

5.4 **ASSESSMENT RIGHTS.**

A. The Board shall establish, fix and levy Assessments against the Owners, and collect and enforce payment of such Assessments in accordance with the provisions of the Governing Documents.

5.5 **RIGHT TO ESTABLISH ASSOCIATION RULES.**

A. The Board may adopt, amend, and repeal Association Rules as it considers appropriate to regulate the use and enjoyment of the Development as well as the conduct of the Owners, their family members, Contract Buyers, agents, employees, representatives, Tenants, Invitees, licensees, customers, clients, and/or patients.

B. A copy of the current Association Rules as adopted, amended, or repealed shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Development.

C. If any provision of the Declaration, the Articles, or the Bylaws is inconsistent with or materially alters any Association and/or Architectural Rule, the provisions of the Declaration, the Articles, or the Bylaws shall control to the extent of any such inconsistency.

5.6 **RIGHT TO IMPOSE AND COLLECT SANCTIONS FOR A VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS AND/OR REIMBURSEMENT TO THE ASSOCIATION FOR DAMAGE TO THE DEVELOPMENT.**

A. In addition to any other enforcement rights described in the provisions of the Governing Documents or authorized by law, and subject to the Due-Process Requirements and/or any additional due process requirements that may be imposed by the law, the Board may take any of the following actions:

1. Against any person or entity whose act, or failure to act, is a Violation or a threatened Violation of a Provision of the Governing Documents:
  - a. Impose monetary penalties, including late charges and interest;
  - b. Suspend voting rights in the Association;
  - c. Suspend use privileges for the Common Area; and
  - d. Commence a legal action for damages, injunctive relief, or both.
2. Against an Owner, or an Owner's Lot, to reimburse the Association for costs incurred in repairing damage to the Common Area, a Major Component, or any personal property owned by the Association for which any Owner of such Lot was allegedly responsible:
  - a. Impose a monetary penalty, including late charges and interest;
  - b. Levy a punitive Assessment ("Punitive Assessment"); however, a Punitive Assessment may not become a lien against the Owner's Lot that is enforceable by a power of sale under the provisions of Civil Code sections 2924, 2924b, and 2924c, or any compatible superseding statutes; and
  - c. Commence a legal action for damages, injunctive relief, or both.

B. The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board.

C. Any legal action may be brought in the name of the Association in its own behalf as well as in behalf of any Owner who so consents. The prevailing party in such action shall recover costs and reasonable attorney's fees.

D. The Board may take more than one (1) of the foregoing enforcement actions against any Violation or threatened Violation of a Provision of the Governing Documents. Any suspension of use privileges shall not exceed thirty (30) days, unless such suspension is for delinquent Assessments and a monetary penalty shall not exceed fifty dollars (\$50.00), excluding late charges imposed for delinquent payments, for any Violation of a Provision of the Governing Documents.

E. The Board, in its sole discretion, may resolve or settle any dispute, including any legal action, under such terms and conditions as it considers appropriate.

F. The Board shall have the power to adopt a schedule of reasonable fines and monetary penalties for a Violation of a Provision of the Governing Documents, provided that any such schedule is distributed to each Member by personal delivery or first-class mail.

G. If the Board is considering the disciplining of any Member, and such Member so requests, the Board must meet in executive session and such requesting Member is entitled to attend.

H. The Board may not cause a forfeiture or abridgement of an Owner's rights to the full use and enjoyment of its, his, her, or their Lot except by the judgment of a court that has the appropriate jurisdiction, a decision arising out of an arbitration proceeding, or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay Assessment fees duly levied by the Association.

I. The enforcement of monetary penalties is subject to the restrictions described in the provisions of Section 7.7 of the Declaration, entitled, "SPECIAL ASSESSMENTS - PURPOSE OF AND PROCEDURE FOR LEVYING."

J. If any Owner fails to cure a default within sixty (60) days after written notice to that Owner of such default, the Board shall give the notice required by the provisions of Section 12.6 of the Declaration, entitled, "NOTICE REQUIREMENT FOR A VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS," to any Eligible Mortgage Holder of Record who holds a current Mortgage of such Owner's Lot.

#### **5.7 RIGHT OF THE BOARD TO DELEGATE ITS POWERS AND DUTIES.**

A. The Board and the officers of the Association shall have the power to delegate their authority and powers to committees, employees of the Association, or to a manager employed by the Association to oversee the operations of the Association, provided that the Board shall not delegate its responsibility to:

1. Make expenditures for capital additions or Improvements chargeable against the Reserve Funds;
2. Conduct hearings concerning compliance by an Owner or its, his, her, or their family members, Contract buyers, agents, employees, representatives, Tenants, Invitees, licensees, customers, clients, and/or patients with the provisions of the Governing Documents;
3. Make a decision to levy a monetary fine or Special Assessments against a Member of an individual Lot, whichever is appropriate, temporarily suspend an Owner's rights as a Member, or otherwise impose discipline;

4. Make a decision to levy Regular or Special Assessments; or
5. Make a decision to bring suit, Record a claim of lien, or institute foreclosure proceedings for default in the payment of Assessments.

**5.8 DUTIES.**

A. In addition to the duties described in any other provision of the Governing Documents, the Association shall have the duties set forth in the provisions of Sections 5.9 through 5.20, inclusive, of the Declaration.

**5.9 MANAGEMENT AND MAINTENANCE OF THE DEVELOPMENT.**

A. The Association shall maintain, repair, replace, and when necessary, restore, operate, and manage the Common Area, the Major Components, as well as any other Improvements, furnishings, equipment, and landscaping that may be located in the Common Area.

B. No person other than the Association, or its duly authorized agents, shall construct, reconstruct, refinish, alter, or maintain any Improvements upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area.

C. Nor shall any person remove any shrub or other vegetation from, or plant any shrub or other vegetation, upon the Common Area, without the express, written approval of the Board.

**5.10 CONTRACTING FOR GOODS AND SERVICES.**

A. The Board shall enter into such contracts for services or materials as may be necessary to perform its duties, including, but not limited to, any contracts with the Declarants.

B. Any such contract shall be subject to the provisions of any and all of those Sections in the Governing Documents that have application thereto.

**5.11 PAYMENT OF TAXES AND ASSESSMENTS.**

A. The Board shall pay all real and personal property taxes, government assessments, as well as any other taxes levied against the Association, the Common Area, or any personal property owned by the Association.

B. Such taxes and assessments may be contested or compromised by the Association, provided they are paid or that a bond or bonds, as the case may be, insuring such payment or payments, is/are posted before the sale or disposition of any property to satisfy the payment of such taxes and/or assessments.

**5.12 SECURING INSURANCE COVERAGE.**

A. The Board shall obtain and maintain the insurance described in the provisions of Sections 8.1, 8.2, 8.5 and 8.6 of the Declaration, entitled "LIABILITY INSURANCE," "ASSOCIATION FIRE AND CASUALTY INSURANCE," "DIRECTOR AND OFFICER LIABILITY INSURANCE," and "WORKER'S COMPENSATION, DEMOLITION, AND OTHER ASSOCIATION INSURANCE," respectively.

5.13 **PREPARATION AND DISTRIBUTION OF FINANCIAL STATEMENTS, REPORTS, AND COPIES OF THE GOVERNING DOCUMENTS.**

A. The Board shall prepare and distribute the following financial statement, reports, and copies of the Governing Documents as indicated:

1. A balance sheet ("Balance Sheet") rendering as of an accounting date ("Accounting Date") that shall be the last day of the month closest in time to six (6) months from the date of the closing of the first (1<sup>st</sup>) sale of a Lot to a purchaser other than the Declarants, and an operating statement ("Operating Statement") for the period commencing with the date of the closing of such first (1<sup>st</sup>) sale and ending on the Accounting Date.
  - a. The Operating Statement shall include a schedule of the total Assessments received and/or receivable which are identified by the Lot number and name of the Owner of such Lot against which and whom such Assessments have been levied.
  - b. Copies of the current Balance Sheet and Operating Statement shall be distributed to each Owner and any Eligible Mortgage Holder.
2. A Budget for each Fiscal Year shall be distributed not less than forty-five (45) days nor more than sixty (60) days before the beginning of such Fiscal Year consisting of at least the following:
  - a. The estimated revenues and Common Expenses for such Fiscal Year that shall be entered on an accrual basis;
  - b. A summary of the Association's reserves based upon the most recent review or study conducted under the provisions of California Civil Code section 1365.5, or any compatible superseding statutes, which summary shall be printed in boldface type and include all of the following:
    - (1) The current estimated replacement cost, estimated remaining life, and estimated useful life of each Major Component.
    - (2) As of the end of the Fiscal Year for which the study is prepared:
      - (i) The current Reserve Account Requirements necessary to repair, replace, restore, or maintain the Major Components;
      - (ii) The current amount of Reserve Funds;
      - (iii) If applicable, the amount of funds received by the Association from any person for either a compensatory damage award or settlement to the Association from any person, for injuries to property, real or personal, arising out of construction or design defects and the expenditure or disposition of any such funds, including the amounts disbursed for the direct and indirect costs of repair of any construction or design defects. These amounts shall be recorded at the end of the Fiscal Year for which the study is prepared, as

separate line items under Reserve Funds, pursuant to the provisions of Subsection 5.13A.2.b.(2)(ii), above. In lieu of complying with the foregoing requirements, if the Association is obligated to issue a review of its financial statement, the Board may include with such review a statement containing all of the information required by the provisions of this Subsection 5.13A.2.b.(2)(iii); and

- (iv) The percentage of the amount in 5.13A.2.b.(1), above, that the amount in 5.13A.2.b.(2), above, represents;
  - c. A statement as to whether the Board has determined or anticipates that the levy of one (1) or more Special Assessments will be required during such Fiscal Year to repair, replace, or restore any Major Component or to provide adequate Reserve Funds for them;
  - d. A general statement addressing the procedures used for the calculation establishing the Reserve Funds;
  - e. A general statement regarding the Members' right to have copies of the minutes of meetings of the Board, and how and when these minutes may be obtained; and
  - f. Instead of distributing the Budget, the Board may elect to distribute a summary of the Budget to all of the Members with a written notice that the Budget is available at the business office of the Association or at another suitable location within the boundaries of the Development, and that copies will be provided upon request at the expense of the Association. Such notice must be in at least ten (10) point boldface type and must appear on the front page of the summary of the Budget. Any Member who requests a copy of the Budget shall be provided a copy by the Board, which shall be sent by first-class United States mail, at the Association's expense, within five (5) days of the date the Board received such request.
- 3. Any summary of the Reserve Funds that have been disseminated pursuant to the provisions of Subsection 5.13A.2.b., above, shall not be admissible as evidence to show improper financial management of the Association.
  - 4. An annual report, which for the purposes of the provisions of this Subsection 5.13A.4., shall be hereinafter referred to as the "Annual Report," consisting of the Association's Balance Sheet rendered as of the last day of the preceding Fiscal Year; the Association's Operating Statement for such Fiscal Year, and a statement of the changes in the Association's financial position for the Fiscal Year. A copy of the Annual Report shall be distributed to each Owner and any Eligible Mortgage Holder within one hundred twenty (120) days after the close of such Fiscal Year. In any Fiscal Year in which the gross income of the Association exceeds seventy-five thousand dollars (\$75,000.00), either a copy of a review of the Annual Report for such Fiscal Year that has been prepared

by a licensee of the California State Board of Accountancy in accordance with the generally accepted accounting principles, or a certificate which has been acknowledged by an authorized officer of the Association that the report was prepared from the books and records of the Association, without independent audit or review, shall be distributed with the Annual Report for such Fiscal Year.

5. A statement of the Association's policies and practices in enforcing its remedies against Owners for delinquent, Regular or Special Assessments including, but not limited to, the Recording and foreclosing of liens against a delinquent Owner's Lot(s). A copy of such statement shall be distributed to each Owner and any Eligible Mortgage Holder.
6. Copies of the Governing Documents and the statement regarding delinquent Assessments that is described in the provisions of Section 5.19 of the Declaration, entitled, "**DELIVERY OF REQUESTED ITEMS,**" shall be provided to any Owner within ten (10) days of the mailing or delivery of a written request to the Board for such items from an Owner. The Board may impose a fee to provide such materials, which fee shall not exceed the Association's reasonable cost in preparing and reproducing such materials.
7. A summary of the provisions of California Civil Code section 1354, or any compatible superseding statutes, which shall include the following language:

"Failure by any Member of the Association to comply with the pre-filing requirements of the provisions of section 1354 of the California Civil Code may result in the loss of your rights to sue the Association or another Member of the Association regarding enforcement of the Governing Documents."
8. A summary of the Association's property, general liability, earthquake, and flood insurance policies; which are, for the purposes of the provisions of this Section 5.13, individually and collectively hereinafter referred to as the "Policy" or "Policies," as the case may be, shall be distributed to the Members at least sixty (60) days prior to the beginning of the Fiscal Year. Such summary shall include the following information about such Policies:
  - a. Name of the insurer;
  - b. Type of insurance;
  - c. Policy limits of the insurance; and
  - d. Amount of deductibles, if any.
9. The Board, as soon as reasonably practical, shall notify the Members by first-class mail if any of the Policies have been cancelled and have not been immediately renewed, restored, or replaced, or if there is a significant change, such as, but not limited to, a deduction in coverage or limits to the Policies or an increase in the deductible for any Policy. If the Association receives a notice of the non-renewal of a Policy, the Board shall immediately notify its Members if replacement coverage will not be in

effect by the date the existing coverage will lapse. The Board shall immediately notify its Members of such eventuality.

10. To the extent that the information required to be disclosed by the provisions of this Section 5.13 is specified in the provisions of the Policy declaration page, the Board may meet its disclosure obligations by making copies of that page and distributing such copies to all of the Members.
11. The summary required in the provisions of these Subsections 5.13A.7. through 5.13A.9., inclusive, above, shall contain, in at least ten (10) point boldface type, the following statement:

“This summary of the Association’s policies of insurance provides only certain information as required by the provisions of subdivision (e) of section 1365 of the Civil Code and should not be considered a substitute for the complete policy and conditions contained in the actual policies of insurance. Any Member, upon request and reasonable notice to the Board, may review the Association’s insurance policies and, upon request and payment of reasonable duplication charges, may obtain copies of those policies. Although the Association maintains the Policies of insurance specified in this summary, such Policies may not cover your property, including any personal property, or real property improvements to or around your Residence, or personal injuries or other losses that occur within or around your Residence. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Members should consult with their individual insurance brokers or agents for any appropriate additional coverage.”

#### **5.14 ENFORCEMENT OF BONDED OBLIGATIONS.**

A. If the Association is the obligee under a bond or other security arrangement, hereinafter collectively referred to as the “Bond,” to secure performance of a commitment of the Declarants, or their successors or assigns, to complete the Common Area Improvements which were not completed at the time a Final Subdivision Public Report was issued, the Board shall consider and vote on the question of which action they should pursue, if any, to enforce the obligations that are secured by such Bond with respect to any Common Area Improvement for which a Notice of Completion has not been filed by the later of:

1. Sixty (60) days after the completion date specified for such Improvement in the planned construction statement (“Planned Construction Statement”) appended to the Bond; or
2. Thirty (30) days after the expiration of any written extension given to the Declarants by the Board.

B. If the Board fails to consider and/or vote on such an action, or after any such consideration and vote decides not to initiate any action to enforce an obligation under the Bond, the Members who represent not less than five percent (5%) of the total voting power of the Association may submit a petition, which has been signed by said Members, to the Board and on

the receipt of same by the Board, the Board shall call a special meeting of the Members for the purpose of voting to override the decision of the Board not to initiate action, or to compel the Board to take an action to enforce the obligation under such Bond, whichever is applicable.

1. The Board shall give a written notice of any such meeting to all of the Members who are entitled to vote on such a matter in the manner provided for in the provisions of the Governing Documents for a notice of a special meeting of the Members.
2. The meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt of such a petition.
3. At the meeting, the vote in person or by proxy of the majority of the Members who are entitled to vote, other than the Declarants, shall be considered the decision of the Association and the Board shall implement such decision.

C. Should the circumstances dictate, the Board shall act in a reasonably prompt manner to exonerate the Declarants and their surety under any Bond in favor of the Association.

#### 5.15 OTHER DUTIES.

A. The Board shall perform such other acts as may be reasonably necessary to exercise its powers or perform its duties under any of the provisions of the Governing Documents or any Board resolutions.

#### 5.16 LIMITATIONS ON THE AUTHORITY OF THE BOARD OR THE ASSOCIATION.

A. The Board shall not take any of the following actions, unless it has the assent of a simple majority of the Members other than the Declarants, who constitute a quorum consisting of fifty-one percent (51%) of the voting power of the Association residing in Members other than the Declarants. Such assent shall have been granted by a vote at a meeting of the Association or, after complying with the provisions of Corporations Code section 7513, or any compatible superseding statutes, by a written ballot without a meeting:

1. Incur aggregate expenditures for capital Improvements to the Common Area in any Fiscal Year that are in excess of five percent (5%) of the Budgeted Common Expenses for such Fiscal Year;
2. Sell, during the Fiscal Year, property of the Association having an aggregate fair market value greater than five percent (5%) of the Budgeted Common Expenses for the Fiscal Year;
3. Pay compensation to the Directors or to the officers of the Association for services performed in the conduct of the Association's business; however, the Board may reimburse any Director and/or officer of the Association for expenses incurred in carrying on the business of the Association; or
4. Enter into a contract with a third (3<sup>rd</sup>) person for such person to furnish goods and/or services for or to, as the case may be, the Common Area and/or the Association in general, for a term longer than one (1) year, with the following exceptions:
  - a. A management contract, the terms of which have been approved by the Federal Housing Administration or the Veterans Administration;



- b. A contract with a public utility company if the rate charged for the materials or services are regulated by the Public Utilities Commission, provided, the term does not exceed the shortest term for which the supplier will contract at the regulated rate;
- c. Prepaid casualty or liability insurance policies that do not exceed three (3) years in duration, provided, the policy allows for a short rate cancellation by the insured;
- d. Lease agreements for equipment that do not exceed five (5) years in duration, provided, the Declarants do not have a direct or indirect ownership interest of ten percent (10%) or more in any lessor under such an agreement;
- e. Agreements for cable television services and equipment or satellite dish television services and equipment, not exceeding five (5) years in duration, provided, the supplier is not an entity in which the Declarants have a direct or indirect ownership interest of ten percent (10%) or more;
- f. Agreements for the sale or lease of burglar alarm and/or fire alarm equipment, installation and services that do not exceed five (5) years in duration, provided, the supplier or suppliers are not entities in which the Declarants have a direct or indirect ownership interest of ten percent (10%) or more; and
- g. Agreements for a term that does not exceed three (3) years in duration, which are subject to termination by the Association, without cause, penalty, or other obligation, after being in force for no longer than one (1) year, upon the giving of a ninety (90) day written notice of termination to all of the other parties to any such agreement.

B. Notwithstanding anything herein to the contrary, but subject to the provisions of Subsection 5.16E., below, the Board shall not institute any significant legal proceedings, including any arbitration or judicial reference proceeding, for the purposes of the provisions of this Section 5.16, being collectively hereinafter referred to as the "Significant Legal Proceeding(s)," against any person without providing the Members with at least one hundred and twenty (120) days' prior written notice, which, for the purposes of the provisions of this Section 5.16, is hereinafter referred to as the "Proceedings Notice," of the Association's intentions to institute such Significant Legal Proceedings.

- 1. The Proceedings Notice shall describe the purpose of such Significant Legal Proceeding, the parties to the Significant Legal Proceeding, the anticipated cost to the Association, including attorney fees, to process such Significant Legal Proceeding, the source of the funds to process such Significant Legal Proceedings (Reserve Funds, Special or Regular Assessments, etc.), and any suggested information that should be disclosed to third (3<sup>rd</sup>) parties, such as, but not limited to, prospective purchasers and lenders, while such Significant Legal Proceeding is being prosecuted.

C. For the purposes of this Section 5.16, "Significant Legal Proceeding" shall mean a legal proceeding in which it is reasonable to anticipate that any of the following events might occur:

1. The levy of a Special Assessment to fund all or any portion of a legal proceeding;
2. The expenditure of more than five percent (5%) of the then current Reserve Funds in connection with a legal proceeding in an amount in excess;
3. The amount of the claim of a legal proceeding that is or will be in excess of twenty thousand dollars (\$20,000.00); or
4. A material adverse effect on the ability to sell and/or refinance the Lots will occur during the period a legal proceeding is being prosecuted.

D. If the proposed Significant Legal Proceeding is against the Declarants, any other developer, or any contractor, subcontractor, architect, engineer, or materials supplier, who is or has been, as the case may be, engaged by or on behalf of the Declarants and/or any other developer, for the design or alleged damage of or to, as the case may be, the Development or any elements thereof, the notice shall also specify each of the following, unless not required by reason of the provisions of Civil Code sections 1375(g)(1)(E) or 1375(g)(2)(D), or any compatible superseding statutes:

1. That a meeting will take place to discuss problems that may lead to the filing of a Significant Legal Proceeding together with the time and place of such meeting; and
2. The known options available to address the problems.

E. Notwithstanding the foregoing, the Proceedings Notice shall not be required to commence and pursue any action to collect delinquent Assessments as described in the provisions of Section 7.12 of the Declaration, entitled, "ASSOCIATION'S POWER TO ESTABLISH ASSESSMENT LIEN," or to enforce any Common Area completion Bond as described in the provisions of Section 5.14 of the Declaration, entitled, "ENFORCEMENT OF BONDED OBLIGATIONS."

F. If the Board, in good faith, determines that there is insufficient time to provide prior notice to the Members, as required herein, before the expiration of any applicable statute of limitations or before the loss of any significant right of the Association, the Board may take the necessary steps to commence a Significant Legal Proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter and not later than thirty (30) days following the commencement of such Significant Legal Proceeding, the Board shall provide the Members with a Proceedings Notice.

G. If the proposed Significant Legal Proceeding is brought by the Association, or any Owner or any combination of same, against the Declarants, other developer, or any contractor, subcontractor, architect, engineer, or materials supplier, who is or who has been, as the case may be, engaged by or on behalf of, the Declarants and/or any other developer, for the design or alleged damage of or to, as the case may be, the Development or any elements thereof, the Association and/or any Owner or any combination thereof, hereinafter referred to as the "Complaining Party," shall send the Declarants and/or any other developer, contractor, subcontractor, architect, engineer, or materials supplier, as the case may be, hereinafter referred to as the "Responding Party," a thirty (30) day written notice of the nature of the dispute, the facts giving rise to its claim, and its, his, her, or their intent to initiate litigation, hereinafter referred to as the "Litigation Notice."

H. The Proceedings Notice shall name a mediator. The Responding Party shall be obligated to pay any fee to initiate mediation; however, the cost of mediation, including any attorney's fees, shall ultimately be borne as determined by the parties if the mediation results in a settlement of the dispute. If the Responding Party does not agree with the Complaining Party's choice of a mediator, the Responding Party, within ten (10) days of the Responding Party's receipt of the Proceedings Notice, shall request the American Arbitration Association to select a mediator from its panel. If the Responding Party has not made such a request of the American Arbitration Association within the ten (10) day time requirement, the mediator that was selected by the Complaining Party shall serve. Within thirty (30) days after the mediator is chosen, the parties shall schedule and attend a mediation session and make a good faith effort to resolve their dispute. If the mediation session does not resolve the dispute, or if the Responding Party refuses to attend, the dispute shall be submitted to and conclusively determined by binding arbitration in accordance with the provisions of Subsections 5.16I. through 5.16P., inclusive, below.

I. Neutral and impartial individuals shall be appointed to serve as arbitrator(s), with such arbitrator(s) to be appointed within a reasonable period of time, which in no event shall be more than sixty (60) days from the administrator's receipt of a written request from a party to arbitrate a claim or dispute. In selecting the arbitrator(s), the provisions of section 1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in the provisions of the above referenced code section. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

J. The arbitration shall be conducted in San Luis Obispo County, California.

K. The parties shall submit to the arbitration all written, documentary, or other evidence, and give any oral testimony that is reasonably necessary for a proper resolution of the dispute. Copies of all of the written submittals shall be provided to the arbitrator(s) and the parties on each side. The arbitrator(s) shall conduct such hearings as he, she, or they consider necessary, may require the submission of briefs or points and authorities, and may submit written questions to the parties. The parties shall respond to such questions in writing. If a question is addressed to less than all of the parties, copies of the question and the answer thereto shall be served on the other parties.

L. At the arbitration hearing, any party may present any relevant evidence and the formal rules of evidence applicable to judicial proceeding shall not govern. Evidence shall be admitted or excluded at the sole discretion of the arbitrator(s).

M. The procedures that are set forth in the provisions of this Section 5.16 for the resolution of disputes ("Dispute Resolution Procedure") is intended to be implemented in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. sections 1-16), which is designed to encourage the use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings. Therefore, the Dispute Resolution Procedure is to be interpreted and enforced as authorized by the above referenced Federal Arbitration Act. Parties interpreting the provisions of this Subsection shall follow the federal court rulings, such as, but not limited to, Allied-Bruce Terminix Companies, Inc. v. Dobson, 115 S.Ct. 834 (1995), which provide, without limitation, that the Federal Arbitration Act (1) is a congressional declaration of a liberal federal policy favoring an alternative to law suits for the resolution of disputes, notwithstanding substantive or procedural state policies to the contrary, (2) requires that federal and state courts rigorously enforce agreements for alternative dispute resolution, and (3) requires that the scope of any issues subject to alternative dispute resolution be resolved in favor of such alternative dispute resolution. Any references in the

provisions of the Governing Documents to California Code sections are not to be interpreted as a waiver of rights created under the above referenced federal cases and/or Federal Arbitration Act.

N. The arbitration shall proceed with due dispatch and a decision shall be rendered within a reasonable time after appointment of the arbitrator(s) and presentation of the facts and evidence. The arbitrator's(s') decision shall be in writing and in a form sufficient for entry of a judgment in any court of competent jurisdiction in the state of California.

O. The arbitrator(s) shall be authorized to render any and all of the recognized remedies that are available in the law or equity for any cause of action that is the basis of any such arbitration. In no event shall an arbitrator's(s') award include a component for punitive or exemplary damages. The Responding Party shall be obligated to pay any fee that is required to initiate such arbitration; however, the costs of the arbitration proceeding, including, but not limited to, any attorney's fees, shall be borne as ultimately determined by the arbitrator(s).

P. If the Complaining Party and the Responding Party have entered into a settlement agreement, or the matter has otherwise been resolved, as soon as is reasonably practical thereafter, the Board shall provide a written notice, which may from time to time be amended, modified, or supplemented, to each of the current Members of such resolution. Such notice shall include each of the following items:

1. A general description of the damages, as of the date of such notice, that the Board reasonably believes will be repaired or replaced;
2. A good faith estimate, as of the date of such notice, when the Board believes that the damage will be repaired or replaced; and
3. The status of any claims that will not be repaired or replaced and that were either expressed in a primary list of the defects that were sent to the Members or that were otherwise claimed and disclosed to the Members.

#### **5.17 LIMITATION ON LIABILITY OF OFFICERS AND DIRECTORS.**

A.— Subject to the provisions of Subsection 5.17B., below, no Director, officer, committee member, employee, or other agent of the Association, including the Declarants or any agent of the Declarants when acting in such capacity, all of whom, for the purposes of the provisions of this Section 5.17, being collectively and individually hereinafter referred to as the "Released Party(ies)," shall be personally liable to any of the Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities for their failure to provide any service required under the provisions of the Governing Documents, provided such Released Party(ies) has/have, upon the basis of such information as may be possessed by the Released Party(ies), acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstance.

B. Without limiting the generality of the foregoing, such standard of care and limitation of liability shall extend to such matters as the establishment of the Budget, the funding of the Reserve Accounts, the repair and maintenance of the Common Areas, as well as the Major Components together with the enforcement of the provisions of the Governing Documents.

C. No person who suffers bodily injury, including, but not limited to, emotional distress, wrongful death, or property damage, as a result of the tortuous act or omission of a volunteer Director or officer of the Association shall recover damages from such Director and/or officer if all of the following conditions are satisfied:

1. The Director or officer is an Owner of no more than two (2) Lots;
2. The act or omission was performed within the scope of the volunteer Director's and/or officer's Association duties, which shall include, but not be limited to:
  - a. Whether to conduct an investigation of the Development for latent deficiencies prior to the expiration of the applicable statute of limitations; and
  - b. Whether to commence a civil action against the Declarants, or other developer, or any contractor, subcontractor, architect, engineer, or materials supplier, who is or who has been, as the case may be, engaged by or on behalf of the Declarants and/or any other developer, for defects in design of construction.
3. The act or omission was performed in good faith;
4. The act or omission was not willful, wanton, or grossly negligent;
5. The Association maintained and had in effect at the time the act or omission occurred, and at the time a claim was made, one (1) or more policies of insurance that included coverage for general liability of the Association and individual liability of the Directors and/or officers of the Association for negligent acts or omissions in their official capacities, with minimum coverage for both types of insurance being not less than one million dollars (\$1,000,000.00).

D. The payment of the actual expenses incurred by a Director and/or officer of the Association in the execution of that person's Association duties shall not affect that person's status as a volunteer Director and/or officer of the Association for the purposes of the provisions of this Section 5.17. However, any Director and/or officer of the Association who receives direct or indirect compensation from the Declarants or from a financial institution that acquired a Lot as a result of a judicial or nonjudicial foreclosure proceeding, is not a volunteer.

E. The provisions of this Section 5.17 are intended to reflect the protections accorded to volunteer Directors and officers of community associations under the provisions of California Civil Code section 1365.7. In the event said Civil Code section 1365.7 is amended or superseded by another compatible provision of the California statutes, the provisions of this Section 5.17 shall be deemed amended, without the necessity of further Owner approval, to correspond to such amended or successor Civil Code provisions.

**5.18 DELIVERY OF DOCUMENTS AND INSPECTION OF ASSOCIATION BOOKS AND RECORDS.**

A. The Declarants and their successors and assigns, shall, commencing no later than ninety (90) days after the close of escrow on the sale of the first (1<sup>st</sup>) Lot in the Development, other than to the Declarants, deliver or cause to be delivered, as soon as they are readily obtainable, one (1) copy of each of the documents listed in the provisions of Subsection 5.18B., below, that have application to the Development, or to the Association, at the Association office or at such other location as the Board may from time to time designate by written notification to the Declarants. Such obligation shall terminate upon the earliest to occur of the following events:

1. The conveyance of the last Lot in the Development that is covered by a Final Subdivision Public Report to an Owner other than the Declarants; or

2. Five (5) years from the date of expiration of the most recent Final Subdivision Public Report covering the Development or any portion thereof.

B. The documents to be delivered, if applicable, are:

1. The Recorded Subdivision Map for the Development.
2. The deeds and easements executed by the Declarants conveying the Common Area or other interest to the Association.
3. The Recorded Declaration, including any amendments and/or supplements thereto.
4. The filed Articles, if any, and any amendments thereto.
5. The Bylaws, including any amendments thereto.
6. Any Architectural and/or Association Rules, together with any other rules regulating the use of an Owner's interest in the subdivision or use of the Development, which have been promulgated by the Association.
7. Any plans that have been approved by any agency that has the jurisdiction to approve same, for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be As-Built Plans, bear appropriate restrictions on their commercial exploitation, or use and may contain appropriate disclaimers regarding their accuracy.
8. All Notice of Completion certificates issued for Common Area Improvements, other than residential structures.
9. Any bond or other security devise of which the Association is the beneficiary.
10. Any written warranty being transferred to the Association that covers any of the Common Area equipment, fixtures, Major Components, or Improvements.
11. Any insurance policy procured for the benefit of the Association, its officers, the Board, or the Common Area.
12. Any lease, rental agreement, or contract to which the Association is a party.
13. The Members register, including mailing addresses and telephone numbers, books of account, and minutes of meetings of the Board and of committees of the Board.
14. Any other instrument that has not been described above, whose provisions establish or define the common, mutual, and/or reciprocal rights or responsibilities of the Members.

C. Any Owner, or such Owner's duly appointed representative, shall have access to any of the above referenced documents, books of account, and minutes from any meeting of the Owners, the Board, with the exception of any minutes of an executive session of the Board, or any committee of the Board in order to inspect and copy such records and/or documents for any purpose reasonably related to its, his, her, or their interest as an Owner.

D. Access shall be at any reasonable time at the office of the Association or such other place within the Development as the Board prescribes.

E. The Board shall establish rules regarding the notice the Owner must give to the custodian of the records to obtain access, the hours and days of the week when the records may be inspected and copied, and the charges imposed by the Association for copying records requested by an Owner.

**5.19 DELIVERY OF REQUESTED ITEMS.**

A. Within ten (10) days of the mailing or delivery to the Board of a written request by an Owner ("Requesting Owner") to do so, the Board shall provide the Requesting Owner with the following items and information:

1. Copies of the Governing Documents;
2. Copies of all the current documents that have been distributed in accordance with the provisions of Section 5.13 of the Declaration, entitled "PREPARATION AND DISTRIBUTION OF FINANCIAL STATEMENTS, REPORTS, AND COPIES OF THE GOVERNING DOCUMENTS;"
3. Whether, to the knowledge of the Association, the Requesting Owner's Lot is in Violation of a Provision of the Governing Documents;
4. The amount of Regular and Special Assessments, including installment payments, that have been paid by the Requesting Owner during the Fiscal Year that its, his, or her request is received;
5. A statement in writing from an authorized representative of the Board showing the amount of the Association's current Regular and Special Assessments and/or fees, any Assessments that have been levied against the Requesting Owner's Lot that are unpaid on the date of such statement, and any monetary fines or penalties that have been levied against the Requesting Owner and are unpaid as of the date of the statement;
6. A copy or summary of any notice that has been previously sent to the Requesting Owner pursuant to the provisions of California Civil Code section 1363(h), or any compatible superseding statutes, which sets forth an alleged Violation of a Provision of the Governing Documents that remains unresolved at the time of the request.
  - a. Any such notice will not be deemed a waiver of the Board's right to enforce any provision of the Governing Documents against the Requesting Owner or any purchaser of the Requesting Owner's fee title interest in a Lot with respect to any such Violation of a Provision of the Governing Documents;
7. A copy of any preliminary list of defects that has been provided to the Members in compliance with the provisions of California Civil Code section 1375, or any compatible superseding statutes, unless the parties later enter into a settlement agreement or otherwise resolve the matter and the Association complies with the requirements of the provisions of California Civil Code section 1375.1, or any compatible superseding statutes.
  - a. Such list of defects must include a statement that a final determination as to whether such list is accurate and complete has not been made as of the date of such statement;

8. A copy of any information that has been provided to the Requesting Owner in compliance with the provisions of Subsection 5.16P. of the Declaration, above; and
9. A notice of any change in the Association's current Regular and Special Assessments as well as its fees that have been approved by the Board, but have not yet become due and payable.

B. The Board may charge the Requesting Owner a fee to recover its reasonable costs of preparing and delivering the requested items and information.

C. Any prospective purchaser or Mortgagee of the Requesting Owner's fee title interest in a Lot may rely on the information that is contained in any statement that has been provided to such Requesting Owner in compliance with the provisions of this Section 5.19, with the exception that reliance may not extend to any Violation of a Provision of the Governing Documents of which the Board does not have actual knowledge of at the time such items and information were provided to the Requesting Owner.

#### 5:20 LITIGATION.

A. Subject to the provisions of Section 5.16 of the Declaration, entitled, "LIMITATIONS ON THE AUTHORITY OF THE BOARD OR THE ASSOCIATION," and California Civil Code section 1354, or any compatible superseding statutes, the Board has the authority to institute, defend, settle, or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to:

1. The enforcement of the provisions of the Governing Documents;
2. Damage to a Major Component as well as the Common Area;
3. Damage to any Lot which the Association is obligated to maintain or repair; or
4. Damage to a Lot which arises out of, or is integrally related to activities involving the Common Area or a Lot that the Association is obligated to maintain or repair.

### ARTICLE VI

#### PROVISIONS DECLARING MEMBERSHIP AND VOTING RIGHTS

##### 6.1 MEMBERSHIP APPURTENANT TO OWNERSHIP.

- A. Each Owner, including the Declarants, shall be a Member.
- B. Membership shall be appurtenant to each Lot, and the holding of an ownership interest in the fee title to a Lot shall be the sole qualification for Membership. No Owner shall hold more than one (1) Membership even though such Owner owns an interest in more than one (1) Lot.
- C. Membership shall terminate automatically when the Owner no longer holds an ownership interest in a Lot.
- D. Membership may not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except on the transfer of an interest in the fee title to a Lot and then only to the transferee.
- E. Any attempt to make a prohibited transfer shall be void.



F. Any transfer of an interest of the fee title to a Lot shall also automatically transfer the Membership interest that is appurtenant thereto to the transferee.

G. Any party that holds a claim on an interest in the fee title to a Lot merely as security for the performance of an obligation shall not be entitled by such claim to a Membership.

H. Each Member shall have the right, duties, and obligations as set forth in the provisions of the Governing Documents.

## 6.2 VOTING SYSTEM.

A. Except as may otherwise be provided for in the provisions of the Governing Documents, including, but not limited to, the provisions of Section 6.3 of the Declaration, entitled, "**TWO CLASS SYSTEM; WEIGHTED VOTES**," the determination of all matters requiring the approval of the Members shall be deemed approved if the Members who hold a majority of the total voting power of the Association assent to them by written consent or, in the alternative, at any duly called regular or special meeting of the Association at which a Membership Quorum is present, either in person or by proxy, by the Members who hold fifty-one percent (51%) of the total voting power of all of the Members who are present at such meeting, either in person or by proxy.

## 6.3 TWO CLASS SYSTEM; WEIGHTED VOTES.

A. The Association shall have two (2) classes of voting Membership as follows:

### 1. Class A:

- a. The Class A Members shall be all of the Members other than the Declarants.
- b. Subject to the provisions of Subsection 6.3A.1.c., below, each Class A Member shall be entitled to one (1) vote for each Lot in which it, he, or she owns an interest in the fee title of such Lot.
- c. If more than one (1) Member owns an interest in a Lot, only one (1) vote may be cast with respect to such Lot.

### 2. Class B:

- a. The Class B Member shall be the Declarants, who will be entitled to three (3) votes for each Lot in which the Declarants own an interest in the fee title.
- b. A Class B Membership shall cease and be irreversibly converted to a Class A Membership on the occurrence of one (1) of the following events, whichever is the first to occur:
  - (i) When the total outstanding Class A Membership votes equal the total outstanding Class B Membership votes; or
  - (ii) On the second (2<sup>nd</sup>) anniversary of the first (1<sup>st</sup>) conveyance of an interest in the fee title of a Lot to an Owner other than the Declarants.

B. As long as two (2) classes of voting Membership exist, any action by the Association that requires the approval of the Members shall require the approval of the designated percentage of the voting power of each class provided for in the provisions of the Governing Documents.

C. The voting rights appurtenant to any Lot shall vest at the time an Assessment has been levied by the Board against such Lot.

**6.4 JOINT OWNERSHIP VOTES.**

- A. The vote that is appurtenant to each Lot may not be cast on a fractional basis.
- B. If the Lot has more than one (1) Owner and the Owners are unable to agree as to how the vote should be cast, such vote shall be forfeited on the matter in question.
- C. If one (1) Owner of a multiple owner Lot casts the vote attributed to such Lot, the vote shall conclusively bind all of the other Owners of that Lot, unless, at the time such vote is cast, any or all of the other Owners of such Lot protest to its being cast.
- D. If more than one (1) Owner of a Lot attempts to cast the vote that is appurtenant to such Lot and they are in disagreement, such Lot's vote shall not be counted and shall be considered void.

**ARTICLE VII  
ASSESSMENTS**

**7.1 ASSESSMENTS – AGREEMENT TO PAY.**

A. Except as provided for in the provisions of Section 7.2 of the Declaration, entitled “LIMITED EXEMPTION FROM ASSESSMENT DURING CONSTRUCTION,” the Declarants hereby covenant and agree for each Lot in which they may hold an interest in the fee title expressly made subject to Assessments in compliance with the provisions of the Governing Documents, and each Owner by the acceptance of an interest in the fee title to a Lot, hereby covenants and agrees for each Lot in which such an interest is held, to pay to the Association any Regular and/or Special Assessments levied against such Lot in accordance with the provisions of the Governing Documents.

B. The Declarants and each such Owner, under the provisions of Subsection 7.1A., above, further covenant(s) and agree(s) to allow the Board to enforce any Assessment lien, established in accordance with the provisions of the law and the Governing Documents, by any nonjudicial proceedings under a power of sale or by any other means that may be authorized by law.

**7.2 LIMITED EXEMPTION FROM ASSESSMENT DURING CONSTRUCTION.**

A. Notwithstanding the provisions of Section 7.1 of the Declaration, entitled, “ASSESSMENTS – AGREEMENT TO PAY,” any Lot on which there are no structural Improvements for human occupancy shall be exempt from the payment of that portion of any Assessments that is for the purpose of defraying any Common Expenses and/or providing Reserve Funds that are directly attributable to the existence and use of such structural Improvement. The exemption may include, but is not limited to:

1. Roofs;
2. Exterior maintenance;
3. Walkway and carport lighting;
4. Refuse disposal;
5. Cable television; and
6. Domestic water supply to the Residences.

B. The foregoing exemptions shall be in effect until the earlier to occur of the following events:

1. Recordation of a Notice of Completion for any such structural Improvements and/or commencement of the maintenance or activity for which an exemption is being taken; or
2. Any such structural Improvement that has been placed in use.

C. In addition, the Declarants and any Owner are exempt from the payment of that portion of any Assessment that is for the purpose of defraying Common Expenses and/or providing Reserves Funds that are directly attributable to the existence and use of a Major Component and/or portion of the Common Area that is not complete at the time Assessments commence. This exemption from the payment of Assessments shall be in effect until the earliest of the following events:

1. Recordation of a Notice of Completion for any such Major Component and/or portion of the Common Area; or
2. Any such Major-Component and/or portion of the Common Area that has been placed into use.

### **7.3 ASSESSMENTS AS THE PERSONAL OBLIGATION OF AN OWNER.**

A. Each Assessment and/or installment thereof, together with any late charge, interest, collection costs, and/or reasonable attorney's fees that are levied or charged against any Lot, shall be the personal obligation of the Owner ("Personal Obligation") of such Lot at the time such Assessment, installment, late charge, interest, collection cost, and/or reasonable attorney's fee is levied.

B. If there is more than one (1) Owner of a particular Lot, each such Owner shall be jointly and severally liable for any Personal Obligation.

C. A Personal Obligation for any delinquent Assessments or installments and related sums shall not pass to an Owner's successor in title unless expressly assumed by such successor in title.

D. No Owner may be relieved from the obligation to pay any Assessments, installments, late charge, interest, collection cost, and/or reasonable attorney's fee by waiving the use or enjoyment of all or any portion of the Development, or by abandoning a Lot.

### **7.4 SCOPE OF ASSESSMENT – AUTHORITY.**

A. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members, to improve, replace, repair, operate, and maintain the Common Area, the landscaping, the Major Components, as well as any Association personal property, wherever such items may be located, to provide funds necessary for the performance of the duties of the Association as such duties are set forth in the provisions of the Governing Documents, and to further any other purpose that is for the common benefit of the Members in promoting their use and enjoyment of the Development.

### **7.5 ESTABLISHMENT OF REGULAR ASSESSMENTS.**

A. Not more than ninety (90) days nor less than sixty (60) days before the beginning of each and every Fiscal Year, the Board shall meet for the purpose of establishing a Regular Assessment for the forthcoming Fiscal Year.

B. At such meeting the Board shall review the proposed Budget for such Fiscal Year and consider any written comments received from the Members and Mortgagees, as well as any other pertinent information that has been made available to the Board for such Budget review purposes.

C. After making any adjustments that the Board considers appropriate, the Board, subject to the restrictions provided for in the provisions of Subsections 7.5E. and 7.5F., below, if there is an increase in the amount of the Regular Assessment over the Regular Assessment that was levied for the previous Fiscal Year, having either complied with the provisions of Subsection 5.13A.2. of the Declaration or, in the alternative, at a meeting of the Association, obtained the assent of a simple majority of the Members who constitute a quorum consisting of fifty-one percent (51%) of the voting power of the Association, shall establish the Regular Assessment for the forthcoming Fiscal Year.

D. The Board may not establish a Regular Assessment for any Fiscal Year that is more than one hundred and twenty percent (120%) of the Regular Assessment for the immediately preceding Fiscal Year, with the exception of the Association's first (1<sup>st</sup>) Fiscal Year, if it is less than twelve (12) months in duration, without the approval, by vote or written consent, of the Owners holding fifty-one percent (51%) of the Class A voting rights together with the approval of the Declarants.

1. If there are just Class A votes, the approval, by vote or written consent, of the Owners holding fifty-one percent (51%) of the Class A voting rights of all of the Owners together with the approval, by vote or written consent, of the Owners holding fifty-one percent (51%) of the voting rights of all of the Owners other than the Declarants.

E. Unless the Association is exempt from federal and state income taxes, including without limitation, an exemption under the provisions of Internal Revenue Code section 23701t, or any compatible superseding statutes, all Reserve Funds, to the extent possible, shall be designated and accounted as capital contributions to the Association and the Board shall take such steps as may be reasonably necessary under federal and state tax laws to prevent the Reserve Funds from being taxed as income of the Association, including, but not limited to, if necessary, maintaining the Reserve Funds in segregated accounts and not commingling such funds with the general operating funds.

F. Notwithstanding any other provisions in the Governing Documents to the contrary, the Board may not levy a Regular Assessment for any Fiscal Year that is more than twenty percent (20%) above the Regular Assessment for the Association's immediately preceding Fiscal Year.

G. The foregoing restrictions on Assessment increases do not apply to increases necessary for emergency situations. For the purposes of the provisions of this Section 7.5, an emergency situation is any one (1) of the following:

1. An extraordinary expense required by an order of a court of law having jurisdiction of the matter for which such extraordinary expense has been occasioned.
2. An extraordinary expense necessary to repair or maintain the Development, or any portion thereof that the Association is responsible to maintain, when a threat to personal safety on the Property is discovered.

3. An extraordinary expense necessary to repair or maintain the Development, or any portion thereof that the Association is responsible to maintain, which could not have been reasonably foreseen by the Board in preparing and distributing the Budget for the immediately preceding Fiscal Year.
  - a. Before the imposition or collection of any Regular Assessment to be levied under the provisions of this Subsection 7.5G.3., the Board must pass a resolution containing written findings as to the necessity for any such extraordinary expense as well as why such an extraordinary expense was not, or could not have been, reasonably foreseen in the Budget process for the preceding Fiscal Year.
  - b. The Board shall then distribute a copy of such resolution to all of the Members with the notice of such Regular Assessment.

#### 7.6 RESERVE FUNDS.

A. Each Regular Assessment shall include a portion for the Reserve Funds.

B. Reserve Funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be Directors or one (1) officer of the Association, who is not a Director, and a Director shall be required to withdraw money from the Reserve Account.

C. Reserve Funds may not be expended for any purpose other than repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of the Major Components.

D. Notwithstanding any of the foregoing, the Board may authorize the temporary transfer of money from the Reserve Account to the Association's general operating fund to meet short term cash flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid to the Reserve Account.

~~E.~~ The transferred funds shall be restored to the Reserve Fund within one (1) year of the date of the initial transfer. The Board, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Development, may provisionally delay the restoration.

F. The Board shall exercise prudent fiscal management in maintaining the integrity of the Reserve Account and shall, if necessary, levy a Special Assessment to recover the full amount of any transferred Reserve Funds within the time limits that are specified for the repayment of such Reserve Funds.

1. This Special Assessment shall be subject to the Assessment increase restrictions set forth in the provisions of Section 7.7 of the Declaration, entitled, "SPECIAL ASSESSMENTS – PURPOSE OF AND PROCEDURE FOR LEVYING," Subsections 7.7B. and 7.7C., and California Civil Code section 1366, or any compatible superseding statutes.
2. The Board may, at its discretion, extend the date the payment of any such Special Assessment is due.

3. Any such extension shall not prevent the Board from pursuing any legal remedy available to them for enforcing the collection of an unpaid Special Assessment on the expiration of such extension.

G. If the current replacement value of the Major Components is equal to or greater than one-half (1/2) of the gross budget, excluding the Reserve Account, for the above referenced three (3) year period, as part of the Reserve Account Requirements at least once every three (3) years the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the Major Components.

1. The Board shall review this study annually, and shall consider and implement the necessary adjustments to the Board's analysis of the Reserve Account Requirements as a result of such a review.
2. The study shall, at a minimum, include:
  - a. Identification of the Major Components as of the date of the study that have a remaining useful life of less than thirty (30) years;
  - b. Identification of the probable remaining useful life of each of those Major Components identified in the provisions of Subsection 7.6G.2a., above, as of the date of the study;
  - c. An estimate of the cost of repair, replacement, restoration, or maintenance of each of the Major Components identified in compliance with the provisions of Subsection 7.6G.2a., above, during and at the end of its useful life; and
  - d. An estimate of the total annual contribution necessary to defray the costs to repair, replace, restore, or maintain each of the Major Components identified in compliance with the provisions of Subsection 7.6G.2a., above, during and at the end of their useful lives after subtracting the total of the Reserve Funds as of the date of the study.

H. If the Board elects to use Reserve Funds or to temporarily transfer money from the Reserve Account to pay for litigation, the Board shall, in the next available mailing to all of the Members in compliance with the provisions of California Corporations Code section 501b, or any compatible superseding statutes, notify the Members of such a decision and of the availability of an accounting of these expenses.

1. The Board shall make an accounting of any expenses related to such litigation on at least a quarterly basis.
2. The accounting shall be made available for inspections by the Members at the Association's office.

#### **7.7 SPECIAL ASSESSMENTS – PURPOSE OF AND PROCEDURE FOR LEVYING.**

A. Subject to the restrictions described in the provisions of Subsections 7.7B. and 7.7C., below, the Board may levy a Special Assessment if, for any particular Fiscal Year in which the Board, in its sole discretion, determines that the for any reason, including, but not limited to, any unanticipated delinquencies, the costs of necessary and unforeseen construction, or any unexpected repairs to or the placement of a Major Component, the Association's available funds are or will become inadequate to meet the estimated Common Expenses, including, but not limited to, the maintenance of appropriate Reserve Funds.

1. If the Board determines to levy a Special Assessment it shall determine the amount necessary to meet any such shortfall and, if the amount is approved by a majority vote of the Board, it shall become a Special Assessment.
2. The Board, in its sole discretion, may levy a Special Assessment immediately or levy it in installments over any period of time the Board considers appropriate.
3. Unless the Association is exempt from federal or state income taxes, including, without limitation, any exemption under the provisions of Internal Revenue Code section 528 and Revenue and Taxation Code section 23701t, or any compatible superseding statutes, the Board shall take such steps as may be reasonably necessary to prevent any such Special Assessment from being included in the Association's income for federal and state income tax purposes, including, if necessary, depositing the funds received from any such Special Assessment in a segregate account, not commingling such funds with any other funds of the Association, and using such funds solely for the purpose for which they were levied.

B. Notwithstanding any other provision in the Governing Documents, the Board may not levy any Special Assessment that under the provisions of Subsection 7.7A., above, either by itself or in the aggregate with other similar Special Assessments levied for the same Fiscal Year, would be in excess of five percent (5%) of the Common Expenses of the Association for such Fiscal Year without the approval of fifty-one percent (51%) of the votes at a meeting of the Members at which a Membership Quorum is present.

C. The restriction contained in the provisions of Subsection 7.7B., above, shall not apply in the following circumstances:

1. An Assessment levied against a particular Lot to reimburse the Association for any costs incurred in bringing the Owner of such Lot, or such Lots, into compliance with the provisions of the Governing Documents.
2. Increases necessary for emergency situations. For the purposes of the provisions of this Section 7.7, an emergency situation is any one (1) of the following:
  - a. An extraordinary expense required by an order of a court of law having jurisdiction of the matter for which such extraordinary expense has been occasioned.
  - b. An extraordinary expense necessary to repair or maintain the Development, or any portion thereof that the Association is responsible to maintain, when a threat to personal safety on the Property is discovered.
  - c. An extraordinary expense necessary to repair or maintain the Development, or any portion thereof that the Association is responsible to maintain, which could not have been reasonably foreseen by the Board in preparing and distributing the Budget for the current Fiscal Year.

- (1) Before the imposition or collection of any such Special Assessment to be levied under the provisions of this Subsection 7.7C.2.c., the Board must pass a resolution containing written findings as to the necessity for any such extraordinary expense as well as why such an extraordinary expense was not, or could not have been, reasonably foreseen in the Budget process for the current Fiscal Year.
  - (2) The Board shall then distribute a copy of such resolution to all of the Members with the notice of such Special Assessment.
3. Any Special Assessment levied to restore Reserve Funds under the provisions of California Civil Code section 1365.5(c), or any compatible superseding statutes.

**7.8 ALLOCATION OF REGULAR AND SPECIAL ASSESSMENTS.**

A. Subject to the provisions of Section 7.2 of the Declaration, entitled, "LIMITED EXEMPTION FROM ASSESSMENT DURING CONSTRUCTION," the Regular and Special Assessments levied by the Board shall be allocated among the Lots as follows:

1. Except as otherwise provided herein, an Assessment shall be allocated among each Lot subject to such Assessment by dividing the total amount of the Assessments by the total number of Lots subject to such Assessment.

B. Special Assessments levied against a particular Lot or an Owner, as the case may be, to reimburse the Association for costs incurred in bringing such Owner and/or Lot into compliance with the provisions of the Governing Documents shall not be subject to the allocation provisions contained in the provisions of Subsection 7.8A.1., above.

**7.9 ASSESSMENT PERIOD.**

A. Unless the Board determines otherwise, the Association's Fiscal Year shall be a calendar year. The Regular Assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year, provided that the first (1<sup>st</sup>) Regular Assessment period for all of the Lots in any Phase shall commence on the first (1<sup>st</sup>) day of the calendar month following the date of the closing of the first (1<sup>st</sup>) conveyance of an interest in the fee title of a Lot in such Phase to an Owner other than the Declarants and shall terminate on December 31 of such year.

B. Each Regular Assessment shall be payable in equal monthly installments unless the Board adopts some other method for payment.

C. The first (1<sup>st</sup>) Regular Assessment and all Special Assessments shall be adjusted according to the number of months remaining in the Fiscal Year for which they are levied.

**7.10 NOTICE OF INCREASE IN ASSESSMENTS.**

A. Not less than thirty (30) nor more than sixty (60) days prior to any increase in a Regular or Special Assessment, or any installment thereof, as the case may be, the Board shall provide a notice of such increase by first-class mail to all of the Owners who will be subject to such Assessment increase.



**7.11 DUE DATE, LATE CHARGES, AND INTEREST.**

A. At least ten (10) days prior to the commencement of any Regular or Special Assessment, the Board shall give each Owner who is subject to such Assessment, a written notice of the amount of the Assessment that is about to commence and the due date, or due dates if paid in installments, as well as the amount of any single installment.

1. Such notice need only be given once for any Assessment that is to be paid in installments.
2. Unless the Board specifies otherwise, the due date of any installment shall be the first (1<sup>st</sup>) day of each month.

B. Any Assessment payment, including any installment payment, shall become delinquent if payment is not received by the Association within fifteen (15) days after its due date.

1. There shall be a late charge of ten percent (10%) or ten dollars (\$10.00), whichever is greater, on each delinquent payment.
  - a. A late charge may not be imposed more than once on any delinquent payment; however, it shall not eliminate or supersede any charges imposed on prior delinquent payments.
2. Interest shall also accrue on any delinquent payment at the rate of twelve percent (12%) per annum. Interest shall commence thirty (30) days after any such payment for which such interest is being imposed becomes due and remains unpaid.

**7.12 ASSOCIATION'S POWER TO ESTABLISH ASSESSMENT LIEN.**

A. The Board has the right to collect and enforce Assessments.

B. In addition to the enforcement powers described in the provisions of Section 5.6 of the Declaration, entitled, "**RIGHT TO IMPOSE AND COLLECT SANCTIONS FOR A VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS AND/OR REIMBURSEMENT TO THE ASSOCIATION FOR DAMAGE TO THE DEVELOPMENT,**" and subject to the restrictions on the enforcement of monetary penalties described in the provisions of Section 7.7 of the Declaration, entitled, "**SPECIAL ASSESSMENTS – PURPOSE OF AND PROCEDURE FOR LEVYING,**" the Board may enforce any delinquent Assessments, including any delinquent installments of such Assessments, by bringing a legal action against an Owner directly on the debt established by any such delinquency, or by establishing a lien against such Owner's Lot as provided for in the provisions of Section 7.13 of the Declaration, entitled, "**CREATION OF ASSESSMENT LIEN,**" and foreclosing such lien through either judicial proceedings or nonjudicial proceedings under a power of sale as provided for in the provisions of Section 7.14 of the Declaration, entitled, "**FORECLOSURE UNDER ASSESSMENT LIEN.**"

C. The Board may commence and maintain a lawsuit directly on any debt created by a delinquent Assessment without waiving its right to establish a lien against the delinquent Owner's Lot for any such delinquency.

D. In any action instituted by the Board to collect a delinquent Assessment together with any accompanying late charges or interest, as the case may be, the prevailing party shall be entitled to recover their costs and reasonable attorney's fees.

**7.13 CREATION OF ASSESSMENT LIEN.**

A. Subject to the provisions of Section 7.7 of the Declaration, entitled "SPECIAL ASSESSMENTS – PURPOSE OF AND PROCEDURE FOR LEVYING," the Board may impose a lien against the Owner's Lot for the amount of any delinquent Assessment or Assessments as well as any installments thereof, late charges, interest plus any costs of collection including attorney's fees, by taking the following steps:

1. The Board shall notify the delinquent Owner in writing by certified mail, of the collection practices, fees, and penalty procedures of the Association and shall provide an itemized statement of the charges owed by such Owner, including, but not limited to, the principal owed, any late charges together with the method used to calculate such charges, as well as any attorney fees.
2. After compliance with the notice requirements that are provided for in the provisions of Subsection 7.13A.1., above, the Board may impose a lien against the delinquent Owner's Lot in the amount of any delinquent Assessment covered in the notice that has been sent in compliance with the above referenced notice requirements, plus any costs of collection, late charges, and/or interest, which is applicable to same, by Recording a notice of delinquent Assessment ("Notice of Delinquent Assessment") with the San Luis Obispo County Recorder.
  - a. The Notice of Delinquent Assessment shall state the following:
    - (1) The amount of any delinquent Assessment(s) and other sums that have been imposed in accordance with the provisions of California Civil Code section 1366, or any compatible superseding statute;
    - (2) A legal description of the Lot against which such delinquent Assessment(s), together with any other sums, have been levied;
    - (3) The name of the Owner of such Lot; and
    - (4) If the lien is to be enforced by a nonjudicial foreclosure, the name and address of the trustee authorized by the Board to enforce such lien by nonjudicial foreclosure and sale.
  - b. The Notice of Delinquent Assessment shall be signed by any officer of the Association, or any employee or agent of the Association who has been authorized to do so by the Board.
  - c. A copy of the Notice of Delinquent Assessment shall be mailed in the manner required by the provisions of Civil Code section 2924b, or any compatible superseding statutes, to all of the Record Owner(s) of such Lot no later than ten (10) days after the Recording of the Notice of Delinquent Assessment.

B. Any payments made on a delinquent Assessment(s) shall be applied first to the principal owed. Only after the principal owed is paid in full shall payments be applied to any penalties, interest, or collection costs.

C. On payment in full of the sums specified in a Notice of Delinquent Assessment, the Association shall cause a release of the lien that was created by such Notice of Delinquent Assessment to be Recorded with the County Recorder.

**7.14 FORECLOSURE UNDER ASSESSMENT LIEN.**

A. After the expiration of thirty (30) days following the Recording of the Notice of Delinquent Assessment, the Board may enforce any lien that was created by such Recording by the filing of an action in any court of competent jurisdiction for judicial foreclosure or, in the alternative, by nonjudicial foreclosure as provided for in the provisions of California Civil Code sections 2924, 2924b, 2924f, 2924g, 2924h, and 2924j, or any compatible superseding statutes.

B. Any foreclosure sale shall be conducted by the trustee named in the Notice of Delinquent Assessment, or by a trustee substituted in accordance with the provisions of California Civil Code section 2934a.

C. The Board may bid at any foreclosure sale and, if it has been the successful bidder, may hold, lease, mortgage, or convey the acquired fee title interest in the Lot.

D. If the default is cured before completing a judicial foreclosure, or prior to any sale that would result from such a foreclosure, including the payment of all of the collection costs and foreclosure expenses incurred by the Board in pursuit of such delinquent items, the Board shall Record a notice of satisfaction and release of lien and, on receipt of a written request by the defaulting Owner, a notice of rescission of the declaration of default and demand for sale.

**7.15 THE ENFORCEMENT OF ASSESSMENTS SUBSEQUENT TO A FORECLOSURE SALE.**

A. The following rules shall govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a fee title interest in a Lot.

1. Except as provided for in the provisions of Section 12.2 of the Declaration, entitled, "SUBORDINATION," the sale or transfer of any estate in a Lot shall not affect any Assessment lien that was duly Recorded with respect to that Lot prior to such sale or transfer, and the Association can continue to foreclose its lien in spite of any change in the ownership of such an estate in the affected Lot.
2. The Association's Assessment lien against a Lot shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred prior to the sale or transfer of an estate in such Lot under a judicial foreclosure sale or the exercising of a power of sale by the holder of a prior Recorded encumbrance, but not by a deed or assignment-in-lieu of foreclosure.
  - a. A "prior Recorded encumbrance" shall mean and refer to any Mortgage or lien Recorded prior to the Association's Assessment lien.
3. Except as provided for in the provisions of Section 12.2 of the Declaration, entitled, "SUBORDINATION," no sale or transfer of the fee title of all, or any portion thereof, of a Lot as the result of a judicial foreclosure, an exercise of a power of sale, or otherwise shall relieve any new Owner of such fee title interest from the liability for any Assessments thereafter levied against such Lot after said new Owner has acquired its, his, her, or their fee title interest to such Lot, nor from the lien of any such Assessment.

4. Any Assessments, late charges, interest, and associated costs of collection that are lost as a result of a sale or transfer covered by the provisions of this Section 7.15 shall be deemed to be a Common Expense collectible from the Owners of all of the Lots including any person or persons who acquire(s) a fee title interest in such Lot that was the subject of such sale or transfer and its, his, her, or their heirs, successors, and assigns, as the case may be.
5. No sale or transfer of a fee title interest in a Lot as the result of a judicial foreclosure, an exercise of a power of sale, or otherwise that is occasioned by a senior encumbrance or lien shall affect the Board's right to maintain a personal action against the Owner whose fee title interest has been so sold or transferred by any such process, to collect the delinquent Assessments, late charges, interest, and associated costs of collection that were incurred by such Owner as a result of its, his, her, or their holding of such fee title interest prior to any such sale or transfer that resulted from such actions.
6. The provisions of Section 7.14 of the Declaration, entitled, "**FORECLOSURE UNDER ASSESSMENT LIEN**," and this Section 7.15 are intended to reflect the California law concerning community association Assessment lien priority in effect as of the effective date of the Declaration. In the event that the applicable California laws are revised, the provisions of this Section 7.15 and the above referenced Section 7.14 may be modified by an action of the Board to conform to the new statutory provisions concerning this subject matter without submitting same to a vote of the Owners.

## **ARTICLE VIII INSURANCE**

### **8.1 LIABILITY INSURANCE.**

A. The Board shall obtain and maintain a comprehensive public liability insurance policy insuring the Association, any manager, the Owners as well as their respective family members, Contract Buyers, agents, employees, representatives, Tenants, Invitees, licensees, customers, clients, and/or patients, against any liability incident to the ownership or use of the Common Area, or any other Association-owned or maintained real or personal property and including, if obtainable, a cross liability or severability of interest endorsement insuring each insured against liability to each other insured.

B. The limits of such insurance shall not be less than two million dollars (\$2,000,000.00), covering all claims for debt, personal injury, and property damage arising out of a single occurrence.

C. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and any other liability or risk customarily covered with respect to developments similar in construction, location, and use.

**8.2 ASSOCIATION FIRE AND CASUALTY INSURANCE.**

A. The Board shall obtain and maintain a master or blanket policy of fire and casualty insurance coverage ("Fire and Casualty Policy") that satisfies each of the following conditions:

1. The Fire and Casualty Policy shall cover the following real and personal property:
  - a. All of the Major Components;
  - b. Monuments;
  - c. Any personal property owned or maintained by the Association;
  - d. May, at the sole discretion of the Board, include lawn, trees, shrubs, and plants located with the Common Area;
  - e. May exclude, at the sole discretion of the Board, any land, building foundations, excavations, or other items typically excluded from insurance policies of this nature.
2. The Fire and Casualty Policy shall provide coverage against any losses caused by fire, and all other hazards normally covered by such "special form" policy or its equivalent.
3. The dollar limit of the Fire and Casualty Policy shall not be less than the full replacement value of the covered property described in the provisions of Subsections 8.2A.1. through 8.2A.1.e., inclusive, above; provided there may be lower dollar limits for specified items as is customarily provided for in property insurance policies of this kind and nature.
4. The Fire and Casualty Policy shall be primary and noncontributing with any other insurance covering the same losses.
5. If available, the Fire and Casualty Policy shall contain the following endorsements or their equivalent:
  - a. Agreed amount;
  - b. Boiler and machinery, to the extent applicable;
  - c. Plate glass;
  - d. Ordinance or law;
  - e. Inflation guard;
  - f. Increased cost of construction;
  - g. Contingent liability from operation of building laws;
  - h. Extended coverage;
  - i. Theft;
  - j. Vandalism;
  - k. Malicious mischief;
  - l. A special form endorsement;
  - m. A determinable cash adjustment clause or similar clause to permit cash settlement covering the full value of the Major Components in case of partial destruction and a decision not to rebuild or replace; and
  - n. Such other endorsements as the Board, in its discretion, may from time to time elect to utilize.

6. The Association shall not carry an earthquake endorsement without the approval of seventy-five percent (75%) of the total voting power of the Members.
  - a. If the Members elect to require the Association to obtain an earthquake endorsement, such an endorsement may be subsequently cancelled on the vote of seventy-five percent (75%) of the total voting power of the Members.
  - b. If such an endorsement is cancelled for any reason, the Board shall make a reasonable effort to notify the Members of the cancellation at least thirty (30) days before the effective date of such cancellation.
7. The Fire and Casualty Policy shall name the Association as the insured and may contain a loss payable endorsement in favor of the trustee that is described in the provisions of Section 8.3 of the Declaration, entitled, "APPOINTMENT OF AN INSURANCE TRUSTEE."
8. The Fire and Casualty Policy shall waive all subrogation rights against any Owner and its, his, or her family members, Contract Buyers, agents, employees, representatives, Tenants, Invitees, licensees, customers, clients, or patients.
9. The Fire and Casualty Policy shall provide for a thirty (30) day prior written notice to the Board of its cancellation.
10. Subject to any restrictions imposed by any First Mortgagees and delivered to the Board in writing, the Board shall have the power and the right to deviate from the insurance requirements contained in the provisions of this Section 8.2 in any manner that the Board, in its sole discretion, considers to be in the best interests of the Development. If the Board elects to materially reduce the coverage from the coverage required in the provisions of this Section 8.2, the Board shall make every reasonable effort to notify the Members of such reduction in coverage, and the reasons therefore, at least thirty (30) days prior to the effective date of any such reduction.

B. The Association, the Directors, and/or the officers of the Association shall have no liability to any Owner or Mortgagee for any failure to obtain insurance coverage if, after a good faith effort:

1. The Board is unable to obtain any insurance required by the provisions of the Governing Documents because such insurance is no longer available;
2. If available, any such insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or
3. The Members fail to approve any Assessment increase needed to fund the insurance premiums.

C. The Board is hereby authorized and each Owner, by acceptance of a deed to a Lot, hereby irrevocably appoints the Board or the insurance trustee described in the provisions of Section 8.3 of the Declaration, entitled "**APPOINTMENT OF AN INSURANCE TRUSTEE**," whichever is applicable, as that Owner's attorney-in-fact, to procure, negotiate, accept, compromise, release, settle, distribute, and/or take other prudent actions in connection with any insurance policy maintained by the Association, as well as any losses or claims related thereto, and each and every Owner hereby agrees to be bound by any actions so taken by the Board as if such Owner had personally taken such action.

**8.3 APPOINTMENT OF AN INSURANCE TRUSTEE.**

A. All fire and casualty insurance proceeds payable under the provisions of Section 8.2 entitled, "**ASSOCIATION FIRE AND CASUALTY INSURANCE**," for losses to any real and/or personal property, may be paid to a trustee to be held and expended for the benefit of the Association, the Owners, any Mortgagees, and others as their respective interests shall appear.

B. The Trustee shall be a commercial bank or other financial institution, with trust powers in the County, that agrees in writing to accept such trust.

C. If repair or reconstruction is authorized that will require the utilization of insurance proceeds, the Board shall have the duty to contract for such work and oversee the expenditure of such proceeds as is provided for in the provisions of the Governing Documents.

**8.4 INSURANCE CLAIMS.**

A. The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the full right and authority to compromise and settle any claim, or enforce any claim, by legal action or otherwise, and to execute any releases in favor of an insurer.

B. Each and every Owner, by acceptance of a deed to a Lot, irrevocably appoints the Board as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing, and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto, and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

**8.5 DIRECTOR AND OFFICER LIABILITY INSURANCE.**

A. To the extent insurance is available, the Board shall purchase and maintain insurance in an amount up to one million dollars (\$1,000,000.00) on behalf of any Director, officer, or member of a committee of the Association for the purposes of the provisions of this Section 8.5, collectively hereinafter referred to as the "Agents," against any liability asserted against or incurred by the Agents in such capacity, or arising out of the Agents' status as such, regardless of whether the Association would have the power to indemnify the Agents against such liability under applicable law.

**8.6 WORKER'S COMPENSATION, DEMOLITION, AND OTHER ASSOCIATION INSURANCE.**

A. The Board may, and if reasonably practical, when required by an Institutional First Mortgagee shall, purchase and maintain demolition insurance in adequate amounts to cover the razing, in case of total or partial destruction, of a Major Component, or any portion thereof, and a decision not to replace same, as well as a policy of flood insurance.

B. The Board shall also purchase and maintain worker's compensation insurance, to the extent it is required by law, for all employees of insured contractors of the Association.

C. The Board shall also purchase and maintain fidelity bonds and/or insurance in an amount not less than one hundred and fifty percent (150%) of each year's estimated Common Expenses and Reserve Funds, which shall contain an endorsement that covers any person who may serve without compensation, that is, if reasonably practical, sufficient to meet the requirements of any Institutional First Mortgagee.

D. The Board shall also purchase and maintain such insurance on personal property owned by the Association, together with any other insurance, that it deems necessary, prudent, or, where practical, that is required by any Institutional First Mortgagee.

#### **8.7 OWNER'S LIABILITY INSURANCE.**

A. An Owner may carry personal liability and Property damage insurance with respect to its, his, or her Lot that it, he, or she desire. However, any such policy shall include a waiver of subrogation clause acceptable to the Board and to any-Eligible Mortgage Holder that encumbers such Owner's Lot.

#### **8.8 INSURANCE REVIEW AND NOTICE.**

A. Notwithstanding anything herein to the contrary, but subject to the provisions of Sections 5.12 and 5.13 of the Declaration, entitled, "SECURING INSURANCE COVERAGE" and "PREPARATION AND DISTRIBUTION OF FINANCIAL STATEMENTS, REPORTS, AND COPIES OF THE GOVERNING DOCUMENTS," respectively, the Board shall periodically, but in no event less than every three (3) years, review all of the insurance coverage maintained by the Association and make such adjustments to the policies' terms and conditions as the Board may consider to be in the best interests of the Association.

B. Such review shall include an appraisal by a qualified appraiser of the current replacement costs of all of the property covered under the Association's policies, unless the Board is satisfied that the current dollar limit of such policies, coupled with the amount of the actual Reserve Funds on hand, is equal to or greater than said current replacement costs.

### **ARTICLE IX**

#### **DAMAGE OR DESTRUCTION OF A MAJOR COMPONENT**

#### **9.1 REPAIR, RECONSTRUCTION, OR REPLACEMENT OF DAMAGE TO A MAJOR COMPONENT.**

A. Subject to the provisions of Section 9.4 of the Declaration, entitled "MINOR REPAIR AND RECONSTRUCTION," if there is a total or partial destruction of a Major Component, and if the available proceeds of the insurance carried pursuant to the provisions of ARTICLE VIII of the Declaration, entitled, "INSURANCE," are sufficient to cover at least eighty-five percent (85%) of the costs of any such repair, reconstruction, and/or replacement of the damaged Major Component, the damaged Major Component shall be promptly repaired, reconstructed, or replaced, as the case may be.



B. Not later than one hundred and twenty (120) days from the date of any such damage, the Board shall be required to execute, acknowledge, and Record a certificate in the office of the County Recorder which declares the intention to so repair, reconstruct, or replace, as the case may be.

C. Subject to the provisions of Section 9.4 of the Declaration, entitled "**MINOR REPAIR AND RECONSTRUCTION**," and Subsections 9.1D. through 9.1E., inclusive, below, if the available proceeds of any insurance carried pursuant to the provisions of **ARTICLE VIII** of the Declaration, entitled, "**INSURANCE**," are less than eighty-five (85%) of the cost of the needed repair, reconstruction, or replacement of the damaged Major Component, such Major Component shall be promptly repaired, reconstructed, or replaced, as the case may be.

D. However, if within ninety (90) days from the date of such damage, the Members then holding at least fifty-one percent (51%) of the total voting power of each class of Memberships are present and entitled to vote, in person or by proxy, at a duly constituted Members meeting, determine that such repairs, reconstruction, or replacement, whichever is applicable, shall not take place, then the Board shall:

1. Solicit and obtain bids from at least two (2) reputable contractors to repair, reconstruct, or replace, whichever is applicable, the damaged Major Component in accordance with the most current As-Built Plans and, prior to any vote being taken, shall present this information to the Members who are present at such Members meeting.

E. If any repair, reconstruction, and/or replacement is to take place, not later than one hundred and twenty (120) days from the date of such damage the Board shall execute, acknowledge, and Record a certificate in the office of the County Recorder which declares the intention to so repair, reconstruct, or replace, as the case may be.

## 9.2 APPORTIONMENT OF ASSESSMENTS.

A. If there is a determination to repair, reconstruct, and/or replace any damaged Major Component, pursuant to the provisions of Section 9.1 of the Declaration, entitled, "**REPAIR, RECONSTRUCTION, OR REPLACEMENT OF DAMAGE TO A MAJOR COMPONENT**," each Member shall be obligated to contribute its, his, or her appropriate proportionate share of the cost of such repair, reconstruction, and/or replacement that is not covered by the available insurance proceeds.

B. If a Special Assessment is levied in compliance with the provisions of Section 7.7 of the Declaration, entitled "**SPECIAL ASSESSMENTS – PURPOSE AND PROCEDURE FOR LEVYING**," for the cost of repairing, reconstructing, and/or replacing a damaged Major Component, such appropriate proportionate share shall be allocated among each Lots by dividing the total amount of such Assessment by the total number of Lots.

## 9.3 CONTRACTS FOR THE REPAIRING, RECONSTRUCTION, OR REPLACING OF A DAMAGED MAJOR COMPONENT.

A. If a damaged Major Component is to be repaired, reconstructed, and/or replaced, the Board or its authorized representatives shall, after obtaining bids from at least two (2) reputable contractors as required in the provisions of Section 9.1 of the Declaration, entitled, "**REPAIR, RECONSTRUCTION, OR REPLACEMENT OF DAMAGE TO A MAJOR COMPONENT**," award the repair, reconstruction, and/or replacement work, whichever is

applicable, to the lowest bidder that has otherwise met the requirements set forth by the Board in its request for bids.

B. The Board shall have the authority to enter into a written contract with the selected contractor for such repair, reconstruction, and/or replacement. Any insurance proceeds, which have been specifically allocated to such repair, reconstruction, and/or replacement, shall be disbursed to the selected contractor according to the terms of the above referenced written contract.

C. It shall be the obligation of the Board to take all of the steps necessary to assure the commencement and completion at the earliest possible date of any authorized repair, reconstruction, and/or replacement.

#### 9.4 MINOR REPAIR AND RECONSTRUCTION.

A. Notwithstanding any other provision of the Governing Documents to the contrary, the Board shall have the duty to repair, reconstruct, or replace damaged Major Components without the consent of the Owners, and irrespective of the amount of available insurance proceeds, in all instances of partial destruction where the estimated cost of repair, reconstruction, or replacement does not exceed twenty thousand dollars (\$20,000.00).

B. The Board may levy a Special Assessment for the cost of repairing, reconstructing, or replacing such damaged Major Components to the extent insurance proceeds are unavailable. Any such Special Assessment is to be levied as described in the provisions of Section 9.2 of the Declaration, entitled, "APPORTIONMENT OF ASSESSMENTS," and may be done without the consent or approval of the Owners.

### ARTICLE X DAMAGE OR DESTRUCTION OF A RESIDENCE

#### 10.1 DAMAGE OR DESTRUCTION OF A RESIDENCE.

A. If all or any portion of any Residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner(s) of the Lot on which such Residence is located to rebuild, repair, or reconstruct such Residence in a manner that will restore it substantially to its appearance and condition immediately prior to the casualty.

B. Any Owner who has suffered such damage shall apply to the Architectural Committee for approval of the plans for the rebuilding, reconstruction, or repairing of its, his, or her Residence.

1. Application for such approval shall be made in writing to the Architectural Committee together with the submission of a full and complete set of plans, specifications, working drawings, and elevations showing the proposed rebuilding, reconstruction, or repairing, as the case may be.
2. The Architectural Committee shall grant such approval only if the design proposed by the submitting Owner would result in a finished Residence that will be in harmony with the exterior design of other Residences within the Property.

C. The Owner, or Owners, of any damaged Residence(s) and the Architectural Committee shall be obligated to proceed with all due diligence hereunder to discharge their respective obligations.

D. Unless a waiver or modification of these time requirements is obtained from the Architectural Committee in accordance with the provisions of Section 14.5 of the Declaration, entitled, "VARIANCES," the Owner(s) shall commence reconstruction or removal of the damaged or destroyed structure within six (6) months after the damage occurs, and complete reconstruction within eighteen (18) months after such damage occurs.

## ARTICLE XI CONDEMNATION

### 11.1 CONDEMNATION.

A. If an action for condemnation of all or any portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by the vote or written consent of at least fifty-one percent (51%) of all of the Owners who are eligible to vote, and with the prior written consent of seventy-five percent (75%) of all of the Eligible Mortgage Holders, the Common Area, or any portion of it, may be sold and conveyed to the condemning authority by the Board or its designees who is/are acting as the attorney-in-fact of all of the Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot, grants to the Board and which shall be coupled with the interest of all of the other Owners, at a price that is deemed fair and equitable by the Board.

B. On any sale occurring under the provisions of Subsection 11.1A., above, the proceeds of such sale shall be distributed equally to each Owner and their Mortgagees as their respective interests may appear.

C. If the Common Area, or any portion thereof, is not sold but is instead taken under a judgment by a court of competent jurisdiction, the award for such a taking shall be apportioned among the Owners, and their respective Mortgagees, by the terms of the judgment of condemnation and if not so apportioned, then any such award shall be distributed in equal shares to each Owner.

## ARTICLE XII PROTECTION OF MORTGAGEES

### 12.1 MORTGAGE PERMITTED.

A. Any Owner may encumber its, his, or her fee title interest in a Lot with a Mortgage.

### 12.2 SUBORDINATION.

A. Any Assessment lien that is levied or claimed under the provisions of the Governing Documents is expressly made subject and subordinate to the rights of any Institutional First Mortgage that is made in good faith and encumbers all or a portion of the Development and that has been made in good faith and for value.

B. No Assessment lien shall in any way defeat, invalidate or impair an obligation to or priority of an Institutional First Mortgage unless such Institutional First Mortgagee is expressly made subordinate to such Assessment lien.

C. If any fee title interest of a Lot is encumbered by an Institutional First Mortgage that has been made in good faith and for value, the foreclosure of any Assessment lien, or any installment thereof, shall not operate to affect or impair the lien of the Institutional First Mortgage.

D. On the foreclosure of any such Institutional First Mortgage, the liens for any Assessments or the installments of an Assessment that may have accrued prior to the date such foreclosure is commenced, shall be subordinate to the lien being foreclosed. Anyone who receives a fee title interest in such foreclosed Lot at the foreclosure sale does so free of any such Assessments and/or installment liens.

E. Anyone who receives a fee title interest in a Lot at a foreclosure sale shall be obligated to pay only those Assessments or other charges that have been levied against such Lot by the Association after the acquisition of such fee title interest.

F. Any such subsequently levied Assessments or other charges may include any previously unpaid Assessments, or portions thereof, that were levied against the foreclosed Lot, provided all of the Owners are required to pay their proportionate share of such previously unpaid Assessments as provided for in the provisions of ARTICLE VII, entitled "ASSESSMENTS."

#### **12.3 MORTGAGEE'S RIGHT TO EXAMINE BOOKS AND RECORDS.**

A. Institutional First Mortgagees shall have the right to examine the books and records of the Association and any Eligible Mortgage Holder shall have the right to require the submission of financial data concerning the Association including, but not limited to, annual audit reports, Budgets, and operating statements as furnished to the Owners.

#### **12.4 PRIORITY IN DISTRIBUTION OF INSURANCE AND CONDEMNATION PROCEEDS.**

A. In the case of distribution to the Owners of any insurance proceeds or condemnation awards for losses to, or the taking of, Lots or Common Area, as the case may be, and notwithstanding any of the provisions of ARTICLE XI of the Declaration, entitled, "CONDEMNATION," no Owner or any other party shall have priority over any right of an Institutional First Mortgagee that is granted to such Institutional First Mortgagee pursuant to the provisions of its Mortgage.

B. Any provision in the Governing Documents to the contrary is to such extent void.

C. All applicable fire, physical loss, and extended coverage insurance policies, to the extent that it is economically feasible, shall contain loss payable clauses that are acceptable to the affected Institutional First Mortgagees, naming the Mortgagees as their interests may appear.

#### **12.5 STATUS OF THE MAJOR COMPONENTS AND/OR COMMON AREAS.**

A. The Major Components as well as the Common Area shall be appropriately available for the reasonable use of the Owners.

B. All such Common Area and/or Major Components shall be owned by the Owners in undivided interests, or by the Association, free of encumbrances, except for any easements granted for public utilities or other public purposes consistent with the intended use of such Common Area and/or Major Components by the Owners or by the Association, as the case may be.

**12.6 NOTICE REQUIREMENT FOR A VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS.**

A. If any Owner has committed a Violation of a Provision of the Governing Documents, and such Violation is not cured within sixty (60) days after a written notice of such Violation has been sent to the violating Owner, the Board shall give to any Eligible Mortgage Holder of such Owner a written notice of such violation and of the fact that sixty (60) days have expired after receipt of said notice by the violating Owner and no cure has been perfected.

**12.7 PAYMENT BY MORTGAGEES.**

A. Mortgagees of Lots may, jointly or severally, pay taxes or any other charges which are in default and which may, or have become, a charge against the Common Area.

B. Such Mortgagees may also pay any overdue premiums on insurance policies or secure new insurance coverage on the lapse of any such policy that covers the Association, the Common Area, a Major Component, or any other property, real or personal, of the Association.

C. Upon making any such payments, such Mortgagees shall be owed immediate reimbursement for same from the Association.

D. This provision shall constitute an agreement by the Association for the express benefit of all Institutional First Mortgagees, and upon request of any such Mortgagee the Board shall execute and deliver to such Institutional First Mortgagee a separate written agreement embodying the terms of the provisions of this Section 12.7.

**12.8 LIEN NOT INVALIDATED.**

A. No Violation of a Provision of the Governing Documents shall invalidate the lien of any Institutional First Mortgage that has been made in good faith and for value. Notwithstanding the text in the preceding sentence in this Section 12.8, all of the covenants, conditions, and restrictions contained in the Governing Documents shall be binding on any and all of the Owner(s) whose title is/are derived through a foreclosure sale, trustee's sale, or otherwise.

**12.9 MORTGAGEE NEED NOT CURE A VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS.**

A. Any Institutional First Mortgagee who acquires title to a Lot by foreclosure, by deed in lieu of foreclosure, or by assignment in lieu of foreclosure shall not be obligated to cure any Violation of a Provision of the Governing Documents that is non-curable or of a type that is not practical or feasible to cure.

**12.10 STATUS OF LOAN TO FACILITATE RESALE.**

A. Any Institutional First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition of an interest in the fee title to same by a trustee's deed, deed in lieu of foreclosure, or by an assignment in lieu of foreclosure shall be deemed to be a Mortgage made in good faith and for value, and entitled to all of the rights and protection of Institutional First Mortgages under the provisions of the Governing Documents.

**12.11 RIGHT TO APPEAR AT MEETINGS.**

A. Because of its, his, or her, as the case may be, financial interest in the Development, any Mortgagee may appear, but cannot vote, at meetings of the Members as well as of the Board to draw attention to a Violation of a Provision of the Governing Documents that has not been corrected, or that has been made the subject of remedial proceedings or a Special Assessment by the Board.

**12.12 RIGHT TO FURNISH INFORMATION.**

A. Any Mortgagee may furnish information to the Board concerning the status of its, his, or her Mortgage.

**12.13 RIGHT OF FIRST REFUSAL INAPPLICABLE TO MORTGAGE.**

A. Subject to the provisions of Section 4.20 of the Declaration, entitled "RIGHT TO LEASE OR RENT," no right of first refusal, or similar restriction on the right of an Owner to sell, transfer, or otherwise convey the Owner's Lot, shall be granted to the Association without the written consent of any Institutional First Mortgagee of such Lot.

B. Under any circumstances, a right of first refusal or option to purchase a Lot that may be granted to the Association or other person, firm, or entity, shall not impair the rights of an Institutional First Mortgagee of such Lot to:

1. Foreclose or take title to a Lot pursuant to the remedies provided for in the provisions of the Mortgage;
2. Accept a deed or assignment in lieu of foreclosure in the event of default under the such Mortgage; or
3. Sell or lease a Lot that has been acquired by the Mortgagee through a foreclosure of its, his, her, or their Mortgage.

**12.14 NOTICES TO ELIGIBLE MORTGAGE HOLDERS.**

A. An Eligible Mortgage Holder will be entitled to written notice of certain occurrences upon a request in writing to the Association from said Eligible Mortgage Holder identifying its, his, her or their name(s) and mailing address(es) together with the Lot number(s) or address(es) of the Lot or Lots encumbered by its, his, her or their Mortgage, asking that the Association provide it, him, her or them, as the case may be, with a notice of the occurrence of any of the following events:

1. Condemnation or casualty loss which affects a material portion of the Development or any Lot on which there is a Mortgage held by such Eligible Mortgage Holder;
2. Any Violation of a Provision of the Governing Documents and/or delinquency in the payment of any Assessment or charge which is owed by an Owner of a Lot subject to a Mortgage held by such Eligible Mortgage Holder that has remained uncured for a period of sixty (60) days;
3. The lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
4. Any proposed action that would require the consent of a specified percentage of any class of Mortgage Holders as stipulated in the provisions of this ARTICLE XII.

B. The Board shall discharge its obligation to notify an Eligible Mortgage Holder by sending the written notice required herein to such requesting party, at the addresses given on its, his, her, or their current request for any such notice, in the manner prescribed by the provisions of Section 16.11 of the Declaration, entitled, "NOTICES AND COMMUNICATION."

**12.15 REQUIREMENTS OF THE VETERANS ADMINISTRATION.**

A. So long as there is a Class B Membership pursuant to the provisions of Section 6.3 of the Declaration, entitled, "TWO CLASS SYSTEM; WEIGHTED VOTES," the following actions require approval of the Veterans Administration if there are loans in the Development covered by Mortgages insured by them:

1. Annexation of additional properties;
2. Dedication of the Common Area;
3. Mortgage or sale of the Common Area;
4. Levying of any Special Assessments that will affect any Lot that is encumbered by any such Mortgage; and
5. Material amendment of the Declaration.

**12.16 CONTROL IF MORTGAGEE PROTECTION CONFLICTS WITH OTHER PROVISIONS OF THE GOVERNING DOCUMENTS**

A. In the event of any conflict between any of the provisions of Sections 12.1 through 12.16, inclusive, of the Declaration and any other provision of the Governing Documents, the provisions of Sections 12.1 through 12.16, inclusive, of the Declaration shall control.

**ARTICLE XIII  
MINIMUM CONSTRUCTION STANDARDS**

**13.1 AIR POLLUTION CONTROL DISTRICT FEES.**

A. Prior to a Lot Owner obtaining a County building permit, such Owner shall pay the sum of one hundred sixty-six dollars (\$166.00) per each Residence located on such Owner's Lot to the Air Pollution Control District in order to comply with mitigation measures imposed on the Development by the County.

B. Proof of such payment shall be provided to the Board and to the San Luis Obispo County Planning and Building Department prior to the issuance of any building permit.

**13.2 ARCHAEOLOGICAL MONITORING.**

A. In the event that certain Cultural Resources Management Plan ("Resources Plan"), which has been approved by the County, copies of which are available at the Association office, shows a significant cultural resource within fifty (50) feet of any proposed construction on a Lot, the Owner of same shall retain a San Luis Obispo County Department of Planning and Building-qualified archaeologist and Native American monitor to monitor the construction activities on such Lot based on, and consistent with, the provisions of the Resources Plan.

### 13.3 BIOLOGICAL MONITORING.

A. Prior to the construction of a structure on a Lot, the Owner of such Lot shall arrange for the monitoring of such construction by a biological monitor ("Biological Monitor") who has been pre-approved by the San Luis Obispo County Planning and Building Department. The Biological Monitor shall perform the following:

1. Clearly mark the dripline area of each oak tree located outside of, but contiguous with, the proposed construction areas.
2. All dripline areas shall be marked with highly visible flagging or construction fencing.
3. During construction, monitor that there is no soil disturbance, compaction, and/or grading activities within, or adjacent to, any dripline of a marked oak tree.
4. Monitor any construction activities that might lead to damage to sensitive resources including, but not limited to, oak woodland, oak savanna, riparian forest, and known as well as potential wetlands.
5. Conduct a brief training session prior to the commencement of construction to advise construction personnel on the biological sensitivity of various habitats, and discuss various measures for minimizing potential construction related impacts.
6. Visit the construction sites located within or near sensitive areas at a frequency and duration that has been determined to be appropriate by the County and/or the Board based on construction timing and the perceived sensitivity of resources at issue.
7. During such periodic site visits, ensure that any identified construction sites, and access routes to same, remain clearly marked and any restricted areas are avoided.
8. Prepare weekly reports, or as otherwise directed by the County and/or the Board, documenting construction activities and associated effects on any sensitive biological resources.

### 13.4 KIT FOX MONITORING.

A. The following protective measures should be implemented during construction activities:

1. Construction-related vehicles should observe a twenty (20) mile per hour speed limit throughout the construction area to reduce the potential for impacting any kit fox that may be present.
2. All construction should be restricted to within daylight hours to avoid affecting kit fox nocturnal activities.
3. All holes or trenches should be thoroughly inspected for trapped animals prior to filling.
  - a. In the event that a trapped or injured kit fox is discovered during construction, the USFWS field office in Ventura and local CDFG representative should be immediately notified.
4. Because kit foxes are attracted to den-like structures such as pipes, all construction pipes, culverts, or similar structures with a diameter of four (4) inches or greater that are stored within work areas for overnight



periods should be thoroughly inspected for kit foxes before the pipe or culvert is buried, capped, or moved.

- a. If a kit fox is found inside of a pipe, the pipe should not be moved until representatives of USFWS and CDFG are notified.
5. All food-related trash items should be disposed of in closed containers and removed from associated construction sites, at least once per week.
6. No firearms or pets should be allowed on a construction site during construction activities.

### 13.5 BUILDING HEIGHT.

A. No structure shall be erected, altered, placed, or permitted to remain on any Lot that is not in compliance with the following restrictions. For the purposes of the provisions of this Section 13.5, "natural grade" shall mean the elevation of the ground after infrastructure improvements, but prior to any grading for Residences or related on-site improvements.

1. The height of a building or structure is to be measured as the vertical distance from the highest point of such building or structure to the average of the highest and lowest points of same where the vertical plane of its exterior walls would touch the natural grade level of the site ("Building Height").
2. The Building Height of Lots 54, 55, 56, 57, 58, 59, 60, 61, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 77, 78, 80, 81, 88, 89, 92, and 98 shall not exceed twenty-five (25) feet.
3. The Building Height of Lot 62 shall not exceed twenty (20) feet for a structure on that portion of a Lot located above the one thousand fifty-five (1,055) foot contour line. However, the Building Height may exceed twenty (20) feet if the San Luis Obispo County Department of Building and Planning has expressly provided in writing that a Building Height in excess of twenty (20) feet does not cause any portion of the structure to silhouette when viewed from Highway 101.
4. The Building Height of Lot 63 shall not exceed sixteen (16) feet for a structure on that portion of a Lot located above the one thousand sixty (1,060) foot contour line. However, the Building Height may exceed sixteen (16) feet if the San Luis Obispo County Department of Building and Planning has expressly provided in writing that a Building Height in excess of sixteen (16) feet does not cause any portion of the structure to silhouette when viewed from Highway 101.

### 13.6 CONSTRUCTION CLEAN UP AND DISPOSAL PRACTICES.

A. During the construction of a structure on any Lot, the washing of concrete, painting equipment, or any other construction equipment shall occur only in areas that have been previously designated on the construction plans approved by the San Luis Obispo County Department of Planning and Building as well as the Architectural Committee.

1. Under no circumstances shall such washing be allowed near sensitive biological resources or within the dripline of existing oak trees.

B. During the construction of structures on a Lot, any excess construction materials shall be separated on the construction site for reuse/recycling, or other means of proper disposal.

1. The location for such separating activities shall be designated on the construction plans approved by the San Luis Obispo County Department of Planning and Building and the Architectural Committee.

### 13.7 CREEK BUFFER.

A. In order to minimize the impact to riparian habitats and wildlife, a buffer ("Buffer Zone") of at least one hundred (100) feet shall be established along both sides of San Antonio Creek.

B. Except as may be permitted by the provisions of the San Luis Obispo County Department of Planning and Building approved monitoring program, activities within the Buffer Zone shall be limited to hiking, photography, research, and horseback riding.

### 13.8 EXTERIOR LIGHTING AND FIXTURES.

A. 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, woodlands, or Open Space areas (as defined in the provisions of 4.8, entitled, "INTERFERENCE WITH OPEN SPACE AREAS ON LOTS 62 AND 63"). The issue of whether a nuisance exists shall be determined by the Board in its sole discretion.

B. Under no circumstances will lighting fixtures of any kind or nature be above the roof of any structure.

C. All security lighting installed on Lots shall be equipped with a motion detector switch.

D. For the purposes of the provisions of this Section 13.8, "security lighting" shall mean and refer to porch and exterior building lights.

### 13.9 FIRE SAFETY PLAN.

A. Prior to a Lot Owner obtaining a County building permit, such Owner shall adopt a fire safety plan approved by the County Fire Department. Such plan shall include, but not be limited to, the installation of a quick response residential fire sprinkler system.

B. Written conformation from the County Fire Department of the approval of such plan shall be provided to the San Luis Obispo County Planning and Building Department as well as to the Board.

### 13.10 OAK TREE PRESERVATION.

A. Copies of the Tree Plan shall be maintained at the Association office and provided to an Owner prior to the commencement of any construction and/or grading on such Owner's Lot.

B. Such Owner shall then take all of the actions reasonably necessary to comply with the provisions of the Tree Plan including, but not limited to, the following:

1. None of the oak trees shown on the Tree Plan shall be removed or critically damaged, except for those oak trees that are specifically designated as removable in the Tree Plan.
2. The preservation of all of the oak trees located on the Owner's Lot which lie outside of a structure footprint, except for the oak trees that have been specifically designated as removable in the Tree Plan.

3. Ground disturbance and the location of landscaping within the area beneath an oak tree's canopy, plus one-half (1/2) of the diameter of such canopy, unless otherwise permitted by the provisions of the Tree Plan.

#### **13.11 PREVENTION OF STORM WATER POLLUTION.**

A. Any construction on a Lot is required to conform to the provisions of the "Urban Runoff Best Management Practice," a copy of which is available at the Association office. The provisions of the above referenced "Urban Runoff Best Management Practice" are designed to increase local rainwater infiltration, decrease runoff velocities, and minimize inadvertent washing of pollutants into storm drains per the "Porter Cologne Act and the Basin Plan" requirements to protect water quality.

B. Recommendations for implementing such provisions include, but are not limited to, the use of grass pavers, dry wells on site, and French drains in driveways.

#### **13.12 SEPTIC SYSTEMS.**

A. Each Lot that has its own individual, on site, septic waste disposal system shall be designed, located, and constructed in accordance with the requirements, standards, and recommendations of the State Department of Health Services.

1. The following Lots are required to have a registered engineer design any septic system that is constructed, maintained, or located on such Lot: Lots 4, 16, 23, 25, 27, 28, 30, 45, 50, 52, 53, 82, 92, 94, 100, 101, 123, 138, 142, 143, 145, and 146.
2. The following Lots may be required to have a registered engineer design the septic systems: Lots 46, 48, 69, 75, 76, 84, 95, 96, 99, 104, 136, and 139.

#### **13.13 WETLANDS PROTECTION FOR LOTS 16, 29, 33, AND 34.**

A. During and following any construction activities on Lots 16, 29, 33, 34, and "PTN. 150" the Owner or the Board, whichever is appropriate, shall establish fencing between the construction area and any identified wetland and drainage swales that may be located on such Lots to avoid the disturbance of same.

### **ARTICLE XIV ARCHITECTURAL CONTROL**

#### **14.1 PROVISION FOR ARCHITECTURAL APPROVALS.**

A. Except for the construction and/or alterations of any Improvements in any Phase of the Development by or at the direction of the Declarants, no Improvement of any kind shall be commenced, erected, or maintained within the Development, nor shall any exterior addition, change, or alteration be made to the exterior of any Residence until the plans and specifications showing the nature, color, kind, shape, height, including front, side, and rear elevations, materials, and location of the same have been submitted to and approved in writing by the San Luis Obispo County Department of Planning and Building as well as the Architectural Committee as to quality of workmanship and materials, harmony of external design, and location in relation to the surrounding structures, setback lines, topography, and finish grade elevations.

B. It is expressly understood and agreed that the Architectural Committee shall be entitled to apply both subjective and objective criteria when considering such submitted plans and specifications, as long as the Architectural Committee does so reasonably and in good faith.

#### **14.2 APPOINTMENT AND MAKEUP OF ARCHITECTURAL COMMITTEE.**

A. The Declarants shall appoint all of the original members of the Architectural Committee, which shall not be less than five (5) persons and any replacements for them.

B. The appointees do not have to be Members.

C. Five (5) persons shall constitute the number of authorized members of the Architectural Committee, unless they are increased or decreased by the vote or written consent of the holders of at least fifty-one percent (51%) of the voting rights of each class of Members.

D. The initial appointees and any of their replacements shall hold office until the first (1<sup>st</sup>) anniversary of the original issuance of the Final Subdivision Public Report for the first (1<sup>st</sup>) Phase.

E. Thereafter, the Declarants may appoint a majority of the members of the Architectural Committee, and any of their replacements, until ninety percent (90%) of the Lots in all of the Phases have been sold and deeds to them Recorded in favor of Owners, other than the Declarants, or until the fifth (5<sup>th</sup>) anniversary of the original issuance of the Final Subdivision Public Report for the last Phase, whichever is the first to occur.

F. After one (1) year from the date of the original issuance of the Final Subdivision Public Report, the Board shall have the power to appoint one (1) member of the Architectural Committee, whose power shall continue until ninety percent (90%) of the Lots have been sold and deeds to them Recorded in favor of Owners, other than the Declarants, or until the fifth (5<sup>th</sup>) anniversary of the issuance of the Final Subdivision Public Report, whichever is first to occur.

G. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Committee.

H. Any person appointed to the Architectural Committee by the Board must be a Member.

#### **14.3 SUBMISSION OF PLANS; ACTION BY THE ARCHITECTURAL COMMITTEE.**

A. When a proposed work of Improvement is submitted to the Architectural Committee for review, the Architectural Committee shall grant the requested approval only if the Architectural Committee, in its sole discretion, finds that all of the foregoing provisions have been satisfied:

1. The Owner's plans and specifications:
  - a. Conform to the provisions of the Governing Documents that are in effect at the time said plans are submitted to the Architectural Committee;
  - b. Will result in the construction of an Improvement that is in harmony with the external design of other structures and/or landscaping within the Development; and
  - c. Will not interfere with the reasonable enjoyment of any other Owner of its, his, or her Lot.
  - d. Trees:

- (1) All landscaping shall be consistent with the provisions of the Tree Plan; and
- (2) Existing trees as well as any vegetation shall be preserved to the maximum extent possible, and shall be used to adequately blend the new construction, including any driveways and outbuildings, to the existing landscape.

e. **Roofs:**

- (1) Roofs shall be articulated, follow the general shapes of the hills, and avoid flat planes which project against the sky in long straight lines or acute angles and might be considered intrusive to the existing natural character of the hills and vegetation.
- (2) Roof colors shall be limited to darker earth tones, deep muted reds, browns, and grays and should be no brighter than six (6) in chroma value on the Munsell Color-Scale on file in the San Luis Obispo County Department of Planning and Building.
  - (i) Shiny metal roofs, bright orange, red, or blue shall be prohibited.

f. **Fences:**

- (1) Delineate all proposed fencing which must be constructed of solid flat planes.
- (2) Any fencing that is located along the side and back portions of a Lot shall be wooden post construction only.
- (3) Any existing Development boundary fencing which is white, may remain white.
- (4) Fence colors shall be similar to the surrounding natural colors of the terrain and may not be brighter than six (6) in chroma and value on the Munsell Color Scale which is on file in the San Luis Obispo County Department of Planning and Building.
- (5) Construction of any other fence types as well as the use of white paint or other white materials for fence construction shall be prohibited unless it can be shown that they will not be visible from any streets or other Lots.

g. **Building Colors:**

- (1) Building colors shall be darker than, subdued, and blend with the surrounding natural colors.
- (2) Generally, colors should be no brighter than six (6) in chroma and value on the Munsell Color Scale which is on file in the San Luis Obispo County Department of Planning and Building.

h. **Energy Conservation:**

- (1) Residences should be designed to incorporate passive solar features and solar hot water heating with a goal of reducing energy use by twenty percent (20%), and offset long-term

mobile and area source operational emissions. Components of passive solar design should include:

- (i) Orientation of Residences so the windows face to the south;
- (ii) Encouraged use of solar or solar-assisted water heaters;
- (iii) The use of building materials designed to absorb heat from the sun in the winter;
- (iv) Shade tree planting along the southern exposure of a Residence to reduce summer cooling needs;
- (v) Increase Building Envelope efficiencies beyond the minimum requirements of Title 24 of the California Code of Regulations;
- (vi) The use of built-in energy efficient appliances;
- (vii) Increased tree planting along the roadways;
- (viii) Installation of outdoor electrical outlets to encourage the use of electric appliances and tools;
- (ix) The use of double-paned windows;
- (x) The use of sodium sheet lights; and
- (xi) The use of energy efficient interior lighting.

3. Exterior wall colors shall be limited to muted tones. Whites and pastels shall be prohibited.
4. The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standard prevailing within the Development, together with the overall plan and scheme of the subdivision as well as the purpose of the provisions of the Governing Documents.

B. Though it is recognized that the Architectural Committee's determination to approve or disapprove an Improvement will, of necessity, be subjective to some degree, the members of the Architectural Committee shall at all times during the reviewing process act reasonably and in good faith.

C. Factors commonly considered by the Architectural Committee in reviewing proposed Improvements include, but are not limited to, the following:

1. Quality of workmanship and materials to be used in the proposed Improvement;
2. Harmony of the proposed Improvement's exterior design, finish materials, and color with that of the existing structure;
3. Proposed location of the Improvement in relation to existing topography, finished grade elevations, roads, Common Areas, as well as other structures; and
4. The location, style, and materials used for mailboxes and house numbers must be included in the plans and designs submitted to the Architectural Committee for the initial construction of a Residence.

D. The Architectural Committee shall be entitled to determine that a proposed Improvement, or any component thereof, is unacceptable in the context of a particular Lot, even if the same or a similar Improvement/component has previously been approved for use at another location or locations within the Development.

E. Factors that may cause the Architectural Committee to reject a proposal that was previously approved at another site include, but are not limited to, the following:

1. Poor drainage;
2. Visibility from roads, Common Area or Lots;
3. Proximity to other Residences or Major Components; or
4. Prior adverse experience with the product or design of the proposed Improvement or any component thereof.

F. If at any time during the final approval process the Architectural Committee determines that it would be in the best interest of the Development, as well as its Owners, for an applicant to employ an architect or engineer to design or review any proposed Improvements or component thereof, the Architectural Committee shall advise the applicant in writing of its determination, whereupon all plans and specifications so designated by the Architectural Committee must thereafter bear appropriate evidence of such preparation or review.

#### 14.4 STANDARDS AND PROCEDURES FOR THE ARCHITECTURAL RULES.

A. The Architectural Committee may, from time to time, subject to review by the Board, adopt, amend, and repeal the Architectural Rules.

B. The Architectural Rules shall provide guidelines for the architectural design, placement of any work of Improvement, color schemes, exterior finishes and materials, as well as any similar features which are recommended for use within the Development.

C. The Architectural Rules shall not be in derogation of the minimum standards required by the provisions of the Governing Documents.

D. In the event of any conflict between the Architectural Rules, Declaration, Articles, and/or Bylaws, the provisions of the Declaration, Articles, and/or Bylaws, whichever is/are applicable, shall prevail.

#### 14.5 VARIANCES.

A. The Board or the Architectural Committee shall be entitled to allow reasonable variances from the provisions of this Section 14.5 or any restrictions specified in the provisions of ARTICLE IV of the Declaration, entitled, "COVENANTS AND USE RESTRICTIONS," and this ARTICLE XIV that have application to architectural design, in order to overcome any practical difficulties, to avoid any unnecessary expense, or to prevent any unjustifiable hardships, provided such grant will not in any way relieve the requesting Owner from complying with any and all of the requirements of any governmental or quasi-governmental agency or authority and the following conditions are met:

1. If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under the provisions of the Governing Documents, the Board or the Architectural Committee must conduct a hearing on such proposed variance after giving at least ten (10) days' prior written notice to all of the Owners whose Lots are within one hundred (100) feet of the Lot to which the variance will apply.
  - a. Such Owners shall have thirty (30) days from the receipt by them of such notice in which to submit to the Board or the Architectural Committee, whichever is applicable, their written comments or objections with respect to such variance.

- b. No decision shall be made concerning the proposed variance until the above referenced thirty (30) day period has expired.
2. The Board or the Architectural Committee, whichever is applicable, must make a good faith determination that:
    - a. The requested variance does not constitute a material deviation from the overall plan and scheme of the Development or from any provision of the Governing Documents, and that the proposal allows the overall architectural objectives of the Development to be substantially achieved despite such variance;
    - b. The proposed variance relates to a requirement of the provisions of the Governing Documents that it is unnecessary or burdensome under the circumstances; and
    - c. The proposed variance, if granted, will not result in a material detriment or create an unreasonable nuisance with respect to any other Lot, the Common Area, or an Owner.

#### **14.6 ISSUANCE OF A CERTIFICATE OF COMPLIANCE.**

A. Within thirty (30) days after a written demand is delivered to the Board or the Architectural Committee, as the case may be, by an Owner and upon payment to the Association of any reasonable fee, if applicable, which may be fixed from time to time by the Board, the Board or the Architectural Committee, whichever is applicable, shall issue a Certificate of Compliance which shall be executed by two (2) Directors or two (2) members of the Architectural Committee, as the case may be, certifying, with respect to any Lot that is specified in the above referenced demand and is owned in fee by the applicant Owner(s), that as of the date of such Certificate of Compliance, either:

1. All of the Improvements made, as well as any other work that has been completed on such Lot, complies with the provisions of the Governing Documents and any variances that may have been issued are in compliance with the provisions of Section 14.5 of the Declaration, entitled, "VARIANCES;" or
2. That any such Improvements and/or other work do not so comply, in which event the Certificate of Compliance shall also identify the noncomplying Improvements and/or other work and shall set forth with particularity the basis of such noncompliance.

B. Any purchaser from such Owner, or anyone deriving any interest in such Lot through the Owner, shall be entitled to rely on such Certificate of Compliance with respect to the matters therein set forth, such matters being conclusive as between the Association, all of the Owners, and any persons deriving any interest in such Lot through them.



**ARTICLE XV  
AMENDMENT OF DECLARATION**

**15.1 PROCESS TO AMEND OR REVOKE THE PROVISIONS OF THE DECLARATION.**

A. Before the close of the first (1<sup>st</sup>) sale of a Lot in the Development to a purchaser other than the Declarants, the provisions of the Declaration, as well as any amendments to it, may be amended or revoked, in any respect, by the execution by the Declarants of an instrument amending or revoking any or all of the provisions of the Declaration. The amending or revoking instrument shall make appropriate reference to the provisions of the Declaration, as well as any amendments thereto, and shall be properly acknowledged and Recorded in the office of the County Recorder.

B. Before the close of the first (1<sup>st</sup>) sale of a Lot in the second (2<sup>nd</sup>) or any subsequent Phase to a purchaser other than Declarants, any Annexation Supplement Recorded pursuant to the provisions of Section 15.6 of the Declaration, entitled, "ANNEXATION OF ADDITIONAL PROPERTY," with respect to such Phase, may be amended in any respect or revoked by the execution of an instrument amending or revoking all or any portion of such Annexation Supplement by the Declarants. The amending or revoking instrument shall make appropriate reference to the provisions of the Declaration, as well as any amendments and/or other Annexation Supplements thereto, and shall be properly acknowledged and Recorded in the office of the County Recorder.

C. After the close of the first (1<sup>st</sup>) sale of a Lot in a subsequent Phase to a purchaser other than the Declarants, the Declaration may be amended or revoked in any respect by the vote or written consent of a simple majority of the voting power of each class of the Members or, if a single class of the Members is then in effect, by the vote or written consent of not less than:

1. A simple majority of the voting power of the Association; and
2. A simple majority of the voting power of the Association, excluding the voting power of the Declarants.

D. However, if any provision of the Governing Documents requires a greater or lesser percentage of the voting power of any class of the Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of the Members shall be required to amend or revoke such provision.

E. Also, if the consent or approval of any governmental authority, Eligible Mortgage Holder, or other person, firm, agency, or entity is required under the provisions of the Governing Documents with respect to any amendment to, or revocation of, any provision of the Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

F. Any amendment or revocation to a provision of the Declaration that is subsequent to the close of the first (1<sup>st</sup>) sale of a Lot to a purchaser other than the Declarants, shall be evidenced by an instrument that has been certified by the Secretary or other duly authorized officer of the Association, makes the appropriate reference to the provision of the Declaration that has been amended or revoked, as the case may be, as well as any other prior amendments to the Declaration that have been made in compliance with the provisions of this **ARTICLE XV**, is appropriately acknowledged and has been Recorded in the Office of the County Recorder of the County.

15.2 **CONTROL IF THE PROVISIONS OF ARTICLE XV CONFLICT WITH ANY MORTGAGEE PROTECTION OR OTHER PROVISIONS OF THE DECLARATION.**

A. To the extent any provision of Sections 15.1 through 15.7, inclusive, of the Declaration conflict with the provisions of Sections 12.1 through 12.16, inclusive, or any other provisions of the Declaration, except those contained in the provisions of Section 15.3 of the Declaration, entitled, "COMPLIANCE WITH THE PROVISIONS OF BUSINESS AND PROFESSIONS CODE SECTION 11018.7," the provisions of Sections 12.1 through 12.16, inclusive, or any other conflicting provisions, shall control.

15.3 **COMPLIANCE WITH THE PROVISIONS OF BUSINESS AND PROFESSIONS CODE SECTION 11018.7.**

A. All amendments to or revocations of the provisions of the Declaration shall comply with all of the applicable provisions of California Business and Professions Code section 11018.7, or any compatible superseding statutes.

15.4 **RELIANCE ON ANY AMENDMENTS TO, OR REVOCATIONS OF, THE PROVISIONS OF THE DECLARATION.**

A. Any amendments to and/or revocations of the provisions of the Declaration that have been perfected in accordance with the terms of the provisions of the Declaration, may be presumed valid by anyone relying on them in good faith.

15.5 **CONFORMING WITH THE MORTGAGEE REQUIREMENT PROVISIONS OF THE DECLARATION.**

A. It is the intent of the Declarants that the provisions of the Governing Documents, together with the Development in general, shall now and in the future, meet all of the requirements necessary to purchase, guarantee, insure, or subsidize any Mortgage of a Lot by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, and the Veterans Administration.

B. The Board and each Member shall take any action or shall adopt any resolutions that are reasonably required by the Declarants, or any Mortgagee, to conform to the provisions of the Governing Documents and/or the Development, and to the Mortgage requirements of any of the above referenced entities or agencies.

15.6 **ANNEXATION OF ADDITIONAL PROPERTY.**

A. The real property described on "EXHIBIT C," any portion thereof or interest therein, may be annexed to the Development ("Annexed Real Property") and made subject to the Governing Documents at the written election of the Declarants, or by their successors in title to such Annexed Real Property. Such election shall be made by the Recording of an annexation supplement ("Annexation Supplement").

B. Any Annexation Supplement Recorded in accordance with the provisions of this Section 15.6 shall be in conformance with any plan of development that has been submitted to and approved by the California Department of Real Estate as well as being conclusive in favor of all persons who relied on it in good faith.

C. Upon the Recording of any such Annexation Supplement in compliance with the provisions of the Declaration, the Annexed Real Property shall be part of the Development and subject to the provisions of the Governing Documents as well as all of the rights and powers of the Association.

D. Thereafter, all of the Owners of any Lots constituting a portion of the Annexed Real Property shall automatically be Members, with voting rights commencing on the date Regular Assessments commence for such annexed Lots.

E. Regular and Special Assessments with respect to the Annexed Real Property shall commence at the time and to the extent described in the provisions of Section 7.5 of the Declaration, entitled, "ESTABLISHMENT OF REGULAR ASSESSMENTS," and Section 7.8 of the Declaration, entitled, "ALLOCATION OF REGULAR AND SPECIAL ASSESSMENTS."

F. Declarants of such Annexation Supplement shall expressly reserve for the benefit of all of the Members reciprocal easements of use, enjoyment, access, ingress, and egress over the Annexed Real Property. Such easements may be used by the Declarants, their assigns, successors, and purchasers together with all of the Owners family members, Contract Buyers, agents, employees, representatives, Tenants, Invitees, licensees, customers, clients, or patients, for sidewalks, walkways, vehicular access, and such other purposes reasonably necessary to the use and enjoyment of all of the Lots.

G. The Annexation Supplement may contain complimentary additions, amendments, and modifications to the provisions of the Governing Documents that are necessary to reflect the different character, if any, of the Annexed Real Property which are not inconsistent with the Common Plan.

H. Any other provision in the Governing Documents notwithstanding, unless approved by the California Department of Real estate, no Annexation Supplement may:

1. Cause a substantial increase in the Common Expenses, presently being borne by Owners, which was not disclosed in the Final Subdivision Public Report for the Phase of the Development in which an Owner purchased its, his, or her Lot; or
2. Otherwise materially adversely affects the rights of Owners without the prior affirmative vote or written consent of at least sixty-six percent (66%) of each class of Members entitled to vote.

I. If any Annexed Real Property, or any portion thereof, has been rented for at least one (1) year prior to the conveyance of the first (1<sup>st</sup>) Lot in such Annexed Real Property to an Owner other than the Declarants, the Declarants must pay to the Association the appropriate amounts of deferred Reserve Funds that would have been required from such rented Annexed Real Property had it been subject to the Regular Assessments from the first (1<sup>st</sup>) day it was rented to the day of such first (1<sup>st</sup>) conveyance.

J. The Declarants may amend an Annexation Supplement by executing and Recording an amendment to such Annexation Supplement, and/or remove from the Development all or any portion of the Annexed Real Property by executing and Recording a rescission of such annexation, if the contents of any such instruments are consistent with the Declaration, provided that:

1. No Lot in such Annexed Real Property has been conveyed to an Owner other than the Declarants; and
2. Assessments have not commenced for any Lot located within such Annexed Real Property.

**15.7 COUNTY APPROVAL REQUIRED FOR CERTAIN AMENDMENTS.**

A. Notwithstanding any other provision of this Declaration, no amendment, change, modification, or termination of the conditions, covenants, and restrictions of this Declaration regarding the following provisions shall be effective for any purpose until approved in writing by the Director of Planning and Building of the County of San Luis Obispo, California:

1. The restriction that the Lots be used for residential purposes;
2. The provisions regarding Building Envelopes and their location;
3. Maintenance of the Common Area;
4. Maintenance of the Open Space (as defined in the provisions of 4.8, entitled, "INTERFERENCE WITH OPEN SPACE AREAS ON LOTS 62 AND 63");
5. Maintenance of the roads and trails;
6. Maintenance of the Development entry gates;
7. Dissolution of the Association; and
8. The provisions imposed on the Development by the Conditions of Approval for Parcel Map COAL 99-0229 Santa Ysabel Ranch in the provisions of Exhibit D.

**ARTICLE XVI  
GENERAL PROVISIONS**

**16.1 BINDING EFFECT.**

A. The provisions of the Governing Documents shall inure to the benefit of and be binding on the successors and assigns of the Declarants and the heirs, personal representatives, grantees, family members, Contract Buyers, agents, employees, representatives, Tenants, Invitees, licensees, customers, clients, patients, and assigns of the Owners.

**16.2 CONFLICTS WITH OTHER DOCUMENTS.**

A. If there are conflicts or inconsistencies between the provisions of the Declaration and either the Articles of Incorporation, the Bylaws, the Association Rules, or the Architectural Rules, the provisions of the Declaration shall prevail.

**16.3 CUMULATIVE REMEDIES.**

A. Each remedy provided for in the provisions of the Governing Documents shall be cumulative and not exclusive. Failure to exercise any remedy provided for in the provisions of the Governing Documents shall not, under any circumstances, be construed as a waiver of such remedy.

**16.4 EASEMENTS RESERVED AND GRANTED.**

A. Any easements referred to in the provisions of the Governing Documents shall be deemed reserved or granted, or both reserved and granted, by reference to the appropriate provisions of the Governing Documents in any deed to any Lot.

**16.5 HEADINGS.**

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

**16.6 INCORPORATION OF EXHIBITS.**

A. The exhibits referred to in the text are attached to the Declaration and are incorporated by reference.

**16.7 LIBERAL CONSTRUCTION.**

A. The provisions of the Governing Documents should be liberally construed to effectuate their purpose of creating a Common Plan for the development of a Planned Development and for the maintenance of the Common Area and Lots, as well as the operation of the Association.

**16.8 NO DISCRIMINATORY RESTRICTIONS.**

A. No Owner shall execute or cause to be Recorded any instrument that imposes a restriction upon the sale, leasing, or occupancy of its, his, or her Lot on the basis of race, sex, marital status, national ancestry, color, or religion.

**16.9 NO FIXED TERM.**

A. The Declaration shall continue in full force and effect until the Declaration is revoked pursuant to **ARTICLE XV** of the Declaration, entitled, "AMENDMENT OF DECLARATION."

**16.10 NO REPRESENTATIONS OR WARRANTIES.**

A. No representations or warranties of any kind, express or implied, have been given or made by the Declarants, or their agents or employees, in connection with the Property or any portion thereof, including, but not limited to, its physical condition, zoning, compliance with applicable laws, fitness for intended use or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes, or regulation thereof as a Common Interest Planned Development, except as specifically and expressly set forth in the provisions of the Governing Documents and/or as filed by the Declarants from time to time with the California Department of Real Estate.

B. Furthermore, no representations, warranties, or assurances have been given as to whether any additional Phase of the Development will actually be constructed and if so, how many Phases, nor, if any such Phase were to be developed, of the ownership of such Phases.

**16.11 NOTICES AND COMMUNICATION.**

A. Unless otherwise expressly stated in the provisions of the Governing Documents, all notices and/or communications that may be required by the provisions of the Governing Documents shall comply with the following guidelines:

1. Any communication and/or notice of any kind permitted or required in the provisions of the Governing Documents shall be in writing and may be served, as an alternative to personal service, by mailing the notice as follows:
  - a. If to a Member, to the street address of such Member's Lot or to such other address that such Member may from time to time designate in writing to the Board.
  - b. If to the Association, to the Santa Ysabel Ranch Homeowners Association at the principal office of the Association, or to such other address as the Board may from time to time designate in writing to the Members.

#### **16.12 NOTIFICATION OF SALE.**

- A. Concurrently with the consummation of the sale of any Lot under circumstances where the transferee becomes an Owner of the Lot, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale.
- B. Such notification shall set forth the name of the transferee and its, his, her, or their Mortgagee and transferor, the common address of the Lot purchased by the transferee, the transferee's and the Mortgagee's mailing addresses, and the date of the deed conveying an interest in such Lot to the transferee.
- C. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board, or the Manager, if any, shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor.
- D. Mailing addresses may be changed at any time upon written notification to the Board.
- E. Notices shall be deemed received forty-eight (48) hours after they have been mailed, if mailed to the transferee or its, his, her, or their 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.
- F. Notices shall also be deemed received twenty-four (24) hours after being sent by telegram or upon personal delivery to any occupant of the Lot over the age of twelve (12) years.

#### **16.13 NUMBER; GENDER.**

- A. The singular shall include the plural and the plural the singular unless the context requires the contrary. The masculine, feminine, and neuter shall each include masculine, feminine, or neuter as the context requires.

#### **16.14 OWNER'S ACCESS TO BOOKS.**

- A. Any Owner may, at any reasonable time and upon reasonable notice to the Board or the Manager, as the case may be, at its, his, or her own expense, cause an audit or inspection to be made of the books and financial records of the Association.

16.15 SEVERABILITY OF PROVISIONS.

A. The provisions of the Declaration shall be deemed independent and severable, and the invalidity, partial invalidity, or unenforceability of any provision or provisions shall not invalidate any other provisions.

16.16 VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS AS NUISANCE.

A. Every act or omission in Violation of a Provision of the Governing Documents shall constitute a nuisance and, in addition to all other remedies that may be available, may be abated or enjoined by an Owner, any Director, the manager, if any, or the Association.

2003. Declarants have executed the Declaration as of the 17<sup>th</sup> day of January

WEYRICH DEVELOPMENT COMPANY, INC.,

By: David B. Weyrich  
David B. Weyrich, President

DAVID B. WEYRICH AND MARY T. WEYRICH  
TRUSTEES OF THE SANTA YSABEL RANCH  
TRUST, UNDER AGREEMENT DATED JULY  
13, 2001,

By: David B. Weyrich  
David B. Weyrich, Trustee

By: Mary T. Weyrich  
Mary T. Weyrich, Trustee

ACKNOWLEDGMENT  
STATE OF CALIFORNIA

COUNTY OF San Luis Obispo

} SS.

On January 17 2003, before me,  
Michelle Ann Ramirez,  
a Notary Public in and for said County and  
State, personally appeared

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

WITNESS my hand and official seal

Michelle Ann Ramirez  
Signature of Notary



ACKNOWLEDGMENT  
STATE OF CALIFORNIA

COUNTY OF San Luis Obispo

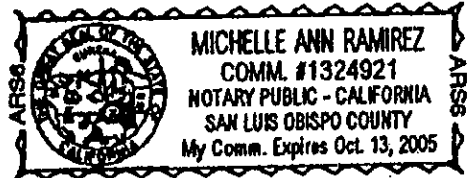
} SS.

On January 17 2003, before me,  
Michelle Ann Ramirez,  
a Notary Public in and for said County and  
State, personally appeared

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

WITNESS my hand and official seal.

Michelle Ann Ramirez  
Signature of Notary





## LEGAL DESCRIPTION OF ROAD EASEMENTS

### PHASE 1

1. All of Lake Ysabel Road, Battering Rock Road, Hanging Tree Lane, and Bunkhouse Court in the unincorporated territory of the County of San Luis Obispo, State of California, lying within the subdivision boundary as shown on map filed in Book 56, page 39 of Parcel Maps, in the office of the County Recorder of said County.
2. That portion of Fire Rock Loop, as shown on said Parcel Map, lying adjacent to Lots 33 and 1 beginning at its intersection with Lake Ysabel Road and ending at a line which bears South 62°46'26" West from the most Westerly corner of Lot 33 of said Parcel Map.
3. That portion of Warm Spring Lane, as shown on said Parcel Map, lying adjacent to Lots 36 and 150 beginning at its intersection with Lake Ysabel Road and ending at a line which bears North 14°16'30" East from the most Easterly corner of Lot 36 of said Parcel Map.
4. That portion of Iron Stone Loop, as shown on said Parcel Map, lying adjacent to Lot 150 beginning at its intersection with Lake Ysabel Road and ending at a line which bears South 78°12'33" East from the most Northeasterly corner of Lot 141 of said Parcel Map.
5. That portion of Iron Stone Loop, as shown on said Parcel Map, lying adjacent to Lots 129 and 134 beginning at its intersection with Lake Ysabel Road and ending at a line which bears South 65°51'08" East from the Northeasterly corner of Lot 129 of said Parcel Map.
6. That portion of Burnt Rock Way, as shown on said Parcel Map, lying adjacent to Lots 119, 120, and 150 beginning at its intersection with Lake Ysabel Road and ending at a line which bears South 58°56'25" East from the Southeasterly corner of Lot 120 of said Parcel Map.
7. That portion of Burnt Rock Way, as shown on said Parcel Map, lying adjacent to Lots 83, 84, 85, 91, 92, 93, 94, 95, and 150 beginning at its intersection with Hanging Tree Lane and ending at a line which bears South 0°02'57" East from the most Southerly corner of Lot 93 of said Parcel Map.

### EXHIBIT A

## SLOPE AREAS

### PHASE 1

1. All of those certain areas that are located on Lots 35, 36, 53 through 59, inclusive, 61 through 65, inclusive, 69, 72, 73, 76, 77, 84, 86, 87, 89, 95, and 129 and are shown, designated, and described on the Subdivision Map as "10' P.U.E. AND SLOPE EASEMENT."
2. That certain area that is located on Lot 71 and shown, designated, and described on the Subdivision Map as "20' SLOPE AND STORM DRAIN EASEMENT."
3. All of those certain areas that are located on Lots 52, 60, 74, 75, 78, 79, 81, 82, 83, 85, 90, 93, 94, and 119 and are shown, designated, and described on the Subdivision Map as "25' SLOPE EASEMENT."
4. All of those certain areas that are located on Lots 53, 54, 118, and 120 and are shown, designated, and described on the Subdivision Map as "15' SLOPE EASEMENT."
5. That certain area that is located on Lot 120 and shown, designated, and described on the Subdivision Map as "75' SLOPE EASEMENT."

### **EXHIBIT B**

## PROPERTY PROPOSED FOR ANNEXATION

Lots 1 through 34, inclusive, 37 through 51, inclusive, 97 through 117, inclusive, 130 through 133, inclusive, and 135 through 146, inclusive, all as shown, designated and described on that certain map entitled, "PARCEL MAP COAL 99-0229," which was filed for Record in the Office of the County Recorder of San Luis Obispo County, California, on April 19, 2002, as Document No. 2002-032476, in Book 56 of Parcel Maps at Page 39, as well as those certain easements that are more fully described as:

1. That portion of Iron Stone Loop, as shown on said Parcel Map, lying adjacent to Lots 130, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, and 150 beginning at a line which bears South 78°12'33" East from the most Northeasterly corner of said Lot 141 and ending at a line which bears South 65°51'08" East from the Northeasterly corner of Lot 129 of said Parcel Map.
2. That portion of Burnt Rock Way, as shown on said Parcel Map, lying adjacent to Lots 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 108, 109, 113, 114, 115, 116, 117, and 150 beginning at a line which bears South 58°56'25" East from the Southeasterly corner of Lot 120 and ending at a line which bears South 0°02'57" East from the most Southerly corner of Lot 93 of said Parcel Map.
3. That portion of Warm Springs Lane, as shown on said Parcel Map, lying adjacent to Lots 37, 38, 39, 40, 42, 44, 47, 48, 49, and 150 which lies Southeasterly of a line which bears North 14°16'30" East from the most Easterly corner of Lot 36 of said Parcel Map.
4. That portion of Fire Rock Loop, as shown on said Parcel Map, adjacent to Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 26, 27, 28, 31, 32, and 150 which lies Northwesterly of a line which bears South 62°46'26" West from the most Westerly corner of Lot 33 of said Parcel Map.

**NOTE:** The above-described Real Property may be annexed to the Development in its entirety or any portion thereof.

### EXHIBIT C

**CONSENT OF LIENHOLDERS AND SUBORDINATION OF LIEN.**

The undersigned Beneficiary under that certain Deed of Trust dated March 21, 2002 and Recorded March 27, 2002, as Instrument Number 2002-024996, in the Official Records of San Luis Obispo County, California, consents to all of the provisions contained in the attached Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Parcel Map COAL 99-0229 Santa Ysabel Ranch ("Declaration"), executed by Weyrich Development Company, Inc., and David B. Weyrich and Mary Therese Weyrich Trustees of the Santa Ysabel Ranch Trust, Under Agreement Dated July 13, 2001, as Declarants, and agrees that the lien of the above referenced Deed of Trust shall be junior and subordinate and subject to the Declaration.

Dated: 1-23-, 2003

**MID-STATE BANK & TRUST**

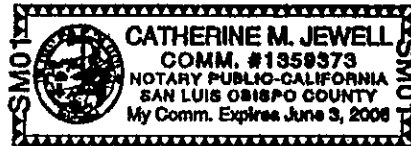
By: Steve Weiss  
V.P. Corporate Banking

**ACKNOWLEDGMENT  
STATE OF CALIFORNIA**

COUNTY OF San Luis Obispo

} SS.

On 01-23-03, before me,  
Catherine M. Jewell  
a Notary Public in and for said County and  
State, personally appeared \_\_\_\_\_  
Steve Weiss



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

WITNESS my hand and official seal.

Catherine M. Jewell  
Signature of Notary