civil Code section 2924a et seq. or sale by the Court pursuant to California Code of Civil Procedure section 725a et seq. and any other applicable laws.

F. "Mortgage" shall mean a mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by sublease or assignment) given as security for the

repayment of a loan or other financing which encumbers a Separate Interest, made in good faith and for value.

G. "Mortgagee" shall mean a holder of a Mortgage including the beneficiary of a deed of trust that constitutes a Mortgage.

H. "Mortgagor" shall mean a person who encumbers its Separate Interest with a Mortgage including the trustor of a deed of trust that constitutes a Mortgage.

14.2 Specific Rights of Lenders. Notwithstanding any provision in the Governing Documents to the contrary, First Lenders shall have the following rights:

A. Notice of Action: Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Separate Interest address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(1) Any condemnation loss or any casualty loss that affects either a material portion of the Property or any Separate Interest on which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;

(2) Any default in performance of obligations under the Governing Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Separate Interest subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days;

(3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and,

(4) Amendments to the Declaration only as follows:

(a) Amendments of a material adverse nature to First Lenders require the approval of at least fifty-one percent (51%) of Eligible First Lenders (based on one (1) vote for each First Mortgage owned);

(b) Any action to terminate the legal status of the Property, or to use insurance proceeds for any purpose other than to rebuild, requires approval of at least fifty-one percent (51%) of Eligible First Lenders (based on one (1) vote for each First Mortgage owned); and,

(c) The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required by this Declaration to such parties, at the address given on the current request for notice. An Eligible Mortgage Holder who receives a written request to approve or consent to a proposal, and who fails to deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposal shall be deemed to have approved such request, provided the notice has been delivered to the Eligible Mortgage Holder by certified or registered mail, return receipt requested.

B. Distribution of Proceeds of Insurance, Condemnation or Termination: No provision of the Governing Documents gives an Owner, or any other party, priority over any rights of First Lenders in the case of a distribution to Owners of proceeds of termination or any insurance proceeds or condemnation awards for losses to or taking of Separate Interests and/or Common Area.

ARTICLE XV ENFORCEMENT

15.1 Remedy at Law Inadequate. Except for nonpayment of any Assessment, the remedy at law to recover damages for the breach, default or violation of any of the Governing Documents are hereby declared and agreed to be inadequate. Any such breach, default, or violation may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

15.2 Nuisance. Without limiting the generality of the foregoing section, the result of every act or omission whereby any provision of this Declaration is violated is hereby declared to be a nuisance. Violation of any law, ordinance or regulation by any Owner, Tenant, resident, guest, invitee, agent or contractor which affects the health, safety, or property rights of other Members is hereby declared to be a nuisance and a violation of this Declaration. Every remedy against nuisance, either public or private, shall be applicable against every such violation of law or the Declaration.

15.3 Costs and Attorneys' Fees. In any action brought because of any alleged breach or default of any Owner or Tenant of any Separate Interest, the court may award to the prevailing party in any such action such attorneys' fees and other costs as the court deems just and reasonable. An Owner shall be responsible for attorneys' fees and costs incurred by the Association to cure the defaults respecting his or her Separate Interest, including those of his or her Tenant(s) or of any guest, invitee, agent, or contractor thereof.

15.4 Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different

times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or Tenant or others to perform or observe any provision of this Declaration.

15.5 Failure Not a Waiver. The failure of any Owner, the Association, or its Board, officers, or agents to enforce any of the provisions of this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

15.6 Rights and Remedies of the Association.

A. Rights Generally. In the event of a breach or violation of any Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's Tenants, guests, employees, invitees, or contractors, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to, the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Areas or suspension of the Owner's voting rights as a Member of the Association.

B. Schedule of Fines: Due Process. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for illegally parked vehicles). The Board shall distribute to each Owner, pursuant to Section 15.7 of the Bylaws, a schedule of the monetary penalties that may be assessed for those violations, or any changes thereto. Such fines may not be levied unless the Board first provides written notice to the Owner, pursuant to Section 15.7 of the Bylaws, at least ten (10) days prior to the meeting to consider or impose discipline upon an Owner, and provides the Owner an opportunity for a hearing before the Board. The notice shall contain the date, time, and place of the meeting, the nature of the alleged violation for which the Owner is subject to discipline, and a statement that the Owner has a right to attend and may address the Board at the meeting. The Board shall meet in executive session if requested by the Owner being disciplined. No penalty or temporary suspension of rights shall be imposed pursuant to this Section unless the Owner alleged to be in violation is given, pursuant to Section 15.7 of the Bylaws, at least fifteen (15) days prior written notice of the penalty imposed or temporary suspension.

C. Disciplinary Action. Notwithstanding the foregoing, under circumstances involving conduct that constitutes: (1) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (2) a traffic, life safety, or fire hazard; (3) a threat of material damage to, or destruction of, the Common Area; or (4) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation

has occurred (such as parking violations), the Board of Directors or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the offending Owner, or on its own initiative, conduct a hearing as soon thereafter as reasonably practicable.

D. Rules Regarding Disciplinary Proceedings. The Board shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules and shall provide for notices and procedures satisfying the alternative dispute resolution requirements of applicable law.

E. Court Actions. Before initiating any court action seeking solely declaratory or injunctive relief to interpret or enforce the Governing Documents or declaratory or injunctive relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits for small claims court, the Association or Owner shall first comply with the provisions of applicable law relating to alternative dispute resolution, except in the case of an emergency in which immediate injunctive relief is necessary.

ARTICLE XVI

AMENDMENT OF DECLARATION

16.1 Amendment in General. This Declaration may be amended or revoked by the vote or assent of fifty-one percent (51%) of all Owners, using voting procedures prescribed in the Bylaws or by law. The percentage of Owners necessary to amend a specific provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that provision.

16.2 Effective Date of Amendment. An amendment will be effective upon the Recording of a Certificate of Amendment, and the distribution of a copy of the Recorded amendment to each Owner. The Certificate of Amendment shall be executed by the President and Secretary of the Association, setting forth the amendment in full, and certifying that the approval requirements herein have been duly met. Notwithstanding anything to the contrary herein, no amendment shall affect the rights of the holder of any deed of trust or Mortgage recorded prior to such amendment.

16.3 Amendment by Board. Where permitted by the Davis-Stirling Common Interest Development Act or other applicable law, the Board may amend this Declaration to conform to current law, to remove restrictive covenants in violation of law, or otherwise. Any such amendment shall be approved by the Board in a duly held open meeting, and shall be conducted in strict accordance with applicable law.

ARTICLE XVII
GENERAL PROVISIONS

17.1 No Public Rights. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

17.2 Survival of Association. In the event the Association as a corporate entity is dissolved, then a nonprofit, unincorporated association shall automatically be deemed formed to succeed to all the rights and duties of the Association, all of which shall continue to be governed by the Governing Documents and applicable law.

17.3 Notices. Communications or notices of any kind required, permitted, or described herein shall be in writing, and may be served and delivered (unless otherwise provided by applicable law), as an alternative to personal service, by mailing same as provided in the Bylaws. Notwithstanding, to the extent any document must be delivered by the Association by individual delivery or notice, whether required by law or as stated herein, effective delivery includes e-mail, facsimile, or other electronic means, if the recipient has consented to such delivery, in writing or by e-mail. Consent to electronic delivery may be revoked in writing, or by e-mail, by the recipient. (Civil Code § 4040(a)(2).)

17.4 Failure of Mortgagee to Respond. Any Mortgagee and/or governmental agency who receives a written request from the Board to respond or consent to any action shall be deemed to have approved such action, unless the Association receives a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

17.5 Arbitration. Any dispute between the Association and any Owner shall be settled by arbitration pursuant to the rules of the American Arbitration Association.

ARTICLE XVIII
CONFORMANCE TO CITY REQUIREMENTS

18.1 Violation of Ordinances or Permits. Nothing in this Declaration shall be construed to authorize the Association, Board, Owners, or occupants to violate the provisions or restrictions of any cognizant governmental authority including without limitation the laws, ordinances, permits and powers of the City of Pismo Beach applicable to the Properties.

18.2 Approval of Amendments by the City of Pismo Beach. Any amendment to this Declaration shall be submitted for approval, and shall not become effective until such amendment has been reviewed and approved as to form by the City of Pismo Beach.

Such review and approval shall be solely for the purpose of ensuring that such amendments do not conflict with any conditions attached to the approval of the subdivision of said City or existing city codes.

18.3 Right of City to Compel Performance. The City of Pismo Beach is hereby given ancillary jurisdiction over the enforcement of these CC&Rs with respect to the duty to maintain Common Areas. In the event of breach of any duty or interference with any of the rights or benefits herein established, the City of Pismo Beach may give written notice of such breach or interference to the Association, together with a demand on the Association to remedy the breach. If the Association refuses to do so, or fails to take appropriate action within thirty (30) days of receipt of said notice, upon a resolution of the City Council of said City, the City shall have full power to perform the necessary maintenance and repair to the Common Area and to charge the cost thereof to the Association. Any funds collected by the City shall be applied, after deducting expense of enforcement, to correct the breach or interference, and any excess funds shall be paid or applied for the benefit of the Association and its Members.

IN WITNESS WHEREOF, the undersigned executed this Amended and Restated Declaration of Covenants, Conditions and Restrictions this ____ day of _____, 20_____.

SPYGLASS RIDGE VILLAS HOMEOWNERS ASSOCIATION

By: _____, President

By: _____, Secretary

CERTIFICATE

I, the undersigned, the duly elected and acting Secretary of SPYGLASS RIDGE VILLAS HOMEOWNERS ASSOCIATION, a California non-profit mutual benefit corporation, do hereby certify that the foregoing AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS were duly approved and adopted by the membership of SPYGLASS RIDGE VILLAS HOMEOWNERS ASSOCIATION by secret ballot vote pursuant to the requirements of the Davis-Stirling Common Interest Development Act (*Civil Code* §§ 4000-6150) on _____, 20____; that same were duly approved by first mortgagees of separate interests in the community required by the Original Declaration, as amended or restated; and that the same do now constitute the AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS of the Association.

This Certificate is executed under penalty of perjury on _____,
20____, in _____, California.

SECRETARY