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Declaration of Covenants, Conditions and Restrictions

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

This Declaration of Covenants, Conditions and Restrictons, hereinafter referred to as the "Declaration, is made September 25, 1995, by Daniel Warren Spencer, Judy Kay Spencer, Donald Earl Berry and Cynthia F. Berry hereinafter referred to as the "Declarants".

RECITALS

A. Declarants are the owners of the real property described as Parcels one(1) through four(4), inclusive of Parcel Map CO 94-113. Said Map recorded SEPTEMBER 15, 1995 in Book 51 Page 73 of Parcel Maps in the County of San Luis Obispo, hereafter referred to as the "Real Property". Declarants have established a general plan, hereafter known as the "Development", set forth in this declaration, for the improvement, and development of the Real Property, in each and every Parcel on the Real Property, and desires to secure the harmonious and uniform development of the Real Property in accordance with the plan.

**ARTICLE I
DECLARATION**

A. Declarants declare that the Real Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to the following limitations, restrictions, easements, covenants, conditions, servitudes, liens, and charges, all of which are declared and agreed to be in furtherance of the improvement, protection, maintenance and sale of dwelling units within the Real Property as well as for the purpose of enhancing, maintaining, and protecting the value and attractiveness of the Real Property. All of the limitations, restrictions, easements, reservations, covenants, conditions, servitudes, liens, and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title, or interest in the Real Property, are for the benefit of the Real Property, and shall be binding on and inure to the benefit of the successors in interest of such parties.

**ARTICLE II
DEFINITIONS**

- 2.1 **DECLARANTS** - "Declarants" means Daniel Warren Spencer, Judy Kay Spencer, Donald Earl Berry and Cynthia F. Berry and their successors and assigns, if such successors and assigns are assigned to the rights of the Declarants pursuant to Subsection 3.5 of the Declaration, and entitled "ASSIGNMENT OF DECLARANT'S RIGHTS", or if such successor or assign is a mortgagee acquiring Declarants interest in the Development by foreclosure or deed in lieu of foreclosure.
- 2.2 **DECLARATION** -- "Declaration" means this Declaration of Covenants, Conditions, and Restrictions and its amendments, modifications, or supplements.
- 2.3 **INVITEES** - "Invitees" means any persons within the Development at the express or implied invitation of an owner for business purposes, for mutual advantage, or for purely social purposes.

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- 2.4 **MORTGAGE: MORTGAGEE** - "Mortgage" means a mortgage or deed of trust encumbering a Parcel or other portion of the Development. A "Mortgagee" shall include the beneficiary under a deed of trust and any other guarantor or insurer of a Mortgage.
- 2.5 **OWNER** - "Owner" means each person or entity holding a record of ownership interest in a lot, including Declarants, and any contract seller under recorded contracts of sale. "Owner" shall also mean Member of the Association, and "Ownership" shall include membership in the Association. "Owner" shall not include persons or entities who hold an interest in a Parcel merely as security for the performance of an obligation.
- 2.6 **PRIVATE** - "Private" is used as descriptive of certain portions of the Property, such as, but not limited to, Mesa Ranch Road, and utility easements, traditionally recognized as being maintained by a governmental agency.
- 2.7 **PROJECT: DEVELOPMENT** - "Project" or "Development" means the Property that is to be developed as well as the improved and the improvements on the Property.
- 2.8 **ROAD EASEMENT** - "Road Easement" means a non-exclusive easement for ingress, egress, public, and private utilities as shown and defined on Parcel Map CO 94-113.
- 2.9 **PARCEL MAP** - "Parcel Map" means that map submitted to the County of San Luis Obispo, California for final approval, and known as Parcel Map CO 94-113.

**ARTICLE III
LAND USE**

- 3.1 **RESIDENTIAL, AGRICULTURAL AND LIVESTOCK RAISING USE.**
A. Parcels shall be used for residential, agricultural and livestock raising purposes only and no part of the Real Property shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes.
- 3.2 **TYPES OF BUILDINGS.**
A. No building shall be erected, altered, placed or permitted to remain on any Parcel other than the following:
- (1) One(1) primary residence dwelling of not less than 2000 square feet of living space.
 - (2) One(1) secondary residence as allowed by County of San Luis Obispo.
 - (3) All buildings and structures customarily associated with and incidental to agriculture and domestic use.
 - (4) Temporary trailers or structures necessary to facilitate residence construction shall not exist on property longer than eighteen(18) months from date that first such trailer or structure is placed on Parcel.

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3.3 **NUISANCE.**

A. Nothing shall be done on or within a Parcel that may be or may become an annoyance or nuisance to the residents of other Parcels within the Development, or that in any way interferes with the quiet enjoyment of said residents. This provision shall not be applicable to work required by The County of San Luis Obispo to be performed by the Declarants, or other Property Owners, nor to noise, odors, dust, chemicals, etc. that are associated with a properly conducted agricultural operation.

3.4 **TRASH DISPOSAL.**

A. No trash, garbage, rubbish, debris or other waste shall accumulate upon or within any portion of a Parcel except in the customary sanitary receptacles and that normally associated with the raising of farm animals. Said receptacles shall be of a type that will not permit noxious odors to emanate from same.

3.5 **ASSIGNMENT OF DECLARANTS RIGHTS.**

A. Nothing in the Declaration shall limit the right of Declarants to complete construction of improvements to any Parcels owned by Declarants or to alter them or to construct additional improvements as Declarants deem advisable before completion and sale of the entire Development. The rights of Declarants in the Declaration may be assigned by Declarants to any successor to all or any part of any Declarants interest in the Development, as developers, by an express assignment incorporated in a recorded deed that transfers any such interest to a successor or to a Mortgagee acquiring Declarants interest in the Development by foreclosure or by deed in lieu of foreclosure. No act can be done inconsistent with the other terms and conditions of these articles.

**ARTICLE IV
EASEMENTS**

4.1 **RESERVATION OF EASEMENTS.**

A. Easements for the installation and maintenance of utilities, both public, quasi-public and private, a Road Easement to provide ingress and egress to each individual Parcel, are reserved as shown on Parcel Map CO 94-113. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of said utilities. The easement areas on each Parcel therein shall be maintained by the Parcel Owner, except for those areas and improvements which are the sole responsibility of the Road Maintenance Management Committee.

4.2 **GRANTING OF EASEMENTS.**

A. Declarants shall have the power to grant and convey in the name of each and every Parcel Owner, hereinafter referred to as the "Owners", as his and/or her attorney-in-fact, to any other Owner or party, easements and rights-of-way in, on, over or under those certain easements reserved by the Parcel Map, for the purpose of constructing, erecting, operating or maintaining lines, cables, conduits, or similar devices for electricity, cable television, telephone or any other objective, gas lines or pipes, and any comparable public, quasi-public or private improvements or facilities as well as for ingress, egress and support; and each Owner, in accepting a deed to a Parcel, expressly consents to such easements and rights-of-way and authorizes and appoints the Declarants, as long as Declarants own one(1) or more Parcels, as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

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**ARTICLE V
EASEMENT MANAGEMENT COMMITTEE AND ASSESSMENTS**

5.1 COMMITTEE.

A. The full right and authority of management, control and maintenance of the road easement shall be and is hereby vested in the Road Maintenance Management Committee, hereinafter referred to as the "Committee", as constituted and appointed in the Declaration, which shall have all the powers necessary or appropriate to its function.

B. The Committee shall consist of a minimum of three(3) members and shall initially be composed of members appointed by the Declarants. Each member shall continue as such until his or her membership shall terminate as hereinafter provided. No person shall be eligible to serve as a member unless he or she shall be a fee owner of one(1) or more of the Parcels of Parcel Map CO 94-113, or unless he or she shall be a partner, agent or officer of an owner of one(1) or more of the Parcels of Parcel Map CO 94-113. Each member of the Committee shall serve without compensation and shall have an equal voice in the decisions and activities of the Committee, and the decision of the majority shall prevail.

C. Whenever a vacancy shall occur in the Committee, for whatever reasons, the remaining member or members shall appoint a successor or successors to fill the vacancy or vacancies.

5.2 MAINTENANCE, REPAIR AND RESTORATION.

A. The Committee shall, from its annual assessments and subject to the provisions of the Declaration, maintain, repair, replace or restore, the road as needed.

5.3 ASSESSMENTS - AGREEMENT TO PAY.

A. The Declarants, for each Parcel of Parcel Map CO 94-113 owned by them in the Development, hereby covenants, and each Owner of the Parcels within the Development, by acceptance of a deed or other conveyance thereof, is deemed to covenant as follows, with respect to the road easement, hereinafter referred to as the "Easement":

(1) That portion of an assessment levied to meet the costs and expenses for the repairs to the Easement as the Committee may agree, from time to time, to be performed, such as, but not limited to, surfacing, resurfacing, grading and regrading of the Road Easement shall be allocated by the ratio of the number of Parcels as shown on Parcel Map CO 94-113 within the Development owned by the assessed owner to the total number of Parcels subject to Assessments, which is four(4), so that each Parcel bears an equal share of the total Regular Assessment.

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(2) Prior to undertaking any such repairs, improvements or construction to the Easement, pursuant to Subsection 5.3A.(1), the Committee shall procure a minimum of two(2) bids from reputable contractors and/or repair companies, covering the work proposed to be done, if such repairs, improvements or construction shall cost in excess of Two Thousand Dollars(\$2000.00) and need obtain only one(1) bid if the proposed work shall be less than Two Thousand Dollars(\$2000.00). The lowest responsible bid for the work to be performed shall be accepted. Prior to the commencement of any proposed repairs, improvements or construction to the Easement, the Committee shall levy an assessment against each Owner of the Parcels of Parcel Map CO 94-113 of record for one-fourth(1/4) of the amount of the accepted bid, plus ten percent(10%) for a reserve. Notice of all assessments levied under this Subsection 5.3A(2) of the Declaration shall be mailed by first class mail or delivered personally to each Owner at the address of his or her Parcel unless otherwise notified in writing by said Owner of a different address for the delivery of said notices. All such notices shall contain the amount of the assessment for that specific Parcel, the purpose for which the assessment has been levied and the due date of the assessment or installments of same.

(3) No repairs, improvements or construction of the Easement shall be undertaken by the contractor selected by the Committee to do same, unless and until sufficient funds have been collected from all of the assessed Owners to cover the costs of the accepted bid as well as the requisite reserve.

(4) At least sixty(60) days prior to the commencement of any assessment, each Owner who is to be assessed shall be given written notice of the amount of the assessment, and the due date, or due dates, if paid in installments, and the amount of each installment. The notice need only be given once for any assessment paid in installments.

(5) Any assessment payment, including any installment payment, shall become delinquent if payment is not received by the appointed agent within fifteen(15) days after its due date. There shall be a late charge of ten percent(10%) or Ten Dollars(\$10), whichever is greater. A late charge may not be imposed more than once on any delinquent payment, but it shall not eliminate or supersede any charges imposed on prior delinquent payments.

(6) Interest also shall accrue on any delinquent payment at the rate of ten percent(10%) per annum. Interest shall commence thirty(30) days after the assessment becomes due.

(7) The Committee, a majority of the Owners, or any single Owner or any other entity entitled to enforce the Declaration, may, at any time after the expiration of such thirty(30) day period, and in addition to any other remedies granted by law or in equity enforce the obligation to pay assessments by an action at law against the Owner or Owners personally obligated to pay the assessment. In any such action, the court may grant a reasonable attorney's fee to the prevailing party.

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5.4 **ASSESSMENTS AS PERSONAL OBLIGATION OF OWNER.**

A. Each assessment or installment, together with any late charge, interest, collection costs, and reasonable attorneys fees, shall be the personal obligation of the assessed Owner at the time such assessment or installment becomes due and payable. If there is more than one(1) Owner of a particular assessed Parcel, each Owner shall be jointly and severally liable. The personal obligation for any delinquent assessments or installments and related sums shall not pass to an Owner's successor in interest unless expressly assumed by the successor-in-interest. No Owner may be relieved from the obligation to pay assessments or installments by waiving the use of enjoyment of all or any portion of the Easement or the Owner's Parcel, or by abandoning the Parcel.

5.5 **SCOPE OF ASSESSMENT AUTHORITY.**

A. The assessments levied by the Committee shall be used exclusively to improve, replace, repair and maintain the Easement and to any other purpose that is for the common benefit of the Owners and their use and enjoyment of the Property.

**ARTICLE VI
PROTECTION OF MORTGAGES**

6.1 **LIEN NOT INVALIDATED.**

A. No breach of any provision of the Declaration shall invalidate the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding in any Owner whose title is derived through foreclosure sale, trustee sale, or otherwise.

6.2 **MORTGAGEE NEED NOT CURE BREACH.**

A. Any Mortgagee who acquires title to a Parcel by foreclosure or by deed in lieu of foreclosure shall not be obligated to cure any breach of the Declaration that is non-curable or the type that is practical or feasible to cure.

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

A. Any first Mortgage given to secure a loan to facilitate the resale of a Parcel after acquisition by foreclosure or by deed in lieu of foreclosure or by any assignment in lieu of foreclosure shall be deemed to be loan made in good faith and for value and entitled to all of the rights and protection of the Mortgages under the Declaration.

6.4 **RIGHT TO APPEAL AT MEETINGS.**

A. Because of its financial interest in the Development, any Mortgagee may appear, but cannot vote, at the meetings of the Committee to draw attention to violations of the Declaration that may have not been corrected or that have been made the subject of remedial proceedings or assessments.

**ARTICLE VII
AMENDMENT OF DECLARATION**

7.1 **AMENDMENT OF DECLARATION.**

A. After the close of the first sale of a Parcel in the Development to a purchaser, other than the Declarants, the Declaration may be amended or revoked in any respect by the vote or written consent of the Owners of not less than seventy five percent(75%) of the Owners of the Parcels.

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7.2 CONTROL IF AMENDMENT PROVISIONS CONFLICT WITH MORTGAGEE PROTECTION OR OTHER PROVISIONS.

A. To the extent any provisions of Article VII of the Declaration, entitled "Amendment of Declaration", conflicts with the provisions of Article VI of the Declaration entitled "Protection of Mortgagees", or any other provisions of the Declaration, the provisions of Article VI of the Declaration or the other provisions shall control.

7.3 RELIANCE ON AMENDMENTS.

A. Any amendments made in accordance with the terms of the Declaration shall be presumed valid by anyone relying on them in good faith.

**ARTICLE VIII
GENERAL PROVISIONS**

8.1 HEADINGS.

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

8.2 SEVERABILITY OF PROVISIONS.

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

8.3 CUMULATIVE REMEDIES.

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

8.4 VIOLATIONS AS NUISANCE.

A. Every act or omission in violation of the provisions of the Declaration shall constitute a nuisance and, in addition to all other remedies set forth, may be abated or enjoined by any Owner.

8.5 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 his or her Parcel on the basis of race, sex, marital status, national ancestry, color, or religion.

8.6 LIBERAL CONSTRUCTIONS.

A. The provisions of the Declaration should be liberally construed to effectuate its purpose. Failure to enforce any provision of the Declaration shall not constitute a waiver of the right to enforce the provisions thereafter.

8.7 EASEMENT RESERVED AND GRANTED.

A. Any easements referred to in the Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to the Declaration and any deed to any Parcel.

8.8 BINDING EFFECT.

A. This declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarants, and the heirs, personal representatives, grantees, tenants, successors, and assigns of the Owners.

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8.9 **NO FIXED TERM.**

A. The Declaration shall continue in full force and effect until the Declaration is revoked pursuant to Subsection 7.1 of the Declaration, entitled "Amendment of Declaration".

Declarants have executed this instrument as of the 25th day of September, 1995.

Daniel Warren Spencer
Daniel Warren Spencer

Judy Kay Spencer
Judy Kay Spencer

Donald Earl Berry
Donald Earl Berry

Cynthia F. Berry
Cynthia F. Berry
by Donald Earl Berry as her
attorney in fact.

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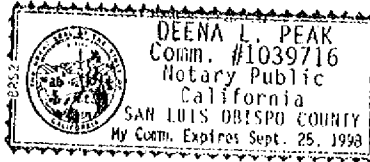
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STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

On September 25, 1995,
before me, the undersigned, a Notary Public in and for said State, personally appeared
Daniel Warren Spencer, Judy Kay Spencer, Donald Earl Berry

* * * * *
* * * * *
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.



Signature *Deena L. Peak*

(This area for official notarial seal)

STATE OF CALIFORNIA
COUNTY OF _____

On _____
before me, _____
a Notary Public in and for said State, personally appeared _____

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.

Signature _____

(This area for official notarial seal)

ESCROW NO. AG-61036-JMT
TITLE ORDER NO. 61036

END OF DOCUMENT