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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
RM UNIT XI HOMEOWNER'S ASSOCIATION

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DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS
OF
RM UNIT XI HOMEOWNER'S ASSOCIATION

RECITALS:

Declarant is the owner of the real property located in the unincorporated area of San Benito County, California, described as RIDGEMARK ESTATES TRACT NO. 116, UNIT NO. 11, according to the map thereof recorded in Book 11, page 98, of Maps, in the Office of the Recorder of San Benito County, California (the "Real Property"). Declarant has established a General Plan, set forth in this Declaration, for the subdivision, improvement, and development of the real property and each and every lot and parcel on the real property, and any additional real property that may be annexed to this Declaration, and desires to secure the harmonious and uniform development of the real property in accordance with the Plan.

Declarant declares that the Property, and each and every Lot and parcel on it, is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, reservations, covenants, conditions, servitudes, liens and charges, all of which are declared and agreed to be in furtherance of and pursuant to a general plan for the development of the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property. These provisions are imposed upon Declarant, the Owners and the Association and are for the benefit of all Lots and the Common Area, and shall bind the Owners and the Association. These provisions shall be a burden upon and a benefit to not only the original Owner of each Lot and the Association but also to their successors and assigns. All covenants are intended as and are declared to be covenants running with the land as well as equitable servitudes upon the land.

ARTICLE I
DEFINITIONS

Section 1.01. "Architectural Committee" means the committee created in accordance with Article VI of this Declaration.

Section 1.02. "Articles" means the Articles of Incorporation of the RM UNIT XI HOMEOWNER'S ASSOCIATION, which are filed in the office of the California Secretary of State, as such Articles may be amended from time to time.

Section 1.03. "Assessment" means any regular, special or special individual assessment made or assessed by the Association against any Owner and his or her Lot in accordance with the provisions of Article IV of this Declaration.

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Section 1.04. "Association" means RM UNIT HOMEOWNER'S ASSOCIATION, A California Non-Profit Corporation (formed pursuant to the Non-Profit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is "an Association" as defined in California Civil Code § 1351(a).

Section 1.05. "Association Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Members and the Lessees of non-resident Members. The Association Common Area owned by the Association is described as follows:

All that certain real property situated in the unincorporated area of the County of San Benito, State of California, described as follows:

All that real property shown on Map of Ridgemark Estates Tract No. 116, Unit No. 11, filed July 11, 1996, in Book 11, Page 98, of Maps, in the Office of the Recorder of San Benito County, California, except Lots 605 through 707 as shown on said Map.

Section 1.06. "Association Common Facilities" means the Pond Lot, as shown on the Subdivision Map, streets, curbs, gutters, and other facilities constructed or installed, or to be constructed or installed, or currently located on the Common Area and owned by the Association.

Section 1.07. "Association Common Funds" means all funds collected or received by the Association (i) for use in the maintenance, management, administration, insurance, operation, replacement, repair, addition to, alteration or reconstruction of, all or any portion of the Common Area and Common Facilities and (ii) for use in discharging any and all of its functions as provided for in its Articles of Incorporation, the Bylaws and this Declaration.

Section 1.08. "Association Common Expense" means any use of Common Funds authorized by Article IV and includes (i) all expenses or charges for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Association Common Facilities as incurred or as may be estimated from time to time by the Association and/or its Board of Directors, (ii) any amounts reasonably necessary for reserves for maintenance and for nonpayment of any assessments, (iii) the costs and expenses of the Association in the performance of its functions as provided for in its Articles of Incorporation, the Bylaws, or this Declaration, and (iv) an adequate reserve fund for replacement of Association Common Facilities, which shall be established by the Association and funded by Regular Assessments.

Section 1.09. "Association Rules" shall mean the rules, regulations, and policies adopted by the Board of Directors of the Association, as the same may be in effect from time to time.

Section 1.10. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

Section 1.11. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may, from time to time, be amended.

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Section 1.12. "Common Areas," "Common Expenses" and "Common Facilities" shall refer respectively to Association Common Areas, Association Common Expenses and Association Common Facilities. Unless the context clearly indicates a contrary intent, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon.

Section 1.13. "County" means the County of San Benito, State of California.

Section 1.14. "Declarant" shall mean and refer to the project developer of the Properties, namely, GOLF XI, INC., A California Corporation, its successors and assigns.

Section 1.15. "Declaration" means this Declaration of Covenants, Conditions and Restrictions, and its amendments, modifications, or supplements.

Section 1.16. "Governing Documents" is a collective term that means and refers to this Declaration and to the Articles, the Bylaws, and the Association Rules.

Section 1.17. "Lot" shall mean any parcel of Real Property designated by a number on the Subdivision Map for any portion of the Property, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include residences and other improvements constructed or to be constructed on a Lot.

Section 1.18. "Map" shall mean and refer to the Subdivision Map of the Subdivision described on page 1 of this Declaration.

Section 1.19. "Member" shall mean and refer to every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Article III, Section 3.08(a) hereof.

Section 1.20. "Mortgage" means a mortgage or deed of trust encumbering a Lot or other portion of the Project. A "Mortgagee" shall include the beneficiary under a deed of trust and any guarantor or insurer of a Mortgage. An "institutional" Mortgagee is a Mortgagee that is a bank or savings and loan association or Mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans, or any insurance company or any federal or state agency or instrumentality, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. A "first" Mortgage, or "first" Mortgagee is one having priority as to all other Mortgages or holders of Mortgages encumbering the same Lot or other portions of the Project.

Section 1.21. "Owner" means any person, firm, corporation or other entity which owns a fee simple interest in any Lot (including contract sellers, but excluding those having such interest merely as security for the payment of a debt or the performance of an obligation).

Section 1.22. "Owner of Record" and "Member of the Association" include an Owner and means any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

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Section 1.23. "Project" or "Development" means the Property.

Section 1.24. "Properties" shall mean and refer to that certain real property described in the first Recital to this Declaration and such additions thereto as may thereafter be brought within the jurisdiction of the Association.

Section 1.25. "Residence" means all of those residential other improvements located on a Lot.

Section 1.26. "Single Family Residential Use" shall mean occupation and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state or municipal rules and regulations. In no event shall a Residence be occupied by more individuals than permitted by applicable zoning law or governmental regulation.

Section 1.27. "Subdivision Map" means the recorded Final Subdivision Map for the property, which Map is described in the Recitals to this Declaration on the first page thereof, and any recorded Final Subdivision or Parcel Map for any Real Property annexed pursuant to this Declaration.

**ARTICLE II
PROPERTY RIGHTS**

Section 2.01. **Title to Common Areas.** Prior to the final closing of the first sale of a lot in the Development, Declarant or its successors or assigns shall convey to the Association title and control of the Common Area or Common Areas, free of all liens and encumbrances, except current real property taxes and any reservations, easements, covenants, conditions, and restrictions of record, including those contained in this Declaration.

Section 2.02. **Owners' Non-Exclusive Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area, including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

(a) The right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any assessment against his or her Lot, or any Special Individual Assessment against the Owner, individually, remains unpaid.

(b) The right of the Association to adopt and enforce Association Rules governing the control and use of streets, roadways and paving areas located upon or across the Common Area, including the right to regulate the kind of vehicles and their speed and the parking of vehicles upon such private streets and roadways. Declarant or the Association is authorized to delegate to a municipality, a county, a county service area, or other governmental entity or to contract with any private security patrol company to exercise its authorized rights in connection with such private streets, roadways, and parking areas.

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(c) The right, after prior notice of at least ten (10) days and a hearing before the Board, to temporarily suspend the voting rights and right to the use of Common Area and/or recreational facilities by any Owner, the Owner's tenants and guests in accordance with Article III, Section 3.08(a)

(d) The right of the Association, to the extent reasonably necessary to protect the rights, privileges, benefits, uses and enjoyment of the Members in common, to limit the number of guests of Members who may use Common Area and to adopt uniform rules and regulations pursuant to Section 3.07 of Article III hereof regulating use and enjoyment of the Properties.

(e) The right of the Association, or its agents, when necessary, to enter any Lot and the exterior of any Residence to perform its obligations under this Declaration, including the enforcement of restrictions, any obligations with respect to construction, maintenance and repair as necessary for the benefit of the Common Areas or the Owners in common, or to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, the rights of owners hereunder. The Association's right of entry for the purposes aforesaid shall be immediate in case of an emergency originating in or threatening such Lot, and the Association's work may be performed under such circumstances whether or not the owner is present. In all non-emergency situations the Association, or its agents, shall furnish the Owner with at least seven (7) days' written notice of its intent to enter the Lot, specifying the purpose of such entry.

(f) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property; provided, the rights of any such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.

(g) The right of the Association to sell, dedicate or transfer all or any part of the Common Area to any persons and/or to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the owners. No such sale, dedication or transfer shall be effective unless an instrument, signed by at least seventy-five (75) percent of the voting power of the owners, consenting to such dedication or transfers has been recorded. Said instrument may be executed in counterparts so long as each counterpart is in recordable form.

(h) The power to grant and convey in the name of all the Owners as their attorney-in-fact, (or in the name of the Association as to any property to which the Association holds title) to any Owner or other party easements and rights-of-way in, on, over, or under the Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and each purchaser, in accepting a deed to a Lot expressly consents to such easements and rights of way and authorizes and appoints the Association and Declarant (as long as Declarant owns one or more lots) as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights of way. However, no such easement can be granted if it would permanently interfere with the use, occupancy,

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or enjoyment by any Owner of his Lot unless approved by the vote or written consent of the holders of not less than seventy-five percent (75%) of the voting rights of each class of members and their first mortgagees.

(i) Each Lot and its Owner and the Association, as the case may be, is declared to be subject to all easements, dedications, and rights-of-way granted or reserved in, on, over, and under the Property and each Lot as shown on the Subdivision Map.

(j) The right of the Association to adopt and enforce Association Rules concerning the control and use of any private streets, roadways and paving areas located upon or across the Properties, including the right to regulate the kind of vehicles and their speed and the parking of vehicles upon such private streets and roadways. The Association shall not be responsible for maintenance, repair or replacement of any private streets, roadways or paving areas outside of the Properties, but serving the Properties unless such responsibility is assumed by a majority of the voting power of the Association and a writing reflecting the approval of the assumption of such responsibility is recorded in the Official Records of San Benito County, California. The Association is authorized to delegate to a municipality or other governmental entity or to contract with any private security patrol company to exercise its authorized rights in connection with such private streets, roadways, and parking areas.

Section 2.03. Delegation of Use/Rights and Obligations of Lessees.

(a) Delegation of Use/Rights of Lots. Generally, Owners shall delegate, in accordance with the Bylaws and this Declaration, their right of enjoyment to the Common Areas and the Common Facilities to the members of the Owner's family, his or her Tenants, or Lessees, or contract purchasers who reside on the Owner's Lot; provided that any rental or lease of any residence on an Owner's Lot may only be to a single family for Single Family Residential Use and for a term of no less than 30 days. It is the intent of the immediately preceding sentence to protect, enhance and maintain the single family residential atmosphere which exists within the Properties and to avoid the occupancy of residential structures for short periods of time or by an unreasonable number of unrelated individuals. Any lease must be for the entire Residence and not for merely parts thereof. Any rental or lease of a Residence shall be in writing and shall be subject to this Declaration, the Bylaws and Articles of the Association and the Association Rules established by the Board pursuant to Article III, Section 3.07 hereof, all of which shall be deemed to be incorporated by reference in the written lease or rental agreement. Each Tenant or Lessee shall be provided with a copy of this Declaration and the Association Rules by the Owner so renting or leasing. The Owner shall at all times be responsible for compliance of Owner's Tenant or Lessee with all of the provisions of this Declaration, Bylaws and Articles and the Association rules during the Tenant's/Lessee's occupancy and use of the Residence. In the event of such a default, the Owner shall take action immediately to cure the default including, if necessary, eviction of the Tenant.

(b) Discipline of Lessees: Association's Right to Maintain Eviction Action. In the event that any Tenant or Lessee fails to honor the provisions of this Declaration, the Bylaws or Articles of the Association, or the Association Rules, the Association, after reasonable notice to the non-resident owner and the offending Tenant or Lessee and an opportunity to be heard before the Board, shall be entitled to take appropriate corrective action which may include suspension of privileges to use Common Areas and/or Common Facilities or the imposition of fines and penalties

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against the non-resident Owner in accordance with Article VII, Section 3.08 hereof and, in the event the Tenant or Lessee's conduct involves damage or misuse of any Common Areas or Common Facilities or constitutes an unreasonable nuisance to neighboring Lot Owners or residents, the Association shall be entitled to maintain an eviction action against such Tenant or Lessee to the same extent as the owner of the subject Lot, the Association being deemed to be a third party beneficiary of any lease agreement involving a Residence located on any Lot within the Properties. The Association's right to maintain an eviction action hereunder shall arise only in the event that the owner has not taken action on his own to prevent and/or correct the actions of his Lessee giving rise to the Common Area or Common Facility damage or nuisance after receiving written notice from the Association, or an authorized committee of the Board, detailing the nature of the infraction and having a reasonable opportunity to either take appropriate corrective action on a voluntary basis or appear before the Board or committee to present arguments as to why such action is not necessary. In the event that any Lessee fails to honor the provisions of this Declaration, the Bylaws or Articles of the Association, or the Association Rules, the Owner immediately shall take all action to cure the default including, if necessary, eviction of the Tenant. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies which the Association has.

(c) **Owner's Duty to Notify Association.** All Owners leasing any Residence shall promptly notify the Secretary of the Association in writing of the names of all Tenants and members of Tenant's family occupying such Residence and of the address of the owner and telephone numbers where the Owner and Lessee can be reached and members of the Lessee's family occupying such Residence. All Owners who lease a Residence shall also provide a description for each vehicle to be parked on the properties by the residents of the Residence including vehicle license plate numbers.

Section 2.04. Notification Regarding Declaration. As more particularly provided in Section 1368 of the California Civil Code, the Owner of the Lot, as soon as practicable before transfer of title or execution of a real property sales contract therefor, shall provide the following to the prospective purchaser: (1) a copy of the governing documents of the Association including this Declaration, the Articles and Bylaws and all amendments thereto; (2) a copy of the most recent financial statement distributed pursuant to California Civil Code Section 1365; and (3) a true statement in writing from an authorized representative of the Association as to the amount of any assessments levied upon the property sold which are unpaid on the date of the statement, together with true information on late charges, interest and costs of collection, which, as of the date of such statement are or may be a lien upon the property sold pursuant to Civil Code Section 1367.

Section 2.05. Easements to Accompany Conveyance of Lot. Easements that benefit or burden any Lot shall be appurtenant to that Lot and shall automatically accompany the conveyance of the Lot, even though the description in the instrument of conveyance may refer only to the fee title to the Lot.

Section 2.06. Owners' Rights and Easements for Utilities. The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, drainage, water, electricity, gas, television receiving, telephone equipment, cables and lines, exhaust flues, and heating facilities (if any) (hereinafter referred to, collectively, as "utility facilities") shall be as follows:

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(a) Whenever utility facilities are installed within the project, which utility facilities or any portion thereof lie in or upon a Lot or Lots owned by other than the Owner of a Lot served by said utility facilities, the Owners of any Lots served by said utility facilities shall have the right of reasonable access for themselves or for utility companies or the County of San Benito to repair, to replace and generally maintain said utility facilities as and when the same may be necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.

(b) Whenever utility facilities are installed within the Project which utility facilities serve more than one (1) Lot, the Owner of each Lot served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility facilities as service his Lot.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said utilities facilities, or with respect to the sharing of the cost thereof, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted to binding arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, or any successor thereto, and the decision of the Arbitrator(s) shall be final and conclusive on the parties, and judgment may be entered thereon in any court having jurisdiction. The prevailing party in such arbitration shall be entitled to reasonable costs and attorney's fees, in addition to such other relief as may be awarded.

**ARTICLE III
HOMEOWNER'S ASSOCIATION**

Section 3.01. Association Membership. Each Owner, including Declarant shall be a Member of the Association. Membership shall be appurtenant to each Lot, and the holding of an Ownership interest in a Lot shall be the sole qualification for Membership. Membership shall terminate automatically when the Owner no longer holds any Ownership interest in any Lot. Membership may not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on transfer of title to a Lot, and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall automatically transfer the appurtenant Membership to the transferee. Any party that has an interest in a Lot merely as security for performance of an obligation shall not be a Member of the Association.

Each Member of the Association shall have the rights, duties, and obligations set forth in this forth in this Declaration, the Articles, Bylaws, and Association Rules.

Section 3.02. Majority Approval Required. Except as otherwise provided in this Declaration, the Articles, or the Bylaws, and subject to the provisions of Section 3.03 below, all matters requiring the approval of Owners shall be deemed approved if Owners holding a majority of the total voting power of all Owners assent to them by written consent or if approved at any duly called regular or special meeting at which a quorum is present, either in person or by proxy, by Owners holding a majority of the total voting power of all Owners present, either in person or by proxy.

Section 3.03. Voting Rights - Two-Class Voting System.

(a) The Association shall have two classes of voting membership as follows:

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Class A: Class A Owners are all Owners, with the exception of Declarant. Each Class A Owner shall be entitled to one vote for each Lot in which he or she owns an interest. If more than one Owner owns an interest in the Lot, only one vote may be cast with respect to that Lot.

Class B: The Class B Owner shall be the Declarant who shall be entitled to three votes for each Lot owned in any phase of the Project. Class B Membership shall cease and be irreversibly converted to Class A Membership on the occurrence of one of the following events, whichever occurs earliest:

(i) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; or

(ii) On the second anniversary of the first conveyance of a Lot in the Project.

(b) As long as two classes of voting memberships exist, any action by the Association that requires approval by the owners shall require the approval by the designated percentage of voting power in each class. Voting rights shall vest either at the time assessments are levied against the owner's lot, or as provided in a subsidization plan approved by the California Department of Real Estate.

Voting for the members of the Board shall be by secret written ballot, and the Members shall be entitled to exercise cumulative voting rights as provided in §7.04 of the Bylaws of the Association.

Section 3.04. Joint Ownership Votes. If one Owner casts the vote attributed to a Lot, the vote shall conclusively bind all the Owners of that Lot.

Section 3.05. Rights and Duties of the Association Board of Directors. The rights, duties and obligations of the Board of Directors of the Association shall be as set forth in this Declaration, the Articles and the Bylaws of the Association.

Section 3.06. Powers and Authority of the Association. The Association shall have all of the powers of a non-profit mutual benefit corporation organized under the laws of the State of California in operating for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, Bylaws and this Declaration. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of this Declaration, the Bylaws and California law, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in the Bylaws.

Notwithstanding any other provision in this Declaration, the Association shall contract with R.G. & C. Co., Inc., a California Corporation, to provide security for the Properties and shall pay

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therefor the reasonable sum representing a proportionate share of security costs for all of those areas of Ridgemark Golf and Country Club for which security is provided by R. C. & C. C., Inc.

Section 3.07. Association Rules.

(a) **Rulemaking Power.** The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners of Lots within the Properties. Such rules may concern, but need not be limited to, matters pertaining to use of the Common Areas and Common Facilities, signs, collection and disposal of refuse, minimum standards of maintenance of landscaping or other improvements on any Lot, the elimination of improvements which obstruct the vision of motorists or which create a hazard for vehicular or pedestrian traffic, the keeping of household pets on Lots and any other subject or matter within the jurisdiction of the Association as provided in this Declaration and the Bylaws of the Association. Notwithstanding the foregoing grant of authority the Association Rules shall not be inconsistent with or materially alter any provision of, or the rights, preferences and privileges of Members as set forth in the Articles or Bylaws of the Association or this Declaration. In the event of any material conflict between any Association Rule and any provision of the Articles, Bylaws or Declaration, the provision contained in the Articles, Bylaws or Declaration (as the case may be) shall prevail.

(b) **Distribution of Rules.** A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and a current copy thereof shall be maintained in the Association's corporate records.

(c) **Amendment of Rules.** The Association Rules may be amended from time to time by majority vote of the Board. Amendments to the Rules shall be distributed to the Owners either by mail or by personal delivery. Any duly adopted amendment to the rules shall become effective forty-eight (48) hours after the date of distribution to the Owners or at such later date as the Board may deem appropriate under the circumstances following adoption of such amendment.

Section 3.08. Breach of Rules or Restrictions.

(a) In the event of a breach of any Rule or of any of the restrictions contained in the Bylaws or this Declaration by an Owner, his family, guests, employees, invitees, licensees, or tenants, the board, for and on behalf of all other Owners, shall enforce the obligations of each Owner to obey such Rules or restrictions in any manner provided by law or in equity, including but not limited to appropriate hiring of legal counsel, the pursuing of legal action, or suspension of the Owner's right to use the Common Area and/or Common Facilities or suspension of the Owner's voting rights as a Member of the Association; provided, however, that any suspension for an infraction of the Association Rules may not be for a period in excess of sixty (60) days, after notice and hearing as provided in Article XI, Section 11.06, hereof.

(b) In addition to the other remedies herein set forth, the Board, by majority vote, may levy a fine against such Owner, after appropriate notice and hearing as hereinafter provided, in an amount not to exceed Two Hundred Dollars (\$200.00) for each such violation and the payment of such fine may be enforced as a Special Individual Assessment in the manner set forth in Section 4.04 of Article IV hereof. The Board may also implement schedules of reasonable fines and penalties for

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particular offenses as part of its general rulemaking power. A violation shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board shall include one component for the violation and a per diem component for so long as the detrimental effect continues, according to the Board's discretion. Similar violations on different days shall justify cumulative imposition of discipline. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance at the cost of the responsible Owner; provided that no discipline may be founded upon continuance of a violation beyond a date when the Association should reasonably have commenced action to end it.

(c) Prior to imposing any penalty provided herein for breach of any rules enacted hereunder or restrictions contained in this Declaration (other than penalties imposed pursuant to Article IV, Section 4.01(d) hereof), the Board shall comply with the procedures and requirements of Article XI, Section 11.06, hereof.

Section 3.09. Assessments Rights. The Association may establish, fix, and levy assessments against the Owners and collect and enforce payment of such assessments, in accordance with the provisions of this Declaration.

Section 3.10. Payment of Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Common Area, or the personal property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that bond insuring payment is posted before the sale or disposition of any property to satisfy the payment of such taxes.

Section 3.11. Preparation and Distribution of Financial Statements and Reports and Copies of Governing Instruments.

The Association shall prepare and distribute the following financial statements, reports, and copies of the governing instruments as indicated:

1. Estimated revenue and expenses on an accrual basis;
2. A summary of the Association's reserves based on the most recent reserves review or study conducted under California Civil Code § 1365.5, which shall be printed in bold type and shall include the following:
 - (a) The current estimated replacement cost, estimated remaining life, and estimated useful life of each Common Area improvement that the Association is obligated to maintain;
 - (b) As of the end of the fiscal year for which the study was prepared:
 - (i) The current estimate of cash reserves necessary to repair, replace, restore, or maintain the Common Area;

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(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain the Common Area; and

(iii) The percentage of the amount in (2)(a) that the amount in (2)(b) represents:

3. A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any Common Area improvements:

4. A general statement addressing the procedures used for the calculation establishing those reserves to defray the future repair, replacement, or additions to the Common Areas; and

5. A general statement regarding the Member's right to have copies of the minutes of meetings of the Board of Directors and how and when these minutes may be obtained.

6. An annual report consisting of a balance sheet rendered as of the last day of the fiscal year, an operating statement for the fiscal year, and a statement of changes in financial position for the fiscal year. A copy of the annual report shall be distributed to each Owner and any Mortgagee that has requested a copy within 120 days after the close of the fiscal year. In any fiscal year in which the gross income of the Association exceeds \$75,000.00, a copy of the review of the annual report prepared by a licensee of the California state Board of Accountancy in accordance with generally accepted accounting principles shall be distributed with the annual report. If the annual report is not reviewed by an independent accountant, the report shall be accompanied by the certificate of an authorized officer of the Association that the report was prepared from the books and records of the Association without independent audit or review.

7. A statement of the Association's policies and practices in enforcing its remedies against Owners for delinquent regular or special assessments including the recording and foreclosing of liens against a delinquent Owner's Lot. A copy of this statement shall be distributed to each Owner and any Mortgagee that has requested a copy within 60 days prior to the beginning of each fiscal year.

8. Copies of this Declaration, the Articles, Bylaws, Association rules and the statement regarding delinquent assessments as described in Section 4.11(a) shall be provided any Owner within 10 days of the mailing or delivery of a written request. The Board may impose a fee to provide these materials not to exceed the Association's reasonable costs in preparing and reproducing the materials.

Section 3.12. Other Duties. The Association shall perform such other acts as may be reasonably necessary to exercise its powers or perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Association Rules, or Board resolutions.

Section 3.13. Limitations on Authority of the Board. The Board shall not take any of the following actions except with the assent, by vote at a meeting of the Association or by written ballot without a meeting, pursuant to Corporations Code § 7513, of a simple majority of the members other than Declarant, constituting a quorum consisting of more than 50 percent of the voting power of the Association residing in members other than Declarant:

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(a) Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent of the budgeted gross expenses of the Association for that fiscal year.

(b) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent of the budgeted gross expenses of the Association for that fiscal year.

(c) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member for expenses incurred in carrying on the business of the Association; or

(d) Enter into a contract with a third person to furnish goods or services for the Common Area or the Association for a term longer than one year, with the following exceptions:

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

(2) A contract with a public utility company if the rates 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;

(3) Prepaid casualty or liability insurance policies not to exceed three years' duration provided the policy permits for short rate cancellation by the insured; and

(4) Lease agreements for laundry room fixtures and equipment not to exceed five years duration provided the Declarant does not have a direct or indirect ownership interest of ten percent or more in any Lessor under such agreements.

(5) Agreements for cable television services and equipment or satellite dish television services and equipment not exceeding five years' duration, provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of 10 percent or more.

(6) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation, and services not exceeding five years' duration, provided that the supplier or suppliers are not entities in which the subdivider has a direct or indirect ownership interest of 10 percent or more; and

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

Section 3.14. Limitation on Liability of the Association and the Association's Directors and Officers.

(a) No member of the Board of Directors or officers or committee members of the Association shall be personally liable to any of the Association's members or to any other person, for any error or omission of any such person, their agents, representatives and employees in the discharge of their duties and responsibilities hereunder or under the Bylaws, or for their failure to provide any service required hereunder or under the Bylaws; provided that such person or officer has, upon the basis of such information as may be possessed by him, acted reasonably and in good faith, and in a manner such person reasonably believed to be in the best interests of the Association. Without limiting the generality of the foregoing, this limitation on liability shall extend to such matters as the establishment of the Association's annual financial budget and the funding of Association capital replacement and reserve accounts.

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(b) Neither the Association nor any member of its Board of Directors, nor any of its officers, committee members, agents or employees shall be responsible to any Owner or to any member of his family or any of his Lessees, guests, servants, employees, licensees, invitees or any others for any loss or damage suffered by reason of damage, theft or other loss of any article, vehicle or other item of personal property which may be stored by such Owner or other person on the Common Area, any Lot or within any Residence or for any injury to or death of any person or loss or damage to the property of any person caused by fire, explosion or the elements or the act or omission of any other Owner or person within the Properties, or by any other cause, unless the same is attributable to its or his own negligence.

(c) Each Owner, on behalf of himself, his heirs, successors, and assigns, agrees not to make any claim against the Association or any member of its Board, or any of its officers, committee members, agents or employees for or on account of any loss, damage or conduct coming within the limitations on liability hereunder and agrees to indemnify each of them against, and hold each of them harmless from, any such claim made by any member of his family, any of his guests, servants, employees, licensees or invitees or the heirs, successors or assigns of any such person.

Section 3.15. Inspection of Association's Books and Records. Any Owner, or that Owner's duly appointed representative, shall have access to the Association's membership register, including mailing addresses and telephone numbers, books of account, and minutes from any meeting of Members, the Owners, the Board, or any committee of the Board in order to inspect and copy such records for any purpose reasonably related to his or her interest as an Owner. Access shall be at any reasonable time at the office of the Association or such other place within the Project as the Board prescribes. 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 the Owner.

Any member of the Board may at any reasonable time inspect, copy, or make extracts of any books, records, and documents of the Association and inspect the physical properties owned or controlled by the Association.

Section 3.16. Delivery of Documents to Association. Commencing not later than ninety (90) days after the close of escrow of the first lot or other interest in the subdivision, copies of the documents listed below, as soon as readily obtainable, shall be delivered by Declarant to the Board of Directors of the Association at the office of the Association or at such other place as the governing body of the Association shall prescribe. The obligation to deliver the documents listed below shall apply to any documents obtained by the Declarant no matter when obtained, provided, however, that such obligation shall terminate upon the earlier of (1) conveyance of the last subdivision interest covered by a subdivision public report or (2) three years after the expiration of the most recent public report, on the subdivision:

- (1) The recorded subdivision map or maps for the project.
- (2) The deeds and easements executed by the subdivider conveying the common area or other interest to the Association, to the extent applicable.

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- (3) The recorded covenants, conditions and restricts for the subdivision, including all amendments and annexations thereto.
- (4) The Association's filed articles of incorporation, if any, and all amendments thereto.
- (5) The Association's bylaws and all amendments thereto.
- (6) All architectural guidelines and all other rules regulating the use of an owner's interest in the subdivision or use of the common area which have been promulgated by the Association.
- (7) The plans approved by the local agency or county where the subdivision is located, 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 and that the plans may 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 device in which the Association is the beneficiary.
- (10) Any written warranty being transferred to the Association for common area equipment, fixtures or improvements.
- (11) Any insurance policy procured for the benefit of the Association, its governing board of the common area.
- (12) Any lease or contract to which the Association is a party
- (13) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the members, of the governing body and of committees of the governing body of the Association.
- (14) Any instrument referred to in § 11018.6(d) of the Business and Professions Code, but not described above which establishes or defines the common, mutual or reciprocal rights or responsibilities of members of the Association.

**ARTICLE IV
ASSESSMENTS**

Section 4.01. Assessments Generally.

(a) Declarant covenants and agrees for each Lot owned by it in the Project that is expressly made subject to assessments as set forth in this Declaration, and each Owner by acceptance of a deed covenants and agrees for each Lot owned, to pay to the Association the regular and special assessments levied in accordance with the provisions of this Declaration, and to allow the Association to enforce any assessment lien established in accordance with the provisions of this Declaration by nonjudicial proceedings under a power of sale or by any other means authorized by law.

(b) Each installment payment of any Regular Assessment and each lump sum or installment payment of any Special Assessment or Special Individual Assessment, together with any interest charge provided for in subparagraph (c) hereof and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall be a separate debt of the owner against whom the same has been assessed. Furthermore, each Regular Assessment and each Special Assessment is hereby declared and agreed to be a lien upon and against the Lot so assessed in the

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nature of a mortgage with a power of sale in accordance with California Civil Code Section 2924 (or a comparable superseding statute), all as more particularly described in Section 4.11 of this Article IV. Special Individual Assessments may only be imposed as a lien against the Owner's Lot in those instances specifically identified in Section 4.04(a) of this Article IV.

(c) Each Owner who acquires title to a Lot (whether at a judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of purchase by such Owner; provided that any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed and any lien created pursuant to the provisions of this Article IV by reason of such unpaid Assessment shall remain in force and effect as a lien on the Lot sold and may be subject to foreclosure as provided in Section 4.11 hereof.

(d) If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within fifteen (15) days after the same becomes due, such payment shall be delinquent and the amount thereof shall be subject to a late charge not exceeding ten percent (10%) of the delinquent assessment or Ten Dollars (\$10.00) whichever is greater, pursuant to California Civil Code, Section 1366(d)(2) such larger sum as may hereafter be allowed by such statute or any successor statute thereto.

(e) Interest on regular and special assessments together with reasonable costs of collection and late charges shall accrue at an annual percentage rate of twelve percent (12%) per annum commencing thirty (30) days after the assessment becomes due, or at such higher interest rate as may hereafter be permitted by California Civil Code Section 1366(d)(3) or any successor statute thereto.

(f) No Owner may exempt himself or his Lot from liability or charge for his share of any Regular, Special or Special Individual Assessment rightfully made and assessed against him and his Lot by waiving or relinquishing, or offering to waive or relinquish, his right to use and enjoy all or any portion of the Common Area or common Facilities or by the abandonment or nonuse of his Lot.

Section 4.02. Regular Assessment.

(a) Estimate. Not less than forty-five (45) nor more than sixty (60) days prior to the beginning of each fiscal year of the Association (which may correspond to the calendar year), the Board shall estimate, on an accrual basis, the anticipated Common Expenses (including prudent contributions to the capital reserve fund for replacement of Common Facilities) for the next succeeding fiscal year and shall deduct therefrom the amount of any estimated surplus which will remain from the current year's Assessment. Association dues or charges shall include an adequate reserve fund determined as provided for in this section below, for maintenance, repairs and replacement of those improvements which the Association is obligated to maintain and that must be replaced on a periodic basis, and the assessments therefor shall be payable in regular installments rather than by special assessments. The total expenses (less deductions) thus estimated shall be allocated among all the Lots within the Properties in the manner described in subparagraph (b) of this Section 4.02 as the Regular Assessment for such Lot; notwithstanding any other provision in this Declaration to the contrary, the Board may not (1) impose a regular assessment for any fiscal year more than twenty per cent (20%) above the regular assessment for the Association's preceding fiscal year without the approval of a majority of the votes at a meeting of the members of the Association at which a quorum is present.

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For purposes of this section, a quorum means more than fifty percent (50%) of the Owners of the Association, and the meeting must be conducted in accordance with Corporations Code Sections 7510-7527, 7613. The Board may not exercise its discretion to increase regular assessments in any fiscal year above the regular assessment for the Association's preceding fiscal year, without the approval of a majority of a quorum of the members as set forth in this Section, unless the Board has timely distributed the pro forma operating budget described in California Civil Code Section 1365(a) for that fiscal year. The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. For purposes of this Section 4.02(a) emergency situation is any one of the following:

(i) An extraordinary expense required by an order of the court.
 (ii) An extraordinary expense necessary to repair or maintain the Properties or any part of it that the Association is responsible to maintain when a threat to personal safety on the property is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Properties or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget required under California Civil Code Section 1365, provided that before the imposition or collection of any assessment under this subparagraph the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the members with the notice of assessment.

(iv) The Board may not increase the regular assessment for a fiscal year as provided herein unless the Board has complied with subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. "Quorum" for purposes of such a vote means more than 50% of the owners of the Association.

Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement, or additions to the Common Areas that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account, and the signatures of at least two persons who shall either be Members of the Board, or one officer who is not a Member of the Board and a Member of the Board, shall be required to withdraw money from the reserve account. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance, or litigation involving the repair, restoration, replacement, or maintenance, of Common Areas that the Association is obligated to maintain.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year after the date of the initial transfer, provided that the Board, on the making of a finding supported by

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documentation that a temporary delay is in the best interest of the Development, may temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required. This special assessment shall be subject to the assessment increase restrictions set forth in Section 4.03(b) and California Civil Code § 1366(b). The Board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

At least once every three years, the Board shall cause a study of the reserve account requirements to be conducted if the current replacement value of the Common Areas that the Association is obligated to repair, replace, restore, or maintain is equal to or greater than half of the gross budget of the Association for any fiscal year. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The study shall, at a minimum, include:

- (i) Identification of the Common Areas that the Association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years;
- (ii) Identification of the probable remaining useful life of the areas identified in subparagraph (i) as of the date of the study;
- (iii) An estimate of the cost of repair, replacement, restoration, or maintenance of the areas identified in subparagraph (i) during and at the end of their useful life; and
- (iv) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain areas identified in subparagraph (i) during and at the end of their useful lives after subtracting total reserve funds as of the date of the study.

As used in this document, "reserve account" means money that the Board has identified for use to defray the future repair or replacement of, or additions to, those Common Areas that the Association is obligated to maintain; and "reserve account requirements" means the estimated funds that the Board has determined are required to be available at a specified time to repair, replace, or restore those Common Areas that the Association is obligated to maintain.

If the Board elects to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the association shall, in the next available mailing to all members under California Corporations Code § 5016, notify its members of that decision and of the availability of an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the Association at the Association's office.

(b) Allocation of Regular Assessments. The total estimated Association Common Expenses shall be divided equally among, assessed against and charged to all Lots within the Properties.

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(c) **Assessment Roll.** That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded upon an assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his authorized representative. The assessment roll shall show for each Lot the name and address of the Owner of record thereof, all Assessments, whether Regular or Special, levied against each Owner and his Lot, and the amount of such Assessments which have been paid or remain unpaid. A certificate executed and acknowledged by the Secretary or Treasurer of the Association stating the indebtedness secured by any lien created hereunder upon any such Lot shall be conclusive upon the Association and the Owner of such Lot as to the amount of such indebtedness as of the date of such certificate, in favor of all persons who rely thereon in good faith, and such a certificate shall be furnished by the Association to any Owner or to any first Mortgagee under a Mortgage encumbering a Lot upon written request therefor at a reasonable fee payable to the Association.

(d) **Mailing.** The Board of Directors shall cause to be mailed to each Owner at the street address of his Lot, or at such other address as such Owner may from time to time designate to the Association in writing, a statement of the amount of the Regular Assessment assessed against his Lot for the next succeeding fiscal year after determination thereof. The Association shall provide notice of first-class mail to the Members of any increase in regular or special assessments not less than 30 days nor more than 60 days before the due date of the increased assessment.

(e) **Failure to Make Estimate.** If, for any fiscal year, the Board of Directors shall fail to make an estimate of the Common Expenses, then in such event the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.03 hereof for that year, shall be assessed against each Owner and his Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic assessment shall be payable on the regular payment dates established by the Association.

(f) **Installment Payment.** The Regular Assessment made against each Owner shall be due and payable in advance to the Association in equal quarterly installments on the first day of each quarter or on such other date or dates as may be established from time to time by the Association. Quarterly installments of Regular Assessments shall be delinquent if not paid by the fifteenth (15th) day of the first month of each quarter.

Section 4.03. Special Assessments.

(a) Subject to the restrictions described in subparagraph (c) of this section below, the Board may levy a special assessment if the Board, in its discretion, determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including the maintenance of appropriate reserves, for a particular fiscal year or any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements or otherwise. The Board shall determine the amount necessary to meet the estimated expenses, and if the amount is approved by a majority vote of the Board, it shall become a special assessment. The Board, in its discretion, may levy the entire assessment immediately or levy it in installments over a period it considers appropriate. Unless the association is exempt from federal or state income taxes, including without limitation an exemption under Internal Revenue Code

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§ 528 and Revenue and Taxation Code § 23701t, the Board shall take such steps as may be reasonably necessary to prevent the special assessment from being included in the association's income for federal and state income tax purposes, including, if necessary, depositing the funds in a segregated account, not commingling the funds with any other funds of the Association, and using the funds solely for the purpose for which they were levied.

(b) Assessment Increases Requiring Membership Approval. As more particularly provided in California Civil Code Section 1366(b) no special assessment described in subparagraphs (a) hereof shall be made by the Board of Directors whereby the regular assessment is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year or the special assessments in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners, constituting a quorum, casting the majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

The provisions of this subdivision do not limit assessment increases for emergency situations. For purposes of this section emergency situation is any one of the following:

(i) An extraordinary expense required by an order of the Court.
 (ii) An extraordinary expense necessary to repair or maintain the Properties or any part of it that the Association is responsible to maintain when a threat to personal safety on the property is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Properties or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget required under California Civil Code Section 1365, provided that before the imposition or collection of any assessment under this subparagraph the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the members with the notice of assessment.

The Association shall provide notice by first-class mail to the Members of any increase in special assessments not less than 30 days nor more than 60 days before the due date of the increased assessment.

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above the Special Assessment shall be equally divided among, assessed against and charged to such Members and their Lots and recorded on the Association's Assessment Roll, just as are regular assessments under §4.02(b) above, and notice thereof shall be mailed to each Owner subject thereto. Special Assessments for purposes described in subparagraph (a) shall thereafter be due as a separate debt of the Owner and a lien against his Lot, which debt shall be payable to the Association in equal monthly installments during the remainder of the then current year. Special Assessments for purposes described in subparagraph (b) shall thereafter be due as a separate debt and payable in full to the Association within thirty (30) days after the mailing of such

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notice or within such extended period as the Association shall determine as being appropriate considering the circumstances giving rise to such Special Assessment.

Section 4.04. Special Individual Assessments.

(a) In addition to the Special Assessments provided for in Section 4.03 hereof, the Association may also impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (1) through (3) below. Special Individual Assessments imposed pursuant to subparagraphs (1) and (2) below shall be a lien against the Owner as described in Section 4.11 below, but any Special Individual Assessment imposed pursuant to subparagraph (3) shall be only an obligation of the assessed owner and may only become a lien against his or her property to the extent permitted in Section 4.04(b).

(1) **Damage to Common Area.** In the event of any damage or destruction of any portion of the Common Area or the Common Facilities caused by the willful misconduct or negligent act or omission of any Owner, any member of his family, or any of his tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated for by insurance proceeds) shall be assessed and charged solely to and against such owner and his Lot as a Special Individual Assessment.

(2) **Act Increasing Insurance Premiums.** In the event any act or omission of any owner, any member of his family, or any of his tenants, guests, servants, employees, licensees or invitees, shall in any way cause or be responsible for any increase in the premises for any insurance purchased or obtained by the Association in accordance with the provisions of Article IX hereof, the amount of such increase shall be assessed and charged solely to and against such Owner and his Lot as a special Individual Assessment.

(3) **Expenses Incurred in Gaining Member Compliance.** In the event that the Association incurs any costs or expenses, including reasonable title company, accounting or legal fees, to accomplish (i) the payment of delinquent assessments, (ii) any repair, under this Declaration, the Bylaws or the Association rules, or (iii) to prevent the continued maintenance of a nuisance or otherwise bring the Owner and/or his Lot into compliance with the provisions of this Declaration, the Bylaws or the Association Rules, the amount incurred by the Association or any monetary penalties and interest thereon duly imposed hereunder shall be assessed and charged solely to and against such Owner and his Lot as Special Individual Assessment; provided that Special Individual Assessments of the kind described in this subparagraph (a) (4) may only be imposed after the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Article XI, Section 11.06 hereof, and has been given a reasonable opportunity to comply voluntarily with the Association's governing documents before the assessment is imposed. Liens may be filed against the Owner's Lot for Special Individual Assessments only to the extent provided in Section 4.04(b).

(b) **Levy of Special Individual Assessment and Payment.** Once a Special Individual Assessment has been levied against an Owner for any reason described and subject to the conditions imposed, in subparagraph (a) of this Section 4.04, such Special Individual Assessments shall be recorded on the Association assessment rolls, notice thereof shall be mailed to the affected owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner and, in the case of Special Individual Assessments imposed pursuant to subparagraphs (1) or (2) of Section 4.04(a), shall also become a lien against his Lot, payable as set forth below.

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Special Individual Assessments imposed pursuant to Section 4.04(a)(3) hereof may not be characterized nor treated as an assessment which may become a lien against the member's Lot interest enforceable by a sale of the Lot in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code. Nothing herein shall prevent the Association from recording a notice of the assessment against the Owner's Lot, for record notice purposes, but without right of foreclosure. Furthermore, the prohibition against foreclosure of Special Individual Assessment Liens imposed hereunder shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

Special Individual Assessments imposed pursuant to either Section 4.04(a)(1) or 4.04(a)(3) shall be payable in full to the Association within thirty (30) days after the mailing of notice of the assessment and Special Individual Assessments imposed pursuant to Section 4.04(a)(2) shall be payable in full to the Association at least ten (10) days in advance of the date or dates for the payment of the increased insurance premium giving rise to the assessment.

Section 4.05. Purpose and Reasonableness of Assessment. Each Assessment, whether it be a Regular, Special or Special Individual Assessment, made in accordance with the provisions of this Declaration, is hereby declared and agreed (i) to be for use exclusively to promote the recreation, health, safety and welfare of the residents of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees, or for the repair, maintenance, replacement and protection of the Common Areas and Common Facilities within the Properties, (ii) to be a reasonable assessment, and (iii) to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is made and shall bind his heirs, successors and assigns; provided that the personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 4.06. Exemption of Certain of the Properties from Assessments. The following real property subject to this Declaration, unless devoted to the use as a residential dwelling, shall be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Properties dedicated and accepted by a local public authority;
- (b) The Common Area and common Facilities; and
- (c) Any Lot owned by the Association.

Section 4.07. Notice and Procedure for any Action Authorized Under Sections 4.02 and 4.03. Any action authorized under Sections 4.02 and 4.03 of this Article IV requiring the vote of the Association Members shall be taken either by written ballot or at a meeting of the Members called for that purpose, written notice of which shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting or mailing of the written ballots.

DECLARATION OF CC & Rs - RM UNIT XI HOMEOWNER'S ASSOCIATION**Section 4.08. Maintenance of Assessment Funds.**

(a) **Deposit; Bank Account.** All sums received or collected by the Association from Assessments, whether Regular or Special, together with any interest charge thereon, shall be promptly deposited in a federally insured checking and/or savings account in a bank or savings and loan association as selected by the Board of Directors. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and shall be responsible to the Owners for the maintenance at all times of accurate records thereof.

(b) **Separate Accounts; Commingling of Funds.** The proceeds of each Assessment shall be used only for the purpose for which such Assessment was made. For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate account of all funds received by it in payment of each Assessment, and of all disbursements made therefrom, except that receipts and disbursements of special Assessments made pursuant to Section 4.03 of this Article IV shall be combined with the receipts and disbursements of the Regular Assessments; and the Board shall maintain separate liability accounts for each capital improvement for which reserve funds for replacement are allocated.

Section 4.09. Assessment Period. Unless the Board determines otherwise, the Association's fiscal year shall be a calendar year, and the regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of that year, provided that the first regular assessment period for all Lots shall commence on the first day of the calendar month following the date of the closing of the first conveyance of a Lot, and shall terminate on December 31 of that year.

Section 4.10. Due Dates, Late Charges, and Interest. At least ten (10) days prior to the commencement of any regular or special assessment, the Board shall give each Owner written notice of the amount of 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. Unless the Board specifies otherwise, the installment due dates shall be the first day of each month.

Any assessment payment, including any installment payment, shall become delinquent if payment is not received by the Association within 15 days after its due date. There shall be a late charge of 10% or \$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.

Interest also shall accrue on any delinquent payment at the rate of 12% per annum. Interest shall commence 30 days after the assessment becomes due.

Section 4.11. Effect of Non-Payment of Assessments; Enforcement of Liens.

(a) A delinquent assessment or installment, together with any accompanying late charges, interest, costs (including reasonable attorney fees), and penalties as may be authorized under this Declaration shall become a lien on the Lot against which the assessment was levied on the recordation of a notice of delinquent assessment in the office of the county recorder of the county in

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which the Lot is located. The notice shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Declaration, a description of the Lot, the name of the owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the Trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association, or any employee or agent of the Association authorized to do so by the Board.

Unless the Board considers the immediate recording of the notice to be in the best interests of the Association, the notice shall not be recorded until fifteen (15) calendar days after the Association has delivered a written notice of default and demand for payment. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

(b) The Association may bring an action at law against the Owner personally obligated to pay the delinquent assessment, or foreclose its lien against the Owner's Residence and Lot: provided, however, that the right of foreclosure in the case of Special Individual Assessments described in Section 4.04(b) hereof shall only exist to the extent specifically provided in Section 4.04(a)(3) of this Article IV. To the extent permitted hereunder, foreclosure by the Association of its lien may be by judicial foreclosure of a mortgage or deed of trust upon real property under the laws of the State of California. Non-judicial foreclosure shall be commenced by the Association or its duly authorized agent by recording in the Office of the county Recorder a notice of delinquency, which notice shall state all amounts which have become delinquent with respect thereto and the costs (including attorneys' fees), penalties and interest which have accrued thereon, the amount of any assessment which is due and payable although not delinquent, a description of the property in respect to which the delinquent assessment is owed, the name and address of the trustee authorized by the Association to enforce the lien by sale and the name of the record or reputed Owner thereof. The Association shall have the rights conferred by Section 2934a of the Civil Code to assign its rights and obligations as Trustee in any non-judicial foreclosure proceeding to the same extent as a Trustee designated under a deed of trust and for purposes of said Section 2934a of the Civil Code to assign its rights and obligations as Trustee in any non-judicial foreclosure proceeding to the same extent as a trustee designated under a Deed of Trust for purposes of said Section 2934a, the Association shall be entitled to employ the services of a title insurance company or responsible company engaged in the business of acting as a trustee in foreclosure to act as an agent on behalf of the Association in commencing and prosecuting the foreclosure process.

The notice of delinquency shall state the election of the Association to sell the Lot or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under Section 2924c of the California Civil Code. The Association or its assignee shall mail a copy of the notice to the Owner or reputed Owner at the last address appearing on the books or records of the Association, and to any person to whom the giving of notice is required by application provisions of Section 2924b of the California Civil Code. In the event such notice is given by the Association or its assignee, the Owner and junior encumbrancers shall have reinstatement rights identical to those provided by law for trustors or mortgagors, which rights must be exercised during the period specified by law for reinstatement of obligations secured by deeds of trust.

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After the lapse of such time as may then be required by law following the recordation of a notice of default under a deed of trust, the Association or its assignee may give notice of sale in the manner and for the period required in the case of deeds of trust. After the giving of the notice of sale, the Association, or its assignee, without demand on the Owner, may sell the Lot or other property at the time and place fixed in the notice of sale, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. The Association or its assignee may postpone sale by public announcement at the time fixed by the preceding postponement. The Association shall deliver to the purchaser at such foreclosure sale the Association's deed conveying the Lot or other property so sold but without covenant or warranty, express or implied. The recitals in such deeds shall be conclusive proof of the truthfulness thereof. Any person, including the Association, may bid on the property and purchase the same at such sale.

After deducting all costs, fees, and expenses of the Association from the sale proceeds, the Association or its assignee shall apply the balance of the proceeds of sale to payment of all sums secured by its lien at the time of sale, including interest, costs and attorneys' fees, and the remainder, if any, shall be disbursed to the person or persons legally entitled thereto.

Where the purchase of a foreclosure lot will result in a five percent (5%) or greater increase in assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association. During the period a lot is owned by the Association, following foreclosure: (1) No right to vote shall be exercised on behalf of the Lot; (2) no assessment shall be assessed or levied on the Lot; and (3) each other Lot shall be charged, in addition to its usual assessment, its share of the assessment that would have been charged to such Lot had it not been acquired by the Association as a result of foreclosure. After acquiring title to the Lot at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Lot which deed shall be binding upon the Owners, successors, and all other parties.

Suit to recover a money judgment for unpaid common expenses, rent and attorneys' fees shall be maintainable without foreclosure or waiving the lien securing the same. Furthermore, the Board may take such additional action, consistent with this Declaration, as is necessary or appropriate to enforce its assessment rights hereunder.

Section 4.12. Transfer of Lot by Sale or Foreclosure. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure by the mortgagee of the first mortgage of record shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Where the mortgagee of the first mortgage of record or other purchaser of a Lot obtains title to the same as the result of foreclosure of any such first mortgage, the person acquiring title, his successors and assigns, shall not be solely liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be

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common expenses collectible from Owners of all of the Lots including such acquirer, his successors and assigns.

If a Lot is transferred, the grantor shall remain liable to the Association for all unpaid assessments against the Lot through and including the date of the transfer. The grantor shall be entitled to a statement from the Association dated as of the date of transfer, setting forth the amount of unpaid assessments against the grantor due the Association and the Lot so transferred shall not be subject to a lien for unpaid assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any such assessment that becomes due after the date of the transfer.

Section 4.13. Priorities. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Lot prior and superior to all other liens except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first mortgage or record (meaning any recorded mortgage or deed of trust) made in good faith and for value; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such mortgage or deed of trust or pursuant to the power of sale in such mortgage or deed of trust. Such foreclosure shall not relieve such property from liability for any assessments thereafter becoming due or from the lien of any such subsequent assessment.

Section 4.14. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the assessments made under the provisions of Section 4.02 of this Article IV and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

Section 4.15. Assignment of Rents. Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collection of all assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies as they become due and payable; provided, however, that the Association in its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of assessments. Upon revocation of such authority the Association may, pursuant to court order or by court appointed receiver, collect and retain such monies, whether past due and unpaid or current.

Section 4.16. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article IV, the benefit of any homestead or exemption law of California in effect at the time any assessment or installment thereof becomes delinquent or any lien is imposed.

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Section 4.17. Statement of Defaults. Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws, or Association Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and (iii) the amount of any assessments levied against the owner's Lot that are unpaid as of the date of the statement, including any late charges, interest, or costs of collection that as of the date of the statement are or may be made a lien against the Owner's Lot as provided by this Declaration.

**ARTICLE V
MAINTENANCE OF RESIDENCES**

Section 5.01. Maintenance of Residential Improvements. Each Owner shall be solely responsible for the maintenance and repair of his Residence and Lot and shall keep same in a well maintained, neat and orderly condition. Each Owner shall keep all shrubs, trees, hedges, grass, and landscaping of every kind on such Owner's Lot trimmed, properly cultivated, and free of trash, weeds, and other unsightly material, and in all respects in accordance with the provisions of this Article V.

The Directors shall notify in writing the Owner of a Lot which does not comply with the requirements of this provision, and shall direct such owner to do whatever work is necessary to secure compliance with this provision. If said deficiencies have not been corrected satisfactorily within a reasonable time, the Directors may make such corrections as they deem reasonably necessary.

Section 5.02. Owner Performance of Neglected Maintenance. In the event an Owner fails to maintain his Residence or Lot as required by this Declaration, the Association shall have the right, but not the obligation, to enter onto the Lot or Residence to perform necessary maintenance or repair at the owner's expense. The Association shall charge the responsible Owner with all such costs of maintenance or repair, and the Owner shall immediately pay costs of maintenance or repair, and the owner shall immediately pay the charge to the Association, together with interest at the rate of twelve percent (12%) per annum (but not in excess of the maximum interest rate authorized by law) from the date the charge is paid by the Owner. If the Owner disputes the charge, the Owner shall be entitled to a Notice and a Hearing as provided in Article XI, Section 11.06 hereof before the charge may be collected.

**ARTICLE VI
ARCHITECTURAL CONTROL.**

Section 6.01. Review of Plans.

(a) It is the primary purpose of this Declaration to insure that all homes and other structures (including without limitation, driveways, solar equipment, swimming pools, spas, landscape design and capital improvements on any Lot) and improvements shall be of superior design, appearance, and construction; and that all homes and other structures and improvements shall be appropriate and proper as to their size, height, location and quality in their relationship and general harmony with the

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dwellings and other structures and improvements on neighboring and surrounding Lots in Ridgemark Estates, taking into account such things as setbacks, open spaces, masses, proportions, exploitation of views, interference with views, protection of privacy, integration with topography and utilization and preservation of topographical features. To achieve this purpose, the Board of Directors of the Association shall act as an architectural and site review committee, and before any dwellings, out-buildings, walls or fences are constructed, reconstructed, or altered on the exterior, adequate plans and elevations showing the nature, color, kind, shape, height (including front, side, and rear elevations), materials and location of the same shall be presented to the Architectural Committee for review and approval. It shall be a condition of approval that houses constructed on the following numbered lots shall be designed to conform to the natural terrain, i.e., platform homes or stepped foundations: 640, 641, 643, 644, 645, 646, 666, 700, 701, 702, 703, 706, and 707. Similarly, when any grading, construction of driveways or retaining walls, or other major site improvement is proposed, before work is initiated, a site plan in sufficient detail shall be presented to the Architectural Committee for review and approval. Major landscaping, such as planting of large trees or hedges, shall not be initiated without the approval as to type and location from the Architectural Committee. All such plans and drawings shall be in adequate detail to show clearly the Owner's intent, and more particularly that there will be no violation of any of Article VII, Sections 7.04-7.10, and Sections 7.13 and 7.15.

(b) The Board of Directors shall appoint an Architectural Committee composed of not less than three nor more than five members. However, Declarant may appoint all original Committee members and their replacements until the first anniversary of the issuance of the original public report of the Department of Real Estate for the Development. After one year from the date of issuance of the original public report of the Development the Board shall have the power to appoint one member to the Architectural Committee until 90% of all of the Lots in the Development have been sold or until the fifth anniversary date of the original issuance of the Final Public Report for the Development, whichever first occurs. Thereafter the Board shall have the power to appoint all of the members of the Architectural Committee. Committee members shall be appointed from the membership of the Association. A majority of the Architectural Committee may designate a representative to act on its behalf. Members of the Committee shall serve for a term of one year. In the event of death or resignation of any member of the Architectural Committee, a successor shall be appointed by the Board. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto.

Plans and specifications for the proposed improvements shall be submitted to the Architectural Committee by personal delivery or certified mail to the secretary of the Association or the chairperson of the Architectural Committee. In the event the Committee fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, the request shall be deemed to have been approved. Approval of the Committee can contain conditions or requests for modification of particular aspects of the owner's plan and specifications.

The Architectural Committee may, subject to review by the Board of Directors, from time to time, adopt, amend, and repeal the rules and regulations known as "architectural rules." Said rules shall interpret and implement the provisions of this declaration by setting forth the standards and procedures for the review and approval of proposed improvements and guidelines for architectural

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design, placement of any work of improvement or color schemes, exterior finishes and materials, and similar features which are recommended for use within the property, provided that said rules shall not be in derogation of the minimum standards required in this Declaration. In the event any conflict between the architectural rules and this Declaration, the Declaration shall prevail.

The Architectural Committee shall be entitled to allow reasonable variances with respect to this Article VI or any restrictions specified in Article VII in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided that 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 this Declaration, the Committee must conduct a hearing on the proposed variance after giving at least ten (10) days prior written notice to the Board and to all owners of residences within 100 feet of the property for which the variance applies. The owners receiving notice of the proposed variance shall have thirty (30) days in which to submit to the Board or Committee written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the thirty day comment period has expired.

(2) The Committee must make a good faith determination that (i) the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Properties or from any restriction contained herein or that the proposal allows the objectives of the violated requirements to be substantially achieved despite non-compliance; or (ii) the variance relates to a requirement hereunder that is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment or create an unreasonable nuisance with respect to any other residence, common area, or owner within the properties.

Within thirty days after the written demand is delivered to the Architectural Committee by any owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board) the Committee shall execute an estoppel certificate executed by any two of its members, certifying (with respect to any residence owned by the applicant owner) that as of the date thereof, either (i) all improvements made and other work completed by said owner with respect to the residence comply with this Declaration; or (ii) that such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the bases of such non-compliance. Any purchaser from the owner, or anyone deriving any interest in said residence through the owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all owners, and any persons deriving any interest through them.

Appeals from decisions of the Architectural Committee may be made to the Board of Directors, which may elect, in its discretion, to hear the appeal, or, in the alternative, affirm the decision of the Architectural Committee. The Association Rule shall contain procedures to process appeals pursuant to this provision.

Any denial of approval by the Architectural Committee or the Board may be referred for reconsideration and vote by the members of the Association at an annual or special meeting of the

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Association, and the decision by vote of a quorum of the membership shall prevail over any decision by the Board of Directors.

(c) By approving plans and specification, the Board and the Architectural Committee do not assume any liability or responsibility for compliance with building or zoning ordinances, which compliance shall be the sole responsibility of the applicant. Neither the Architectural Committee, nor any member thereof, nor the Board of Directors shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawing and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specification; (c) the development of any Lot within the Properties.

Section 6.02. Common Areas. No improvement, excavation or work which in any way alters any Common Area from its natural or existing state shall be made or done except upon strict compliance with, and within the restrictions and limitations of, the following provisions of this section.

(a) No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall make or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area.

(b) The Association may at any time, and from time to time:

(1) Reconstruct, replace, or refinish any Common Facility or other improvement or portion thereof upon the Common Area in accordance with the original design, finish or standard of construction of such improvement of such Common Area which was approved by the government entity having jurisdiction.

(2) Construct, reconstruct, replace, refinish any road improvement or surface upon any portion of Common Area designated on a subdivision map as a private road or parking area.

(3) Replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of Common Area.

(4) Place and maintain upon the Common Area such signs as the Association may deem necessary for the identification of the development and of roads, the regulation of traffic, including parking, the regulation and use of Common Area and Common Facilities and for the health, welfare and safety of Owners, tenants and guests. Any such signs to be placed within the street area shall be subject to City approval.

(c) In the event that the Board determines that a new capital improvement project should be commenced and all requisite approvals have been obtained from the Architectural Committee (and the Members if a Special Assessment is required) the board shall obtain firm bids on the total project cost which shall be reviewed by the Association Manager and a Technical Committee of Association Members appointed by the Board. After the Board has received and considered

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comments or recommendations, if any, submitted by the Manager or the Technical Committee, the Board shall levy a special assessment pursuant to Article IV Section 4.03 in the amount of the accepted bid. Promptly following levy and collection of the Special Assessment for the capital improvement the Board shall commence and diligently undertake construction and installation of such improvement. During construction the Manager, with the assistance of the duly appointed Technical Committee, shall supervise the construction project and regularly report thereon to the Board.

Section 6.03. Enforcement of Architectural Restrictions. If an owner makes an improvement, addition or change in his Residence or Lot without approval from the Board of Directors, the Association may direct that the improvement, addition or change be removed and in the event that the Owner fails to diligently commence action to remove or modify the work within thirty (30) days after receipt of a written demand for removal or modification, the Association may either enter upon the Lot to effect removal or commence legal action to compel removal. Any costs and expenses incurred by the Association in the discharge of its responsibilities hereunder, including reasonable attorneys' fees, may be recovered from the Owner by means of a Special Individual Assessment.

Section 6.04. Completion of Authorized Improvements. The approval by the Directors of any improvement, erection, construction, refinishing, installation, placement, or alteration of a building, or other structure, shall be deemed conditional upon the commencement of such work within ninety (90) days after the final approval of the same, or within such other period as shall have been specified by the Directors at the time of such approval; and work thereon must thereafter be prosecuted diligently to completion within two (2) years after such final approval, or within such other period as may be specified by the Directors. The Directors may for good cause, as determined by them, extend the period for the commencement or completion of any such erection, construction, refinishing, installation, placement or alteration.

**ARTICLE VII
USE OF PROPERTIES AND RESTRICTIONS**

Use of the Lots, Common Area and other portions of the Properties shall be subject to the following rules and restrictions. In the event that the Association is compelled to expend funds to gain compliance with such rules and restrictions, whether for attorneys' fees or otherwise, the same may be recovered from the offending Owner by means of a Special Individual Assessment.

Section 7.01. Single Family Residential Use. Subject to the provisions of section 7.04 below, the use of the Residence Lots within the Properties is hereby restricted to Single Family Residential Use of each single family dwelling constructed on a Lot. No buildings or structures shall be moved from other locations onto any Lot or Lots. No mobile home (other than a mobile home as defined in California Civil Code § 714.5), or recreational vehicle of any type shall be used as a dwelling unit or supplemental living accommodation on any lot. Notwithstanding the foregoing provisions of this Section 7.01, a structure intended for occupancy, which is constructed in an offsite facility or factory, and is subsequently moved or transported in sections or modules to a residence with lot within the properties may be sold, leased, rented, and used as a single family residence.

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No health care facilities operating a business or charity and serving the sick, elderly, disabled, handicapped or retarded shall be permitted in the Project.

No Lot or Lots or any portion thereof in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license", "travel club", "extended vacation", or other membership of time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Lot or Lots or any portion thereof in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of twenty-five (25) consecutive calendar days or less. Provided, this section shall not be construed to limit the personal use of any Lot or any portion thereof in the Project by any Lot owner or his or her or its social or familial guests.

Section 7.02. Lots. Each Lot shall be conveyed as a separately designated and legally described fee simple estate subject to this Declaration. All Lots, whether occupied or unoccupied, and the Residences and other improvements placed thereon, shall at all times be maintained in such a manner as to prevent their becoming unsightly by the reason of the accumulation of rubbish, debris or unsightly growth thereon.

Section 7.03. Common Areas.

(a) **Generally.** The Common Areas shall be preserved as open space and used for those recreational purposes originally planned as Common Facilities by the Declarant or subsequently installed by the Association in accordance with this Declaration. Nothing shall be altered, constructed, placed or stored in the Common Areas except upon the direction and under the authority of the Association in accordance with Article VI hereof. Use and enjoyment of Common Areas shall at all times be subject to this Declaration, the Bylaws and the Association Rules and other purposes incidental and ancillary to the use of Lots.

(b) **Association Common Areas.** In addition to the provisions of Section 703(a) hereof, but subject to Article II, Section 2.02, Article II, Section 2.03(b) and Article III, Section 3.08(a), it is further provided that the use of Association Common Areas shall be available for and limited to the private use, for aesthetic and recreational purposes, of the Association's resident Members, their families and guests and of the Lessees of nonresident Members and the families and guests of such Lessees.

Section 7.04. Restrictions on Improvements. No building shall be erected on any Lot except one single family dwelling that conforms to the building codes and requirements of the County of San Benito and out-buildings therefor, which shall so conform and shall be limited to not more than one guest house (which shall not contain kitchen facilities) and/or a garage, hobby shop, or studio. Notwithstanding this provision, a second single family dwelling either attached or detached may be constructed on twenty-one (21) Lots within the Properties, which Lots are as follows:

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Lots 605, 609, 620, 627, 631, 636, 650, 653, 666, 667, 671, 676, 677, 682,
683, 688, 691, 692, 698, 699, and 700.

Section 7.05. Setbacks. Front, side, and rear setbacks for all structures shall be as then required by the Zoning Ordinance of the County of San Benito, unless modified by the record map of Unit 1, Ridgemark Estates, or by a specific variance granted by said County of San Benito; provided, however, no application for variance on any setback shall be requested of the County of San Benito by any Owner without first obtaining approval of the Board of Directors of the Association. Buildings shall be so located on a Lot as to permit the Owner maximum use and enjoyment of his property, with minimum feasible interference with views from adjoining Lots.

Section 7.06. Minimum Size. No dwelling unit constructed as of the date of this Declaration shall have an enclosed floor area, excluding porches, carports, garages, and out-buildings, of less than one thousand nine hundred (1,900) square feet. Provided, however, on those Lots where a second single family residence or unit is permitted as provided in Section 7.04 above, the square footage of such unit may be less than one thousand nine hundred (1,900) square feet.

Section 7.07. Height Limitation. The highest point on the roof of any single story dwelling or out-building on Lots within the Properties shall not be more than twenty (20) feet above the finished floor level covered by such roof. No two-story residences may be constructed on any lot within the project; provided, however, that this restriction shall not prevent construction of houses conforming to the natural terrain, i.e., platform homes or stepped foundations, on those lots specified in Section 6.01(a) above, in accordance with the provisions of that section.

Section 7.08. Fences. No fence, hedge or wall exceeding six (6) feet in height may be erected on any Lot, except upon written approval from the Board of Directors. Fencing shall be designed to allow for some movement of wildlife. No fence, hedge or wall shall be erected, placed or altered on any Lot nearer to any Street than the minimum building setback line without the approval of the Directors. Fences or hedges constructed along any property line of a Lot may be limited to four (4) feet in height where in the opinion of the Board of Directors, they will otherwise block the prime view from adjoining Lots. Where fences or hedges are proposed to be constructed along any Lot line that borders on a fairway of the golf course, the design, materials, and height thereof shall be as approved by the Board of Directors, the objective being in all such cases to provide protection to Lot Owners while, at the same time, preserving appearances from the golf course. For a distance of twenty (20) feet back from all Street intersections, no fence or hedge shall be of such height, design, or density as to block sight distance for automobiles approaching any such intersection.

The restrictions of this Section 7.08 shall apply to trees and bushes, whether or not planted in accordance with the plan approved by the Board of Directors; and the Board of Directors may limit the height and density of trees and bushes which may substantially interfere with the views from any adjoining Lot or Lots.

Section 7.09. Minimum Off-Street Parking. Not less than two (2) off-Street parking spaces, outside of any garage or carport, shall be provided for each Lot at the time of construction of any dwelling unit thereon.

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Section 7.10. Minimum Building Site. Lots may not be subdivided into more than one building site. Adjustment of property lines may be made between owners of adjacent Lots, provided that no resulting building site is less than ten thousand (10,000) square feet in area, and also provided that prior approval thereof has been obtained from the Board of Directors.

Section 7.11. Room Letting. No room or rooms in any dwelling or any out-building thereof may be rented or sublet for any purpose to anyone not related by blood or marriage to the Owner or Lessor of the dwelling, except upon approval of the Board of Directors; this provision shall not prohibit the renting of any dwelling unit as a whole for use as a single family residence.

Section 7.12. Drilling. No oil drilling, mining or quarrying operation shall be permitted on any Lot, or any activity related thereto, with the exception that soil or rock may be removed or imported as reasonably needed for residential construction.

Section 7.13. Lighting. All exterior lighting shall be harmonious with the area, unobtrusive, shielded not to shine off-site and constructed or located so that only the intended area is illuminated.

The lot owners subject to this Declaration recognize that proper maintenance of Street and exterior lighting is for the benefit of themselves as well as other residents of the County of San Benito and that the County of San Benito is an intended third party beneficiary of this Declaration and may, fifteen (15) days after written notice to the Association, exercise the same powers of enforcement with respect to compliance with this section 7.13 as the Association.

Section 7.14. Tree Houses. No tree house shall be permitted upon any Lot.

Section 7.15. Drainage. No Owner shall unnecessarily interfere with the established drainage pattern over such Owner's Lot from adjoining or other Lots, and shall make adequate provisions for proper drainage in the event it is necessary to change the established drainage over such Owner's Lot.

Section 7.16. Trees. No Owner shall injure, remove, or destroy any tree existing on the date a Lot was first conveyed in fee by Declarant to such Owner, nor any tree which has reached a height in excess of ten (10) feet, without the prior written approval of the Directors. In the event of a violation of this provision, the Directors shall have the right to cause any person to enter upon any Lot at a reasonable time for the purpose of planting, replacing, or maintaining such tree.

Section 7.17. Golf Course. The golf course known as "Ridgemark Golf and Country Club" is adjacent to many Lots within the Properties. The golf course is not owned, operated, or managed or controlled by this Association. Ownership of a Lot within the Properties includes no easement or right of access or use of the golf course.

Section 7.18. Use of the Properties. The use of all Properties shall be limited to those uses, as strictly interpreted, which are specified in this Declaration. Any change in use of the

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Properties, or any part thereof, shall require the vote of two-thirds (2/3) of the Members of the Association.

Section 7.19. Prohibition of Noxious Activities. No noxious or offensive activities shall be carried on or conducted upon any lot or the Common Areas, nor shall any things be done on any Lot or the Common Areas that shall be or become an unreasonable annoyance or nuisance to the neighborhood. Without limiting any of the foregoing, no Owner or Lessee shall permit noise, including, but not limited to the barking of dogs, the operation of air conditioners, stereo amplifier systems, television systems, motor vehicles or power tools, or emanate from any Lot or the Common Area, which would unreasonably disturb any other member's enjoyment of his Lot or the Common Area. Excessive noise levels may be determined according to the ordinances of the County of San Benito or other applicable governmental regulation dealing with such matters. The Board may, in its sole discretion, prohibit maintenance within the Properties of any animal that constitutes a nuisance (whether due to its size, viciousness, unreasonable noise or otherwise) with respect to any other Owners(s).

Without limiting the foregoing, no exterior speaker, horn, whistles, bell, or other sound device, except security devices used exclusively for security purposes, shall be located, used or placed upon a Lot.

Section 7.20. Temporary Structures. No structure of a temporary character, trailer, mobile home (other than a mobile home as defined in California Civil Code § 714.5), camper, motor vehicle, tent, shack, or other outbuilding shall be used on any lot or the common area at any time as a residence, either temporarily or permanently. Notwithstanding the foregoing provisions of this Section 7.20, a structure intended for occupancy, which is constructed in an offsite facility or factory, and is subsequently moved or transported in sections or modules to a residence lot within the properties may be sold, leased, rented, and used as a single family residence.

Section 7.21. Household Pets. A reasonable number of common household pets may be kept in each Lot so long as the same do not become a nuisance and are not kept, bred or maintained for commercial purposes. Not more than two cats or dogs shall be kept on any Lot, and these must be kept in an enclosed area, and shall only be permitted off the Owner's property when property restrained. No other animals, livestock, or poultry of any kind shall be kept, bred or raised in any Lot. The Association or any Owner may cause any unleashed dog found within the Common Area to be removed to a pound or animal shelter under the jurisdiction of the City of Hollister, or the County of San Benito by calling the appropriate authorities whereupon the Owner may, upon payment of all expenses connected therewith, repossess the dog. No household pet shall be left chained or otherwise tethered in front of a Lot or in the Common Areas. No pets or horses shall be permitted on the golf course. Pet owners shall be responsible for the prompt disposal of their pet's wastes when deposited in the Common Areas or on any other Owner's Lot. The Board of Directors shall have the right to establish and enforce additional regulations for the reasonable control and maintenance of household pets in, upon and around the Properties, to insure that the same do not interfere with the quiet and peaceful enjoyment of the Properties by the other Owners. Each person bringing or keeping a pet on the Properties shall be solely responsible for the conduct of, or damage or injury caused by, such pet and the Association, its Board, officers, employees and agents shall have no liability (whether by

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virtue of this Declaration or otherwise) to any owners, their family members, guests, invitees, Lessees or contract purchasers for any damage or injury to persons or property caused by any such act.

Section 7.22. Signs. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot or the Common Area, nor shall any Lot be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Residence or any resident thereof. Notwithstanding the foregoing, any Owner of a Lot or his or her agent may display or have displayed on the Owner's Lot, or on another Owner's Lot with that Owner's consent, a sign which is reasonably located, in plain view of the public, and is of reasonable dimensions and design, advertising the property for sale, lease, or exchange, or advertising directions to the property.

Section 7.23. Business Activities. Except as provided herein, no business activities of any kind whatsoever shall be conducted in any building or in any portion of any Lot; provided, however, the foregoing covenants shall not apply to the activities, signs or the maintenance of buildings, by the Association, its successors and assigns, in furtherance of its powers and purposes as set forth herein. Notwithstanding the foregoing, no restrictions contained in this Article VII shall be construed in such a manner as to prohibit any Owner from (a) maintaining his personal library within his Residence; (b) keeping his business records or accounts therein; (c) handling his personal, business or professional telephone calls or correspondence therefrom; or (d) conducting any other business activities on the Owner's Lot otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or governmental regulations without the necessity of first obtaining a special use permit or similar specific governmental authorization. Such uses are expressly declared to be customarily incident to the principal residential use and not in violation of any provision of this Article VII. In no event shall any business activities be permitted which increase traffic to the Properties or any portion thereof.

Section 7.24. Garbage and Storage. No rubbish, trash, or garbage shall be allowed to accumulate on Lots and any garbage shall be stored entirely within appropriate covered disposal containers maintained in good, clean condition. Any extraordinary accumulation or rubbish, trash, garbage or debris (such as is often generated upon vacating of premises or during holidays, including Christmas trees) shall be removed from the Properties to a public dump or trash collection area by the Owner or Tenant at his or her expense.

The Association shall be entitled to impose reasonable fines and penalties for disposal of garbage and refuse in any manner inconsistent with this Section. Nothing in this Section shall be interpreted so as to preclude the Association from establishing and maintaining within the Properties appropriate storage yards and storage buildings for the maintenance and retention of materials and equipment needed for planting, building, repair, maintenance and preservation of the structures, gardens and other improvements of the Lots and the Common Areas.

No toxic or hazardous materials shall be disposed of within the project by dumping in the garbage containers or down the drains, or otherwise.

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Section 7.25. Clotheslines. No clotheslines shall be placed outdoors, unless fully concealed, nor shall clothes be dried where visible from other Lots or Properties.

Section 7.26. Antennas. In order to insure adequate aesthetic controls and to maintain the general attractive appearance of the Properties, no Owner, resident or Lessee shall, at his expense or otherwise, construct, erect or maintain any television and/or radio or other receiving antenna of any kind, including but not limited to mast, towers, poles, and satellite receiving dishes, except as authorized by the Board of Directors. Notwithstanding the foregoing provisions of this Section 7.26, an owner, resident, or Lessee may install and use a video or television antenna with a diameter or diagonal measurement of 36 inches or less, provided that such antenna is not visible from any street or the common area of the properties. No such qualifying antenna shall be installed without 10 day's prior notice to the Board of Directors of the Association.

Section 7.27. Vehicle Restrictions and Parking.

(a) No trailer, camper, mobile home, recreational vehicle, commercial vehicle, truck (other than standard size or smaller pick-up truck or standard size or smaller van), tractor, boat, or inoperable vehicle of any type, shall be permitted to remain upon the Properties (including but not limited to streets and driveways) other than for periods not exceeding forty-eight (48) consecutive hours, or unless placed and maintained within an enclosed garage. Commercial vehicles shall not include sedans (or standard size vans or pick-up trucks) which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board.

(b) No noisy or smoky vehicles shall be operated on the Properties. No unlicensed, unregistered or inoperable motor vehicles shall be maintained upon the Properties at any time.

(c) Garage space shall be used for parking of permitted vehicles only. Garage space may not be converted into any use (such as a recreational room or for storage) that would prevent its use as parking for the number of vehicles that the garage was designed to contain. Owners are to use their garages for parking of their vehicles so that Common Area parking will be available for guest parking. No Owner shall park a vehicle on his driveway in such a manner that the vehicle extends into the street.

Section 7.28. Repair of Vehicles: Commercial Vehicles. No motor vehicle shall be constructed, reconstructed or repaired within the Properties, except entirely within the resident's garage, and no dilapidated or inoperable vehicle including vehicles without wheel(s) or an engine, shall be stored on the Properties. No commercial vehicles of any nature shall be parked or stored on any Lot or on the streets within the Properties, except for commercial vehicles providing services to owners or the Association, and in that event only for the duration reasonably necessary to provide such service. No prohibition of this Section 7.28 shall apply to use of public streets within the properties.

Section 7.29. Use of Streets Serving Properties. Streets serving the Properties shall not be used for recreational purposes. Motorcycles, mopeds, or cars shall be allowed on such private streets only for ingress and egress. The speed limit on all private streets is twenty-five (25) miles per hour. Golf carts driven on private streets shall be operated in a safe manner by licensed drivers. Golf

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cart drivers shall obey all California driving laws as though the private streets were public streets. No prohibition of this Section 7.29 shall apply to use of public streets within the properties.

Section 7.30. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or construction of a Residence or appurtenant structures or landscaping within the Properties.

Section 7.31. Diseases and Insects. No Owner shall permit any thing or condition to exist upon his Lot which shall induce, breed, or harbor infectious plant diseases or noxious insects.

Section 7.32. Compliance With Local Laws And Activities Affecting Insurance. Subject to rights of reasonable contest, nothing shall be done or kept on any Lot or within the Common Area which will increase the rate of insurance relating thereto without the prior written consent of the Association and no Owner shall permit anything to be done or kept on his Lot or the Common Area which would result in the cancellation of insurance on any Lot or any part of the Common Area or which would be in violation of any applicable statute ordinance, law or administrative ruling or regulation.

Section 7.33. Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof and no Owner of a Lot within the Properties shall be entitled to sever that Lot from the Common Area portions of the Properties. No easement or other interest in a Lot shall be given without the prior written approval of the Architectural Committee.

**ARTICLE VIII
EASEMENTS**

Section 8.01. Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area and any Lot to perform the duties of maintenance and repair of the Residences or Common Areas provided for herein.

Section 8.02. Boundary Changes. An easement shall exist for use and maintenance of Common Areas over any portion of a Lot which, because of a change in the boundary of a private structure, including a fence, wall or patio, at the time of original construction, lies between that boundary and a Lot line abutting the Common Area.

Section 8.03. Blanket Utility Easement. There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage and electricity and a master television antenna system, if any. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on said Common Areas. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Properties except

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as initially programmed and approved by the Declarant or thereafter approved by the Association's Board of Directors. The easements provided for in this Section 8.03 shall in no way affect any other recorded easement on the Properties.

Section 8.04. Other Easements. Each Lot and its Owner and the Association, as the case may be, is declared to be subject to all easements, dedications, and rights-of-way granted or reserved in, on, over, and under the Property and each Lot as shown on the Subdivision Map.

**ARTICLE IX
INSURANCE**

Section 9.01. Liability Insurance. To the extent such insurance is reasonably obtainable, the Association shall obtain and maintain comprehensive public liability insurance insuring the Association, and the owners and occupants of Lots, and their respective family members, guests, invitees, and the agents and employees of each, against any liability incident to the ownership or use of the Common Areas and 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. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence. 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 projects similar to the Properties in construction, location, and use.

Section 9.02. Association Property Insurance. The Association shall obtain and maintain a master property insurance policy that satisfies each of the following conditions:

(i) **Property Covered:** The policy shall cover the following real and personal property:

(a) **Common Area:** All Common Area Improvements, including buildings and any additions or extensions thereto; all fixtures machinery, and equipment permanently affixed to the Building; fences; monuments; lighting fixtures; exterior signs; and personal property owned or maintained by the Association; but excluding land; foundations; excavations; and other items typically excluded from property insurance coverage.

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

(iii) **Dollar Limit:** The dollar limit of the policy shall not be less than the full replacement value of the covered property, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

(iv) **Primary:** The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

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(v) **Waiver of Subrogation:** The policy shall waive all subrogation rights against any Owner or occupant and their family members and invitees.

(vi) **Cancellation:** The policy shall provide 30 days' prior notice of cancellation.

Section 9.03. Board's Authority To Revise Insurance Coverage. Subject to any restrictions imposed by any Mortgagees, the Board shall have the power and right to deviate from the insurance requirements contained in this Article IX in any manner that the Board, in its discretion, considers to be in the best interests of the Association. If the board elects to materially reduce the coverage from the coverage required in this Article IX, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least 30 days' before the effective date of the reduction.

The Association and its directors and officers shall have no liability to any Owner or Mortgagee if, after a good faith effort, (1) the Association is unable to obtain any insurance required hereunder because the insurance is no longer available; (2) if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or (3) the Members fail to approve any assessment increase needed to fund the insurance premiums.

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 right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association 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.

Section 9.04. Periodic Insurance Review. The Board periodically (and not less than once every three (3) years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. The review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's policy unless the Board is satisfied that the current dollar limit of the property policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

Section 9.05. Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

Section 9.06. Owner's Insurance. An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Residence that he or she desires.

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CONDEMNATION**

Section 10.01. Sale by Consent. If an action for condemnation of all or a portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of at least fifty-one percent (51%) of all of the Owners and with the prior written consent of seventy-five percent (75%) of all institutional first Mortgagees, the Common Area, or a portion of it may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot in the Project grants to the Board and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board.

Section 10.02. Distribution of Proceeds of Sale. On a sale occurring under Section 10.01 of this Article X the proceeds shall be distributed equally to each Owner and their Mortgagees as their respective interests may appear.

Section 10.03. Distribution of Condemnation Award. If the Common Area, or a portion of it, is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of Condemnation, and if not so apportioned, then the award shall be distributed equally to each Owner and their Mortgagees as their respective interests may appear.

**ARTICLE XI
BREACH AND DEFAULT**

Section 11.01. Remedy at Law Inadequate. Except for the non-payment of any Assessment, it is hereby expressly declared and agreed that the remedy at-law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration is inadequate and that the failure of any Owner, Tenant, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to comply with any provision of this Declaration or any rule, regulation, decision or resolution of the Board of Directors or Bylaws or Articles of Incorporation of the Association, all as may be amended from time to time, may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest. Initiation of legal action shall be subject to the provisions of §§ 9.05 and 9.06 of the Bylaws of the Association.

Section 11.02. Nuisance. Without limiting the generality of the foregoing, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy against nuisance, either public or private shall be applicable against every such act or omission.

Section 11.03. Costs and Attorney's Fees. In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the Court may award to

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the prevailing party in such action such attorneys' fees and other costs as it may deem just and reasonable.

Section 11.04. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

Section 11.05. Failure Not A Waiver. The failure of any Owner, the Board of Directors or the Association or its offices or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

Section 11.06. Limitations of Disciplinary Rights.

(a) **Forfeitures:** The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association (including without limitation, voting rights), or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph (c) below.

(b) Monetary penalties imposed by the Association (i) for failure of a Member to comply with the Governing Documents, (ii) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area or Common Facilities allegedly caused by a Member, or (iii) in bringing the Member and his or her Lot into compliance with the Governing Documents, may not be characterized nor treated as an Assessment which may become a lien against the Member's Lot enforceable by a sale of the Lot in nonjudicial foreclosure, provided that this limitation on the Association's lien rights shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney's fees) in the Association's efforts to collect delinquent Assessments.

(c) No penalty or temporary suspension of rights shall be imposed pursuant to this article unless the Owner alleged to be in violation is given at least 15 days prior notice of the proposed penalty or temporary suspension and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) at a hearing conducted at least 5 days before the effective date of the proposed disciplinary action.

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Notwithstanding the foregoing, under circumstances involving conduct that constitutes (i) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (ii) a traffic or fire hazard; (iii) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (iv) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon the request of the offending Owner (which request must be received by the Association, in writing, within five days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five days following the date when the fine is levied. The hearing shall be held no more than 15 days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

The Board shall deliver to the accused Member within seven days after the hearing a written decision which specifies the penalty or suspension, if any, and reasons therefore.

(d) Any notice required by this article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.

(e) The Board shall be entitled to adopt rules that further elaborate and refine the procedure for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become part of the Association Rules.

**ARTICLE XII
AMENDMENT OF DECLARATION**

Section 12.01. Amendment.

(a) Amendment In General. Except as may otherwise be provided in this Declaration, and, in particular, in § 3.03(b) hereof, this Declaration may be amended or revoked in any respect by the affirmative vote or assent or by written ballot of the holders of not less than a majority of the voting power of the Members. Notwithstanding the provisions of this subparagraph (a) of Section 12.01, before the close of the first sale of a Lot in the Project to a purchaser other than Declarant, this Declaration, and any amendments to it, may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or revoking the Declaration.

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All amendments or revocations of this Declaration shall comply with all applicable provisions of California Business & Professions Code § 11018.7.

(b) **Effective Date of Amendment.** The amendment shall be effective upon the recordation in the Office of the Recorder of San Benito County of an instrument setting forth the terms thereof duly certified and executed by the President and Secretary of the Association. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or mortgage recorded prior to the recordation of such amendment.

Section 12.02. Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

**ARTICLE XIII
NOTICES**

Section 13.01. Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to any Owner: To the street address of his or her Lot or to such other address as he or she may from time to time designate in writing to the Association.

If to the Association: c/o 701 McCray Street
Hollister, California 95023
or to such address as the Board may from time to time designate by resolution.

Section 13.02. Personal Service Upon Co-Owners and Others. Personal service of a notice or demand to one of the co-owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

Section 13.03. Deposit in U. S. Mails. All notices and demands served by mail shall be by registered or certified mail, with postage prepaid, and shall be deemed delivered twenty-four (24) hours after deposit in the United States mail in San Benito County, California.

**ARTICLE XIV
MISCELLANEOUS**

Section 14.01. Construction and Severability; Singular and Plural; Titles.

(a) **Restrictions Construed Together.** All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of this

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Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) **Restrictions Severable.** Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) **Singular Includes Plural.** The singular shall include the plural and the plural the singular unless the context requires the contrary, the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) **Captions.** All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) **Liberal Construction.** The provisions of this Declaration shall 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 provision thereafter.

Section 14.02. No Discriminatory Restrictions. No Owner shall execute or cause to be recorded any instrument that imposes a restriction upon the sale, leasing, or occupancy of his Lot on the basis of race, sex, marital status, national origin or ancestry, color, or religion.

Section 14.03. Notification of Sale. 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. Such notification shall set forth the name of the transferee and transferor, the common address of the Lot purchased by the transferee, the transferee's mailing address, and the date of sale. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board, or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to his transferor if the Association has received no notice of transfer as above provided, by certified mail, return receipt requested, at the mailing address above specified. Notices shall also be deemed received twenty-four (24) hours after being sent by telegram or upon personal delivery to any occupant of a Lot over the age of twelve (12) years.

Section 14.04. Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Lot.

Section 14.05. No Fixed Term. This Declaration shall continue in full force and effect until it is amended pursuant to Article XII, or until this Declaration is revoked pursuant to Section 12.01(a) of Article XII.