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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
CYPRESS RIDGE

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF CYPRESS RIDGE ("Declaration") is made this 4th day of April, 2000 by Cypress Ridge, L.P., a California limited partnership ("Declarant") with reference to the facts set forth in the Article hereof entitled "Recitals."

ARTICLE 1

RECITALS

1.1 PROPERTY OWNED BY DECLARANT. Declarant is the owner in fee simple of that certain real property (the "Property") situated in the County of San Luis Obispo, State of California, more particularly described on **Exhibit "A"** attached hereto and incorporated herein.

1.2 NATURE OF PROJECT. Declarant intends to establish a plan of planned development ownership and to develop the Property, as a planned development project within the meaning of California Business and Professions Code Section 11004.5(c) and California Civil Code Section 1351(k), to conform with the provisions of the California Subdivided Lands Law (California Business and Professions Code Section 11000, et seq.) and to subject the Property to certain limitations, restrictions, conditions and covenants as hereinafter set forth, in accordance with the provisions of California Civil Code Sections 1350 et seq., and any successor statutes or laws. To that objective, Declarant desires and intends to impose on the Property mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the benefit of all of the Owners, the Residential Lots and the Association Property and the future Owners of said Residential Lots and Association Property.

1.3 DESCRIPTION OF PROJECT. If developed as planned, the Project (as hereinafter defined) will ultimately contain three hundred eighty-six (386) Residential Lots, but Declarant makes no guarantee that the Project will be constructed as presently proposed. There will also be certain areas which will be conveyed in fee title to the Association as Association Property (as hereinafter defined) and certain easements which will be conveyed to the Association as Association Easement Areas (as hereinafter defined). Each Owner of a Residential Lot will also receive an easement for ingress and egress and use over portions of the Association Property of each other Phase, if any, effective upon conveyance of the first Residential Lot in each Phase. Each Residential Lot shall have appurtenant to it a membership in the Cypress Ridge Owners Association, a California nonprofit mutual benefit corporation ("Association").

379 UNIT

DECLARATION

Declarant declares that the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of a general plan for the subdivision, improvement, protection, maintenance, and sale of the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Property, shall be enforceable equitable servitudes and shall be binding on and inure to the benefit of the successors-in-interest of such parties. Declarant hereby declares that all of the Property described in **Exhibit "A"** shall be subject to this Declaration. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 1354, and any successor statutes or laws.

ARTICLE 2

DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article shall, for all purposes of this Declaration, have the meanings herein specified.

2.1 ADDITIONAL CHARGES. The term "Additional Charges" means costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

2.2 AGRICULTURAL BUFFERS. The term "Agricultural Buffers" refers to those areas situated in the vicinity of the Project which may be used for agricultural purposes described on **Exhibit "B"** attached hereto and incorporated herein.

2.3 ARCHITECTURAL COMMITTEE. The term "Architectural Committee" means the committee created pursuant to the Article hereof entitled "Architectural Committee."

2.4 ARCHITECTURAL GUIDELINES. The term "Architectural Guidelines" means the design criteria adopted by the Architectural Committee pursuant to the provisions of **Article 9** of this Declaration.

2.5 ARTICLES. The term "Articles" means the Articles of Incorporation of the Association as they may from time to time be amended which are or shall be filed in the Office of the Secretary of State for the State of California.

2.6 ASSOCIATION. The term "Association" means the Cypress Ridge Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

2.7 ASSOCIATION EASEMENT AREAS. The term "Association Easement Areas" refers to those areas over which easements have been reserved or granted in favor of the Association. The Association Easement Areas may be located on real property subject to this Declaration or on real property in the vicinity of the Project which is not subject to or included within the Annexable Property. The Association Easement Areas initially granted or reserved in favor of the Association are described on **Exhibit "C"** attached hereto and incorporated herein. The Association Easement Areas included within any subsequent Phase shall be described in a Supplementary Declaration.

2.8 ASSOCIATION EASEMENT AREAS FOR OFF-SITE OWNERS. The term "Association Easement Areas for Off-Site Owners" refers to those easements reserved or granted over portions of the Association Property in favor of certain owners and/or property situated in the vicinity of the Project. The Association Easement Areas for Off-Site Owners initially granted or reserved are described on **Exhibit "D"** attached hereto and incorporated herein. Additional Association Easement Areas for Off-Site Owners, if any, shall be described in a Supplementary Declaration.

2.9 ASSOCIATION RULES. The term "Association Rules" means the rules and regulations adopted by the Board from time to time.

2.10 ASSOCIATION PROPERTY. The term "Association Property" means all the real property owned, from time-to-time, by the Association. The Association Property in the first Phase is described on **Exhibit "E"** as "Association Property." The Association Property in any subsequent Phase shall be described in a Supplementary Declaration (as hereinafter defined).

2.11 BENEFITTED OWNER. The term "Benefitted Owner" refers to the Golf Course Owner (as defined below).

2.12 BOARD. The term "Board" means the Board of Directors of the Association.

2.13 BYLAWS. The term "Bylaws" means the Bylaws of the Association, as they may from time to time be amended, which are or shall be adopted by the Board.

2.14 CAPITAL IMPROVEMENT ASSESSMENTS. The term "Capital Improvement Assessments" means the assessments which are levied pursuant to the provisions of **Section 6.6** of this Declaration.

2.15 COMMON EXPENSES. The term "Common Expenses" means the actual and estimated costs and expenses incurred or to be incurred by the Association, the Board or the Architectural Committee, including, but not limited to, the following:

2.15.1 maintenance, management, operation, repair and replacement of the Association Property, Association Easement Areas and all other areas within the Property which are maintained by the Association;

2.15.2 due but unpaid Assessments (as hereinafter defined);

2.15.3 maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Property as provided in this Declaration or pursuant to agreements with the County;

2.15.4 costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, architects and employees;

2.15.5 the costs of any utilities, landscaping and other services benefitting the Owners and their Residential Lots to the extent such services are paid for by the Association;

2.15.6 the costs of fire, casualty, liability, worker's compensation and other insurance covering the Association Property and activities of the Association or obtained by the Association pursuant to the provisions of this Declaration;

2.15.7 reasonable reserves as deemed appropriate by the Board or otherwise required pursuant to the Governing Documents;

2.15.8 the costs of bonding of the members of the Board, the Architectural Committee, any professional managing agent or any other person handling the funds of the Association;

2.15.9 taxes paid by the Association;

2.15.10 amounts paid by the Association for the discharge of any lien or encumbrance levied against the Association Property or portions thereof;

2.15.11 costs incurred by the Architectural Committee or other committees of the Association; and

2.15.12 the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the operation and/or maintenance of the Association Property, or in furtherance of the purposes or the discharge of any obligations imposed on the Association by the Governing Documents.

2.16 COUNTY. The term "County" means the County of San Luis Obispo, California.

2.17 COST CENTERS. The term "Cost Centers" refers to the portions of the Property which directly receive a special benefit (which benefit may be in the form of amenities provided or maintenance or other services offered) and for which additional Assessments will be imposed on the Owners who receive such special benefits pursuant to the provisions of this Declaration. As of the date of recordation of this Declaration, there are no Cost Centers within the Property. Any Cost Centers which may be formed in the future shall be described in a Supplementary Declaration.

2.18 COST CENTER BUDGET. The term "Cost Center Budget" refers to the elements of the budget for the Association which itemizes the cost components to be assessed against portions of the Property within a Cost Center, as provided in this Declaration and the Bylaws.

2.19 CUSTOM LOTS. The term "Custom Lots" refers to those lots designated for residential purposes on the Final Subdivision Map (as defined below) upon which an Owner may, after acquisition of fee title to the Residential Lot under authority of a Public Report, construct a Residence thereon.

2.20 CYPRESS RIDGE COMMUNITY. The term "Cypress Ridge Community" refers to the Property and all Improvements situated thereon.

2.21 DECLARANT. The term "Declarant" means Cypress Ridge, L.P., a California limited partnership, and its successors and assigns, if such successors and assigns acquire any or all of Declarant's interest in the Property for the purpose of purchase or sale, and Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to a portion or all of the Project. For any successor or assignee of "Declarant" to be deemed a Declarant under the terms of this Declaration, Declarant shall record in the County a certificate so designating said successor or assignee as Declarant. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

2.22 DECLARATION. The term "Declaration" means this Declaration of Covenants, Conditions and Restrictions of Cypress Ridge, as this Declaration may from time to time be amended, modified or supplemented.

2.23 DEVELOPMENT PLAN. The term "Development Plan" refers to the plan attached hereto as **Exhibit "F"** and incorporated herein designating portions of the Property and certain areas adjacent to and in the vicinity of the Property. The Development Plan is for illustration purposes only and there is no guarantee that all or any portion of the Property or the other areas shown on the Development Plan will be developed as shown.

2.24 DRE. The term "DRE" means the California Department of Real Estate or any successor agency that is responsible for administering the sale of subdivided lands pursuant to

Sections 11000, et. seq., of the California Business and Professions Code, or any similar statute hereinafter enacted.

2.25 ELIGIBLE HOLDER. The term "Eligible Holder" means any First Mortgagee who has given written notice to the Association specifying its name, address and the Residential Lot number or address of the Residential Lot by the Mortgage and requesting written notice of any or all of the events specified in this Declaration.

2.26 ENFORCEMENT ASSESSMENTS. The term "Enforcement Assessments" means the assessments which are levied pursuant to the provisions of **Section 6.7** of this Declaration.

2.27 FINAL SUBDIVISION MAP. The term "Final Subdivision Map" means the final subdivision tract map or maps covering the Project.

2.28 FIRST MORTGAGE. The term "First Mortgage" means a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Residential Lot in the Project.

2.29 FIRST MORTGAGEE. The term "First Mortgagee" means the Mortgagee of a First Mortgage.

2.30 GOLF COURSE. The term "Golf Course" means the golf course and related ancillary facilities located adjacent to portions of the Property as shown on the Development Plan.

2.31 GOLF COURSE OWNER. The term "Golf Course Owner" refers to the fee title Owner of the Golf Course, excluding those having such interest merely as security for the performance of an obligation.

2.32 GOLF COURSE RESTRICTIONS. The term "Golf Course Restrictions" refers to that certain Declaration of Golf Course Restrictions for Cypress Ridge recorded on _____ as Document No. _____ in the Office of the County Recorder of San Luis Obispo County which encumbers a portion of the Residential Lots.

2.33 GOVERNING DOCUMENTS. The term "Governing Documents" refers collectively to this Declaration, the Bylaws, Articles, Association Rules and Architectural Guidelines.

2.34 IMPROVEMENTS. The term "Improvement" or "Improvements" means all structures and appurtenances thereto of every type and kind in the Property, including but not limited to, Residences and other buildings, outbuildings, guardhouses, walkways, bicycle trails, utility installations, swimming pools and other recreational facilities, garages, carports, roads, sidewalks, walkways, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, patio and balcony covers, stairs, decks, landscaping, hedges, slopes, windbreaks, the exterior surfaces of any visible structure, paintings, planted trees and shrubs, irrigation systems, antennae,

poles, signs, solar or wind powered energy systems or equipment, and water softener, heater or air conditioning and heating fixtures or equipment; the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind; the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; landscaping, planting, clearing or removing of trees, shrubs, grass or plants; and any change or alteration of any previously approved Improvement including any change of exterior appearance color or texture.

2.35 INSTITUTIONAL MORTGAGEE. The term "Institutional Mortgagee" means a First Mortgagee that is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage; (iii) any Federal or State Agency; (iv) the State of California as the vendor under an installment land sales contract covering a Residential Lot; or (v) any other institution specified by the Board in a recorded instrument, who is the Mortgagee of a Mortgage or the beneficiary of a Deed of Trust encumbering a Residential Lot.

2.36 INVITEE. The term "Invitee" means any person whose presence within the Project is approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

2.37 LAKES. The term "Lakes" refers to the lakes situated adjacent to and/or in the vicinity of portions of the Property. The approximate location of the Lakes is shown on the Development Plan.

2.38 LAKE EASEMENTS. The term "Lake Easements" refers to those easements reserved for lake purposes over certain Residential Lots as designated on the Final Map.

2.39 MEMBER. The term "Member" means every person or entity who holds a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of a Residential Lot.

2.40 MERCHANT BUILDER OR MERCHANT BUILDERS. The term "Merchant Builders" refers to any person or entity which has or will acquire from Declarant a portion of the Property for the purpose of improving such property with Residences for sale to Owners under authority of a Public Report or selling such Residential Lots as Custom Lots under authority of a Public Report in accordance with a Development Declaration recorded against such property by Declarant in connection with the conveyance to the Merchant Builder.

2.41 MORTGAGE. The term "Mortgage" means any duly recorded mortgage or deed of trust encumbering a Residential Lot in the Project.

2.42 MORTGAGEE. The term "Mortgagee" means a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

2.43 NOTICE AND HEARING. The term "Notice and Hearing" means the procedure that gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board.

2.44 OWNER. The term "Owner" means the record owner, whether one or more persons or entities, including Declarant, of any Residential Lot excluding those having such interest merely as security for the performance of an obligation. A contract purchaser under a recorded installment land sales contract shall be included as an Owner but those merely having an interest as security for the performance of an obligation shall not be Owners.

2.45 PHASE. The term "Phase" means a group of Residential Lots which are subject to this Declaration and are designated by Declarant as a separate Phase by a document (which may be a Supplementary Declaration) executed by Declarant and recorded with the County Recorder of the County. Should Declarant not have made a contrary designation, each group of Residential Lots which have been made subject to this Declaration and are covered by a separate Public Report (as defined below) issued by the DRE or otherwise recognized by the California Real Estate Commissioner as a separate Phase shall constitute a separate Phase.

2.46 PRIVATE STREETS. The term "Private Streets" means those streets, roads, drives and storm drain and lighting Improvements within the Property which are owned and maintained by the Association as provided herein.

2.47 PROJECT. The term "Project" means all of the real property described on **Exhibit "A"** together with all Improvements situated thereon.

2.48 PROPERTY. The term "Property" means all of the real property described in **Exhibit "A"** of this Declaration, and such Annexable Property as may hereafter be brought within the jurisdiction of the Association together with all Improvements situated thereon pursuant to a Supplementary Declaration.

2.49 PUBLIC REPORT. The term "Public Report" means the Final Subdivision Public Report issued by the California Department of Real Estate for a Phase in the Project and any amendments to such Public Report.

2.50 REGULAR ASSESSMENTS. The term "Regular Assessments" means the assessments that are levied pursuant to the provisions of **Section 6.4** of this Declaration.

2.51 RESIDENCE. The term "Residence" means each residential dwelling situated within a Residential Lot.

2.52 RESIDENTIAL LOT. The term "Residential Lot" means each legally subdivided lot upon which a Residence has been or is permitted to be constructed, including the Custom Lots, and designated as Lot Nos. 1 through 387, on the Final Subdivision Map.

2.53 SENSITIVE RESOURCE AREAS. The term "Sensitive Resource Areas" refers to the areas established by the County which are situated in the vicinity of the Project and are designated on **Exhibit "G"** attached hereto and incorporated herein.

2.54 SPECIAL ASSESSMENTS. The term "Special Assessments" means the assessments that are levied pursuant to the provisions of **Section 6.5** of this Declaration.

2.55 SUPPLEMENTARY DECLARATION. The term "Supplementary Declaration" means those certain declarations of covenants, conditions and restrictions, or similar instruments, (a) designating the Residential Lots as a Phase, (b) identifying Association Property or other areas referenced in this Declaration to be maintained by the Association (c) describing certain areas within the Property that are to be maintained by the Association and/or (d) such other complementary additions and modifications as are permitted under **Section 15.1** of this Declaration.

2.56 UNOCAL EASEMENT AREA. The term "Unocal Easement Area" refers to the easement in favor of Union Oil Company which encumbers certain Residential Lots as shown on the Final Subdivision Map.

2.57 VOTING POWER. The term "Voting Power" means the total number of votes allocated to Residential Lots as set forth in **Section 3.2** of this Declaration.

ARTICLE 3

OWNERSHIP AND EASEMENTS

3.1 OWNERSHIP OF RESIDENTIAL LOTS. Title to each Residential Lot in the Project shall be conveyed in fee to an Owner. Ownership of each Residential Lot within the Project shall include (a) a membership in the Association, (b) any exclusive or non-exclusive easement or easements appurtenant to such Residential Lot over the Association Property as described in this Declaration and the deed to the Residential Lot, and (c) any non-exclusive easements over the pathways and roadways, if any, included within the Association Easement Areas.

3.2 NO SEPARATE CONVEYANCE. The interest of each Owner in the use and benefit of the Association Property shall be appurtenant to the Residential Lot. Anything in the Article hereof entitled "Amendments," to the contrary notwithstanding, this Article shall not be amended, modified or rescinded until Declarant and each Merchant Builder have conveyed the last Residential Lot within the Project, without (i) the prior written consent of Declarant and (ii) the recording of said written consent in the Office of the County Recorder.

3.3 EASEMENTS. The ownership interests in the Association Property and Residential Lots described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Residential Lots, the Association and the Association Property, and the Declarant and Merchant Builders and each of their respective Residential Lots superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Residential Lots may, but shall not be required to, set forth the easements specified in this Article.

3.3.1 Easements for Association Property. Subject to the provisions of this Declaration and the Association Easement Areas for Off-Site Owners, every Member of the Association shall have, for himself or herself and such Member's Invitees, a non-exclusive easement of access, ingress, egress, use and enjoyment of, in, to and over the Association Property, and such easement shall be appurtenant to and shall pass with title to every Residential Lot in the Project, subject to the rights and restrictions set forth below.

(a) Suspend Rights of Members. The Board shall have the right, after Notice and Hearing, to temporarily suspend an Owner's rights as a Member pursuant to the terms of this Declaration.

(b) Dedicate or Grant Easements. The Association shall have the right to dedicate and/or grant easements over all or any portion of the Association Property.

(c) Control Parking. The Association shall have the right to assign, license or otherwise designate and control parking within the Association Property, and, to promulgate rules and regulations to control parking in a manner consistent with this Declaration.

(d) Adopt and Enforce Association Rules. The Association shall have the right to adopt and enforce the Association Rules as provided in this Declaration.

3.3.2 Right of Access. Subject to the Association Easement Areas for Off-Site Owners and the rights of the Declarant and Merchant Builders set forth in **Article 10**, every Owner shall have the right to enjoy free and unobstructed passage between every such Owner's Residential Lot through the Association Property, to all publicly dedicated streets bordering the Project, subject to any restrictions imposed by the city, county or state.

3.3.3 Entry by Association. The Association and the Association's agents and employees shall have the right to enter (i) upon the Residential Lot (other than the interior of the Residence situated thereon) to effect emergency repairs in accordance with the provisions of this Declaration, (ii) upon the Association Property to perform maintenance obligations, and/or (iii) upon any portion of the Project to inspect the established system of drainage to ensure water is draining properly throughout the Project.

3.3.4 Perform Association Functions. Declarant, the Merchant Builders and each of their duly authorized agents and representatives and the Association and its duly authorized agents and representatives shall have such easements as are necessary to perform the duties and obligations of the Association as are set forth in this Declaration or in the other Governing Documents, including, but not limited to, easements over portions of each Residential Lot (other than the interior of the Residence), for performing repairs or maintenance not performed by the Owner pursuant to the terms of this Declaration. Subject to a concomitant obligation to restore, Declarant, any Merchant Builder and each of their respective sales agents, employees and independent contractors shall also have the easements described in the Article hereof entitled "Development Rights".

3.3.5 Declaration Subject to Easements. Notwithstanding anything herein expressly or impliedly to the contrary, this Declaration shall be subject to all easements shown on the Final Subdivision Map and all easements heretofore or hereafter granted by Declarant and any Merchant Builder for the installation and maintenance of utilities and drainage facilities that are necessary for the Project.

3.3.6 Association Easement Areas for Off-Site Owners. The Association Property shall be subject to the Association Easement Areas for Off-Site Owners, and the Owners and their Invitees of the Owners of the real property in whose favor the Association Easement Areas for Off-Site Owners have been granted shall have the rights of ingress and egress provided for under the easements granting or reserving the Association Easement Areas for Off-Site Owners.

3.3.7 Utilities. There are reserved and granted for the benefit of each Residential Lot, as dominant tenement, over, under, across and through the Project (including the Association Property and each other Residential Lot), as the servient tenement, non-exclusive easements for utility services.

3.3.8 Encroachment. There are hereby reserved and granted for the benefit of each Residential Lot, as dominant tenement, over, under and across each other Residential Lot and Association Property, as servient tenements, and for the benefit of the Association Property, as dominant tenement, over, under and across each Residential Lot, as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of Residential Lots and Association Property as are encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other improvements or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachment exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

3.3.9 Declarant's Non-Exclusive Easements. Subject to a concomitant obligation to restore, Declarant and the Merchant Builders and each of their sales agents, employees and independent contractors shall have the easements described in the Article hereof entitled "Development Rights."

3.3.10 Lake Easements. Residential Lots 51 through 102 inclusive, which will be included as part of the Association Property are subject to the Lake Easements in favor of the Golf Course Owner. The Association and the Owners of the Residential Lots subject to the Lake Easements acknowledge that the use of said Residential Lots and Association Property is subject to the terms of the Lake Easements and that nothing contained herein, shall give to any Owner or the Association the right of ingress or egress or right to use the Lakes. Each Owner by acceptance of a deed, acknowledges that the Lakes are filled with reclaimed water. Each Owner covenants and agrees not to use the water in the Lakes for any purpose. The Golf Course Owner is a third party beneficiary of this restriction and if an Owner breaches its obligations under this Section, the Golf Course Owner shall, in addition to the rights set forth in this Section, have the right specified in **Section 16.5** of this Declaration.

ARTICLE 4

THE ASSOCIATION

4.1 THE ORGANIZATION. The Association is a non-profit mutual benefit corporation formed under the laws of the State of California to operate and maintain the Property for the benefit of the Owners. The Association is charged with the duties and is given the powers set forth in this Article and its affairs shall be governed by the Governing Documents. In the event that the Association as a corporate entity is dissolved, a non-profit unincorporated association shall forthwith and without further action or notice be formed to succeed to all of the rights and duties of said Association hereunder. The affairs of such unincorporated association shall be governed by the Bylaws and this Declaration as if they were created for the purpose of governing the affairs of an unincorporated association. Except for those acts which are expressly reserved to the vote of the membership of Owners in this Declaration, any duty, obligation or authority vested or required to be performed and any power or privilege which may be exercised by the Association pursuant to this Declaration shall be performed or exercised only by the Board or its authorized delegates, agents and servants, and any power, duty, obligation or authority vested or conferred on the Board by this Declaration shall be deemed a power, duty, obligation or authority of the Association. The Board shall conduct its affairs as provided for in the Bylaws.

4.2 ASSOCIATION ACTION; BOARD OF DIRECTORS AND OFFICERS; MEMBERS' APPROVAL. Except as to matters requiring the approval of Members as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws. Except as otherwise provided in this

Declaration, the Articles and the Bylaws, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total voting rights assent to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws or, in certain situations set forth in **Section 4.5** of this Declaration, by written ballot without a meeting pursuant to Corporations Code Section 7513, of a simple majority of the Members, other than Declarant, constituting a quorum consisting of at least sixty-seven percent (67%) of the Voting Power of the Association residing in members other than the Declarant.

4.3 POWERS OF ASSOCIATION. The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the Governing Documents, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below.

4.3.1 Performance of Duties. The Association shall have the power to undertake all of the express duties required under the Section below entitled "Duties of the Association" to be done by the Association.

4.3.2 Right of Enforcement and Notice and Hearing.

(a) Enforcement Actions. The Association in its own name and on its own behalf, or on behalf of any Owner who consents, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can temporarily suspend the membership rights and privileges or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of the Governing Documents or Board resolutions.

(b) Notice Requirements. Before a decision to impose such a suspension or monetary penalties is reached by the Board, at least fifteen (15) days written notice of suspension or imposition of monetary penalties and the reasons therefor must be given to the Owner of such suspension or imposition of a penalty or any such longer period as may be required under California Corporations Code Section 7341, or any successor statute or law. Additionally, before the Board decides to impose a suspension of privileges or impose a monetary penalty, the aggrieved Owner shall be provided with an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the date of the suspension of privileges or imposition of monetary penalty is to take effect. For the purposes of this Section, notice shall be given by any method reasonably calculated to provide actual notice. Notice may be hand-delivered to the Owner or sent by first class registered or certified mail, return receipt requested or overnight courier delivery

and addressed to the Owner at the last address of the Owner shown on the Association's records, or any other method deemed reasonable by the Board for delivering notices.

4.3.3 Delegation of Powers; Professional Management. The Association acting by and through the Board can delegate its powers, duties, and responsibilities to committees or employees, including a professional managing agent ("Manager"), subject to the requirements of the Governing Documents.

4.3.4 Association Rules. The Board shall have the power to adopt, amend and repeal the Association Rules as it deems reasonable. The Association Rules shall govern the use of the Association Property by all Owners and their Invitees. However, the Association Rules shall not be inconsistent with or materially alter any provisions of the Governing Documents. A copy of the Association Rules as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. In case of any conflict between any of the Association Rules and any other provisions of the Governing Documents, the conflicting Association Rule shall be deemed to be superseded by the provisions of the Governing Documents.

4.3.5 Right of Entry and Enforcement. The Association shall have the power and right (but not the obligation) in accordance with the provisions of this Declaration to enter upon any Residential Lot without liability to any Owner, upon at least twenty-four (24) hours prior notice, for the purpose of enforcing any of the provisions of the Governing Documents, or for the purpose of maintaining any Association Property or Association Easement Areas pursuant to this Declaration; provided, however, that in the event that there is an emergency, the agents and representatives of the Board may enter such Residential Lot immediately and without notice for the sole purpose of taking such action as is necessary under the circumstances. In no event, however, may the Association enter into the interior of any Residence. Any damage caused by an entry by the Association pursuant to the provisions of this Section shall be repaired by the Association.

4.3.6 Easements and Rights of Way. The Association, may grant and convey to any third party easements and licenses for use and rights of way in, on, over or under any Association Property conveyed or otherwise transferred to said Association or under its jurisdiction in accordance with the provisions of this Declaration.

4.3.7 Dedication. The Association, may dedicate any of its property to an appropriate public authority for public use as provided for in this Declaration.

4.3.8 Capital Improvements. The Board may, approve the construction, installation or acquisition of a particular capital improvement to the Association Property.

4.3.9 Other Property. The Association, may acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise, subject to the limitations set forth in **Section 4.6** below.

4.3.10 Enter Into Maintenance Agreements. The Association shall have the power to enter into maintenance or subsidy agreements with Declarant or any Merchant Builder for the repair and maintenance of the Association Property and for the undertaking by Declarant or any Merchant Builder of any other maintenance responsibilities of the Association pursuant to the provisions of this Declaration.

4.3.11 Contract for Goods and Services. The Association shall have the power to contract for goods and services for the benefit of the Association Property and the Project that are necessary for the Association to perform its duties and obligations hereunder, subject to the limitations set forth in **Section 4.6** below.

4.3.12 Borrow Funds. The Association shall have the right to borrow money to improve, repair or maintain the Association Property and to hypothecate any or all real or personal property owned by the Association, including pledging as collateral the assessment liens levied thereon, provided that the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the budgeted gross expenses of the Association shall require the approval by written ballot of a majority of each class of Members. Notwithstanding the foregoing, the Association shall have the right to borrow money from any public or governmental agency in excess of five percent (5%) of the budgeted gross expenses of the Association without the consent of the Owners, if such loans are below the then current market rates of fered by commercial or private sector lenders.

4.3.13 Litigation. Subject to the provisions of this Declaration, including, but not limited to, **Section 16.4**, the Association shall have the power, but not the duty, to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (a) the application or enforcement of this Declaration and (b) damage to the Association Property and Association Easement Areas. Any recovery by the Association with respect to any damage to or defect in the Association Property and Association Easement Areas shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

4.3.14 Cost Centers. Subject to the restrictions set forth in **Sections 4.5.4** and **5.3** of this Declaration, the Association shall have the power to form and administer Cost Centers in accordance with the terms and provisions of this Declaration and the Bylaws. In connection with the administration of Cost Centers, the Association shall have the power to establish advisory committees for any Cost Center, comprised of Owners whose Lots are within the applicable Cost Center. Such advisory committees may propose special rules and regulations with respect to Cost Centers or Cost Center Maintenance Areas which may be adopted by the Board. The Board shall also adopt special election procedures for the election of members of such advisory committees.

4.4 DUTIES OF THE ASSOCIATION. In addition to the powers delegated to it by its Articles and Bylaws, and without limiting their generality, the Association, acting by and through

the Board, has the obligation to conduct all business affairs of common interest to all Owners and to perform each of the duties set forth below.

4.4.1 Association Property and Association Easement Areas. The Association shall accept any Association Property and Improvements situated thereon and any easements over the Association Easement Areas conveyed by the Declarant or any Merchant Builder and/or created under this Declaration and shall maintain, operate, and otherwise manage all of the Improvements situated on the Association Property, and all personal property acquired by the Association in accordance with the terms and provisions of this Declaration. The Board shall periodically review the nature and scope of the operations of the Association to assure such operations are in satisfactory compliance with the requirements of the Governing Documents.

4.4.2 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association Property, personal property owned by the Association or against the Association. Such taxes and assessments may be contested or compromised by the Association if they are paid or a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes. Notwithstanding the foregoing, in no event shall the Association have any obligation to pay any such taxes with respect to the Association Easement Areas, which shall be the obligation of the Owner of fee title thereof.

4.4.3 Water and Other Utilities. The Association shall acquire, provide and pay for necessary utility and other services for the Association Property.

4.4.4 Maintenance of Project. The Association shall maintain and repair the Association Property, and any other portions of the Project required to be maintained by the Association pursuant to the provisions of the Governing Documents. The Association's obligations to maintain the Association Property in any Phase shall commence on the date Regular Assessments commence on Residential Lots in such Phase. Until commencement of Regular Assessments on Residential Lots in any Phase, the Association Property in such Phase shall be maintained by Declarant or the Merchant Builder who owns fee title to such property.

4.4.5 Architectural Control. The Association shall have the duty to maintain architectural control over the Property, promulgate Architectural Guidelines and appoint the Architectural Committee in connection therewith in accordance with the provisions of **Article 9** of this Declaration.

4.4.6 Association Rules. The Association shall adopt, amend, and repeal such rules and regulations as it deems reasonable. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Association Property and Association Easement Areas. In the event of any conflict between any such Association Rules and any other provisions of the other Governing Documents, the provisions

of the Association Rules shall be deemed to be superseded by the provisions of the other Governing Documents to the extent of any such inconsistency.

4.4.7 Association Property Maintenance. The Association shall maintain, repair, inspect, replace, paint (if applicable) and landscape the Association Property in accordance with the requirements of this Declaration and any other property and interests owned by the Association in accordance with the provisions of the Governing Documents, and acquire, maintain and replace such furnishings and equipment as the Board shall determine proper. All of such obligations shall be discharged when and in such manner as the Board determines in its judgment to be appropriate, provided that the Association shall conform with the requirements of any agreements entered into between the Declarant, with a Governmental Agency pertaining to the Association Property. The Association may prepare or cause to be prepared and implemented, on an annual basis, a comprehensive maintenance program for maintenance of the Association Property, which maintenance program shall be subject to review and approval by the Board.

4.4.8 Liens and Charges. The Association shall pay any amount necessary to discharge any lien or encumbrance upon the Association Property, or any other property or interest of the Association. Where one or more Owners are jointly responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens shall be specially assessed to said Owner(s).

4.4.9 Reserves. The Association shall establish and maintain a working capital and contingency fund as required under the Governing Documents.

4.4.10 Insurance. The Association shall obtain, from reputable insurance companies, and maintain the insurance described in the Article hereof entitled "Insurance."

4.4.11 Notice Prior to Litigation. The Association shall use its good faith efforts to notify all Owners of any litigation filed for or on behalf of the Association pursuant to the provisions of **Section 16.3** of this Declaration.

4.4.12 Use of Proceeds to Repair. In the event the Association receives, on its own behalf or for the benefit of the Owners, any proceeds as a result of any construction defect or other claims brought by the Association relating to repair or maintenance obligations of the Association, then the Association shall apply such proceeds first for the purpose of repairing such defects or replacing reserve funds previously utilized by the Association to cause such repairs and then to the costs of such litigation.

4.5 PROHIBITED ACTIVITIES. Notwithstanding any other provisions of this Declaration or the other Governing Documents, the Association is expressly prohibited from undertaking or performing any of the following activities, or expending or otherwise utilizing Association funds or resources therefor, and the following activities shall not constitute Permitted Functions of the Association.

4.5.1 Property Manager. The Association shall not (a) hire, as a professional manager, any full time employees for the Property. The Manager for the Association shall at all times be a professional manager employed as an independent contractor officer at its own place of business. Nothing contained herein shall limit the Association from hiring other employees for the Property.

4.5.2 Offsite Nuisances. The Association shall not use any assessments or expend Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of Phases in which Assessments have commenced.

4.5.3 Political Activities or Contributions. The Association shall not engage in any federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Property (e.g., endorsement or support of (a) legislative or administrative actions by a Governmental Agency which affect persons or property outside the Property, (b) candidates for elected or appointed office, and (c) initiatives, recall elections or other ballot proposals). The Association is prohibited from conducting, sponsoring, participating in or expending funds or resources on any activity, campaign or event, including without limitation any social or political campaign, event or activity, which does not directly and exclusively pertain to a Permitted Function.

4.5.4 Subassociation or Cost Center. For so long as Declarant or any Merchant Builder has the rights under **Section 5.2** of this Declaration, neither the Association nor any Owner, without the prior written consent of Declarant, shall create or eliminate a Cost Center, special benefits area or other such device to apportion any Common Expenses of the Association against fewer than all of the Owners and their Residential Lots.

4.5.5 Mortgagee Consents. For so long as Declarant or any Merchant Builder has the voting rights under **Section 5.2** of this Declaration, the Association may not, without the prior written consent of Declarant, take any action listed in **Section 13.10** of this Declaration for which the consent of Owners or First Mortgagees is required.

4.5.6 Reserved Rights of Declarant. For so long as Declarant or any Merchant Builder is entitled to exercise any right, or avail itself of any exemption, in **Article 10** or elsewhere in this Declaration, neither the Association, nor the Board, nor any Owner shall take any action which is inconsistent with, or which would abrogate, any such right or exemption.

4.6 LIMITATIONS ON AUTHORITY OF BOARD. The Board shall not take any of the actions listed below except with the vote or approval by written ballot of: (a) a majority of the Members of each of Class A and Class B during the time the two-class voting structure set forth in **Section 5.2** of this Declaration is in effect; or (b) except with the vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code Section 7513 of at least a

majority of the Members of the Association including at least fifty-one percent (51%) of Association Members other than Declarant after conversion to a single Class A voting membership.

4.6.1 Limit on Capital Improvements. The Board shall not, without obtaining the consent of the Members as set forth above, incur aggregate expenditures for capital improvements to the Association Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

4.6.2 Limit on Sales of Association Property. The Board shall not, without obtaining the consent of the Members as set forth above, sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

4.6.3 Limit on Compensation. The Board shall not, without obtaining the consent of the Members as set forth above, pay compensation to members of the Board for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board to be reimbursed for expenses incurred in carrying on the business of the Association.

4.6.4 Limit on Third Person Contracts. The Board shall not, without obtaining the consent of the Members as set forth above, enter into a contract with a third person wherein the third person will furnish goods or services for the Association Property or the Association for a term longer than one year with the following exceptions:

(a) A management contract, the terms of which have been approved by the Federal Housing Contracts Administration or Veterans Administration;

(b) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(c) A prepaid casualty and/or liability insurance policy not to exceed three (3) years duration; provided that the policy permits for short-rate cancellation by the insured;

(d) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one year without cause, penalty or other obligations upon ninety (90) days written notice of termination to the other party.

4.7 TERMINATION OF CONTRACTS AND AGREEMENTS.

4.7.1 Contracts or Leases. Any contract or lease, including any contract providing for the services of Declarant, entered into by the Association while Declarant controls the Association shall not exceed three (3) years and shall provide that the Association has the right to

terminate such contract or lease without cause upon thirty (30) days prior written notice and without penalty or the payment of a termination fee at any time after the transfer of control of the Association from Declarant upon not more than ninety (90) days notice to the other party. For purposes of this Section, the term "control" shall mean the right of Declarant to exercise unilateral control over the Association, the Board, the Project or the Owners in any manner other than by Declarant's exercise of votes allocated to Declarant on the same basis as votes are allocated to other Owners.

4.7.2 Professional Management Contracts. Any agreement for professional management of the Project or any agreement providing for services of the Declarant shall be for a term not to exceed one (1) year without the consent of fifty-one percent (51%) of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

4.7.3 Compensation. The Association shall not pay compensation to the directors or officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a director or officer or a member of the Architectural Committee to be reimbursed for expenses approved by the Board and incurred in carrying on the business of the Association. Nothing contained herein shall limit the Association from paying compensation to any members of any committees appointed by the Board or consultants to such committees, including the Architectural Committee.

4.8 PERSONAL LIABILITY. No member of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any Merchant Builder or any agent of Declarant or any Merchant Builder, shall be personally liable to any Owner, or to any other party, including the Association, for any error or omission of the Association, the Board, its authorized agents or employees or the Architectural Committee, if such person or entity has, on the basis of such information as may be possessed by him or her, acted in good faith without wilful or intentional misconduct. In addition to the foregoing, as more particularly specified in California Civil Code Section 1365.7 and any successor statutes or laws, any person who suffers bodily injury, including, but not limited to, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who resides in the Project either as a tenant or as an Owner of no more than two (2) Residential Lots, and who, at the time of the act or omission, was a "volunteer" as defined in California Civil Code Section 1365.7 or any successor statute or law, shall not recover damages from such Board member, if such Board member committed the act or omission within the scope of his or her Association duties, while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of California Civil Code Section 1365.7, and any successor statutes or laws have been satisfied.

4.9 ADDITIONAL PROVISIONS. Notwithstanding the provisions of this Declaration, by accepting a deed for a portion of the Property, the Association and the Owners acknowledge and agree that there may be certain laws and regulations that may be applicable to the operation of the

Association and the Property by the Association, including, without limitation, the Davis-Stirling Common Interest Development Act of Section 1350 et seq. of the California Civil Code and the Association and Owners shall comply with such provisions to the extent required by such laws and regulations.

ARTICLE 5

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

5.1 MEMBERSHIP.

5.1.1 Qualifications. Each Owner of a Residential Lot which is subject to assessment, including Declarant and any Merchant Builder, shall be a Member of the Association. Ownership of a Residential Lot or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership or ownership interest in all Residential Lots in the Project ceases at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Residential Lot merely as security for performance of an obligation are not to be regarded as Members.

5.1.2 Members' Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in this Declaration and the Governing Documents, as the same may from time to time be amended.

5.1.3 Transfer of Membership. The Association membership of each person or entity who owns, or owns an interest in, one or more Residential Lots shall be appurtenant to each such Residential Lot, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Residential Lot or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Residential Lot or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner.

5.2 NUMBER OF VOTES. The Association shall have two (2) classes of voting membership which are described below.

5.2.1 Class A Members. Class A Members shall be all Owners, with the exception of Declarant and the Merchant Builders so long as the Class B Membership is in effect, and shall be entitled to one (1) vote for each Residential Lot owned. When more than one (1) person holds an interest in any Residential Lot, all such persons shall be Members. The vote for such Residential Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Residential Lot.

5.2.2 Class B Members. The Class B Member shall be Declarant who shall be entitled to three (3) votes for each Residential Lot owned by Declarant and any Merchant Builder

in a Phase for which Assessments have commenced. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

(a) On the second anniversary of the first close of escrow of a Residential Lot in a Phase covered by the most recently issued Public Report for any Phase of the Project; or

(b) The fifth anniversary of the first close of escrow of a Residential Lot covered by the original Public Report for the first Phase of the Project, provided, however, if as of such fifth anniversary eighty-five percent (85%) of the Residential Lots in the first Phase are not sold by the fifth anniversary of the issuance of the Public Report for that Phase, then the conversion date shall be extended to the seventh anniversary of the issuance of the Public Report for that Phase.

As long as two (2) classes of Members in the Association exist, no action by the Association that must have the prior approval of the Association Members shall be deemed approved by the Members unless approved by the appropriate percentage of both classes of Members. Upon conversion to a single class A voting membership, any action by the Association that must have the prior approval of the Members will require approval by at least a majority of the Members of the Association including at least a majority of Members other than Declarant.

5.2.3 Joint Owner Votes. The voting rights for each Residential Lot may not be cast on a fractional basis. If the joint Owners of a Residential Lot are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Residential Lot, it will be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Residential Lot. If more than one (1) person or entity exercises the voting rights for a particular Residential Lot, their votes shall not be counted and shall be deemed void.

5.2.4 Accrual of Voting Rights. No voting rights shall accrue to any Owner until Regular Assessments have first commenced for such Owner's Residential Lot.

5.3 COST CENTER APPROVALS. Notwithstanding any other provisions of the Governing Documents, any action expressly only for the benefit of a Cost Center or the Owners of Residential Lots which requires a vote of the Members shall require the approval of the prescribed percentage of the class or classes of Members or the approval of Members other than Declarant (if applicable) of only those Owners within such Cost Center, except that if Section 1366 of the California Civil Code or any similar applicable statute or law requires the approval of all Owners, then this provision shall not apply.

ARTICLE 6

ASSESSMENTS AND DUES

6.1 CREATION OF LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.

Declarant and each Merchant Builder, for each Residential Lot owned within the Property, hereby covenants, and each Owner of a Residential Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association all assessments levied pursuant to the provisions of this Declaration. All assessments levied hereunder, together with interest, costs and reasonable attorneys' fees assessed hereunder, shall be a charge on the land and shall be a continuing lien upon the Residential Lot against which each such assessment is made, the lien to be effective upon recordation of a notice of delinquent assessments. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Residential Lot at the time when the assessment fell due and shall bind his or her heirs, devisees, personal representatives and assigns. Unlike the lien for non-delinquent assessments, the personal obligation for delinquent assessments shall not pass to successive Owners, unless expressly assumed by such successive Owner. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. If more than one person or entity was the Owner of a Residential Lot, the personal obligation to pay such assessment or installment respecting such Residential Lot shall be both joint and several.

6.2 FUNDS HELD IN TRUST. The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. Upon the sale or transfer of any Residential Lot, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

6.3 PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to perform the obligations and duties of the Association, including, but not limited to, the improvement and maintenance of the Association Property and for any other maintenance responsibilities of the Association, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Governing Documents. The Association shall not impose or collect any assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied.

6.4 REGULAR ASSESSMENTS

6.4.1 Payment of Regular Assessments. Regular Assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year, which budget shall be prepared in accordance with the provisions of this Declaration. Regular Assessments shall be levied on a fiscal year basis. Unless otherwise specified by the Board, Regular Assessments shall be due

and payable in monthly installments on the first day of each month during the term of this Declaration.

6.4.2 Budgeting. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a budget as described in the Article of the Bylaws entitled "Budget and Financial Statements." Increases in Regular Assessments shall be subject to the limitations set forth in Section 6.8 below. For the first fiscal year, the budget upon which Regular Assessment shall be based shall be the budget accepted by the Department of Real Estate of the State of California. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy thereof to each Member (or a summary thereof as provided in the Article of the Bylaws referenced above), together with written notice of the amount of the Regular Assessment to be levied against the Owner's Residential Lot, not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year.

6.4.3 Restrictions for Tax Exemption. As long as the Association seeks to qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 23701t and any amendments thereto, then the Board shall prepare its annual budget and otherwise conduct the business of the Association in such a manner consistent with federal and state requirements to qualify for such status.

6.4.4 Assessments after Conveyance of a Residential Lot in a Phase.

(a) Reallocation of Assessments. After the conveyance of a Phase, the assessment in the budget shall be reallocated among all Residential Lots in the Project, including those in the Phase, in the same manner as described above.

(b) Revision of Budget. Declarant shall give notice to the Association of the recordation of a Supplementary Declaration for the Phase and shall give the Association a copy of the budget submitted to the Department of Real Estate in connection with the Public Report for that Phase.

6.4.5 Non-Waiver of Assessments. If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

6.5 SPECIAL ASSESSMENTS. If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on, damage and destruction or condemnation of, the Association Property, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a

majority vote of the Board and does not exceed five percent (5%) of the budgeted gross expenses of the Association, it shall become a Special Assessment; provided, however, that such limitation shall not apply to Special Assessments levied by the Board to replenish the Association's reserve account as provided in **Section 9.3** of the Bylaws. Except for Special Assessments levied pursuant to **Section 9.3** of the Bylaws, any Special Assessment in excess of five percent (5%) of the budgeted gross expenses of the Association shall be subject to the limitations set forth in Section 6.8 below. The Board may, in its discretion, prorate such Special Assessment over the remaining months of the fiscal year or levy the assessment immediately against each Residential Lot. Unless exempt from federal or state income taxation, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

6.6 **CAPITAL IMPROVEMENT ASSESSMENT.** In addition to any other assessments provided for hereunder, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of **Section 4.3.8**. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. Increases in Capital Improvement Assessments shall be subject to the limitations set forth in **Section 6.8** below.

6.7 **ENFORCEMENT ASSESSMENTS.** The Association may levy an Enforcement Assessment against any Owner who causes damage to the Association Property or for bringing an Owner or his or her Residential Lot into compliance with the provisions of the Governing Documents and/or any other charge designated an Enforcement Assessment in the Governing Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. In the event the Association undertakes to provide materials or services that benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Enforcement Assessment. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by this Declaration and that satisfies California Corporations Code Section 7341 and any successor statutes and laws, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in **Section 6.13** of this Declaration, Enforcement Assessments are assessments but they may not become a lien against the Owner's Residential Lot that is enforceable by a power of sale under Civil Code Sections 2924, 2924b and 2924c and any successor statutes or laws. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

6.8 CHANGES TO ASSESSMENTS.

6.8.1 Limitation on Assessments. From and after January 1st of the year immediately following the conveyance of the first Residential Lot to an Owner, other than Declarant, the maximum annual Regular Assessment may not, except in the case of an Emergency (as hereinafter defined), be increased by an amount greater than twenty percent (20%) of the Regular Assessments for the preceding fiscal year and Special Assessments and Capital Improvement Assessments shall not be imposed that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the consent of fifty-one percent (51%) of the Owners, constituting a quorum and casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of California Corporations Code Section 7613 and any successor statutes or laws. The Board may not increase the Regular Assessments for any fiscal year unless it has complied with California Civil Code Section 1365.5 and any successor statutes or laws. For the purpose of this Section, a quorum shall mean more than fifty percent (50%) of the Owners of the Association and an Emergency shall mean any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain the Association Property or any part of the Project which is the responsibility of the Association to maintain where a threat to personal safety on the Project is discovered; or
- (c) an extraordinary expense necessary to repair or maintain the Association Property or any part of the Project which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the Budget required under this Declaration and the Bylaws; provided, however, that prior to the imposition or collection of a Regular Assessment under this Subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense which is involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of Regular Assessment. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Residential Lot by the Association as a Regular Assessment plus any amount paid by the Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments.

6.8.2 Automatic Assessment Increases. Notwithstanding any other provisions of this **Section 6.8**, upon the conveyance of a Residential Lot in a Phase, the Regular Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Association Property to perform the Association's obligations hereunder in accordance with the standards prescribed by the then current California Department of Real Estate ("DRE") Operating Cost

Manual, or if the Operating Cost Manual is no longer maintained by the DRE, pursuant to standards prescribed by comparable maintenance cost guidelines prepared in accordance with prudent property management practices.

6.8.3 Notice to Owners. The Association shall provide notice by first class mail to the Owners of ~~any~~ increase in the Regular Assessments or Special Assessments of the Association, not less than thirty (30) days and not more than sixty (60) days prior to the increased assessment becoming due and payable.

6.9 LEVEL ASSESSMENTS. Declarant has submitted to the DRE a budget which provides for a "level assessments" program for certain Phases within the Project ("DRE Approved Budget"). During the time that the level assessment budgeting program is in effect, the Community Board shall establish and follow fiscal controls with respect to the "Cumulative Surplus" fund of the budget, which shall include, but not be limited to:

6.9.1 The establishment of a separate account for Cumulative Surplus funds;

6.9.2 The separate account established for the Cumulative Surplus will be used only for funding of Regular Assessments in a given fiscal year; and

6.9.3 The Community Association's annual report referenced in the Bylaws will include a review or test of the Level Assessments program set forth in the budget to insure that adequate Regular Assessments are being collected.

6.10 UNIFORM RATE OF ASSESSMENT. Regular and Special Assessments and Capital Improvements Assessments shall be fixed at a uniform rate for all Residential Lots and may be collected on a monthly basis and shall be determined by dividing the amount of the assessment by the total number of Residential Lots then within the Project and subject to assessment. Enforcement Assessments shall be levied directly to the individual Residential Lots.

6.11 DATE OF COMMENCEMENT OF REGULAR ASSESSMENTS; DUE DATES. The Regular Assessments provided for herein shall commence as to all Residential Lots in a Phase subject to this Declaration on the first day of the month following the conveyance of the first Residential Lot within such Phase to an Owner under authority of a Public Report.

6.12 NOTICE AND ASSESSMENT INSTALLMENT DUE DATES. A single ten (10) day prior written notice of each Special Assessment and Capital Improvement Assessment shall be given to each Owner. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the Board. Each installment of Regular Assessments, Special Assessments and Capital Improvement Assessments shall become delinquent if not paid within thirty (30) days after its due date. There shall accrue with each delinquent installment a late charge, interest charge to be set by the Board and reasonable costs of collection,

including attorneys' fees, but which shall not, in any event, exceed the maximum rates permitted under California Civil Code Section 1366 and any successor statutes or laws.

6.13 ESTOPPEL CERTIFICATE. The Board on not less than ten (10) days prior written request shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default as to such Owner's Residential Lot under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such Residential Lot. Any such statement may be relied on by any prospective purchaser or Mortgagee of the Residential Lot, but reliance on such statement may not extend to any default not involving the payment of assessments of which the signer had no actual knowledge.

6.14 COLLECTION OF ASSESSMENTS; LIENS

6.14.1 Right to Enforce. The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to **Section 6.14.2** enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other Additional Charges described in **Section 6.14** shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, except for monetary penalties imposed by the Association to reimburse the Association for costs incurred by the Association in the repair of damage to Association Property and facilities for which the Member or the Member's invitees were responsible, which may become a lien on the Owner's Residential Lot, a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents or in bringing the Member and his or her Residential Lot into compliance with the Governing Documents of the Association or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Association Property for which such Owner or Owner's Invitees was allegedly responsible may not be characterized nor treated as an assessment that may become a lien against the Member's Residential Lot enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to any Additional Charges.

6.14.2 Creation of Lien. If there is a delinquency in the payment of any assessment, or installment on a Residential Lot any amounts that are delinquent, together with the late charge described in California Civil Code Section 1366 and any successor statutes or laws, interest at the rate permitted in such Section, and all costs that are incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such Residential Lot upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("Notice of Delinquent Assessment") as provided in California Civil Code Section 1367 and any successor statutes or laws. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record as provided in California Civil Code

Section 1367 and any successor statutes or laws. The Notice of Delinquent Assessment may not be recorded unless and until the Board or its authorized representative has sent to the delinquent Owner or Owners, not less than fifteen (15) days before the recordation of the Notice of Delinquent Assessment, a written notice of default and a demand for payment by certified mail, which notice shall contain all of the information specified in California Civil Code Section 1367 and any successor statutes or laws, and unless such delinquency has not been cured within said fifteen (15) day period.

6.14.3 Notice of Default; Foreclosure. The Board or its authorized representative can record a notice of default and can cause the Residential Lot with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c and any successor statutes or laws, or through judicial foreclosure, and as provided in California Civil Code Section 1367 and any successor statutes or laws. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any sale under Section 2924c, the Board is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. If a delinquency is cured before sale, or before completing a judicial foreclosure, the Board or its authorized representative, shall cause to be recorded in the office of the County Recorder a certificate setting forth the satisfaction of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys' fees by any delinquent Owner. Any payments made on delinquent assessments shall be applied in accordance with California Civil Code Section 1367 and any successor statutes or laws. On becoming delinquent in the payment of any assessments, or installments each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of his or her Residential Lot to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Residential Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Residential Lot and vote as an Owner of the Residential Lot.

6.14.4 Payments Under Protest. Notwithstanding any other provisions set forth in this **Section 6.14**, the Owners shall have the right to make certain payments under protest and be entitled to alternative dispute resolution as provided in California Civil Code Sections 1354 and 1366.3 and any successor statutes or laws, as provided in **Section 16.2** of this Declaration.

6.15 ADDITIONAL CHARGES. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay Additional Charges incurred or levied by the Board including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. Additional Charges shall include, but not be limited to, the following:

6.15.1 Attorneys' Fees. Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

6.15.2 Late Charges. A late charge in an amount to be fixed by the Board in accordance with Civil Code Section 1366, or any successor statute or law, to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

6.15.3 Costs of Suit. Costs of suit and court costs incurred as are allowed by the court;

6.15.4 Interest. Interest to the extent permitted by law; and

6.15.5 Other. Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

6.16 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 laws of California in effect at the time any assessment or installment becomes delinquent or any lien is imposed.

6.17 SUBORDINATION OF LIEN TO FIRST MORTGAGES. The lien of assessment herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon any Residential Lot subject to assessment, and the sale or transfer of any Residential Lot pursuant to judicial or nonjudicial foreclosure (excluding a transfer by a deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Lot from any assessments thereafter becoming due or from the lien of any subsequent assessment. Where the Mortgagee of a First Mortgage or other purchaser of a Residential Lot obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquiror of title, his or her successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Residential Lot that became due prior to the acquisition of title to such Residential Lot by such acquire, except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Residential Lots.

6.18 NO OFFSETS. All assessments shall be payable in the amounts specified by the particular assessment and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

6.19 PERSONAL LIABILITY OF OWNER. No Owner may exempt himself or herself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Residential Lot owned by him or her from the liens and charges hereof by waiver of the use and

enjoyment of the Association Property and facilities thereof, or by abandonment of such Owner's Residential Lot.

6.20 TRANSFER OF PROPERTY. After transfer or sale of property within the Project, the selling Owner or Owners shall not be liable for any assessment levied on such Owner or Owner's Residential Lot after the date of such transfer of ownership if written notice of such transfer is delivered to the Association. The selling Owner shall still be responsible for all assessments and charges levied on his or her property prior to any such transfer.

6.21 FAILURE TO FIX ASSESSMENTS. The omission by the Board to fix the assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

6.22 PROPERTY EXEMPT FROM ASSESSMENTS. The Association Property subject to this Declaration shall be exempt from the assessments, charges and liens created herein.

ARTICLE 7

USE RESTRICTIONS

7.1 RESIDENTIAL USE. Residential Lots shall be used for residential purposes only; provided, however, any Residential Lot may be used for professional, administrative or other business occupations so long as such occupations (a) are operated solely within the Residential Lot, (b) are conducted in conformance with all applicable governmental ordinances, (c) are merely incidental to the use of the Residential Lot as a residence, (d) the patrons or clientele of such occupation do not regularly visit or conduct business on the Residential Lot and (e) the operation of the business does not result in (i) the violation of any of the other provisions of this Declaration, (ii) any unreasonable increase in the flow of traffic within the Property, (iii) any unreasonable odor, noise, or vibration outside of the Residential Lot, or (iv) parking problems within the Project. No other use shall be allowed except as specifically permitted by local ordinance; provided, however, Declarant and any Merchant Builder may use any of the Residential Lots owned by Declarant or such Merchant Builder as model homes and sales offices for the Project during that period of time commencing when the Residential Lots are first sold or offered for sale to the public and ending when (x) all the Residential Lots in all Phases of the Project are sold and conveyed by Declarant and any Merchant Builder to separate owners thereof or (y) seven (7) years after the first close of escrow of a Residential Lot in the first Phase of the Project, whichever shall first occur.

7.2 COMMERCIAL USE. Except as otherwise provided in this Declaration, including without limitation **Section 7.1** above and **Section 7.3** below, no Residential Lots shall be used or

caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose.

7.3 RENTAL OF RESIDENTIAL LOTS. An Owner shall be entitled to rent the Owner's entire Residential Lot (but not a portion thereof) subject to the restrictions contained in this Declaration. Any lease agreement shall be in writing, shall provide that the lease is subject to this Declaration, the Bylaws, Articles and the Association Rules, and shall provide that any failure to comply with any provision of the Governing Documents shall be a default under the terms of the lease agreement. A copy of this Declaration shall be made available to each tenant by the Owner so renting. The Owner shall, at all times, be responsible for his or her tenant's compliance with all of the provisions of this Declaration pursuant to the occupancy and use of the Residential Lot. A tenant shall have no obligation to the Association to pay assessments imposed by the Association nor shall any tenant have any voting rights in the Association. Each Owner acknowledges that any or all of the Residential Lots described on **Exhibit "H"** attached hereto and incorporated herein ("Residential Rental Pool Lots") may be included in a rental pool which may provide for rentals of such Residences on a daily, weekly or monthly basis. In such case, a written lease agreement shall not be required. In no event may any Residence other than the Residential Rental Pool Lots identified in **Exhibit "H"** be permitted to participate in a rental pool program. The designation of certain Residential Lots as being eligible to participate in a rental pool program does not mean that such Residential Lots are required to participate in any such program.

7.4 ANIMALS. No animals of any kind shall be raised, bred or kept on the Property except that a reasonable number of dogs and cats may be kept on the Residential Lots, provided that they are not kept, bred or maintained for any commercial purpose, nor in violation of any other provision of this Declaration or the other Governing Documents. Domestic reptiles, birds, rodents and fish shall be permitted so long as such animals are kept in the interior of and are (a) kept as household pets (b) are not so excessively noisy as to disturb the quiet enjoyment by each Owner of his or her Residential Lot, (c) are not kept, bred or raised for commercial purposes or , as determined by the Board, in unreasonable numbers, and (d) do not constitute a nuisance or threat to the personal safety of other Owners and their Invitees in the Project. In no event shall any Owners keep or breed any dogs or other animals deemed by the Board to constitute a danger to other Owners or their Invitees. The decision of the Board shall be binding as to whether the number of animals being kept by an Owner is reasonable, which determination may take into account whether the animals are imposing a nuisance or unreasonable annoyance to other Owners. Each Owner shall be liable to each and all remaining Owners and their Invitees for any unreasonable noise or damage to personal property caused by any animals brought or kept upon the Property by the Owner or by such Owner's Invitees. Each Owner and its Invitees shall be responsible for the prompt disposal of animal waste deposited by animals under their control on any portion of the Property. In addition, all animals must be properly leashed in accordance with the County leash ordinance in effect at that time. Notwithstanding the foregoing, the Association Rules may further limit or restrict the keeping of any pets. The Board shall specifically have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Board, after Notice and Hearing, is deemed by the Board to constitute a nuisance to any other Owner in the sole and exclusive opinion of the Board. All

construction of structures intended to have and/or to contain animals shall be subject to approval by the Architectural Committee and shall be in conformance with the minimum construction standards required by the current building codes of the County for outbuildings and Improvements of such a nature as well as in a manner that will provide for the control of the animal.

7.5 OUTSIDE INSTALLATIONS. No projections of any type may be placed or permitted to remain above the roof of any Residence within the Property, except one or more chimneys and vent stacks originally installed, if at all, by Declarant or any Merchant Builder. No patio cover, wiring, or air conditioning fixture, water softeners, or other devices may be installed on the exterior of a Residence or be allowed to protrude through the walls or roof to the Residence (with the exception of those items installed during the original construction of the Residence) unless the Architectural Committee's prior written approval is obtained.

7.6 ANTENNAE AND SATELLITE DISHES. No television or radio poles, antennae, satellite dishes, or technological evolutions of the foregoing, flag poles, clotheslines, or other external fixtures other than those originally installed by Declarant or any Merchant Builder or approved shall be constructed, erected or maintained on or within the Association Property or any structures on it; provided, however, that the foregoing restriction shall not be construed to limit the installation or use of video or television antennas within the Project, including a satellite dish (collectively, "Antenna"), except as otherwise prohibited or restricted by law, that is of a size and type consistent with the provisions of California Civil Code Section 1376 and any successor statutes or laws, so long as the following requirements are satisfied: (a) the Owner has submitted an application and notice prior to the installation of the Antenna as provided in **Article 9** of this Declaration; and (b) the Owner has obtained approval in accordance with **Article 9** of this Declaration for the installation of the Antenna. The application for approval of an Antenna shall be processed in the same manner as any other architectural modification within the Project subject to the requirements of California Civil Code Section 1376 and any successor statutes or laws. Notwithstanding the foregoing, the Board shall not impose or enforce any restrictions on Antennas that are inconsistent with the provisions of 47 U.S.C. Section 303 or the regulations promulgated thereunder, and any successor statutes or laws. No wiring, insulation, air-conditioning, or other machinery or equipment other than that originally installed by Declarant or any Merchant Builder or approved in accordance with **Article 9** of this Declaration and their replacements, shall be constructed, erected or maintained on or within the Association Property, including any structures on it.

7.7 FENCES, ETC. No fences, awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Project except those that are installed in accordance with the original construction of the Project or as are authorized and approved in accordance with **Article 9**. In addition, all fences or walls installed on a Residential Lot after the original construction of the Project by Declarant or any Merchant Builder shall be constructed in accordance with a uniform fencing design that is consistent with the fencing originally installed in the Project. All fencing situated along the boundaries of any Residential Lot or Association Property which is contiguous

to any adjacent land which supports agricultural use shall be designed, installed and maintained to restrict residents of the Project and their domesticated animals from arbitrarily entering such areas and interfering with any agricultural activities that may take place on such adjacent land. In addition to obtaining the approval of the Architectural Committee, such fencing shall also be approved by the Department of Planning and Building for the County, in association with the Agricultural Commissioner of the County.

7.8 PAINING. No Owner shall paint the exterior of the Owner's Residence or any other exterior improvements within a Residential Lot without prior approval in accordance with **Article 9** of this Declaration, except that no consent shall be required if an Owner repaints the exterior with the same color.

7.9 BASKETBALL HOOPS AND OTHER FIXED SPORTS APPARATUS. No basketball standards or fixed sports or play apparatus shall be installed or attached to the front of any Residence or garage or be erected in any yard without the prior approval of the Architectural Committee. Any portable basketball standards shall be subject to the Association Rules and the Architectural Guidelines.

7.10 OIL DRILLING. No oil drilling, oil operations, oil refining, quarrying, or mining operations of any kind shall be permitted on or in the Project, and no oil wells, tanks, tunnels or mineral excavations or shafts shall be permitted on the surface of the Project or within five hundred (500) feet below the surface of the Project. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted within the Project.

7.11 MINERAL EXPLORATION. No Property within the Project shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance or other mineral of any kind. No well for the production of, or from which there is produced, water, oil or gas shall be operated within the Project, nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business. No slant drilling shall be permitted.

7.12 OFFENSIVE CONDUCT; NUISANCES. No noxious or offensive activities, shall be conducted within the Project. Nothing shall be done on or within the Project that may be or may become an annoyance or nuisance to the residents of the Project, or that in any way interferes or may interfere with the quiet enjoyment of occupants of Residential Lots.

7.13 SIGNS. Except as provided in the Section of **Article 17** of this Declaration entitled "Golf Course Signs", no signs or other advertising device whatsoever, including without limitation, commercial, political and similar signs, shall be erected or maintained within the Project except: (a) such signs as may be required by legal proceedings; (b) residential identification signs, subject to the approval of the Architectural Committee as to suitability; (c) job identification signs during the time of construction of any portion of the Project by Declarant or any Merchant Builder; (d) signs used by Declarant or any Merchant Builder for the purpose of developing, improving and selling

Residential Lots and (e) not more than one "for sale" or "for rent" sign per Residential Lot of reasonable dimensions, pursuant to the Association Rules or as may be approved by the Board, except that no signs shall be permitted to be posted on any garage doors.

7.14 ENTRY GATES. Declarant or if assigned by Declarant to a Merchant Builder in writing and the Merchant Builder consents to such assignment, the applicable Merchant Builder, shall have control over the entry gates which may be situated within the Association Property and shall be responsible for the maintenance and repair of the entry gates until all sales of all Residential Lots in the Project have been completed or until Declarant or, if assigned to a Merchant Builder, the Merchant Builder, in their sole discretion, determines that the Association should take responsibility for control, maintenance and repair of some or all of the entry gates. The Association's obligation shall commence immediately upon receipt of written notice from the Declarant or if assigned to a Merchant Builder, the Merchant Builder identifying the entry gates to be thereafter controlled and maintained by the Association. Notwithstanding who has responsibility for the entry gates, Declarant or any Merchant Builder shall be entitled to have the entry gates remain open during regular business hours in order to conduct sales. The presence of entry gates in the Project is not a warranty or representation by Declarant or any Merchant Builder that any security is being provided to any Owner or to any Owners Residence or personal property. Notwithstanding anything to the contrary set forth in this Declaration, in no event may this provision be modified or amended without the consent of Declarant and each Merchant Builder.

7.15 VIEW IMPAIRMENT. There is no representation that any view exists from any Residential Lot. Each Owner, by accepting a deed to a Lot, acknowledges that grading of, construction on or installation of Improvements, including landscaping, on other Lots within the Property and on surrounding real property may impair whatever view may exist from the Owner's Residential Lot and each Owner consents to such impairment and waives any claim for view impairment. Each Owner and the Association, by accepting a deed to a Lot or any Association Property and Association Easement Areas, acknowledges that any construction or installation by Declarant or any Merchant Builder or by other Owners following Architectural Committee approval as provided in **Article 9** hereof may impair the view of such Owner, and each Owner and the Association on behalf of the Members hereby consent to such impairment.

7.16 BURNING. There shall be no exterior fires whatsoever except barbeque fires and/or exterior fireplace fires located only upon the Owner's Residential Lot and contained within receptacles designed for such purposes. In addition to barbeques, the Declarant, any Merchant Builder and/or Owner may construct an exterior fireplace on a Residential Lot, provided that the construction and operation of same comply with City and all other governmental ordinances, regulations and permits, including fire safety regulations and are approved by the Architectural Committee. Otherwise, outside fires are not permitted unless prior written approval is given by the Association and such Owner acts in compliance with all local governmental fire safety and permit regulations. No Owner shall permit any condition to exist on his or her Residential Lot, including, without limitation, trash piles or weeds, which creates a fire hazard or is in violation of local fire regulations and fuel modification and brush management requirements.

7.17 RUBBISH. No portion of the Property shall be used or maintained as a dumping ground for rubbish. No oil or other refuse shall be allowed to enter storm drains.

7.18 PARKING RESTRICTIONS; USE OF GARAGE.

(a) Parking. Unless otherwise permitted by the Board, no Owner shall leave his or her or her automobile parked or left within the Project other than within a garage or an appurtenant driveway or any designated guest parking area or space and at no time shall a motor vehicle of any kind be permitted on the front yard landscaping. Except for model homes used by Declarant, or any Merchant Builder, the garages shall be used for parking automobiles only and shall not be converted for living or recreational activities. Nothing contained in this Section is intended to prevent Declarant or a Merchant Builder from offering a garage conversion program (e.g. converting a three car garage into a two-car garage) with respect to any Residential Lot built and sold by Declarant or a Merchant Builder. Doors to garages shall be kept closed except during the removal or entry of vehicles therefrom or thereto.

(b) Vehicular Restrictions. No boat, golf cart, mobile home, commercial vehicle, recreational vehicle, recreational motor home, trailer of any kind, truck camper larger than a three quarters (3/4) ton pick-up truck, or that has a mounted camper shell which protrudes from the truck from either side or from beyond the rear gate or above the cab ceiling shall be kept, placed, maintained, parked, constructed, reconstructed or repaired within the Project in such a manner as will be visible from neighboring property or adjacent streets; provided, however, that the provisions of this Subsection shall not apply to (i) emergency vehicle repairs, (ii) commercial deliveries, (iii) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any work or improvement approved in accordance with **Article 9** or work by Declarant or any Merchant Builder relating to the construction or sale of Residences, or (iv) the loading and unloading of such vehicles and the temporary parking of such vehicles for purposes of loading and unloading so long as such vehicles are not parked on a regular basis and are not parked for a period of time exceeding forty-eight (48) hours over a two hundred forty (24) hour period. No dilapidated, dismantled or wrecked vehicles or equipment shall be kept, placed, maintained or parked within the Project, and no vehicle shall be repaired within the Project, except for emergency vehicular repairs, or repairs which are screened in accordance with any Association Rules.

(c) Parking Signage. The Association may, in accordance with Vehicle Code §§22658.2, or comparable superseding statutes, install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park in the Project will be removed at the Owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall be not less than seventeen inches (17") by twenty-two inches (22") in size with lettering no less than one inch (1") in height.

(d) Removal of Vehicles. In addition and in compliance with the above-cited Vehicle Code, the Association may cause the removal of any vehicle wrongly parked on the Property, including a vehicle owned by the occupant. If the identity of the vehicle owner is known or readily ascertainable, the Association, within a reasonable time, must notify the owner by first class mail of said removal. If the identity of the owner is not known or ascertainable, the Association must send a written report of the removal by mail to the California Department of Justice in Sacramento, if the vehicle has not been returned to the owner within one hundred twenty (120) hours. Immediately after the vehicle has been removed, the Association must notify the local traffic law enforcement agency of said removal. The notice must include a description of the vehicle, the license plate number, and the address from where the vehicle was removed. However, the vehicle may be removed without notice if it is parked in a marked fire lane, within fifteen feet of a fire hydrant, if it occupies without proper authority a parking space designated for the handicapped, or if it interferes with an entrance or exit of the Project.

7.19 RESTRICTED USE OF RECREATION VEHICLES, ETC. No boat, truck, trailer, camper, motor home, recreational vehicle or tent shall be used as a living area while located within the Project. However, trailers or temporary structures for use incidental to the initial construction of the Project or the initial sales of Residences may be maintained by Declarant and any Merchant Builder within the Project, but shall be promptly removed on completion of all initial construction and all initial sales.

7.20 OUTSIDE DRYING AND LAUNDERING. No exterior clothesline shall be erected or maintained within the Project and there shall be no exterior drying or laundering of clothes on any Residential Lot.

7.21 COMPLIANCE WITH LAWS, ETC. Nothing shall be done or kept in any Residential Lot or in the Association Property that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project. No Owner shall permit anything to be done or kept in his or her Residential Lot that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal body, including any laws, ordinances or statutes pertaining to the use or storage of any hazardous, contaminated or toxic materials.

7.22 DRAINAGE. Each Owner agrees for himself or herself and his or her successors and assigns that he or she will not in any way interfere with the natural or established drainage of water over, under or through his or her Residential Lot from an adjoining or other Residential Lot in the Property or onto the Golf Course, including run off from the roof of an adjoining Lot, and that he or she will make adequate provisions for proper drainage. For the purposes hereof, "natural" drainage is defined as the drainage which would naturally occur at the time the overall approved grading plan of said Property has been completed by the Declarant and any Merchant Builder. For the purposes hereof, "established" drainage is defined as the drainage which occurred or which would occur at the time the overall grading of the Property, including the finish grading of each Residential Lot in the Property, has been completed by the Declarant and any Merchant Builder. "Established" drainage shall also include any drainage system including but not limited to storm

drains and swales constructed by Declarant and any Merchant Builder. In the event an Owner interferes with the natural or established drainage over his or her Residential Lot or any other Lot or Association Property or on any portion of the Golf Course or if an Owner causes flooding or over saturation of any other Lot or Association Property or the Golf Course, such Owner shall be deemed to be in violation of this Declaration. Each Owner shall maintain the drainage situated within any Residential Lot free of debris and any other material that may impede the flow of water. If such Owner fails to maintain such drainage and, as a result, imminent danger to person or property may result, then the Association shall have the right of access onto the Residential Lot for the purpose of clearing debris and other material so as to not impede the flow of water. Subject to the provisions of this Declaration, the Golf Course Owner is a third party beneficiary of the rights set forth in this Section and if an Owner breaches its obligation under this Section and causes damage to the Golf Course, the Golf Course Owner shall have the rights set forth on **Section 16.5** of this Declaration.

7.23 COMPLIANCE WITH WATER CONSERVATION PROGRAM. Each Owner shall comply with the water conservation program approved by the County for the Project. A copy of the Water Conservation Program may be obtained from the Association. The Water Conservation Program includes (a) guidelines for residents concerning water conservation techniques and (b) lists of ornamental drought-tolerant plants that would do well in sandy soils.

7.24 LANDSCAPING. Each Owner shall landscape the Residential Lot, in accordance with plans approved pursuant to **Article 9** by the date which is no later than six (6) months after the conveyances of the Residential Lot by except that for any Custom Lots such landscaping shall be installed by the date which is six (6) months after the issuance of a certificate of occupancy. All initial landscaping installed on a Lot shall satisfy low water requirements of the County by ensuring the following (a) all residential irrigation shall employ low water use techniques (e.g. drip irrigation), (b) residential landscaping on any Residential Lot shall not exceed 50% lawn surface and the remaining landscaping shall be drought tolerant, (c) any golf course turf shall be of varieties that have reduced water requirements and (d) all other golf course landscaping shall be drought tolerant, utilize drip irrigation where possible and be composed of at least 50% native plants. Pampas grass, German ivy, ice plant and any other plants that are listed as prohibited on the County's plant material list which is maintained by the Department of Planning and Building shall not be permitted.

7.25 EXTERIOR LIGHTING AND FIXTURES. Fluorescent, mercury vapor, sodium, or amber vapor lights, or standard outdoor lights of the type used for security, must be enclosed in a manner that directs the light in a specific area without causing a visual impairment to passing motorists or a nuisance to neighboring properties. The issue of whether a nuisance exists shall be determined by the Board in its sole discretion.

7.26 AGRICULTURAL BUFFERS. No structures of any type or kind shall be constructed within the Agricultural Buffers. If any Owner submits any plans to the County or the Architectural Committee for any Residential Lots bordering the Agricultural Buffers, the plans shall delineate the Agricultural Buffers; provided, however if the County's Environmental Coordinator determines in his or her sole discretion, that agriculture uses located on land adjacent to the Agricultural Buffer

has been permanently discontinued, then the Agricultural Buffer in that area of discontinuance shall no longer be in effect.

7.27 MINIMUM SQUARE FOOTAGE ON CERTAIN LOTS. Under no circumstances shall the Association or the Architectural Committee impose a minimum floor area or square footage requirement on Lots 51 through 102.

7.28 MONUMENTS. Monuments installed in the Project by the Declarant and each Merchant Builder shall be maintained by the Association and shall not be altered or removed by anyone without approval of the Board.

7.29 SOFT WATER TREATMENT SYSTEMS. No individual salt brine producing soft water treatment systems shall be permitted on any Residential Lot, or within the Association Property, unless the systems are recharged at a location other than within the Project. The brine from any salt recharging softeners shall be disposed of at a location approved by the Regional Water Quality Control Board.

7.30 RESTRICTION ON FURTHER SUBDIVISION AND SEVERABILITY. No Lot shall be further subdivided nor shall less than all of any such Residential Lot be conveyed by an Owner hereof.

7.31 UNOCAL PIPELINE. Each Owner is hereby made aware that, upon the date of recordation of this Declaration, the Unocal Oil Company has a pipeline easement that runs adjacent to certain Residential Lots. No structures or other Improvements shall be located within fifty (50) feet of either side of the centerline of the Unocal pipeline. Unocal Oil Company and other safety personnel shall have ample access to the pipeline in the event of a materials spill incident. Each Owner, by acceptance of a deed, acknowledges that there is a potential risk of spills and under ground leaks that are normally associated with a fuel oil pipeline, including the materials specified in the most recent Material Safety and Data Sheet for the materials transported by the pipeline. The Owner of the Residential Lots situated in the vicinity of the pipeline easement or any other Owner may obtain from the Association the most recent Material Safety and Data Sheet for the materials which are transported by the pipeline. The area covered by the pipeline easement shall be kept free from any structure and very low maintenance landscaping shall be utilized on the Unocal pipeline easement area.

7.32 NO ANIMALS WITHIN SENSITIVE RESOURCE AREA. No dogs, cats or other pets are permitted to enter the Sensitive Resource Area and each Owner shall comply with any guidelines or requirements imposed from time to time by the County or the Association or the Owner of the Sensitive Resource Area for the Sensitive Resource Area. The Association may also promulgate other notices regarding the sensitivity of the Black Lake Slough and the restricted entry into the Sensitive Resource Area. The Association shall maintain any "no entry" signs installed by Declarant along the Sensitive Resource Area. Each Owner acknowledges that the Sensitive Resource Area includes sensitive plants and wildlife and each Owner and its Invitees shall avoid any

activity within the Sensitive Resource Area which could cause damage to such plants and wildlife, including but not limited to, walking on or removal of sensitive plants, exposure of the native soil, and disposing of trash, debris or other materials. The Golf Course Owner is a third party beneficiary of the rights set forth in this Section and if an Owner breaches its obligation under this Section and causes damage to the Golf Course, the Golf Course Owner shall have the rights set forth in **Section 16.5** of this Declaration.

7.33 LAKE EASEMENTS. The Owners of certain Residential Lots are subject to the Lake Easements and as a result, certain portions of such Owner's Residential Lots will be covered by water. The existence of the Lake Easement shall not give to any Owner the right of access, ingress or egress onto the Lakes or the right to use the Lakes in any manner. The Golf Course Owner is a third party beneficiary of the rights set forth in this Section and if an Owner breaches its obligation under this Section and causes damage to the Golf Course, the Golf Course Owner shall have the rights set forth on **Section 16.5** of this Declaration.

7.34 GOLF COURSE IRRIGATION. An Owner shall not hook up to any Golf Course irrigation water line for any purpose. The Golf Course irrigation system utilizes reclaimed water, which is not approved for any domestic use at Cypress Ridge. The irrigation water lines are defined as purple colored pipe. If an Owner or Owner's Invitees or any other party is found to be connected to the Golf Course irrigation system and thereby utilizing the Golf Course reclaimed water for private domestic purposes, the Golf Course Owner shall have the right to fine such Owner in the amount of One Hundred Dollars (\$100) per day for each day of the connection. This fine has been authorized to be levied by the County Department of Health and will be payable to the Golf Course Owner. In addition, the Owner shall pay for the cost of repairs incurred by the Golf Course Owner to remove the connection and restore the Golf Course irrigation line to its original condition. The Golf Course Owner is a third party beneficiary of this restriction and if an Owner breaches its obligations under this Section, the Golf Course Owner shall, in addition to the rights set forth in this Section, have the right specified in **Section 16.5** of this Declaration.

7.35 GOLF CARTS. Only electric golf carts or carts that do not use fossil fuels shall be used or provided by the operator of the Golf Course or the Association. Golf carts of any Owners shall not be subject to this restriction.

7.36 INDEMNIFICATION. Each Owner shall be liable to the remaining Owners for any damage to the Association Property that may be sustained by reason of the negligence of that Owner, or the Owner's Invitees. Each Owner, by acceptance of his deed, agrees for himself and for the Owner's Invitees, to indemnify each and every other Owner, and to hold each Owner harmless from, and to defend him against, any claim of any person for personal injury or property damage occurring within the Residential Lot of that particular Owner unless the injury or damage occurred by reason of the negligence or willful misconduct of any other Owner or the Association. Upon demand by the Association, each Owner shall be responsible for the payment of any deductible amount payable under the Association's insurance policy as a result of any claims arising as a result of the negligence or willful misconduct of such Owner or the Owner's Invitees.

ARTICLE 8

IMPROVEMENTS

8.1 MAINTENANCE OBLIGATIONS OF OWNERS.

8.1.1 Maintenance of Residential Lots. Subject to any provisions of the Governing Documents, each Owner shall maintain, repair and otherwise care for the maintenance, repair and replacement of the Owner's Residence and all Improvements situated within the Residential Lot in a good condition of maintenance and repair.

8.1.2 Maintenance of Fences.

(a) Interior Fencing Between Two Residential Lots. For any fencing which separates two (2) Residential Lots, each Owner shall have the obligation to maintain the interior of the fence and the Owners shall share, on an equitable basis, the cost of replacing such fencing. The Owner of each affected portion of the Property upon which a party wall or fence is located shall have a reciprocal non-exclusive easement to the Property immediately adjacent to the interior fence for the limited purpose of maintaining the party wall or fence.

(b) Fencing Between Residential Lots and Association Property. If any fencing separates a Residential Lot from Association Property, the Owner shall maintain the interior portion of the fencing facing the Owner's Residential Lot and the Association shall maintain the exterior portion. The Association shall have the obligation to repair and replace the fencing.

8.2 OWNER'S FAILURE TO MAINTAIN. In the event an Owner fails to maintain the areas and items as provided above or make repairs thereto in such manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof and protect the value thereof, the Board shall give written notice to such Owner, stating with particularity the work of maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. In the event the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Board shall cause such work to be completed and shall assess the cost thereof to such Owner as an Enforcement Assessment in accordance with the procedures set forth in this Declaration.

8.3 MAINTENANCE OBLIGATIONS OF ASSOCIATION. The Association shall be responsible for maintaining, repairing, replacing and otherwise caring for all Association Property in a good condition of maintenance and repair and in accordance with all the requirements of the County.

8.4 LANDSCAPE, IRRIGATION AND DRAINAGE MAINTENANCE. The Association shall regularly inspect, maintain and repair the landscaping, irrigation and drainage

systems serving or within the Association Property and the Association Easement Areas. The Association shall also inspect for any misaligned sprinklers or blocked drainage systems that could cause water damage to the Project. In the event the Declarant provides any maintenance manuals to the Association, the Association shall comply with the requirements and any recommendations of any such maintenance manuals. The Association shall employ the services of a professional landscape architect, maintenance contractor or other such professional person to assist the Association in performing its duties hereunder. The Board shall, from time to time, make appropriate revisions to any maintenance manuals, based on the Board's review thereof on at least an annual basis. The inspections required to be conducted by the Board under this Section shall take place at least annually. The inspectors shall provide written reports of their inspection to the Association and, if requested by the Declarant, to the Declarant promptly following completion thereof. If requested by Declarant, Declarant shall be invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems on the Project. The Board shall report the contents of such written reports to Declarant (if not already provided by the inspector directly) so requested by Declarant and to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes. Should such inspection require the inspection of any Residential Lot, there is hereby created a nonexclusive easement in favor of the Association, and its officers, agents, employees and independent contractors, to conduct such inspections and to provide such maintenance, repair and replacement, provided that entrance is made at reasonable hours and with at least three (3) days advance notice to the Owner, except in case of emergency. Any damage to any structure, landscaping or other improvements caused by the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

8.5 FUTURE CONSTRUCTION. Nothing in this Declaration shall limit the right of Declarant and any Merchant Builder to complete construction of improvements to the Association Property and to Residences owned by Declarant or any Merchant Builder or to alter them or to construct additional Improvements as Declarant or such Merchant Builder deems advisable before completion and sale of the entire Project.

ARTICLE 9

ARCHITECTURAL REVIEW

9.1 NON-APPLICABILITY TO DECLARANT. The provisions of this Article shall not apply to any Improvements installed by the Declarant, and neither the Board nor, if appointed, the Architectural Committee shall have any rights of review or approval with respect thereto.

9.2 AMENDMENTS. Notwithstanding the Article of this Declaration entitled "Amendments," no amendment, verification or rescission of this Article may be made, nor shall Declarant, or any successor thereof, be prohibited from completing the construction of the Project prior to the conveyance by Declarant, or its successor, of the last Residential Lot without the (i) written consent of Declarant, and the (ii) recording of such consent in the Office of the County Recorder. Such written consent shall not be required after the conveyance by Declarant (or its successors) of all the Residential Lots.

9.3 ARCHITECTURAL COMMITTEE APPROVAL. Except as provided below, each Owner, shall obtain the approval of the Architectural Committee for any Improvements in accordance with the provisions set forth in this **Article 9** and the Architectural Guidelines.

9.3.1 Declarant Exemption. The provisions of this **Article 9** shall not apply to Declarant or any Improvements erected or installed by the Declarant on the Property.

9.3.2 Merchant Builder Exemption. The provisions of this **Article 9** shall not apply to any Merchant Builder or any Improvements erected or installed by a Merchant Builder on the Property.

9.3.3 Custom Lot Exemption. The provisions of this **Article 9** shall not apply to any Improvements to any Custom Lots ("Exempt Custom Lots") so long as the Improvements constructed by an Owner on such Custom Lots have been approved by the Declarant or any Merchant Builder to whom Declarant has assigned the rights for architectural approval. Declarant or the applicable Merchant Builder may assign its rights to review the Improvements on a Custom Lot to the Architectural Committee established under this Declaration.

9.4 ORGANIZATION. There shall be an Architectural Committee consisting of three (3) persons. There shall also be one (1) alternate member who may be designated by the Architectural Committee to act as a substitute on the Architectural Committee in the event of absence or disability of any member.

9.5 DESIGNATION OF MEMBERS AND TERMS OF OFFICE.

9.5.1 Initial Members. The initial members of the Architectural Committee shall be appointed by Declarant prior to the conveyance of the first Residential Lot to a member of the

public. Such designation shall be reflected in the minutes of the Association. Declarant shall designate one member to serve a term of one (1) year; one member to serve a term of (2) years and one member to serve a term of three (3) years from the date of appointment. The alternate member shall serve a term of three (3) years. Each of said Architectural Committee members shall serve the length of said terms specified unless they have resigned or have been removed from office. Thereafter, the terms of all Architectural Committee members appointed shall be three (3) years. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term.

9.5.2 Appointment and Removal. Until such time as the Owners, other than Declarant, own ninety percent (90%) or more of the Residential Lots within the Project, or five (5) years after the original issuance of the Public Report for the first Phase of the Project, whichever first occurs, the right to appoint and remove all Architectural Committee members and alternate committee members of the Architectural Committee shall be, and is hereby, vested solely in Declarant unless prior to said time Declarant waives its rights hereunder by notice in writing to the Association; provided, however, that after one (1) year from the issuance of the Public Report for the first Phase of the Project, the Board shall have the right to appoint one (1) member to the Architectural Committee. When Declarant waives or no longer has the right to appoint and remove the members of the Architectural Committee, said right shall be vested solely in the Board. Members of the Architectural Committee appointed by the Board shall be Members of the Association. Members appointed to the Architectural Committee by the Declarant need not be Members of the Association. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the specification in the minutes of the Association of each new Architectural Committee member or alternate member appointed and each member or alternate replaced or removed from the Architectural Committee.

9.5.3 Resignations. Any member or alternate member of the Architectural Committee may at any time resign from the Architectural Committee upon written notice delivered to Declarant or to the Board, whichever then has the right to appoint Architectural Committee members.

9.5.4 Vacancies. Vacancies on the Architectural Committee, however caused, shall be filled by the Declarant or the Board, whichever then has the power to appoint Architectural Committee members.

9.6 DUTIES. The Architectural Committee shall consider and act upon such proposals or plans submitted to it pursuant to the terms hereof and to the extent it has been granted the authority and delegated the responsibility to review such proposals.

9.7 MEETINGS. The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of any two (2) members of the Architectural Committee shall constitute an act by the Architectural Committee unless the

unanimous decision of its members is otherwise required by this Declaration. The Committee shall keep and maintain a record of all actions taken by it at such meeting or otherwise.

9.8 SCOPE. To the extent that an Owner is entitled under this Declaration to modify his Residential Lot in any manner following review and approval by the Architectural Committee, no Improvements of any kind whatsoever shall be commenced, erected, placed or altered upon or around any Residential Lot until the location and the complete plans and specifications showing the nature, kind, shape, height and materials, including the color ("Plans and Specifications"), have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the Architectural Committee. In addition, the grade, level or drainage characteristics of the Residential Lot or any portion thereof shall not be altered without the prior written consent of the Architectural Committee. The Plans and Specification shall be consistent with the Architectural Guidelines.

9.9 ARCHITECTURAL GUIDELINES. The Architectural Committee shall adopt, amend and repeal rules and regulations to be known as "Architectural Guidelines." No changes to the Architectural Guidelines initially adopted by the Association shall be made without the consent of the Golf Course Owner. The Architectural Guidelines shall interpret and implement the provisions hereof by setting forth the standards and procedures for Architectural Committee review and guidelines for architectural design of Improvements, placement of Improvements, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that said rules shall not be in derogation of the standards required by this Declaration. The Golf Course Owner is a third party beneficiary of the rights set forth on this Section and if there are any changes to the Architectural Guidelines which are not approved by the Golf Course Owner, the Golf Course Owner shall have the rights specified in **Section 16.5** of this Declaration.

9.10 APPROVAL OF PLANS AND SPECIFICATIONS BY ARCHITECTURAL COMMITTEE.

9.10.1 Submittal of Plans. Any Owner proposing to construct Improvements or taking other actions requiring the prior approval of the Architectural Committee pursuant to this Declaration shall apply to the Architectural Committee for approval by submission of drawings and any other documents required by the Architectural Committee, and any fees imposed by the Architectural Committee of the proposed Improvements ("Plans and Specifications") in accordance with the Architectural Guidelines.

(a) Time Periods for Review. Within forty-five (45) days after proper application for approval, the Architectural Committee shall consider and act upon such request. In the event the Architectural Committee fails to approve or disapprove any such plans within forty-five (45) days after all documents and information and fees imposed by the Architectural Committee requested by the Architectural Committee have been received by it, the Owner requesting said approval may submit a written notice to the Architectural Committee advising the same of its failure

to act. If the Architectural Committee fails to approve or disapprove any such plans within fifteen (15) days after the receipt of said notice from such Owner, said plans shall be deemed approved, provided that any Improvements conform to all conditions and restrictions contained in this Article and are in harmony with similar structures erected within the Project.

9.10.2 Effectiveness of Approval. Any approval granted by the Architectural Committee as provided above shall be effective for a period of ninety (90) days from the date of the issuance of the approval, except that the Architectural Committee shall have the right to grant extensions as may be deemed appropriate by the Architectural Committee.

9.10.3 Approval of Solar Energy Systems. Any Owner proposing to install or use a solar energy system, as defined in California Civil Code Section 801.5 and any successor statutes or laws shall be subject to the same review and approval process as any Owner proposing to construction any Improvements or other actions requiring the approval of the Architectural Committee pursuant to this Declaration. However, only reasonable restrictions on the installation and use of a solar energy system shall be permitted. Reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly its sufficiency or specified performance, or which allow for an alternative system of comparable costs, efficiency, and energy conservation benefits. Applications for construction permits for the residences shall demonstrate how passive solar design and solar hot water heating will be incorporated into the single-family unit design. Components of passive solar design include, but are not limited to: orientation of the residences so that the windows face to the south; encourage use of solar, or solar-assisted water heaters in units; use of building materials designed to absorb heat from the sun in the winter, and release the heat at night in order to heat the residences. It is recommended that the goal of these design standards be to reduce energy use by a minimum of twenty percent and offset long-term mobile and area source operational emissions of the Project.

9.11 INTERPRETATION AND APPEAL. All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Architectural Committee, and its decision shall be final, binding and conclusive on all of the parties affected. In the event that the Architectural Committee disapproves any Plans and Specifications submitted by an Owner pursuant to this Article, the party or parties making such submission may appeal in writing to the Board. The Board must receive the written request not more than thirty (30) days following the final decision of the Architectural Committee. Within thirty (30) days following receipt of the written request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within the thirty (30) day period shall be deemed a decision against the appellant.

9.12 INSPECTION AND CORRECTION OF WORK. Inspection of work and correction of defects therein shall proceed as follows:

9.12.1 Right of Inspection During Course of Construction. The Architectural Committee or its duly authorized representative may enter into any Residential Lot, from time to time, as provided below during the course of construction or installation of any Improvements for

the purpose of inspecting such construction and/or installation. If the Architectural Committee determines that such construction and/or installation is not being done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner of the subject Residential Lot of such non-compliance. The Architectural Committee may not enter into a Residence without obtaining the prior permission of the Owner or occupant of such Residence; provided, however, that such prior provisions shall not be unreasonably withheld and shall be given for entry by the Architectural Committee during the daylight hours within forty-eight (48) hours of the request for entry.

9.12.2 Notice of Completion. Upon the completion of any construction or reconstruction or the alteration or refinishing of any Improvements, or upon the completion of any other work for which approved Plans and Specifications are required under this Article, the Owner shall give written notice of completion thereof to the Architectural Committee.

9.12.3 Inspection. Within thirty (30) days after receiving notice of completion, the Architectural Committee, or its duly authorized representative, shall have the right to enter onto the Residential Lot (but not the interior of the Residence situated therein), as provided in **Section 9.11** above, to inspect the Improvements to determine whether they were constructed to substantial compliance with the approved Plans and Specifications. If the Architectural Committee finds that such construction, or installation was not done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

9.12.4 Non-Compliance. If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such non-compliance, the Architectural Committee shall notify the Board in writing of such failure. After affording such Owner Notice and Hearing, the Board shall determine whether there is a non-compliance, and if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than thirty (30) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying Improvement or remedy the non-compliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an Enforcement Assessment against such Owner for reimbursement.

9.12.5 Failure to Notify. If for any reason the Architectural Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of said notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved Plans and Specifications.

9.12.6 Government Regulations. In the event there is any conflict between the requirements or actions of the Architectural Committee and the mandatory regulations, ordinances or rules of any governmental entity relating to the Property, the government regulations, ordinances or rules to the extent that such regulations, ordinances or rules are more restrictive, shall control and the Architectural Committee shall modify its requirements or actions to conform to the government regulations, ordinances or rules; provided, however, that if the governmental regulations, ordinances or rules are less restrictive, the provisions of this Declaration shall nonetheless apply. The application to and the review and approval by the Architectural Committee of any Plans and Specifications or other submittals by an Owner shall in no way be deemed to be satisfaction or compliance with any building permit process or other applicable statute or law, or governmental regulation, ordinance or rule, or public utility requirement, ordinance or rule (hereinafter collectively referred to as "Additional Requirements") the responsibility for which shall lie solely with the Owner; provided, however, if the Additional Requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply.

9.13 DILIGENCE IN CONSTRUCTION. Upon final approval of any Plans and Specifications, the Owners shall promptly commence construction and diligently pursue the same to completion.

9.14 FEE FOR REVIEW. The Architectural Committee shall have the right to establish a fee for the review and approval of Plans and Specifications which must be submitted to the Architectural Committee pursuant to the provisions of this Article.

9.15 COMPENSATION. The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder, unless the Association retains a professional architect, engineer or designer as a member of the Architectural Committee for the purpose of providing professional services, in which event reasonable compensation for such member may be approved by the Board. The Architectural Committee shall have the right to hire any engineer or other consultant, the opinion of which the Architectural Committee deems necessary in connection with its review of any plans submitted by any Owner and such Owner shall be liable for payment of such engineer's and/or consultant's fee.

9.16 WAIVER. The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

9.17 ESTOPPEL CERTIFICATE. Within thirty (30) days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Architectural Committee shall record an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any

Residential Lot of said Owner) that as of the date thereof, either: (a) all Improvements made and other work completed by said Owner comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Residential Lot through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through them.

9.18 LIABILITY. Neither the Board, Architectural Committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the Project of any property within the Project; or (d) the execution and filing of an estoppel certificate pursuant to **Section 9.17**, whether or not the facts therein are correct- provided, however, that such Board or Architectural Committee member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, The Board, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any Plans and Specifications or any other proposal submitted to the Board or Architectural Committee.

9.19 VARIANCES. The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including, without limitation, restrictions upon height, size, floor area or placement of Improvements or other similar restrictions, when circumstances such as topography, natural obstructions, aesthetic or environmental considerations may require. Such variances may be evidenced in writing, must be signed by at least two (2) members of the Architectural Committee and shall become effective upon recordation in the Office of the County Recorder. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Residential Lot and particular provision hereof covered by the variance, nor shall it affect in anyway the Owner's obligation to comply with all governmental laws and regulations affecting its use of the Residential Lot, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the County or any other governmental authority.

ARTICLE 10

DEVELOPMENT RIGHTS

10.1 LIMITATIONS OF RESTRICTIONS. Declarant and the Merchant Builder(s) are each undertaking the work of developing Residential Lots and other Improvements within the

Project. The completion of the development work and the marketing and sale, rental and other disposition of the Residential Lots is essential to the establishment and welfare of the Property and the Additional Property as a first-class residential community. In order that the work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant or any Merchant Builder the rights set forth in this Article.

10.2 RIGHTS OF ACCESS AND COMPLETION OF CONSTRUCTION. Until the fifth (5th) anniversary of the original issuance of a Public Report for the most recent Phase, Declarant and each Merchant Builder and each of their contractors and subcontractors shall have the rights set forth below.

10.2.1 Access. Declarant and each Merchant Builder, and each of their contractors and subcontractors shall have the right to obtain reasonable access over and across the Association Property of the Project or do within any Residential Lot owned by it whatever is reasonably necessary or advisable in connection with the completion of the Project and the marketing and maintenance thereof. Declarant and each Merchant Builder shall have the right to keep any gate to the Project open during the construction, sale, and marketing of the Project.

10.2.2 Construct Improvements. Declarant, and each Merchant Builder and each of their contractors and subcontractors shall have the right to erect, construct and maintain on the Association Property of the Project or within any Residential Lot owned by it such structures or Improvements, including, but not limited to, sales offices, flags, balloons, banners and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Project in parcels by sale, lease or otherwise, as determined by Declarant and each Merchant Builder in their sole discretion and to perform or complete any work to improvements required for Declarant and each Merchant Builder to obtain a release of any bonds posted by Declarant or any Merchant Builder with the County.

10.2.3 Grant Easements. Declarant, and each Merchant Builder and each of their contractors and subcontractors shall have the right to establish and/or grant over and across said Association Property such easements and rights of way on, over, under or across all or any part thereof to or for the benefit of the State of California, the County or any other political subdivision or public organization, or any public utility entity or cable television provider, for the purpose of constructing, erecting, operating and maintaining Improvements thereon, therein or thereunder at that time or at any time in the future, including: (i) roads, streets, walks, driveways, trails, parkways and park areas; (ii) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the Project and for the necessary attachments in connection therewith; and (iii) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. The Association Property shall be subject to any dedication stated in the Final Subdivision Map for the Project of an easement for public use for installation, maintenance and operation of facilities for public utilities over all of the Association Property. Said

public utilities easement shall inure and run to all franchised utility companies and to the County, and the State and shall include the right of ingress and egress over the Association Property by vehicles of the utility companies, the County and the State to properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or the County or the State for maintenance or operation of any of the Association Property or the facilities located thereon or the repair, replacement or reconstruction thereof except for those Improvements owned by the utility companies, the County or the State, and except as occasioned by the negligence or willful misconduct of the utility companies, the County, or the State. The Association Property shall also be subject to any easements granted by the Declarant or any Merchant Builder to any public or private entity for cellular, cable or other similar transmission lines. Except for lawful and proper fences, structures and facilities placed upon the Association Property by utility companies, the Association Property subject to the public utility easement shall be kept open and free from buildings and structures. The County and the State furthermore is granted an easement across the Association Property and any Private Streets for ingress and egress for use by emergency vehicles of the County and the State.

10.3 SIZE AND APPEARANCE OF PROJECT. Declarant and each Merchant Builder shall not be prevented from increasing or decreasing the number of Residential Lots that may be annexed to the Project or from changing the exterior appearance of Association Property structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant and each Merchant Builder, if Declarant and/or such Merchant Builder obtains governmental consents required by law.

10.4 MARKETING RIGHTS.

10.4.1 General Rights. Subject to the limitations of this Declaration, Declarant and each Merchant Builder shall have the right to: (i) maintain model homes, sales offices, storage areas and related facilities in any unsold Residential Lots or Association Property within the Project as are necessary or reasonable, in the opinion of Declarant and each Merchant Builder, for the sale or disposition of the Residential Lots; (ii) make reasonable use of the Association Property and facilities for the sale of Residential Lots; (iii) post flags, banners and signs in connection with the marketing of the Residential Lots; and (iv) conduct its business of disposing of Residential Lots by sale, lease or otherwise.

10.4.2 Agreement for Extended Use. If following the fifth (5th) anniversary of the original issuance of a Public Report for the most recent Phase, Declarant or any Merchant Builder requires exclusive use of any portion of the Association Property in that Phase for marketing purposes, Declarant or such Merchant Builder may use the Association Property only if an agreement is entered into between Declarant and the Association. The agreement must specifically provide for a limited duration for such use and must provide for a specific reasonable rate of compensation to the Association by Declarant. Compensation shall be commensurate with the nature, extent and duration of the use proposed by Declarant or such Merchant Builder. In no event,

however, shall Declarant or any Merchant Builder be denied the rights to use the Association Property and any Residential Lots owned by Declarant or any Merchant Builder as an Owner.

10.5 TITLE RIGHTS. This Declaration shall not be construed to impose any obligation on Declarant or any other person or entity to improve, develop or annex any portion of the Additional Property. The rights of Declarant or any Merchant Builder under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies, to the City, to the County, to the State, or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

10.6 AMENDMENT. The provisions of this Article may not be amended without the consent of Declarant and each Merchant Builder until all of the Additional Property has been annexed to the Project and all of the Residential Lots in the Project owned by Declarant and each Merchant Builder have been conveyed.

ARTICLE 11

INSURANCE

11.1 LIABILITY INSURANCE. The Association shall obtain and maintain comprehensive public liability insurance in the name of the Association insuring against any liability incident to the ownership or use of the Association Property and the performance by the Association of its duties under this Declaration. Such policy shall include, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Three Million Dollars (\$3,000,000). Such insurance shall cover all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, property of others and any other liability or risk customarily covered with respect to projects similar in construction, location, and use.

11.1.1 Insurance to Satisfy Civil Code. California Civil Code Section 1365.7 provides for a partial limitation on the liability of volunteer officers and directors of the Association, provided that certain requirements, as set forth in Section 1365.7 are satisfied. The requirements include that general liability insurance and officers' and directors' liability insurance be carried by the Association in specified amounts. The Association shall maintain general liability insurance and officers' and directors' liability insurance in amounts that satisfy the requirements of the California Civil Code Section 1365.7 and any successor statutes or laws to limit the liability of volunteer officers and directors of the Association.

11.2 PROPERTY INSURANCE. To the extent applicable, given the nature of the Association Property, the Association shall keep (i) any Improvements, if any, within the Association Property to be maintained by the Association insured against loss by fire and the risks covered by a "Standard All-Risk of Loss or Perils" insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof and (ii) all personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for Improvements in the Association Property or and personal property owned by the Association shall be payable to the Association. In the event of any loss, damage or destruction to the Association Property, the Association shall cause the same to be replaced, repaired or rebuilt in accordance with the provisions of this Declaration.

11.2.1 Description of Policy Coverages. The policy shall cover the following real and personal property:

(a) Association Property. All Improvements, if any, within the Association Property; but excluding land, foundations, excavations, and other items typically excluded from property insurance coverage; and

(b) Landscaping. Lawn, trees, shrubs and plants located in the Association Property.

11.2.2 Covered Cause of Loss. The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent.

11.2.3 Primary. The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

11.2.4 Endorsements. The policy shall contain the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, ordinance or law, and replacement cost and such other endorsements as the Board in its discretion shall elect.

11.2.5 Waiver of Subrogation. Except as provided in **Section 7.37** of this Declaration, all rights of subrogation between the Association and the Owners and their Invitees and First Mortgagees are waived. All insurance policies obtained by the Association shall include a waiver of all subrogation rights against any Owner and their Invitees and First Mortgagees; provided, however, that any failure or inability to obtain such a waiver shall not defeat or impair the foregoing waiver between the Association and the Owners and their Invitees and First Mortgagees set forth herein. Insurance proceeds for Improvements in the Association Property and personalty owned by the Association shall be payable to the Association.

11.3 INDIVIDUAL INSURANCE. Each Owner shall maintain property insurance against losses to real and personal property located within the Residential Lot covering the full replacement cost thereof, including the Residence and to any upgrades or Improvements located within the Residential Lot and liability insurance against any liability resulting from any injury or damage occurring within the Residential Lot. The Association's insurance policies will not provide coverage against any of the foregoing or any other loss associated with the Residential Lots, and the Association shall not have any obligation to monitor Insurance carried by Owners. Except as provided in **Section 7.37** of this Declaration, all rights of subrogation between the Owners and the Association are waived. Any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the Association; provided, however, that an Owner's inability or failure to obtain such a waiver shall not defeat or impair the waiver of subrogation as between such parties contained herein. No Owner shall separately insure any property covered by the Association's property insurance policy as described above. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution. The Association may levy a reimbursement assessment against the Owner's Residential Lot to collect the amount of the diminution.

11.4 FIDELITY BOND. The Association shall maintain a fidelity bond in an amount equal to at least the estimated maximum of funds, including reserves, in the custody of the Association or a management agent at any given time during the term of the fidelity bond; provided, however, that the bond shall not be less than a sum equal to three (3) months aggregate of the Regular Assessments on all Residential Lots plus reserve funds of the annual assessments naming the Association as obligee and insuring against loss by reason of the acts of the Board, officers and employees of the Association, and any management agent and its employees, whether or not such persons are compensated for their services.

11.5 WORKER'S COMPENSATION INSURANCE. The Association shall maintain worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

11.6 OTHER INSURANCE. The Association shall maintain other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

11.7 COPIES OF POLICIES. Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at reasonable times. All such insurance policies shall (i) provide that they shall not be cancelable or substantially modified by the insurer without first giving at least ten (10) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association and First Mortgagees, Board and Owners. In addition to the foregoing, the Association shall provide such information regarding the insurance of the Association as may be required by applicable law or under the Bylaws.

11.8 REVIEW OF INSURANCE. The Board shall review the adequacy of all insurance at least once every year. The review shall include a replacement cost appraisal of all insurable Association Property Improvements without respect to depreciation. The Board shall adjust and modify the policies to provide coverage and protection that is customarily carried by and reasonably available to prudent owners of similar property in the area in which the Project is situated.

11.9 BOARD'S AUTHORITY TO REVISE INSURANCE COVERAGE. Subject to the provisions of **Section 11.1**, and the requirements regarding insurance set forth in the Bylaws, the Board shall have the power and right to deviate from the insurance requirements contained in this **Article 11** in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this **Article 11**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available; or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or the Members fail to approve any assessment increase needed to fund the insurance premiums.

11.10 ADJUSTMENT OF LOSSES. The Board is appointed attorney-in-fact by each Owner (except for the Secretary, U.S. Department of Veterans Affairs), to negotiate and agree on the value and extent of any loss under any policy carried by the Association pursuant to **Section 11.1** and **11.2**. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

11.11 DISTRIBUTION TO MORTGAGEES. Any Mortgagee has the option to apply insurance proceeds payable directly to an Owner on account of a Residential Lot as provided in this Declaration in reduction of the obligation secured by the Mortgage of such Mortgagee.

11.12 COMPLIANCE WITH FEDERAL REGULATIONS. Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC"), so long as any of the above is a Mortgagee or an Owner of a Residential Lot, except to the extent such coverage is not available or has been waived in writing by the FNMA, FRDMC, GNMA, and FHLMC as applicable. If the FNMA or FHLMC requirements conflict, the more stringent requirements shall be met.

ARTICLE 12

DESTRUCTION OF IMPROVEMENTS AND CONDEMNATION

12.1 RESTORATION DEFINED. As used in this **Article 12**, the term "restore" shall mean repairing, rebuilding or reconstructing damaged Improvements to substantially the same condition and appearance in which it existed prior to fire or other casualty damage.

12.2 INSURED CASUALTY. If any Improvement required to be maintained by the Association is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association, then the Association shall, to the extent permitted under existing laws, restore the Improvement to the same condition as it was in immediately prior to the damage or destruction. The Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies.

12.3 RESTORATION PROCEEDS. The costs of restoration of the damaged Improvement shall be paid first from any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association. If the insurance proceeds are insufficient to restore the damaged Improvement, the Board shall then add to the insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, the Improvement shall be restored and the Board first shall impose a Reconstruction Assessment for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described above (but without the consent or approval of Members, despite any contrary provisions in this Declaration).

12.4 REBUILDING CONTRACT. The Board or its authorized representative shall obtain bids from at least two (2) licensed and reputable contractors and shall accept the restoration work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such restoration, and the insurance proceeds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized restoration at the earliest possible date. Such restoration shall be commenced no later than one hundred eighty (180) days after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such restoration shall return the damaged Improvements to substantially the same condition and appearance in which it existed prior to the damage or destruction.

12.5 PRIVATE STREETS. The Board shall have the duty to restore all Private Streets within the Project. In the event the proceeds of insurance are not sufficient to cause such restoration,

the Board shall levy a Reconstruction Assessment to provide the necessary funds for such restoration.

12.6 INSURANCE TRUSTEE. All property insurance proceeds payable to the Association under the policy described in **Section 11.2**, subject to the rights of Mortgagees under **Article 13**, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees, as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the country in which the project is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

12.7 CONDEMNATION OF ASSOCIATION PROPERTY. If at any time all or any portion of any Association Property, or any interest therein, is taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation shall be paid to the Association and shall be used for restoring the balance of the Association Property. To the extent the Association is not permitted by the governmental agency to rebuild, then such award shall be apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners, the Association and their respective Mortgagees to such area as their interests may appear according to the fair market values of each Residential Lot at the time of destruction, as determined by independent appraisal. The appraisal shall be made by a qualified real estate appraiser with an MAI certificate or the equivalent, which appraiser shall be selected by the Board. Any such award to the Association shall be deposited into the maintenance and operation account of the Association. The Association shall represent the interests of all Owners in any proceeding relating to such condemnation.

12.8 DAMAGE TO RESIDENCES. Restoration of any damage to the Residential Lots shall be made by and at the individual expense of the Owner of the Residence so damaged. In the event of a determination by an Owner not to restore the Residence, the Residential Lot shall be landscaped and maintained in an attractive and well-kept condition by the Owner thereof. All such repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Board as provided herein.

12.9 CONDEMNATION OF A RESIDENCE. In the event of any taking of a Residential Lot, the Owner (and such Owner's Mortgagees as their interests may appear) of the Residential Lot shall be entitled to receive the award for such taking and after acceptance thereof such Owner and such Owner's Mortgagee shall be divested of all further interest in the Residential Lot and membership in the Association if such Owner shall vacate such Owner's Residential Lot as a result of such taking. In such event, the Owner shall grant his or her remaining interest in the Association Property appurtenant to the Residential Lot so taken, if any, to the other Owners owning a fractional interest in the same Association Property, such grant to be in proportion to the fractional interest in the Association Property then owned by the other Owners.

ARTICLE 13

RIGHTS OF MORTGAGEES

13.1 CONFLICT. Notwithstanding any contrary provision contained elsewhere in the Project Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees as specified herein.

13.2 LIABILITY FOR UNPAID ASSESSMENTS. Any Institutional Mortgagee who obtains title to a Residential Lot pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Residential Lot which accrue prior to the acquisition of title to the Residential Lot by the Institutional Mortgagee.

13.3 PAYMENT OF TAXES AND INSURANCE. Institutional Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Residential Lot or Association Property or Improvements situated thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Association Property. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

13.4 NOTICE TO ELIGIBLE HOLDERS. An Eligible Holder is entitled to timely written notice of the following events:

13.4.1 Any condemnation loss or casualty loss that affects either a material portion of the Project or the Residential Lot on which the Eligible Holder holds a First Mortgage;

13.4.2 Any delinquency in the payment of assessments or charges owed by the Owner of a Residential Lot that is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

13.4.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

13.4.4 Any proposal to take any action specified in this Article or in the Article hereof entitled "Destruction of Improvements and Condemnation";

13.4.5 Any default by the Owner-Mortgagor of a Residential Lot that is subject to a First Mortgage held by the Eligible Holder in the performance of his or her obligations under this Declaration or the Bylaws which is not cured within sixty (60) days; or

13.4.6 Any proposed action that requires the consent of a specified percentage of the Eligible Holders.

13.5 RESERVE FUND. The Association shall maintain as a reserve fund a reserve account fund sufficient to pay for maintenance, repair and periodic replacement of Association Property Improvements that the Association is obligated to maintain. This reserve fund shall be funded by Regular Assessments of Owners that are payable in installments rather than by Special Assessment; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of assessment or charge authorized by this Declaration.

13.6 INSPECTION OF BOOKS AND RECORDS. Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Project Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

13.7 FINANCIAL STATEMENTS. The Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year and furnish the same within one hundred twenty (120) days after written request from any Institutional Mortgagee.

13.8 VOTING RIGHTS OF MORTGAGEES. For purpose of this Section a Mortgagee shall be entitled to one (1) vote for each First Mortgage owned.

13.9 ACTIONS REQUIRING ELIGIBLE HOLDER APPROVAL. Unless at least sixty-seven percent (67%) of the Eligible Holders and sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission, seek to abandon or terminate the Project;
- (b) By act or omission abandon, partition, subdivide, encumber, sell or transfer any property or improvements owned, directly or indirectly, by the Association for the benefit of the Residential Lots and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Project by the Association and Owners shall not be deemed a transfer within the meaning of this Section);
- (c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Residential Lots, the exterior maintenance of Residential Lots, or the upkeep of lawns, plantings or other landscaping in the Project;
- (d) By act or omission charge the method of determining the obligations, assessments, dues or other charges that may be levied against an Owner;

(e) Fail to maintain fire and extended coverage insurance on insurable portions of the Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and

(f) Use hazard insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement or reconstruction of such property and Improvements.

13.10 SELF-MANAGEMENT. The vote or approval by written ballot of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) of the Eligible Holders shall be required to assume self-management of the Project if professional management of the Project has been required by an Eligible Holder at any time.

13.11 MORTGAGEE PROTECTION. A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any First Mortgage made in good faith and for value as to any Residential Lot in the Project; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Residential Lot if the Residential Lot is acquired by foreclosure, trustee's sale or otherwise.

13.12 SUBORDINATION. The lien of the assessments, including interest, costs (including attorneys' fees), and late charges subject to the limitations of California Civil Code Section 367 and any successor statutes or laws, provided for herein shall be subordinate to the lien of any First Mortgage with respect to any Residential Lots. Sale or transfer of any Residential Lot shall not effect the assessment lien.

13.13 DISTRIBUTION OF INSURANCE AND CONDEMNATION PROCEEDS. No Owner, or any other party, shall have priority over any right of Institutional Mortgagees of Residential Lots pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Residential Lots or Association Property. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Project is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Institutional Mortgagees naming the Mortgagees, as their interests may appear.

13.14 VOTING RIGHTS ON DEFAULT. In case of default by any Owner in any payment due under the terms of any Institutional Mortgage encumbering such Owner's Residential Lot, or the promissory note secured by the Mortgage, the Mortgagee or his or her representative, on giving written notice to such defaulting Owner or Owners, and placing of record a notice of default, is hereby granted a proxy and can exercise the voting rights of such defaulting Owner attributable to such Residential Lot at any regular or special meeting of the Members held during such time as such default may continue.

13.15 FORECLOSURE. If any Residential Lot is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not affect or impair the lien of the Mortgage. On foreclosure of the Mortgage, the lien for assessments, or installments, that has accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Residential Lot free of the lien for assessments, or installments, that has accrued up to the time of the foreclosure sale. On taking title to the Residential Lot the foreclosure-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Residential Lot. The subsequently accrued assessments or other charges may include previously unpaid assessments provided all Owners, including the foreclosure-purchaser, and his or her successors and assigns are required to pay their proportionate share as provided in this Section.

13.16 NON-CURABLE BREACH. Any Mortgagee who acquires title to a Residential Lot by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or that is not practical or feasible to cure.

13.17 LOAN TO FACILITATE. Any Mortgage given to secure a loan to facilitate the resale of a Residential Lot after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

13.18 APPEARANCE AT MEETINGS. Because of its financial interest in the Project, any Mortgagee may appear (but cannot vote except as may be provided for herein) at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments.

13.19 RIGHT TO FURNISH INFORMATION. Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

ARTICLE 14

AMENDMENTS

14.1 AMENDMENT BEFORE THE CLOSE OF FIRST SALE. Before the close of the first sale of a Residential Lot to a purchaser other than Declarant or a Merchant Builder, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant or a Merchant Builder and any Mortgagee of record of an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder.

14.2 AMENDMENTS AFTER THE CLOSE OF FIRST SALE. Except as may otherwise be stated in this Declaration, after the close of the first sale of a Residential Lot in the Project to an Owner other than Declarant and during the period of time prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time provided that the vote or approval by written ballot of at least sixty-seven percent (67%) of the Voting Power of each class of Members of the Association has been obtained. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended at any time and from time to time, provided that the vote or approval by written ballot of at least (a) sixty-seven percent (67%) of the total voting power of the Association and (b) at least sixty-seven percent (67%) of the voting power of the Members of the Association, other than Declarant, has been obtained. Such amendment shall become effective upon the recording of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or approval by written ballot have been obtained. For the purposes of recording the Certificate of Amendment, the President or Vice-President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording the Certificate of Amendment with the Office of the County Recorder. In addition to the foregoing, in the case of any Material Amendment, as defined below, the vote of fifty-one percent (51%) of the Eligible Holders (based on one vote for each Mortgage owned) and sixty-seven percent (67%) of the voting power of each class of Members (or sixty-seven percent (67%) of the Owners) shall also be required. "Material Amendment" shall mean, for the purposes of this **Section 14.2**, any amendments to provisions of this Declaration governing any of the following subjects:

14.2.1 The fundamental purpose for which the Project was created (such as a change from residential use to a different use);

14.2.2 Assessments, collection of assessments, assessment liens and subordination thereof;

14.2.3 The reserve for repair and replacement of the Association Property;

14.2.4 Property maintenance obligations;

14.2.5 Casualty and liability insurance or fidelity bond requirements;

14.2.6 Reconstruction in the event of damage or destruction;

14.2.7 Rights to use the Association Property;

14.2.8 Reallocation of any interests in the Common Area;

14.2.9 Voting;

14.2.10 Any provision that, by its terms, is specifically for the benefit of Eligible Holders, or specifically confers rights on Eligible Holders;

14.2.11 Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project, the redefinition of Residential Lot boundaries or the conversion of a Residential Lot or Residential Lots into Association Property; and

14.2.12 Imposition of any restriction on any Owner's right to sell or transfer his or her Residential Lot.

Anything herein stated to the contrary notwithstanding, no amendment to provisions contained in **Sections 14.2.1, 14.2.6, 14.2.8, 14.2.9, 14.2.10, 14.2.11 and 14.2.12** may be made to this Declaration without the prior written consent of sixty-seven percent (67%) or more of the Eligible Holders (based upon (1) vote for each such Eligible Holder). Any Eligible Holder who receives written request to consent to additions or amendments requiring consent under this provision who does not deliver to the requesting party a negative response within thirty (30) days after receipt of a notice delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such request. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation subsequent to the close of such first sale shall be evidenced by an instrument certified by the Secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder.

14.3 CONFLICT WITH ARTICLE 13 OR OTHER PROVISIONS OF THIS DECLARATION. To the extent any provisions of this Article conflict with the provisions of **Article 13** or any other provision of this Declaration, except those contained in **Section 14.2** and **Section 14.7**, the provisions of **Article 13** or the other provisions shall control.

14.4 BUSINESS AND PROFESSIONS CODE SECTION 11018.7. All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7 and any successor statutes or laws, to the extent such Section is applicable.

14.5 RELIANCE ON AMENDMENTS. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

14.6 CONSENT BY GOLF COURSE OWNER. Notwithstanding anything to the contrary set forth herein, in no event may the provisions of **Sections 4.4.11, 7.22, 7.32, 7.33, 7.34, 7.35, 9.9, 16.5, Article 17** or this **Section 14.6** be amended without the consent of the Golf Course Owner.

14.7 COUNTY APPROVAL REQUIRED FOR CERTAIN AMENDMENTS. Notwithstanding any other provisions of the Declaration, no addition, amendment, change, modification, or termination of the conditions, covenants and restrictions of the Declaration regarding the following provisions shall be effective for any purposes until approved in writing by the Director of Planning and Building of the County: (a) maintenance of the Association Property; (b) maintenance of the drainage basins and facilities; (c) the provisions of **Sections 2.2, 2.12, 2.55, 4.4.1, 4.4.7, 7.1, 7.23, 7.24, 7.26, 7.27, 7.29, 7.31, 7.32, 7.36, 8.3, 8.4, 9.10.3** and **17.6**; and (d) dissolution of the Association.

ARTICLE 15

SUPPLEMENTARY DECLARATIONS AND DE-ANNEXATION OF ADDITIONAL PROPERTY

15.1 SUPPLEMENTARY DECLARATION. The Declarant may record a Supplementary Declaration. The Supplementary Declaration may contain complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration. In no event, however, shall any such Supplementary Declaration revoke or modify the covenants established by this Declaration, or affect the provisions of this Declaration as covenants running with the land or equitable servitudes.

15.2 DE-ANNEXATION. Declarant may delete all or any portion of the Property from the coverage of this Declaration and rescind any Supplementary Declaration, provided Declarant is the sole Owner of all of the real property described in the Supplementary Declaration to be rescinded or Declarant obtains the consent of the fee title Owner of the real property to be de-annexed. Such deletion shall be effective upon the recordation of a written instrument signed by Declarant, in the same manner as the Supplementary Declaration to be rescinded was recorded.

ARTICLE 16

ENFORCEMENT

16.1 TERM. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by sixty-seven percent (67%) of the then Members has been recorded, at least one

(1) year prior to the end of any such period in the manner required for a conveyance of real property , in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

16.2 ENFORCEMENT AND NONWAIVER.

16.2.1 Rights of Enforcement of Project Documents. The Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions and restrictions, now or hereafter imposed by the provisions of the Project Documents or any amendment thereto, including the right to prevent the violation of such covenants, conditions and restrictions and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning Assessment Liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

16.2.2 Procedure for Enforcement. Notwithstanding anything to the contrary set forth in **Section 16.2.1**, in enforcing any action under the Project Documents for monetary damages, the parties shall comply with the provisions of California Civil Code Section 1354 and any successor statutes or laws. The Board shall annually provide to the Members a summary of the provisions of California Civil Code Section 1354 and any successor statutes or laws, which shall include the language required and shall be delivered in the manner provided in Civil Code Section 1365. The exception for disputes related to Association assessments set forth in Section 1354 shall not apply to disputes between an Member and the Association regarding assessments imposed by the Association, if the Member chooses to pay in full the Association all of the assessments as specified in California Civil Code Section 1366.3 and any successor statutes or laws.

16.3 Notice of Actions Against Declarant. The Association shall comply with the provisions of Civil Code Section 1368.4 and any successor statutes or laws, prior to the filing of any civil action by the Association against the Declarant or other developer of the Project for either alleged damage to the Association Property or other property within the Project that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Project that arises out of, or is integrally related to, such damage to the Association Property or other property within the Project that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in Section 1368.4 and any successor statutes or laws.

16.4 DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE (DECLARANT DISPUTES); WAIVERS. Notwithstanding any provision of this Declaration to the contrary, any action or claim by, between or among the Declarant or any Merchant Builder, as the builders of the Project or any director, officer, partner, member, employee or agent of the Declarant or any Merchant Builder, or any contractor, subcontractor, design professional, engineer or supplier who

provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following dispute notification and resolution procedure (collectively, the "Declarant Parties") and either the Association or any Owner, relating to or arising out of the Project, this Declaration or other governing documents for the Association, any other agreements between the Declarant Parties and an Owner or the Association (unless any such agreement specifies another form of dispute resolution), the sale of the Property, the use or condition of the Property or the design or construction of or any condition on or affecting the Project, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of improvements or disputes which allege fraud, misrepresentation or breach of implied or express warranties as to the condition of the Property or Project where the amount in controversy is greater than \$25,000 or in which non-monetary relief is sought that cannot be granted by a Municipal Court in the State of California as of January 1, 2000 (collectively, "Dispute(s)"), shall be subject to the provisions set forth below.

16.4.1 Notice. Any person with a claim defined as a Dispute, above ("Claimant"), shall notify each applicable Declarant Party in writing of the claim, which writing shall describe the nature of such claim and any proposed remedy (the "Claim Notice").

16.4.2 Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Declarant (and any applicable Declarant Parties) and the Claimant(s) shall meet at a mutually-acceptable place within or near the Project to discuss the Dispute claim. At such meeting or at such other mutually-agreeable time, the Declarant and any Merchant Builder (and any applicable Declarant Parties) and their respective representatives shall have full access to the property that is subject to the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant and any Merchant Builder (and any applicable Declarant Parties), which rights shall continue until such time as the Dispute is resolved as provided in this **Section 16.4**. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the claim. If the Declarant (and any applicable Declarant Parties) elects to take any corrective action, the Declarant (and any applicable Declarant Parties) and their respective representatives and agents shall be provided full access to the Project to take and complete corrective action.

16.4.3 Civil Code Sections 1368.4 and 1375. Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Section 1368.4, referenced in **Section 16.3** of the Declaration. If the claim is subject to the provisions of Civil Code Section 1375 as it may be amended from time to time, compliance with the procedures of Civil Code Sections 1375 (b), (d) and (e) shall satisfy the requirements of **Sections 16.4.1** and **16.4.2**.

16.4.4 Mediation. If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in **Subsection 16.4.2** above (including, if applicable, Civil Code Section 1375 procedures), the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this **Section 16.4.4**) or any successor thereto or to any other entity

offering mediation services that is acceptable to such parties. No person shall serve as a mediator in any Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute participating in the mediation. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. Except as provided in **Section 16.4.8** below, the Association and each Owner covenants that each shall not commence any litigation against the Declarant Parties without complying with the procedures described in this **Section 16.4.4**.

(a) Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party to the Dispute participating in the mediation shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute participating in the mediation shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute participating in the mediation mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project are located or such other place as is mutually acceptable to the parties to the Dispute participating in the mediation.

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

(c) Exclusion Agreement. Prior to the commencement of the mediation session, the mediator and all parties to Dispute participating in the mediation shall execute an agreement pursuant to California Evidence Code Section 1115 et seq. or any successor statutes or laws in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings. Pursuant to California Evidence Code Section 1115 et seq., the agreement shall specifically state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. The provisions of California Evidence Code Sections 1115 through 1128 shall also be applicable to such mediation process.

(d) Persons Permitted at Sessions. Persons other than the parties to the Dispute participating in the mediation, their representatives and the mediator may attend mediation sessions only with the permission of the parties to the Dispute participating in the mediation and the consent of the mediator; provided, however, that such permission and consent shall not be required to allow participation of such parties' insurer in the mediation to the extent required under such parties' liability insurance policy. Confidential information disclosed to a mediator by the parties to the Dispute participating in the mediation or by witnesses in the course of the mediation while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(e) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute participating in the mediation unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

16.4.5 Judicial Reference. Should mediation pursuant to **Section 16.4.4** above not be successful in resolving any Dispute, such Dispute shall be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1 or any successor statutes thereto, as modified or as otherwise provided in this **Section 16.4.5**. Subject to the limitations set forth in this **Section 16.4.5**, the judicial referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The judicial referee shall be the only trier of fact or law in the reference proceeding and shall have no authority to further refer any issues of fact or law to any other party, without the mutual consent of all parties to the judicial reference proceeding.

(a) Participation by Declarant Parties. The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Neither Declarant nor any Merchant Builder shall be required to participate in the judicial reference proceeding if (i) all parties against whom Declarant or any such Merchant Builder would have necessary or permissive cross-claims or counterclaims cannot be joined in the judicial reference proceeding, including, but not limited to, the Declarant Parties, or (ii) the enforcement of the provisions of this **Section 16.4.5** would impair the insurance coverage of Declarant, any Merchant Builder or a Declarant Party for any claim arising out of the Dispute. Prior to commencement of any action under this procedure, Claimant(s) will allow Declarant or any Merchant Builder, as applicable a reasonable time in which to determine if the parties described in subsection (i) above can be joined in the judicial reference proceeding, to seek the consent of its liability insurance carrier to the judicial reference proceeding and to contact each applicable Declarant Party with respect to any consent required by their insurance carriers. If Declarant or any Merchant Builder, as applicable determines that it cannot join all of the parties set forth in subsection (i) above or that Declarant's or any Merchant Builder's, as applicable insurance coverage

would be impaired with respect to the Dispute, or if Declarant or any Merchant Builder is advised by a Declarant Party that it contends its insurance coverage will be impaired by enforcement of this **Section 16.4.5**, Declarant or any Merchant Builder may either elect not to participate in the judicial reference proceeding, or, in the case of the impairment of a Declarant Party's insurance coverage, seek enforcement of its right to have such Declarant Party participate in the judicial reference proceeding by motion or other application pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1 or any successor statutes thereto. If Declarant or any Merchant Builder elects not to participate in the judicial reference proceeding, Declarant or any Merchant Builder will provide notice to Claimant(s) that the Dispute will not be resolved by judicial reference. If Declarant or any Merchant Builder is unsuccessful in its attempt to compel any Declarant Party to participate in the judicial reference proceeding, Declarant or any Merchant Builder will provide notice to Claimant(s) that such Declarant Party will not participate in the judicial reference proceeding and whether or not Declarant or any Merchant Builder will participate in such proceeding. Upon receipt by Claimant(s) of notice from Declarant or any Merchant Builder that the Dispute will not be resolved by judicial reference, Claimant(s) may commence an action in an appropriate court of law against Declarant or any Merchant Builder and/or any applicable Declarant Party. Upon receipt by Claimant(s) of notice from Declarant or any Merchant Builder that any Declarant Party will not participate in the judicial reference, the judicial reference shall proceed as to all parties except such Declarant Party and upon receipt of such notice Claimant(s) may commence legal proceedings against such Declarant Party in an appropriate court of law. In the event that Claimant(s) are permitted to commence legal proceedings as provided herein, subsections (b) through (f) and (h) through (n) of this **Section 16.4.5** will not apply in such legal proceeding, provided that the legal proceeding shall be tried by a judge and not a jury and Claimant(s) and any applicable Declarant Party shall waive their rights to a jury (unless all parties to such proceeding mutually consent otherwise) and agree that the waiver of punitive damages set forth in **Section 16.4.5(g)** below shall be applicable in such proceeding.

(b) Place. The proceedings shall be heard in the county in which the Project is located.

(c) Referee. The referee shall be an attorney or retired judge with experience in relevant real estate matters. The referee shall not have any relationship to the parties to the Dispute or interest in the Project. The parties to the Dispute participating in the judicial reference proceeding shall meet to select the referee within ten (10) days after service of the initial complaint on all defendants named therein. Any dispute regarding the selection of the referee shall be promptly resolved by the judge to whom the matter is assigned, or if there is none, to the presiding judge of the Superior Court of the County in which the Project is located, who shall select the referee.

(d) Commencement and Timing of Proceeding. The referee shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(e) Pre-hearing Conferences. The referee may require one or more pre-hearing conferences.

(f) Discovery. The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange between such parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. Such parties shall also be entitled to conduct further tests and inspections as provided in **Section 16.4.2** above. Any other discovery provided for in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the mutual agreement of the parties to the judicial reference proceeding. The referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(g) Limitation on Remedies; Prohibition on Award of Punitive Damages. The referee shall not have the power to award punitive damages. In addition, as further provided below, the right to punitive damages is waived. The referee shall have the power to grant all legal and equitable remedies and award compensatory damages in the judicial reference proceeding.

(h) Motions. The referee shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary adjudication motions, in the same manner as a trial court judge, except the referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. Notwithstanding the foregoing, if prior to the selection of the referee as provided herein, any provisional remedies are sought by the parties to the Dispute, such relief may be sought in the Superior Court of the County in which the Project is located.

(i) Rules of Law. The referee shall apply the laws of the State of California except as expressly provided herein including the rules of evidence, unless expressly waived by all parties to the judicial reference proceeding.

(j) Record. A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(k) Statement of Decision. The referee's statement of decision shall contain findings of fact and conclusions of law to the extent required by law if the case were tried to a judge. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.

(l) Post-hearing Motions. The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

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

(n) Expenses. The fees and costs of any judicial reference proceeding hereunder shall be equally shared by the parties to the judicial reference proceeding. Each party to the judicial reference proceeding shall bear its own attorneys' fees and costs in connection with such proceeding.

16.4.6 AGREEMENT TO DISPUTE RESOLUTION; WAIVERS OF JURY TRIAL AND AWARD OF PUNITIVE DAMAGES. DECLARANT, EACH MERCHANT BUILDER AND BY ACCEPTING A DEED FOR THE ASSOCIATION PROPERTY OR A RESIDENTIAL UNIT, AS THE CASE MAY BE, THE ASSOCIATION AND EACH OWNER AGREE TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS **SECTION 16.4** AND WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS **SECTION 16.4**. SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS **SECTION 16.4**, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY AND FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE DAMAGES RELATING TO SUCH DISPUTES, THEREBY GIVING UP ANY RIGHTS SUCH PARTIES MAY POSSESS TO SUCH REMEDIES. THIS **SECTION 16.4** SHALL NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

16.4.7 Application of Award. Any proceeds arising from any Dispute by settlement, award or otherwise shall be applied in accordance with **Section 4.4.7** of this Declaration.

16.4.8 Exceptions to Mediation and Reference; Statutes of Limitation. The procedures set forth in this **Section 16.4** shall apply only to Disputes and shall not apply to any action taken by the Association against Declarant, any Merchant Builder or any Owner for delinquent assessments, which shall be covered by **Article 6**, or in any action involving any bond covered by the provisions of **Article 11** of the Bylaws. Furthermore, nothing in this **Section 16.4** shall be considered to toll, stay, reduce or extend any applicable statutes of limitation; provided, however, that the Declarant Parties, the Association or any Owner shall be entitled to commence a legal action which in the good faith determination of any Declarant Party, the Association or Owner is necessary to preserve the Declarant Parties', the Association's or Owner's rights under any applicable statute of limitations, provided that the Declarant Party, Association or Owner shall take no further steps in prosecuting the action until it has complied with the procedures described in **Sections 16.4.4** and **16.4.5**.

16.5 Enforcement by Golf Course Owner. The Golf Course Owner is a third party beneficiary of certain provisions set forth in this Declaration, which are expressly declared to be for the benefit of the Golf Course. In the event an Owner breaches the restrictions under this Declaration or fails to comply with the rights granted to the Golf Course Owner hereunder which are declared to be for the benefit of the Golf Course Owner, then the Golf Course Owner may pursue any remedy at law or equity.

ARTICLE 17

GOLF COURSE AND OTHER DISCLOSURES

17.1 GOLF COURSE DISCLOSURES AND PROVISIONS. As a material condition to Declarant's willingness to convey Residential Lots to the Owners, each Owner, by acceptance of title to a Residential Lot hereby acknowledges, understands and agrees to the following provisions of this **Article 17.**

17.2 GOLF COURSE.

17.2.1 Construction of Golf Course. Portions of the Golf Course are contiguous to or in the vicinity of certain Residential Lots and other portions of the Project. No representations, warranties or assurances have been given as to the exact layout or design of the Golf Course or any changes which may be made in the future to the layout or design of the Golf Course or the structure of ownership and memberships or whether the Golf Course will continue to be operated as a Golf Course in the future.

17.2.2 Use of Facilities. The Golf Course will not be a part of the Project and, therefore, the purchase of a Residential Lot does not confer upon the Owner the right to use the Golf Course or any other facilities associated therewith ("Golf Course Facilities"). In order to use the Golf Course Facilities, Owners will be required to pay such fees and satisfy such other conditions as may be required by the Golf Course. Declarant has provided no representations, warranties or assurances respecting the amount or level of such fees or other conditions which may be imposed by the Golf Course Owner as a condition to use or membership in the Golf Course.

17.2.3 Golf Course Overflight Damage. Living adjacent to or near a Golf Course carries with it the risk of damage caused to persons and property by golf balls coming on the property from the Golf Course. The Declarant, the Golf Course Owner and any Merchant Builder are not providing any assurance whatsoever concerning the frequency which golf balls will enter the Property, if at all, and none of such parties are providing guaranties as to what action, if any, may be taken by the Golf Course Owner to mitigate such entry.

17.2.4 Waste Water Overspray. The Golf Course will in all likelihood be served by a reclaimed water irrigation system. Therefore, there may be overspray of such water onto the Property which might have an adverse impact on landscaping and improvements located on the

Property. The right to grant an appurtenant, non-exclusive easement over any affected portion of the Property, as the servient tenement, has been reserved by the Declarant for such purpose, in favor of the Golf Course, as the dominant tenement.

17.2.5 Pesticide Overspray. There may be an overspray onto the Property of pesticides and fertilizer applied to the Golf Course, which pesticides might have an adverse affect on landscaping and improvements located on the Property. The right to grant an appurtenant, non-exclusive easement over any affected portion of the Property, as the servient tenement, has been reserved by the Declarant for such purposes in favor of the Golf Course, as the dominant tenement.

17.2.6 Golf Course Use. Use of the Golf Course may begin immediately after daylight up to seven (7) days per week and maintenance of the Golf Course, including, but not limited to, irrigation, may be carried on during nighttime, as well as, daylight hours. As a result, the Owners acknowledge and understand that use and maintenance of the Golf Course will create noise from players (including without limitation foul language or raucous language) and maintenance personnel, golf carts and maintenance equipment as well as other potential disturbances that are normally associated with properly conducted operations of the Golf Course.

17.2.7 Public Events. Special public events may also from time to time be held at the Golf Course. The Golf Course Owner may take any and all reasonable actions necessary to provide for the attendees at such events as well as any broadcast media, security personnel, parking attendants, etc.

17.2.8 Maintenance Easement. The right to grant an appurtenant, non-exclusive easement over the Association Property has been reserved by the Declarant in favor of the Golf Course for the purpose of allowing the Golf Course Owner, its, his or her employees, agents or any contractor that may be selected by the Golf Course Owner, to enter the Association Easement Areas in order to install, maintain, repair and replace any cart paths, master television antenna and/or cable systems, wireless communication setup, security devices, together with any similar type of equipment as well as any private utilities, such as, but not limited to, sewers, drainage, retention ponds, electrical, gas, telephone and water.

17.2.9 Golf Course Advertising. It is understood and agreed that the Declarant as well as any Golf Course Owner, shall have the right to photograph, video record and display the exterior of any Residence together with the landscaping on any Residential Lot, for the purposes of promoting the Project, the Golf Course and any activities associated therewith.

17.2.10 Golf Course Signs. The Golf Course Owner may install such signs as may be determined by the Golf Course Owner to be necessary or desirable to identify, warn and otherwise control crossings of streets and roads within the Project by golf carts and pedestrian golfers; to identify the Golf Course and provide appropriate directions to same for motorists and pedestrians; and to identify the boundaries of the Golf Course.

17.2.11 Owner's Responsibilities. No noxious or offensive activities including, but not limited to, the burning of materials and allowing the smoke to cross the Golf Course, maintaining pets which are creating excessive noise, playing loud radios, stereos, televisions or musical instruments, running, walking, jogging, bicycle riding, or skateboarding on the fairways or golf cart paths, picking up golf balls or otherwise interfering with play shall be permitted.

17.2.12 Use of Golf Course Paths. No Owner or Invitee shall have any right to use any portion of a golf cart path on the Golf Course Property, without the prior written approval of the Golf Course Owner.

17.2.13 Liquor License. Each Owner recognizes that Golf Course Owner will probably obtain a liquor license which allows the Golf Course Owner to sell beverages for on-site and/or off-site consumption. Therefore, by the acceptance of title to a Residential Lot in the Project, each Owner acknowledges, understands and agrees to not contest any such application for a liquor license by the Golf Course Owner.

17.3 AMENDMENT OF ARTICLE 17. Notwithstanding any other provision of the Declaration, no addition, amendment, change, modification, or termination of the conditions, covenants and restrictions of this **Article 17** shall be effective for any purposes until approved in writing by the Golf Course Owner.

17.4 GOLF COURSE LIABILITIES. By accepting the deed to a Residence, each Owner, for himself or herself and his or her Invitees, personal representatives, assigns, heirs and next of kin (collectively, the "Owner's Related Parties") hereby (a) acknowledges the potential effect on his or her Residence of (a) stray golf balls and other events inherent to the activities of the Golf Course within the Cypress Ridge Community (the "Golf Course Hazards") and the effect of the installation or growth of trees, shrubs and other landscaping on the Golf Course, (b) the potential for damage to such Owner's Residence including, without limitation, stucco, tile roofs and windows, attributable to the Golf Course Hazards, (c) any adverse effect on any landscaping installed by an Owner on the Owner's Lot arising from or attributable to the use of reclaimed water on the Golf Course by the Owner of the Golf Course, (d) nuisances created by or arising from the Golf Course, including, without limitation, the landscaping and maintenance of the Golf Course and the use of fertilizers and pesticides in connection therewith, noise generated by the use or maintenance of the Golf Course and early morning and late night play (including, without limitation, foul language or raucous noise) or maintenance activities and visibility of lights used in connection with any driving range or clubhouse, if any, installed by the Owner of the Golf Course, (d) overspray in connection with the watering of the roughs, fairways and greens; (e) noise from maintenance and the operation of equipment (including, without limitation, irrigation systems, compressors, blowers, mulchers, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously); (f) odors arising from irrigation and fertilization of the turf situated on the adjacent property; and (g) disturbance and loss of privacy resulting from golf cart traffic, golfers, vehicle and pedestrian congestion; (h) assumes the risk of any property damage, personal injury and/or creation or maintenance of a trespass or nuisance created by or arising in connection with the

Golf Course Hazards or any matters described above (collectively the "Assumed Risks") and (i) releases, waives, discharges, covenants not to sue, indemnifies and agrees to hold harmless Declarant, each Merchant Builder, the Association, the Board, the other members, the owner and operator of the Golf Course, and each of their respective officers, directors, shareholders, members, affiliates, agents, employees, successors and assigns, (collectively, the "Released Parties"), and each of them, from any and all liability to the Owner or Owner's Related Parties for any losses, costs (including, without limitation, attorneys' fees), claims, demands, suits, judgments or other obligations arising out of or connected with any of the Assumed Risks, whether caused by the negligence of the Released Parties or otherwise. This release and waiver shall be binding upon each Owner whether or not separately set forth in the documents of sale and/or deed to such Owner's Lot. Each Owner, by acceptance of a deed, acknowledges that the Golf Course is a privately owned Golf Course and the Association has no obligation or right to regulate or control the Golf Course, in any way or manner. Each Owner, by acceptance of a deed, further acknowledges and agrees that Declarant, in making any reference to a Golf Course herein, makes no warranties or representations that a Golf Course will be a part of the Cypress Ridge Community or that, if installed, a Golf Course will continue to be maintained and operated within any portion of the Project. Each Owner further acknowledge and agree that the standard of maintenance of the adjacent property or any improvements thereon is within the sole discretion of the Declarant and/or the Golf Course Owner.

17.5 CUMULATIVE REMEDIES. All rights, options and remedies of Declarant, each Merchant Builder, the Association, the Owners, or Mortgagees under this Declaration are cumulative, and no one of them shall be exclusive of any other. Declarant, the Association, the Owners, and the Mortgagees shall have the right to pursue any one or all of the such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

17.6 AGRICULTURAL USE. Each Owner by acceptance of a deed acknowledges that, upon recordation of this Declaration, the County has in effect a Right to Farm ordinance and a Leash Ordinance and that there are agricultural operations which are being conducted in the area of the Project. Such agricultural uses will result in certain nuisances, including noise, odors, dusts, pesticides, chemicals and other nuisances that are associated with agricultural operations.

17.7 THIRD PARTY BENEFICIARY. The Golf Course Owner is a third party beneficiary of the rights set forth in this **Article 17** and if an Owner breaches its obligation under this Article and the Golf Course Owner shall have the rights set forth in **Section 16.5** of this Declaration.

ARTICLE 18

GENERAL PROVISIONS

18.1 HEADINGS. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

18.2 SEVERABILITY. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions of it shall not invalidate any other provisions. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Declaration shall become illegal, null, void, against public policy or otherwise unenforceable, for any reason, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

18.3 CUMULATIVE REMEDIES. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver.

18.4 VIOLATIONS AS NUISANCE. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any Owner, any Member of the Board, the manager, or the Association.

18.5 NO RACIAL RESTRICTION. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of his or her Residential Lot on the basis of race, sex, color or creed.

18.6 ACCESS TO BOOKS. Declarant may, at any reasonable time and upon reasonable notice to the Board or manager, cause an audit or inspection to be made of the books and financial records of the Association.

18.7 LIBERAL CONSTRUCTION. The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

18.8 NOTIFICATION OF SALE OF RESIDENTIAL LOT. Concurrently with the consummation of the sale of any Residential Lot under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and his or her Mortgagee and transferor, the common address of the Residential Lot purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Board. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to his or her transferor if the Board has received no notice of transfer as above provided, by certified mail, return receipt requested, at the mailing address above specified. Notices shall also be deemed received twenty-four (24) hours after being

sent by telegram or upon personal delivery to any occupant of a Residential Lot over the age of twelve (12) years.

18.9 NUMBER; GENDER. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

18.10 EXHIBITS. All exhibits referred to in this Declaration are attached to this Declaration and incorporated by reference.

18.11 EASEMENTS RESERVED AND GRANTED. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed to any Residential Lot.

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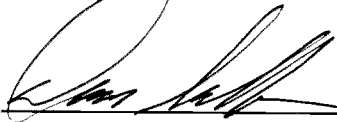
18.12 BINDING EFFECT. This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

IN WITNESS WHEREOF, Declarant has executed this instrument as of
April 4th, 2000.

DECLARANT:

Cypress Ridge, L.P., a California limited partnership

By: Cypress Ridge Development Corporation, a California corporation, its general partner

By: 
Denis Sullivan, President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of SAN LUIS OBISPO } ss.

On April 4, 2000, before me, Ellen MCCAIA, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared DENIS PHILIP SULLIVAN
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal.

Ellen MCCAIA

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: CC&R'S

Document Date: April 4, 2000 Number of Pages: _____

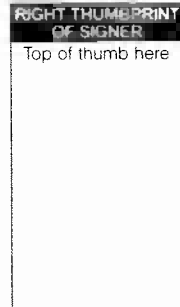
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____



EXHIBITS

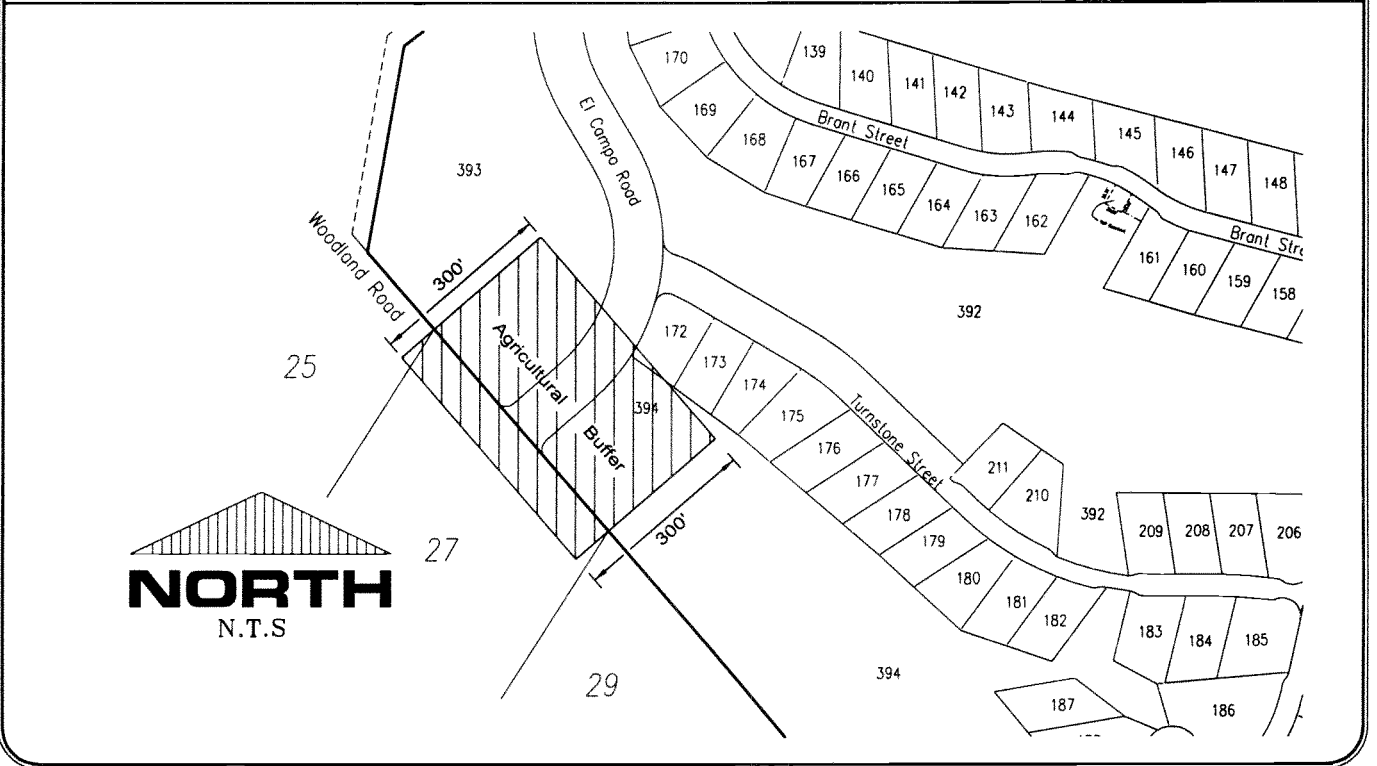
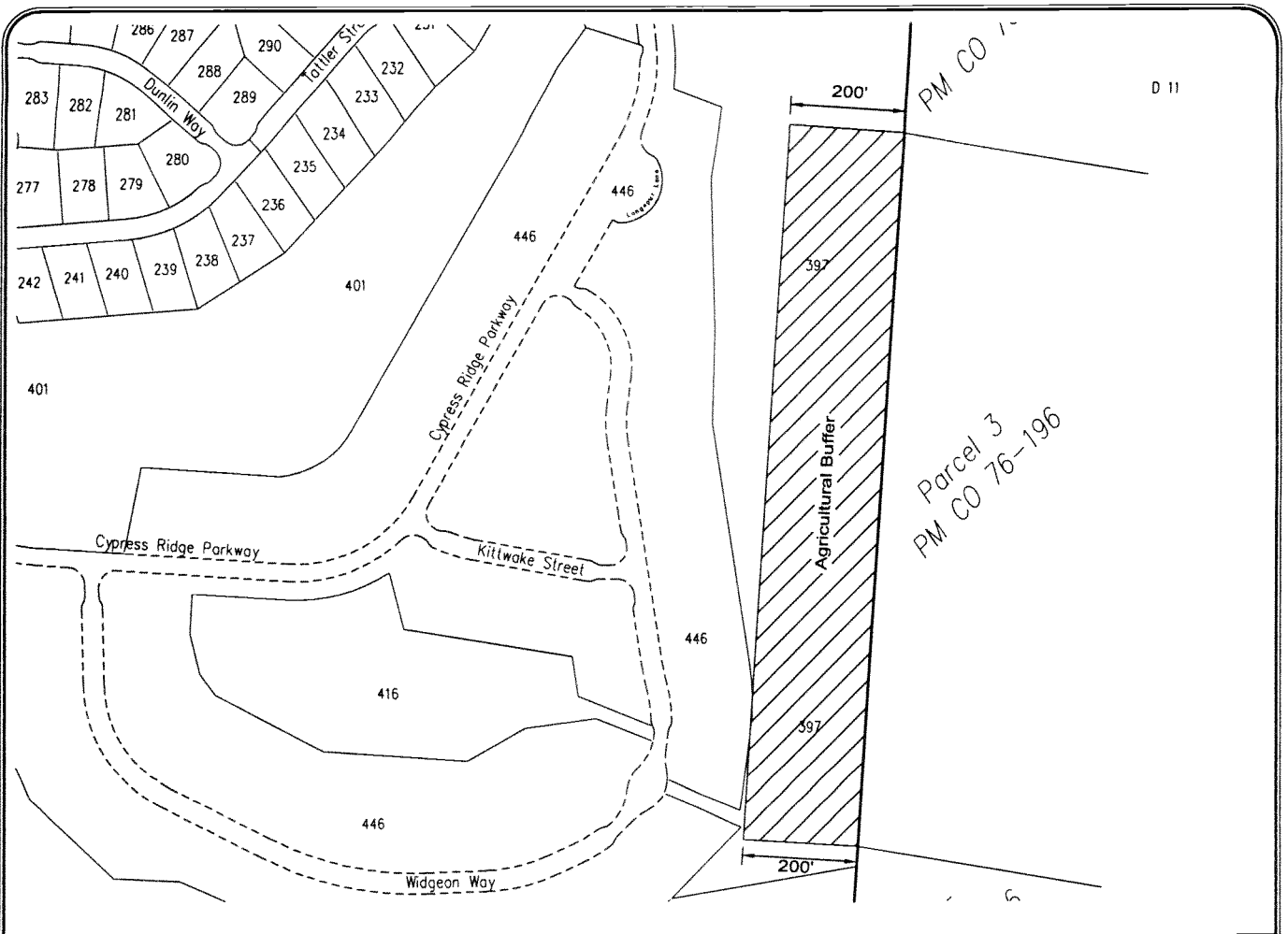
Exhibit "A"	Legal Description of the Property
Exhibit "B"	Agricultural Buffers
Exhibit "C"	Association Easement Areas
Exhibit "D"	Association Easement Areas of Off-Site Owners
Exhibit "E"	Association Property
Exhibit "F"	Development Plan
Exhibit "G"	Sensitive Resource Areas
Exhibit "H"	Residential Rental Pool Lots

EXHIBIT "A"

Legal Description of the Property

Property:

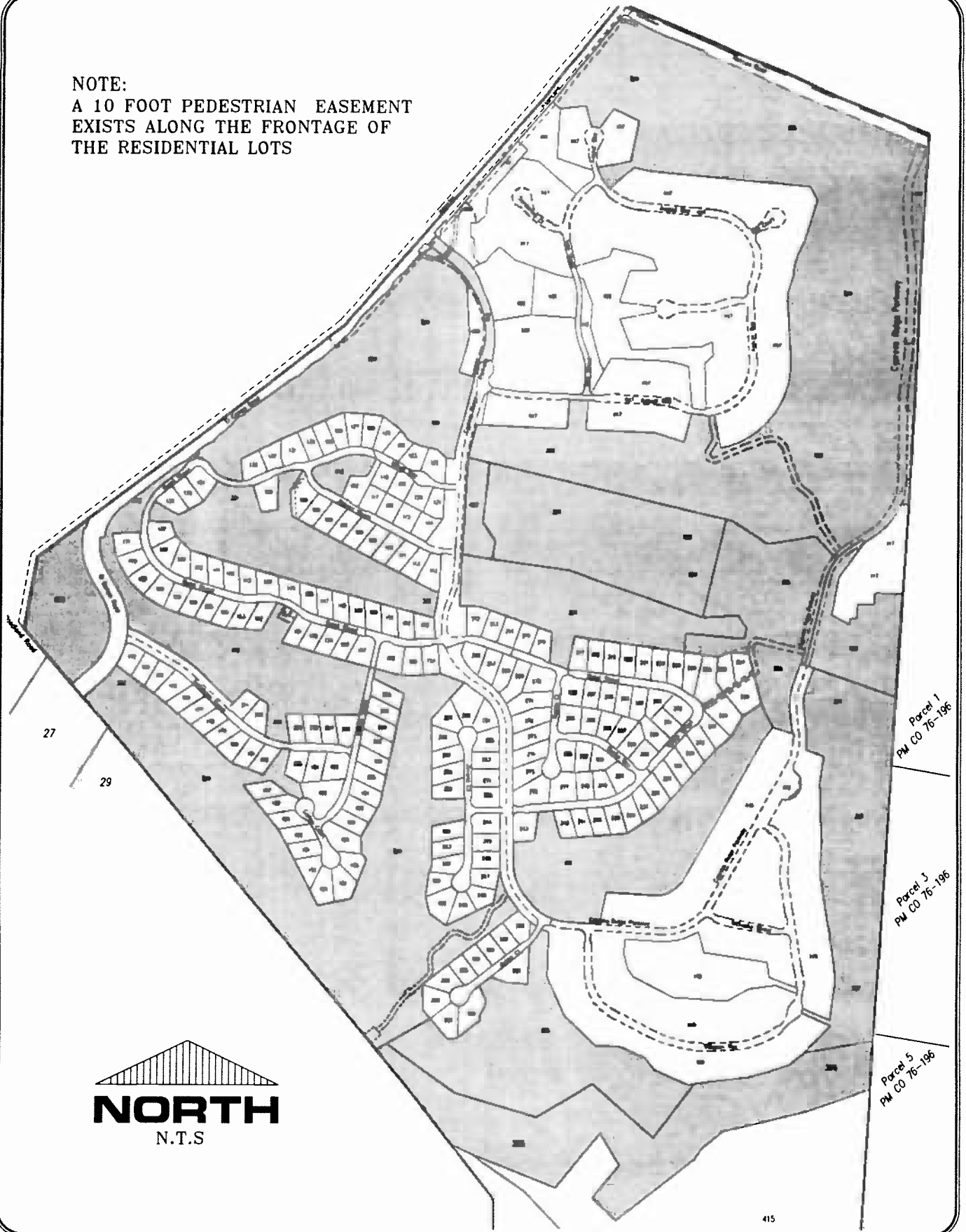
All of Tract 1933 as shown in a map recorded in Book 19 Page 10 of Maps, in the Office of the County Recorder of the County of San Luis Obispo, State of California.



JLWA John L. Wallace & Associates
 Civil Engineering · Surveying · Planning
 4115 So. Broad St B5 San Luis Obispo, Ca
 (805)544-4011 FAX 544-4294

AGRICULTURAL BUFFERS
 CYPRESS RIDGE - TRACT 1933
 EXHIBIT "B"

NOTE:
A 10 FOOT PEDESTRIAN EASEMENT
EXISTS ALONG THE FRONTAGE OF
THE RESIDENTIAL LOTS



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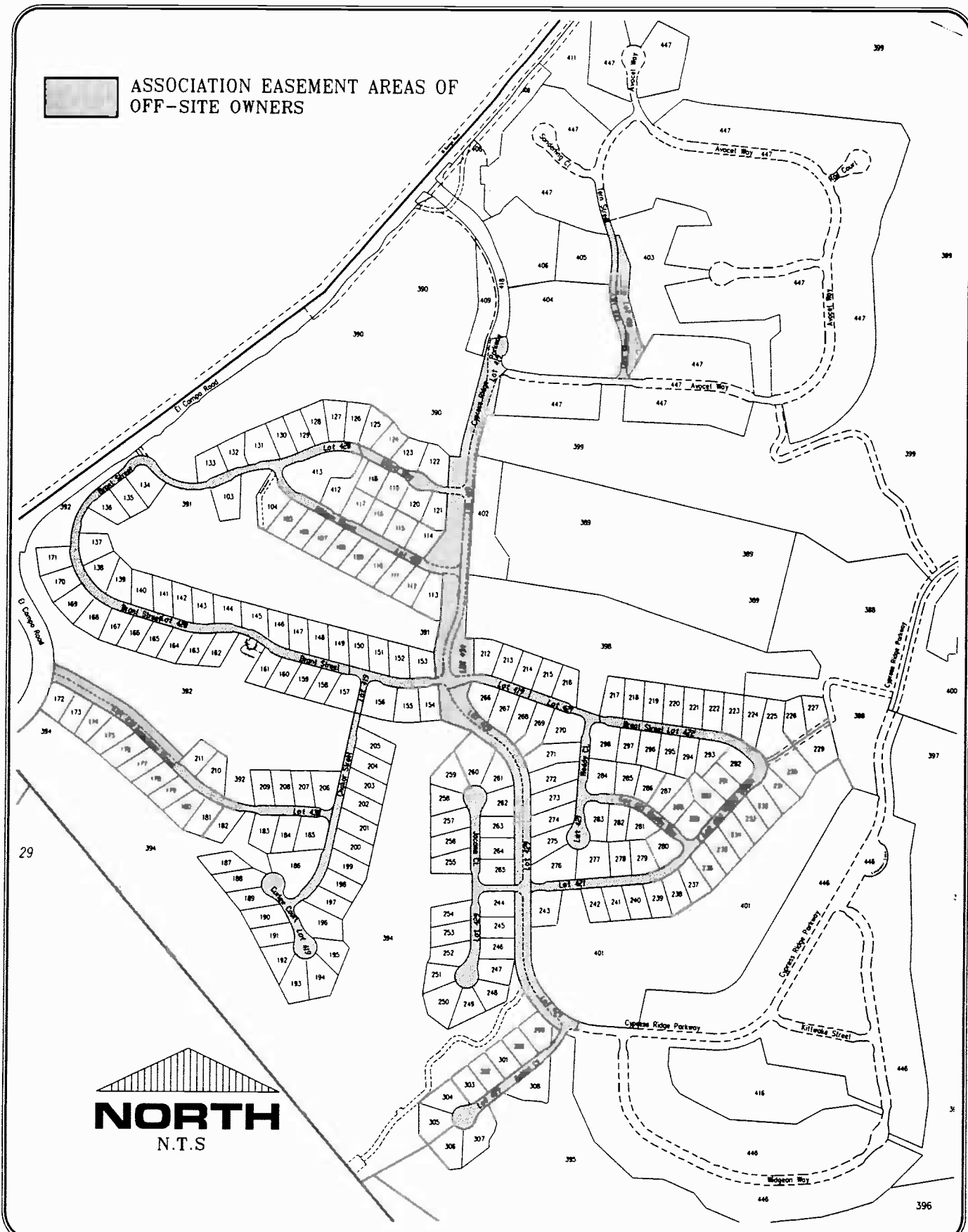
ASSOCIATION EASEMENT AREAS

CYPRESS RIDGE - TRACT 1933

EXHIBIT
"C"

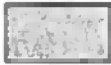


ASSOCIATION EASEMENT AREAS OF
OFF-SITE OWNERS

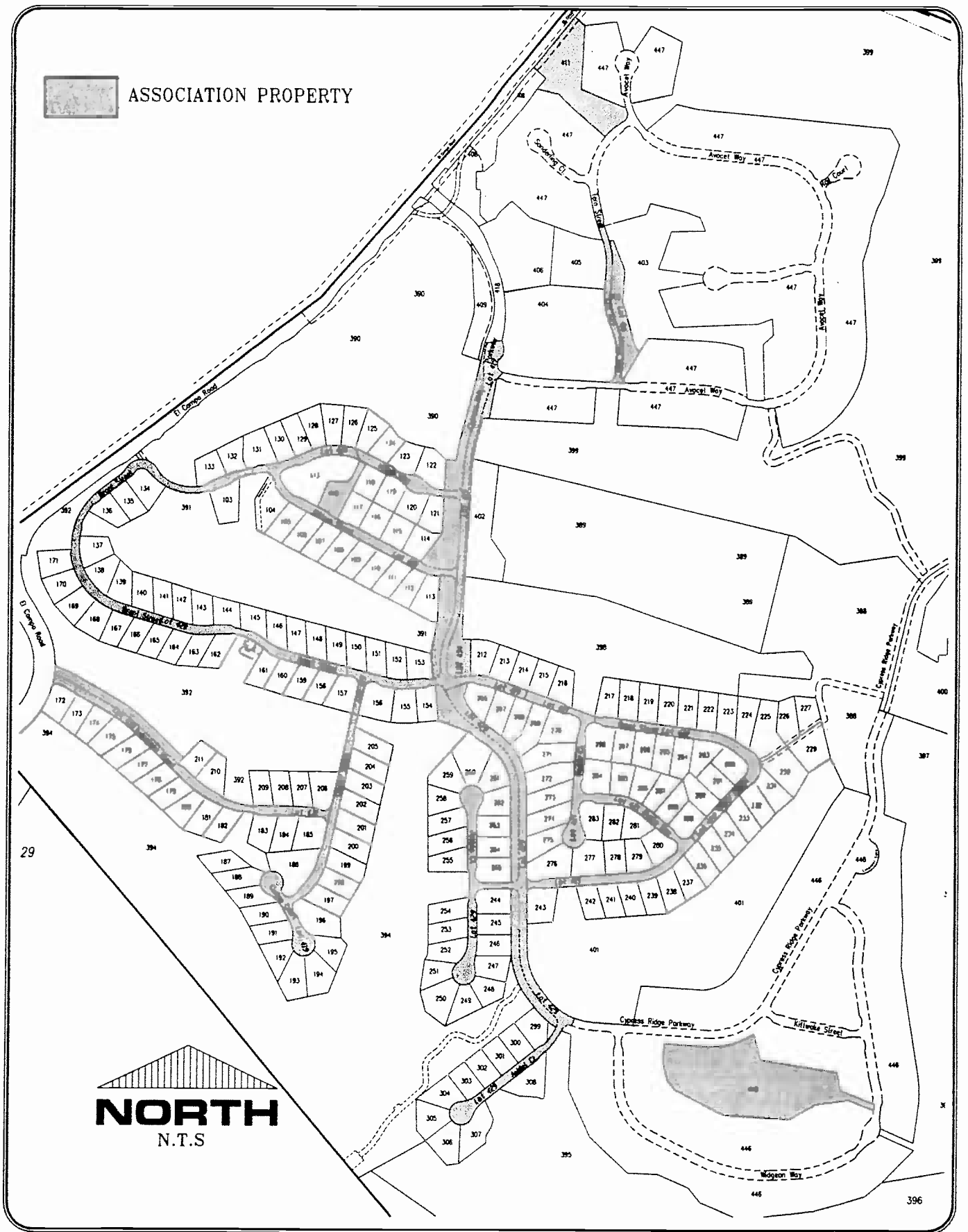


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**ASSOCIATION EASEMENTS AREAS
OF OFF-SITE OWNERS**
CYPRESS RIDGE - TRACT 1933
EXHIBIT "D"



ASSOCIATION PROPERTY



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ASSOCIATION PROPERTY
 CYPRESS RIDGE - TRACT 1933 **EXHIBIT 'E'**

CYPRESS RIDGE

Development Plan D890413D

A Proposed Residential Golf Course Community by

CYPRESS RIDGE L.P.
A California Limited Partnership

CYPRESS RIDGE DEVELOPMENT CORP.
General Partner

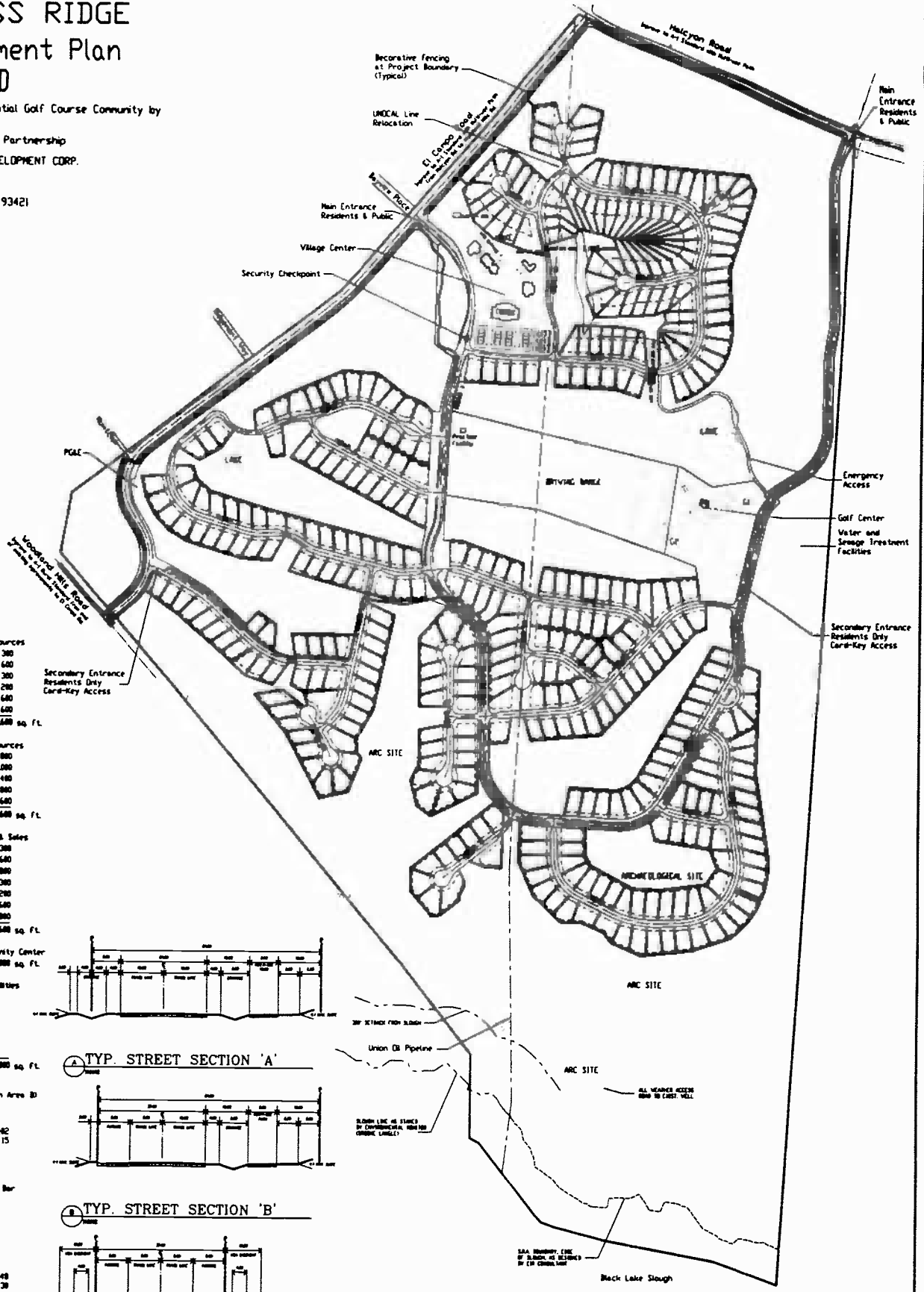
P.O. Box 179
Arroyo Grande, CA 93421

REVISED 05/13/97

REVISED 07/08/97

REVISED 11/14/97

REVISED 03/17/98



VILLAGE CENTER

BUILDING A Community Resources	
Postal	300
"Ordn's" type uses	600
Mini Mart	300
Coffee Shop	200
Storage / Mechanical	600
Misc.	600
Total	2,600 sq. ft.

BUILDING B Community Resources	
Conference Rooms	800
Office Cubicles	1,000
Secretarial Service	400
Storage / Mechanical	800
Misc.	600
Total	3,600 sq. ft.

BUILDING C Administration & Sales	
Lobby	300
Sales Office	600
Administration	800
Cable TV	300
Water & Sewer	200
Storage / Mechanical	600
Misc.	800
Total	3,600 sq. ft.

BUILDING D Resident Community Center	
Total	5,800 sq. ft.

BUILDING E Recreation Facilities	
Covered Pool & Spa	
Workout Room	
Locker & Changing Rooms	
Food Services	
Pro Shop	
Back Areas	
Total	22,800 sq. ft.

4 Tennis Courts
4 Paddle Tennis Courts (2 in Area D)
1 Basketball Court

PARKING	
Cars	182
Golf Carts	15

GOLF CENTER

BUILDING G Pro Shop
BUILDING H Restaurant / Bar

Snack Bars
Golf School
Driving Range (45 stations)
Practice Putting Greens
Practice Pitching Area

PARKING	
Cars	140
Golf Carts	30

RESIDENTIAL LOTS

AREA A	102
AREA B (1 CARETAKER LOTS)	109
AREA C	87
AREA D	89
Total	387

- GENERAL NOTES:**
- All lots are 18,000 gross sq.ft. and a net area per the County LID definitions. Lots adjacent to the lake (A-52 thru A-102) have a minimum buildable area of 6,000 gross sq.ft.
 - Lots are a minimum of 60 ft. wide at a distance of 20 ft. from the front property line except for lots A-52 thru A-102. These lots, if 50 foot wide, can have zero side/yard setbacks consistent with section 22204.118 F.C.D. Zero Lot Line Development.
 - Front yard setbacks will be varied but maintain a minimum of 20 ft. from property line.
 - Side yard setbacks will be varied but maintain a minimum of 5 ft. from property line.
 - Rear yard setbacks will be varied but maintain a minimum of 10 ft. from property line.

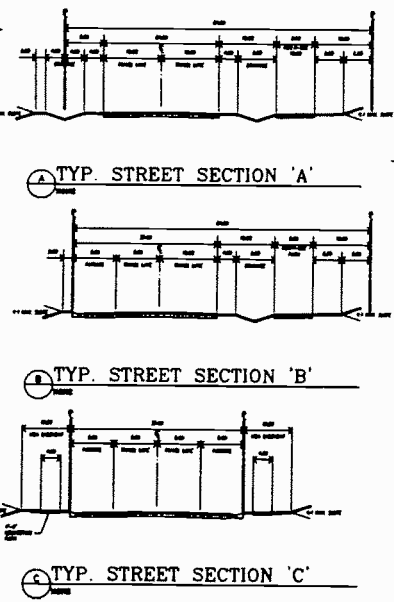
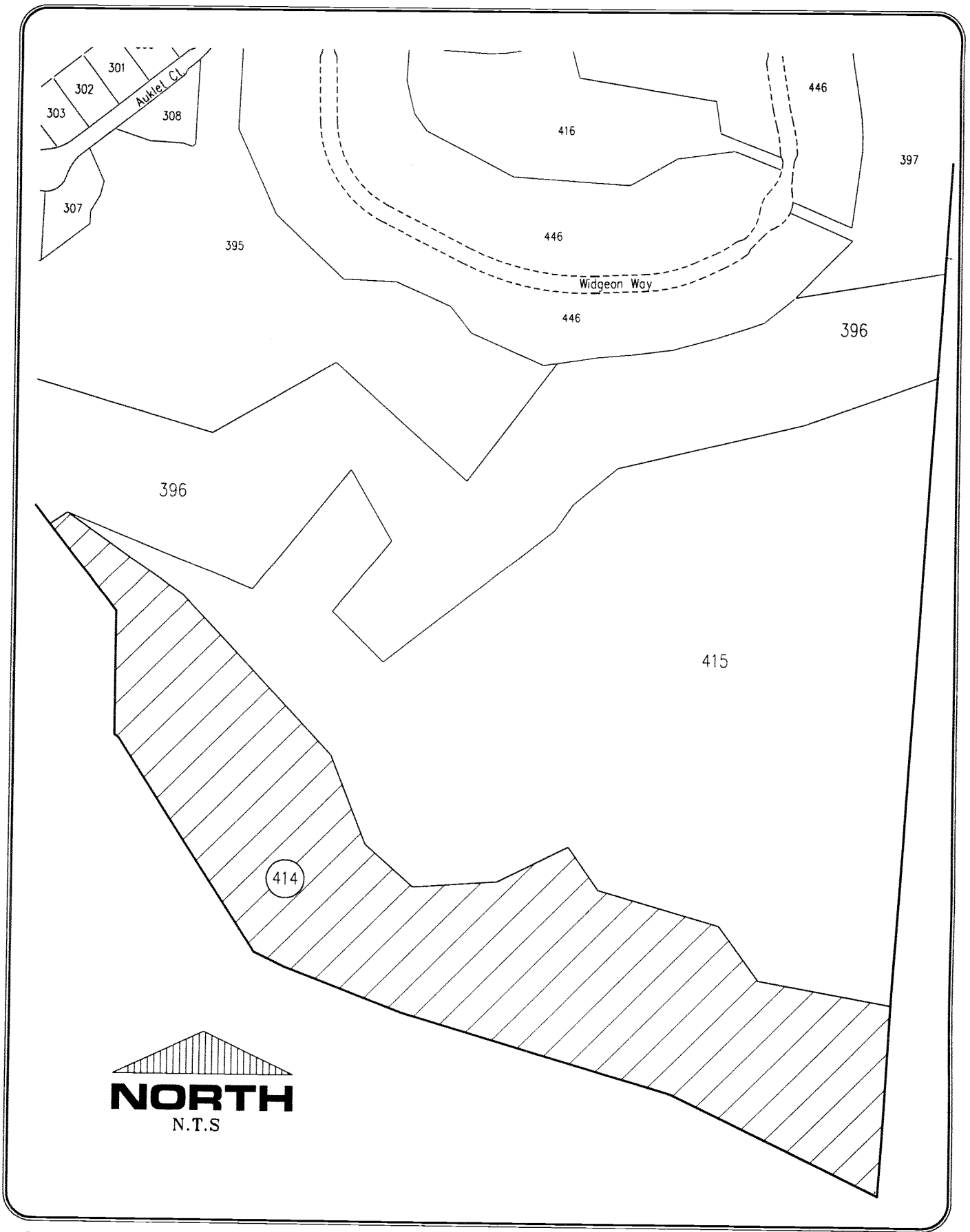


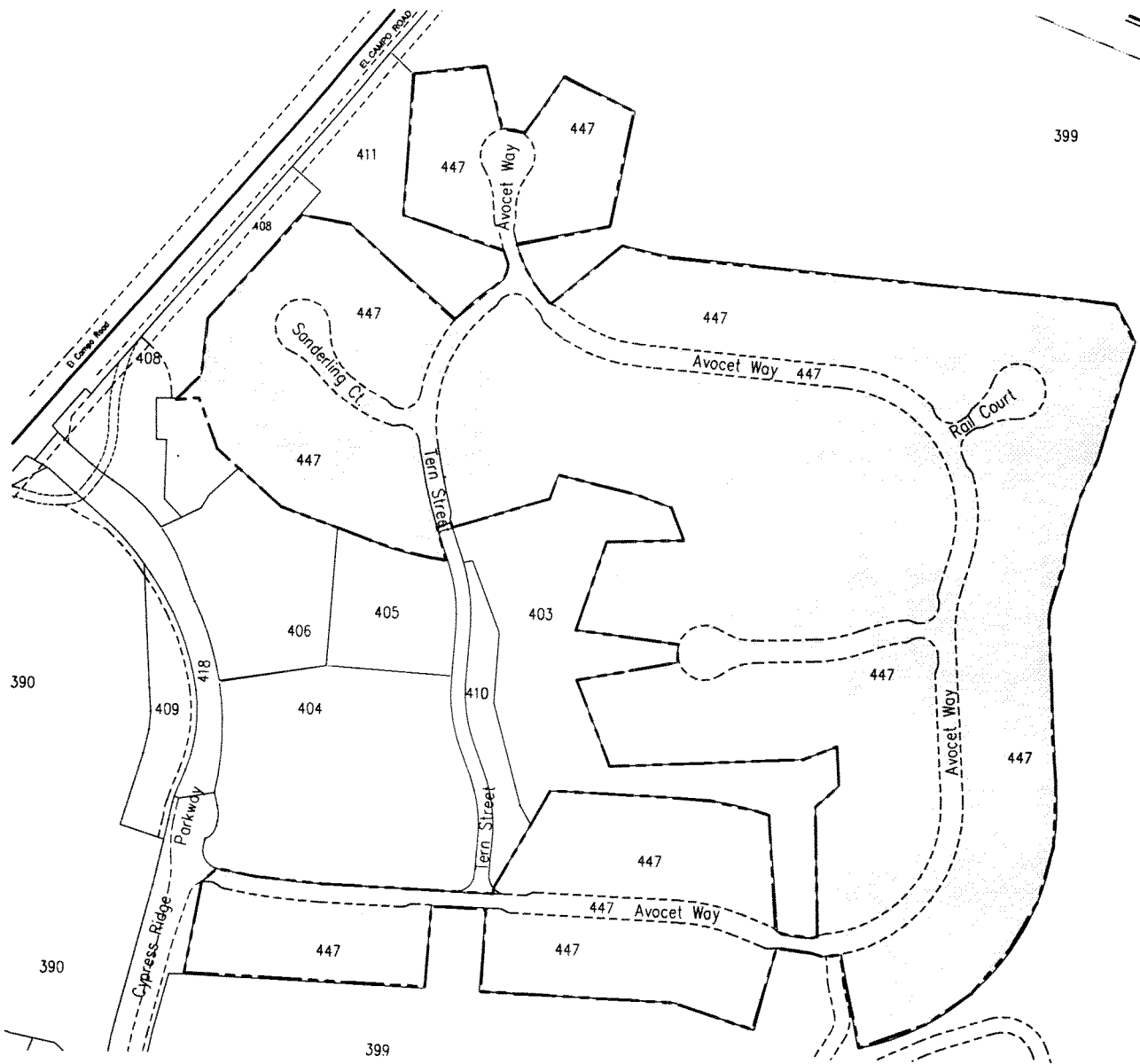
EXHIBIT "F"





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SENSITIVE RESOURCE AREA
 CYPRESS RIDGE - TRACT 1933
 (LOT 414) EXHIBIT "G"



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RESIDENTIAL RENTAL POOL LOTS
 CYPRESS RIDGE - TRACT 1933 EXHIBIT
 (LOT 447) "H"

END OF DOCUMENT