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1326 Chorro St.  
San Luis Obispo, CA 93401

DOC#: 2008001887



Titles: 1	Pages: 8
Fees	28.00
Taxes	0.00
Others	0.00
PAID	<u>28.00</u>

**AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

*0166*

**OF**

**OLD AVOCADO RANCH**

**TRACT NO. 2758**

**SAN LUIS OBISPO COUNTY, CALIFORNIA**

**A PLANNED DEVELOPMENT PROJECT**

WHEREAS, on March 13, 2007, THE OLD AVOCADO RANCH, LLC, a California limited liability company ("Declarant"), recorded a Declaration of Covenants and Restrictions as Document No. 2007016639, Official Records of San Luis Obispo County, California ("the Declaration"); and

WHEREAS, the Section 10.3 of Article X of the Declaration authorizes Declarant, with the consent of all mortgagees of record, to amend the Declaration prior to the close of escrow of the first sale of a Subdivision Interest to a purchaser other than Declarant; and

WHEREAS, none of the Subdivision Interests have been sold by Declarant.

NOW, THEREFORE, the Declarant hereby adopt this Amendment to the Declaration of Covenants and Restrictions for Tract 2758.

1. Section 1.13 shall be amended to read as follows:

"1.13 Project: The real property, as described in Exhibit A, attached hereto and incorporated herein and in any Supplemental Declaration recorded pursuant to Article XII of this Declaration, subject to this Declaration, divided or to be divided into Lots and Common Area, together with all structures, improvements, fixtures, installations and plantings now or hereafter constructed or installed on said real property."

2. Section 2.4 shall be amended to read as follows:

"2.4 Duties of the Association: The Association, acting through the Board and/or its officers, shall have the obligation to perform each of the following duties:

(a) To improve, repair, maintain and otherwise manage and operate all of the Common Area and all property that may be acquired by the Association. The Association shall further maintain the storm water drainage basin systems and adjacent landscaping in a viable condition in perpetuity. All street lighting shall be energy efficient. The Association shall further provide on-going maintenance to all common area parks and amenities therein, as well as the on-site private roads, parkway landscaping strips, guest parking spaces, all interior and perimeter fencing and any other improvements located within the Common Areas. The Association shall also maintain all public streets within the Project until such streets are accepted by a local agency. Such maintenance shall not include maintenance, repairs or replacements required by reason of the negligent or willful act of any Owner, his family, guests, invitees, lessees or by reason of damage or destruction caused by any of the perils covered by a standard form fire insurance policy with extended coverage endorsement or caused by flood, earthquake or other act of God. Such excluded maintenance, repairs and replacements shall be the responsibility of each Owner; provided, however, that if an Owner shall fail to perform such maintenance or make such repairs or replacements as are his responsibility, then, upon the vote of a majority of the members of the Board and after not less than fifteen (15) days

notice to such Owner, the Association shall have the right (but not the obligation) to provide such maintenance or make such repairs or replacement and assess the cost thereof to such Owner by Reimbursement Assessment."

3. Section 4.8 shall be amended to read as follows:

"4.8 Date of Commencement of Regular Assessments: The Regular Assessments provided for herein shall commence as to all Subdivision Interests on the first day of the calendar month following the conveyance of the first Lot in any phase to an Owner other than Declarant. Declarant shall be liable for all assessments levied against any unsold Subdivision Interests."

4. Section 5.1(d) is hereby amended to read as follows:

"(d) Notwithstanding anything contained in this Declaration to the contrary, neither an Infraction Assessment nor a Reimbursement Assessment may not be treated as an assessment which may become a lien against said Owner's Subdivision Interest which is enforceable by a sale of said interest in accordance with Section 2924, 2924(b) and 2924(c) of the California Civil Code; provided, however, that the above prohibition shall not apply to charges imposed by the Association for reasonable late payment penalties on delinquent Regular, Special or Reimbursement Assessments and/or charges to reimburse the Association for the loss of interest and costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Regular, Special or Reimbursement Assessments."

5. Section 7.2(i) is hereby added to read as follows:

"7.2(i) The right of Declarant, its contractors, subcontractors, agents and employees to the non-exclusive use of the Common Area for purposes of completion of improvements and construction of improvements on Lots in any property annexed to the Project in accordance with Article XII below, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than three (3) years after the recordation of a Supplemental

Declaration as provided in Section 12.1 below, provided, that no such use by Declarant, its contractors, subcontractors, agents and employees shall unreasonably restrict the Members in their use and enjoyment of the Common Area.”

6. Section 10.3 is hereby amended to read as follows:

“10.3 Amendment Prior to Close of First Escrow. Before the close of the first sale of a Subdivision Interest 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.

Before the close of the first sale of a Lot in a second or subsequent phase of the Project to a purchaser other than Declarant, any Supplement recorded pursuant to Article XII with respect to such phase may be amended in any respect or revoked by the execution of an instrument amending or revoking the Supplement by Declarant and any Mortgagee of record of the property described in the Supplement. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder of San Luis Obispo County.”

7. Article XII, Annexation of Additional Property is hereby added to read as follows:

**“ARTICLE XII - ANNEXATION OF ADDITIONAL PROPERTY**

12.1 Additions by Declarant. Declarant shall have the right to add all or any portion of the real property described in Exhibit B to the Project, pursuant to a plan of phased development submitted to the California Real Estate Commissioner along with the application for the public report for the first phase of the Project at any time before the third anniversary of the original issuance of the most recently issued final subdivision public report for the most recent phase of the Project. This election shall be made by the recordation of a supplemental declaration (“Supplemental Declaration”). The Supplemental Declaration shall describe the real property to be annexed and shall state that the property described in it is being annexed to the

Project pursuant to Article XII of this Declaration. Any Supplemental Declaration recorded in accordance with the terms of this Section shall be conclusive in favor of all persons who relied on it in good faith.

Declarant in such Supplemental Declaration shall expressly reserve for the benefit of all property that may from time to time be covered by this Declaration reciprocal easements of use, enjoyment, access, ingress and egress. Such easements may be used by Declarant, its successors, purchasers, and all Owners of Lots, their guests, tenants and invitees, for sidewalks, walkways, vehicular access, and such other purposes reasonably necessary to the use and enjoyment of all Lots in the Project. The Supplemental Declaration may contain complementary additions, amendments, and modifications to this Declaration necessary to reflect the different character, if any, of the real property being annexed, which are not inconsistent with the general scheme of this Declaration or which are required by any institutional first Mortgagee to make Lots in the Project eligible for mortgage purchase, guaranty or insurance.

Notwithstanding the foregoing, unless approved by the California Department of Real Estate, no Supplemental Declaration may (i) cause a substantial increase in the Common Area costs and expenses then being borne by Owners that was not disclosed in the Final Subdivision Report for the phase of the Project in which an Owner purchased his or her Lot; or (ii) otherwise materially adversely affects the rights of Owners without the prior affirmative vote or written consent of at least sixty-seven percent (67%) of each class of Owners entitled to vote and their Mortgagees.

**12.2 Other Additions.** In addition to real property annexed by the Declarant, real property may be annexed to the Project and brought within the general plan and scheme of this Declaration by the approval by vote or written consent of at least sixty-seven percent (67%) of the total voting power of the Association.

12.3 Rights and Obligations of Owners of Annexed Property. Upon recording the Supplemental Declaration in accordance with the provisions of this Declaration, the real property described in the Supplemental Declaration shall be part of the Project and subject to the provisions of this Declaration, and to the rights and powers of the Association pursuant to the terms of this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Rules in the same manner as if it were originally covered thereby and thereafter all of the Owners of Lots constituting a portion of the annexed real property shall automatically be members of the Association, with voting rights commencing on the date Regular Assessments commence on the annexed Lots. Regular and Special assessments with respect to the annexed real property shall commence at the time described in Section 4.8 above, and the assessment ratios described shall be modified to take into account the greater number of Lots in the Project, using the same method of calculating such ratios as is described in Section 4.7 above.

12.4 Reciprocal Easements. Declarant hereby reserves, for the benefit of and appurtenant to the Lots located in any phase of development annexed to the first phase of this Project and their respective Owners, reciprocal easements to use the Common Area (other than any buildings or Exclusive Use Common Areas) in the first phase pursuant to and in the manner set forth in this Declaration. Declarant hereby grants, for the benefit of and appurtenant to the Lots in the first phase of this Development and their Owners, a nonexclusive easement to use the Common Area (other than any buildings or Exclusive Use Common Areas) in each phase of development annexed to the first phase, pursuant to and in the manner set forth in this Declaration. These reciprocal easements shall be effective as to any annexed real property upon the first close of escrow for the sale of a Lot in the annexed property.

8. Exhibit B is hereby appended to the Declaration.

**"EXHIBIT B**

Lots 1 through 20, inclusive, Lots 41 and 42, and Lots 47 and 48 of Tract 2758,  
as shown on the map recorded in Book 29 Pages 54 - 58 through inclusive  
March 13, 2007  
of Maps, in the office of the County Recorder of the County of San Luis Obispo,  
State of California."

In all other respects said Declaration of Covenants and Restrictions shall remain in full  
force and effect.

Executed this 11 day of January, 2008 at San Luis Obispo, California.

THE OLD AVOCADO RANCH, LLC  
a California limited liability company

by:

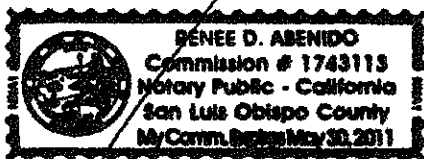
  
ROBERT W. TAKKEN, Manager

STATE OF CALIFORNIA )  
COUNTY OF SAN LUIS OBISPO ) ss.

On January 11, 2008, before me, Renee D. Abenido, a Notary Public for  
the State of California, personally appeared ROBERT W. TAKKEN, proved to me on the basis  
of satisfactory evidence to be the person whose name is subscribed to the within instrument  
and acknowledged to me that, he executed the same in his authorized capacity, and that by his  
signature on the instrument the person or the entity upon behalf of which the person acted,  
executed the instrument.

WITNESS my hand and official seal.

  
Notary Public



State of California )

County of San Luis Obispo)

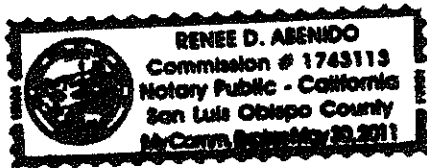
On Jan. 8, 2008 before me, Renee D. Abenido, Notary Public, personally appeared

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Renee D. Abenido (Seal)



END OF DOCUMENT



RECORDING REQUESTED BY:

**QUESTA TITLE**

DOC#: **2007016639**

Titles: 2 Pages: **38**



Fees 125.00  
Taxes 0.00  
Others 0.00  
PAID \$125.00

WHEN RECORDED RETURN TO:

**FITZPATRICK & BARBIERI**  
Attorneys at Law  
1326 Chorro Street  
San Luis Obispo, CA 93401

**DECLARATION OF**

**COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**THE OLD AVOCADO RANCH**

**TRACT NO. 2758**

**A PLANNED RESIDENTIAL COMMUNITY**

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
THE OLD AVOCADO RANCH  
TRACT NO. 2758  
SAN LUIS OBISPO COUNTY, CALIFORNIA  
A PLANNED RESIDENTIAL COMMUNITY**

WHEREAS, THE OLD AVOCADO RANCH, LLC, a California limited liability company, (herein "Declarant") is the owner of the real property described in Exhibit A, attached hereto and incorporated herein ("the Project").

WHEREAS, it is the desire and intention of Declarant to subdivide and develop the Project and to sell and convey Subdivision Interests therein subject to the covenants, conditions and restrictions set forth in this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Project shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, repaired, maintained and improved subject to the following easements, covenants, conditions and restrictions, all of which are in furtherance of a plan for the subdivision and improvement of the Project and sale of Subdivision Interests therein, and which are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project. All of the covenants, conditions and restrictions herein set forth shall run with the Project and shall be binding on all parties having or acquiring any right, title or interest in the Project, or any part thereof, and shall be for the benefit of each owner of any portion of the Project or any interest therein and shall inure to the benefit of and be binding upon each successor in interest of such owners.

**ARTICLE I - DEFINITIONS**

The following terms shall have the following meanings whenever used in this Declaration, unless expressly provided otherwise.

1.1 Architectural Rules: Rules and regulations of the committee described in Article IX, hereof.

1.2 **Articles; Bylaws:** The Articles of Incorporation and Bylaws of the Association and amendments thereto.

1.3 **Association:** THE OLD AVOCADO RANCH HOMEOWNERS' ASSOCIATION, a non-profit, Mutual Benefit corporation its successors and assigns.

1.4 **Association Rules:** Rules and regulations of the Board for the use and operation of the Project, described in Paragraph 2.6(e).

1.5 **Board:** The Board of Directors of the Association.

1.6 **Common Area:** All of the property owned by the Association for the common use and benefit of the Owners, and shall include, upon conveyance to the Association, Lots 47, 48, 49, 50 and 51 of Tract 2758.

1.7 **Declarant:** THE OLD AVOCADO RANCH, LLC, a California limited liability company.

1.8 **Declaration:** This Declaration, as from time to time amended, modified or supplemented.

1.9 **Lot:** Any of the Lots 1 through 46, inclusive, in Tract 2758, together with any improvements now or hereafter thereon.

1.10 **Member:** Every person or entity owning a Subdivision Interest or interest therein, which Subdivision Interest is subject to assessments.

1.11 **Mortgage:** A mortgage or deed of trust of record encumbering a Subdivision Interest. The term "Mortgagee" shall include the beneficiary under a deed of trust and any guarantor or insurer of a mortgage. A "first" mortgagee is one (1) having priority as to all other mortgagees encumbering the same Subdivision Interest.

1.12 **Owner:** The record owner or owners, if more than one (1), including Declarant, of Lots 1 through 46, inclusive. "Owner" shall also include a contract purchaser who is in possession of a Lot. "Owner" does not include persons or entities who hold an interest in a Subdivision Interest merely as security for the performance of an obligation.

1.13 **Project:** The real property, as described in Exhibit A, attached hereto and incorporated herein, subject to this Declaration, divided or to be divided into Lots and Common Area, together with all structures, improvements, fixtures, installations and plantings now or hereafter constructed or installed on said real property.

1.14 Subdivision Interest: Each of the Lots together with each Lot's exclusive and nonexclusive easements in and through the Common Area and the other Lots and a membership in the Association.

## ARTICLE II - MANAGEMENT BY ASSOCIATION

2.1 Organization: The Association is a non-profit, Mutual Benefit corporation. Upon conveyance of the first Lot to an Owner other than Declarant, the Association shall be charged with the duties and vested with the powers prescribed by law and set forth in the Articles of Incorporation, Bylaws, Association and Architectural Rules and this Declaration. Neither the Articles, the Rules nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. Except as to matters requiring the approval of Owners as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association, including the exercise of its powers and duties, shall be conducted by the Board, such officers as the Board may elect or appoint, or such persons or entities with delegated authority under the provisions of Section 2.4(m).

(a) The Association shall conduct its affairs in accordance with the provisions of the Bylaws, as they may be amended from time to time, the provisions of which are hereby incorporated herein.

(b) No member of the Board or officer of the Association shall be liable for or on account of any damages resulting from any acts performed while in the furtherance of such duty as a member of the Board or officer, or omission to perform same, unless such act or omission constitutes a breach of the directors or officers duty to act in good faith, in a manner which such director or officer believed to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinary, prudent person in a like position would use under similar circumstances.

2.2 Membership: Declarant, and each Owner other than Declarant by acceptance of a deed or by recordation of a Contract of Sale where such Owner purchases a Subdivision Interest, shall automatically become and consents to becoming a Member of the Association, to abide by the Articles, the Bylaws, the Association Rules and the Architectural Rules thereof, and to accept all of the benefits and obligations of members thereof. Ownership of a Lot shall be the sole qualification for membership. The membership of each Owner in the Association shall be appurtenant to the Subdivision Interest giving rise to such membership and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to such Subdivision Interest and then only to the transferee of title thereto. Any transfer of title to a Subdivision Interest shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof and shall automatically terminate the membership of the transferor(s). No certificate, membership or other document evidencing membership in the Association need be issued by the Association.

2.3 Voting:

(a) The Association shall have two (2) classes of voting memberships, as follows:

(i) Class A: All Owners, with the exception of the Declarant, shall be entitled to Class A membership. Class A Members shall be entitled to one (1) vote for each Subdivision Interest owned. When a Subdivision Interest is owned by more than one (1) person, such persons shall decide among themselves how that Subdivision Interest's vote is to be cast, but in no event shall more than one (1) vote be cast per Subdivision Interest. The Owners may designate one (1) of the Owners, with the exception of Declarant, to be the "voting member" who shall have the authority to cast any vote as such Owner sees fit; or they may decide by a majority vote among themselves how their Subdivision Interest's vote is to be cast, but fractional votes shall not be allowed. If more than one (1) person is the Owner of a Subdivision Interest and such persons are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. Unless the board receives a written objection in advance from a co-owner, if any co-owner of a Lot casts a vote representing that Lot it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other co-owners. In the event more than one (1) vote is cast for a particular Subdivision Interest, all such votes shall be void and shall not be counted.

(ii) Class B: The Declarant or Declarant's successors or assigns, shall be the sole Class B Member. The Class B Member shall be entitled to three votes for each Subdivision Interest owned. Class B membership shall cease and be converted to Class A membership upon the occurrence of whichever of the following is first in time:

(1) The total outstanding votes of the Class A Members equals or exceeds the total outstanding votes of the Class B Member;

(2) On the second anniversary of the first conveyance of a Subdivision Interest to an Owner other than Declarant.

(b) Any action by the Association that must have the approval of the Members before being undertaken shall require the vote or written ballot of a majority of the votes of each class of membership. Upon conversion of the Class B membership to Class A membership as provided above, any action which requires the vote of written assent of the members shall require the vote or written assent of a majority of the total voting power of the Association and the vote or written assent of a majority of the Association other than Declarant.

(c) Subject to the procedural prerequisites of Section 7615(b) of the California Corporations Code, every Member entitled to vote at an election for members of the Board shall have the right to cumulate his votes and give one (1) candidate, or divide among any number of the candidates, a number of votes equal to the number of votes such Member is otherwise entitled to, multiplied by the number of directors to be elected.

(d) As more particularly set forth in the Bylaws, proxy voting shall be allowed on any matter presented to a vote of Members.

(e) No voting rights shall vest in any member until the Association has levied assessments against that member's Subdivision Interest.

**2.4 Duties of the Association:** The Association, acting through the Board and/or its officers, shall have the obligation to perform each of the following duties:

(a) To improve, repair, maintain and otherwise manage and operate all of the Common Area and all property that may be acquired by the Association. The Association shall further maintain the storm water drainage basin systems and adjacent landscaping in a viable condition in perpetuity. All street lighting shall be energy efficient. The Association shall further provide on-going maintenance to all common area parks (Lots 48, 49 and 51) and amenities therein, as well as the on-site private roads (Lots 47 and 50), parkway landscaping strips, guest parking spaces, all interior and perimeter fencing and any other improvements located within the Common Areas. The Association shall also maintain all public streets within the Project until such streets are accepted by a local agency. Such maintenance shall not include maintenance, repairs or replacements required by reason of the negligent or willful act of any Owner, his family, guests, invitees, lessees or by reason of damage or destruction caused by any of the perils covered by a standard form fire insurance policy with extended coverage endorsement or caused by flood, earthquake or other act of God. Such excluded maintenance, repairs and replacements shall be the responsibility of each Owner; provided, however, that if an Owner shall fail to perform such maintenance or make such repairs or replacements as are his responsibility, then, upon the vote of a majority of the members of the Board and after not less than fifteen (15) days notice to such Owner, the Association shall have the right (but not the obligation) to provide such maintenance or make such repairs or replacement and assess the cost thereof to such Owner by Reimbursement Assessment.

(b) To obtain and maintain in force the policies of insurance specified in the Bylaws and Article III hereof.

(c) Contract for goods and services for the Common Area, facilities, and interests of the Association.

(d) To promulgate rules which require the removal of vehicles parked in unauthorized areas. Such rule or the power granted thereunder shall be in accordance with Section 22658.2 of the California Vehicle Code and shall be conspicuously posted in all parking areas. No parking shall be permitted in the private access roads, which are designated as fire lanes and which shall remain open at all times.

(e) To pay taxes and assessments which are or could become a lien on the Common Area, or any portion thereof.

(f) To maintain adequate reserve accounts in the name of the Association.

(g) To enforce the applicable provisions of this Declaration, the Articles, Bylaws, the Association Rules and the Architectural Rules.

(h) To levy assessments and perfect and enforce liens as herein provided.

(i) To prepare budgets and financial statements and reports for the Association as required by the Bylaws.

(j) To formulate and adopt reasonable rules and regulations for the operation of the Project as a whole.

(k) To initiate and execute disciplinary proceedings against members for violations of provisions of the governing instruments in accordance with procedures set forth in the Bylaws.

(l) To delegate its powers to such committees, officers, or employees of the Association as are expressly authorized by the governing instruments.

(m) To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration, the Bylaws, Association Rules and Architectural Rules.

#### 2.5 Maintenance of Buildings and Other Improvements:

(a) Each Owner shall provide exterior maintenance to each building within such Owner's Lot, which maintenance shall include and shall not be limited to painting, maintaining, repairing and replacing roofs, gutters, down spouts and exterior surfaces (including glass surfaces, doors and skylights), when and if required by reason of normal wear and tear or deterioration. Such maintenance shall include maintenance of any patio, porch, deck or balconies, balcony covers or other improvements or additions built or maintained on or within any Lot by an Owner. Each Owner shall also maintain the grounds, facilities and landscaping within his or her Lot, including trees, shrubs, grass, driveways and walkways. All landscaping shall be neatly trimmed, properly cultivated and maintained in a neat and orderly condition and in a manner designed to enhance its appearance. If an Owner shall fail to perform such maintenance or make such repairs or replacements as are his or her responsibility, then, upon the vote of a majority of the members of the Board and after not less than fifteen (15) days notice to such Owner, the Association shall have the right (but not the obligation) to enter into or upon the Subdivision Interest of such Owner and provide such maintenance or make such repairs or replacement and assess the cost thereof to such Owner by Reimbursement Assessment.

(b) Each Owner has complete discretion as to the choice of furniture, furnishings, and interior decorating, except that windows can be covered only by drapes, shutters, or shades and cannot be painted or covered by foil, cardboard, or other similar materials.

2.6 Powers and Authority of the Association: The Association shall have all of the powers of a non-profit, Mutual Benefit corporation organized under the California Corporations Code, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws or this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and Bylaws 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 including, without limitation, the power and authority:

(a) To establish, fix, levy and collect assessments on the Owners and to enforce payment of such assessments, all in accordance with the provisions of Articles IV and V hereof.

(b) To enter onto any Lot and the Common Area for the purpose of performing the duties or discharging the obligations of the Association, performing by peaceful means any of the provisions of this Declaration or maintaining or repairing any area required to be maintained by an Owner if for any reason whatsoever such Owner fails to maintain or repair such area. Any such entrance into a Lot shall be after twenty-four (24) hours prior written notice to the Owner or such greater notice as may be required by any provision hereof; provided, however, that such entrance shall be permitted without any prior notice whatsoever in the event of an emergency. Any damage to the Lot or the improvements thereon resulting from such entry shall be repaired by the Association, at its sole cost and expense.

(c) 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 or private sewers or septic systems, 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. Each Owner, 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 (1) 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 easements can be granted if it would permanently interfere with the use, occupancy, or enjoyment by any Owner of his Lot or the common facilities of the Project 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;

(d) To employ the services of a person or firm ("Manager") to operate, repair and maintain and manage the Common Area to the extent deemed advisable by the Board and to perform such duties and functions as may be prescribed, authorized or delegated by the Board as well as such other personnel as the Board shall determine to be necessary or proper; provided, however, no management or employment agreement shall be entered into unless the proposed Manager first provides the Association with a written disclosure statement as required by California Civil Code Section 1363.1 and unless not less than a majority of a quorum of the Members entitled to vote at a duly constituted meeting of the Members has approved the employment of such Manager.

(e) By a majority vote of the Board, and from time to time, to adopt, amend, enforce and repeal such reasonable rules and regulations as the Board shall



determine to be necessary or proper for the use and operation of the Project ("the Association Rules"). The Association Rules shall govern the use of the Common Area and each Lot by an Owner, by the family of such Owner or by an invitee, licensee or lessee of such Owner; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. 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. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if set forth in this Declaration. Each Owner is responsible for delivering Association rules to his Lessees;

(f) In addition to any other enforcement rights described in this Declaration and the Bylaws, or authorized by law and subject to any restrictions on the Association's enforcement rights, including any due process requirements imposed by the Bylaws or by law, the Association may take any of the following actions against any person or entity whose act or failure to act violates or threatens to violate any provision of this Declaration, the Bylaws or Association rules:

- (i) assess reimbursement and/or infraction assessments, including late charges and interest;
- (ii) suspend voting rights in the Association;
- (iii) commence a legal action for damages, injunctive relief, or both.

The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Association on its own behalf and/or on behalf of any Owner who consents, and the prevailing party in any such action shall be entitled to recover costs and reasonable attorneys' fees. The Association may take more than one (1) of the foregoing enforcement actions against any one (1) violation or threatened violation, provided that a suspension of use privileges shall not exceed thirty (30) days (unless the suspension is for delinquent assessments) and any infraction assessment shall not exceed One Hundred Dollars (\$100.00) (excluding late charges, interest and costs of collection imposed for delinquent infraction assessments) for any one (1) violation. Continuing violations or repetitive violations may be subjected to multiple infraction assessments. The Association, in its sole discretion, may resolve or settle any dispute, including any legal action, under such terms and conditions as it considers appropriate, on its own behalf and on behalf of any Owner who is a party to such action.

The Association may not cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his or her Lot except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

The enforcement of infraction assessments is subject to the restrictions described in 5.1(b).

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## **ARTICLE III - INSURANCE**

**3.1 Public Liability and Property Damage:** Comprehensive public liability insurance shall be purchased by the Association as promptly as possible following its formation and shall be maintained in force at all times, the premium thereon to be paid out of the maintenance fund. The insurance shall be carried in reputable companies authorized to do business in California. Such insurance shall insure the general liability of the Association and the individual liability of the officers and directors for their negligent acts or omissions in those capacities and shall be in amounts not less than the minimum required by Section 1365.7 of the California Civil Code, regarding protecting the officers and directors of the Association. Said policies shall insure the Association, the Board, the Manager, if any, the Declarant, as long as Declarant is the owner of any Lot(s) and the Owners and occupants of Subdivision Interests, their family members, guests, invitees and the agents, directors, officers and employees of each, against any liability incident to the ownership or use of the Common Area and including, if obtainable, a cross liability endorsement insuring each insured against liability to each other insured. The policy shall include a severability of interest endorsement which shall preclude the insurer from denying the claim of named insured's because of any neglect or other act or omission of another named insured.

The limits and coverage shall be reviewed at least annually by the board and adjusted, subject to the minimums set forth in Section 1365.7 of the California Civil Code, regarding protecting the officers and directors of the Association.

**3.2 (a)** Each Owner shall obtain and maintain fire and casualty insurance for the improvements on his or her Lot as required by the Owner's individual Mortgagee or, if no Mortgagee encumbers his or her Lot, in an amount not less than the full estimated replacement cost of the improvements on the Owner's Lot. Copies of such policies or certificates evidencing the required coverage shall be provided to the Association upon request. In the event an Owner does not obtain the coverage required hereunder, the Association may purchase and maintain such coverage on behalf of the Owner and may assess a reimbursement assessment for the cost thereof. Any damages or other expenses incurred by the Association which are caused by any Owner's failure to obtain the required insurance under this section shall be the liability of such Owner(s) and shall be subject to a reimbursement assessment as well as an action for damages for the recovery thereof.

**(b)** Each Owner may separately maintain personal liability and property damage liability insurance for his or her Lot.

**(c)** With respect to insurance coverage under this Section 3.2, any mortgagee shall have the option to apply insurance proceeds payable to it in reduction of the obligation secured by his mortgage.

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**3.3 Miscellaneous Insurance:**

(a) The Board shall also purchase and maintain workers' compensation insurance to the extent that the same shall be required by law. The Board may also purchase and maintain fidelity bonds, insurance on commonly owned personal property, Directors and Officers liability and such other insurance as it deems necessary, the premiums thereon to be paid out of the maintenance fund.

(b) FNMA, FHLMC and GNMA Requirements: Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bonds meeting the requirements established by Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporations ("FHLMC"), and/or Government National Mortgage Association ("GNMA"), respectively, so long as any of said entities are a Mortgagee or Owner of a Lot within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA, FHLMC or GNMA, respectively.

**ARTICLE IV - MAINTENANCE ASSESSMENTS AND MAINTENANCE FUND**

4.1 (a) Covenant to Pay Assessments: Declarant covenants for each Subdivision Interest owned by Declarant, and each Owner other than Declarant, by acceptance of a deed to any Subdivision Interest, or by execution of a Contract of Sale on any Subdivision Interest, covenants and agrees to pay Regular Assessments, Special Assessments, Reimbursement Assessments and Infraction Assessments levied as hereinafter provided, together with interest, late charges, attorneys' fees and costs of collection as hereinafter provided, and to allow the Association to enforce any assessment lien established in accordance with the provisions of this Declaration by any means authorized by law. The Regular, Special and Reimbursement assessments, together with interest, late charges, attorneys' fees and costs of collection as hereinafter provided, shall be a charge on the real property and shall be a continuing lien upon the Subdivision Interest against which each such assessment is made and such lien shall be enforceable in accordance with the provisions of this Declaration by nonjudicial proceedings under power of sale or by any other means authorized by law. All assessments, together with interest, late charges, attorneys' fees and costs of collection, shall also be the personal obligation of the person(s) who were the Owner of such Subdivision Interest at the time such assessment became due and payable. If there is more than one (1) Owner of a particular Lot, each Owner shall be jointly and severally liable.

(b) Purpose of Assessments: With the exception of Reimbursement Assessments and Infraction Assessments, all assessments levied by the Association shall be used solely to promote the recreation, health, safety and welfare of the Owners in the Project and for the operation, improvement, maintenance and replacement of the Project for the common good of the Owners and for the performance of the duties of the Association as set forth in this Declaration.

(c) No Waiver for Nonuse or Abandonment: No Owner may waive or otherwise escape liability for any assessment by non-use of the Common Areas or by abandonment of his or her Lot.

**4.2 Basis of Regular Assessments:**

(a) Within sixty (60) days prior to the beginning of each calendar year, the Board shall estimate the charges required to be paid by the Association in performing its functions during such ensuing calendar year, including a reasonable provision for contingencies and reserves and less any surplus from the prior year's fund. Such amount ("the estimated cash requirement") shall be assessed to each Owner in December of each year for the following year. If the estimated cash requirement proves inadequate for any reason, including nonpayment of any Owner's assessment, the Board may at any time levy a Special Assessment which shall be assessed to the Owners in the same manner. Unless the Board determines otherwise, each Owner shall pay assessments levied pursuant to this Article to the Association in advance in equal monthly installments commencing at such time as the Board shall determine.

(b) Subject to the restrictions below regarding increasing Regular Assessments, the board shall notify the Owners in writing of any increase in the amount of each Regular Assessment. Such notice shall be by first-class mail not less than thirty (30) or more than sixty (60) days prior to the due date of the increased assessment.

(c) Prior to the Organizational Meeting of the Association, the Regular Assessment payable by each Owner to the Association shall be as set forth in the budget approved by the Department of Real Estate, State of California. Assessments shall be levied against the then Owners in the manner herein provided. Any assessments levied and which become payable with respect to a Subdivision Interest prior to the initial sale thereof by Declarant shall be the obligation of Declarant as the Owner thereof.

**4.3 Special Assessments:**

(a) Subject to the restrictions described 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 for 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.

(b) The Board shall notify the Owners in writing of the amount and due date(s) of each Special Assessment. Such notice shall be by first-class mail not less than thirty (30) days nor more than sixty (60) days prior to the due date of the Special

Assessment or installment thereof. If payable in installments, the Board shall only be required to give notice of the due date of the first installment and the schedule of all subsequent installments.

**4.4 Restrictions on Increases in Regular Assessments and on the Imposition of Special Assessments.** The Board shall comply with Section 1366 of the California Civil Code prior to any increase in Regular Assessments and prior to the imposition of any Special Assessments. Notwithstanding the above restrictions on increases in Regular Assessments and imposition of Special Assessments, the Board may increase or impose assessments if necessary for emergency situations pursuant to Section 1366 of the California Civil Code.

**4.5 Reimbursement Assessments:** After compliance with the due process requirements contained in the Bylaws, the Board may impose a Reimbursement Assessment against an Owner or Owners to reimburse the Association for costs incurred in repairing damage to the Common Area, or any improvements or personal property located within the Project, for which the Owner was allegedly responsible, or in bringing the Owner or the Owner's Lot or the improvements thereon into compliance with this Declaration, the Articles, Bylaws or any duly adopted rules of the Association.

**4.6 Infraction Assessments:** After compliance with the due process requirements contained in the Bylaws, the Board may impose a reasonable monetary penalty and levy an Infraction Assessment against a particular Owner or Owners for actual violations of any provision of this Declaration, the Bylaws, the Association Rules or the Architectural Rules, whether such violations are by an Owner, by an Owner's tenant(s) or invitees. If the board adopts a policy imposing any monetary penalty on any Owner for a violation of the governing documents, including but not limited to properly adopted Architectural Rules or Association Rules, including any monetary penalty relating to the activities of an owner, tenant, guest or invitee of a Owner, the board shall distribute to each Owner, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations. The board shall distribute such schedule to all Owners with the annual distribution of the statement describing the Association's policies and practices in enforcing lien rights and other legal remedies for default in payment of assessments as required by California Civil Code Section 1365(d).

**4.7 Uniform Rate of Assessment:** With the exception of Reimbursement Assessments and/or Infraction Assessments, all assessments shall be fixed at a uniform rate for all Subdivision Interests.

**4.8 Date of Commencement of Regular Assessments:** The Regular Assessments provided for herein shall commence as to all Subdivision Interests on the first day of the month following the conveyance of the first Subdivision Interest to an

Owner other than Declarant. Declarant shall be liable for all assessments levied against any unsold Subdivision Interests.

**4.9 Due Dates, Late Charges and Interest:**

(a) With the exception of Regular Assessments which shall be due on the first day of each calendar month unless otherwise determined by resolution of the Board, the Board shall give each Owner written notice of the amount of each assessment and the due date (or due dates if paid in installments, and the amount of each installment) at least twenty (20) days prior to the due date of any assessment. The notice need only be given once for any assessment paid in installments. Unless the Board specifies otherwise, assessments payable in installments shall be due on the first day of each month.

(b) An assessment is delinquent fifteen (15) days after its due date. If an assessment is delinquent, the Association may recover all of the following:

(i) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.

(ii) A late charge not exceeding ten percent (10%) of the delinquent assessment or Ten Dollars (\$10), whichever is greater.

(iii) Interest on all sums imposed in accordance with this section, including the delinquent assessment, reasonable costs of collection, and late charges, at twelve percent (12%) interest, per annum, commencing thirty (30) days after the assessment becomes due.

(c) 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.

**4.10 Maintenance Fund:**

(a) All funds collected hereunder shall be controlled by the Association and shall constitute the Maintenance Fund. The Board or the Manager, as the case may be, shall have exclusive control of said account and shall be responsible to the Owners for the maintenance of accurate records thereof at all times.

(b) No withdrawal shall be made from said account except to pay for the charges and expenses for the common benefit of all Owners; provided, however, that any expenses not so included which are determined, by affirmative vote of not less than seventy-five percent (75%) of the Owners excluding Declarant, to be a proper charge against said maintenance fund, may be paid from said account.

(c) The books and records of the Association and the books and records of any agent thereof pertaining to the Maintenance Fund, may be inspected or audited by any Owner or his duly authorized representative, at all reasonable times. Such representative shall be either an attorney or a public accountant. If an audit is desired by a majority of the Owners, it shall be at the expense of the Maintenance Fund. Otherwise, any such inspection or audit shall be made at the expense of the Owner(s) desiring same.

4.11 Estoppel Certificate: Within fifteen (15) days of the delivery of a written request by any Owner, the Board or the Manager 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, Association Rules or Architectural Rules; (ii) the amounts of the Association's current Regular and Special Assessments and fees; and (iii) the amount of any assessments, including any late charges, interest, or costs of collection, that as of the date of the statement are unpaid.

## ARTICLE V - ENFORCEMENT OF ASSESSMENTS

### 5.1 Assessment Lien:

(a) Any delinquent Regular, Special or Reimbursement Assessments, together with interest, late charges and reasonable costs of collection (including reasonable attorney's fees), shall be and become a lien upon the Subdivision Interest against which such delinquent assessment or assessments were levied, upon the recording in San Luis Obispo County Recorder's Office of a Notice of Delinquent Assessment as provided in Section 1367 of the Civil Code of California, including the name and address of the Trustee who is authorized by the Association to enforce the lien by nonjudicial foreclosure sale as set forth in Section 5.2 below.

(b) Before the Association can place a lien on a Lot to collect a past due debt for Regular, Special or Reimbursement Assessments, the Association shall, at least thirty (30) days prior to recording a lien, notify the owner of record in writing by certified mail of the following:

(i) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the owner of the Lot has the right to inspect the association records and the following statement in 14-point boldface type, if printed, or in capital letters, if typed:

**"IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."**

(ii) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

(iii) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(iv) The right to request a meeting with the board as provided by Section 1367.1(c) of the California Civil Code.

An Owner may dispute the debt by submitting to the Board a written explanation within fifteen (15) days of the mailing of the Association's notice. The Board must respond to an Owner's timely explanation within fifteen (15) days of the mailing of the Owner's explanation.

An Owner also may submit a written request to meet with the Board to discuss a payment plan for the debt. The request must be mailed within fifteen (15) days of the mailing of the Board's notice. The Board must then meet with the Owner in executive session within forty-five (45) days of the mailing of the Owner's request. If there is no regularly scheduled Board meeting within that time period, the Board may designate a committee of one (1) or more members to meet with the Owner.

Any partial payments made toward the debt will first be applied to the assessments owed, and only after the principal owed is paid in full will the payments be applied to the fees and costs of collection, attorneys' fees, late charges, or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of assessments.

(c) Upon giving the notice to the Owner(s) as set forth in subsection (b) above, the Board may record a Notice of Delinquent Assessment in accordance with Section 1367(b) of the California Civil Code. Unless the Board considers immediate recording of the notice to be in the best interests of the Association, the Notice of Delinquent Assessment shall not be recorded until fifteen (15) days after the delivery to the delinquent Owner of the written notice described in subsection (b) above and unless the delinquent Owner shall not have cured the default within such fifteen (15) day period. The Notice shall be signed by any officer or director of the Association or any employee or agent of the Association who is authorized by the Board to sign such notice(s). Any Manager or legal counsel employed by the Association shall also have the power to sign lien documentation on behalf of the Association. Within ten (10) calendar days after recordation of the Notice of Delinquent Assessment, the Association shall mail in the manner set forth in Section 2924(b) of the California Civil Code a copy of the notice to all record owners of the Unit.

(d) Notwithstanding anything contained in this Declaration to the contrary, an Infraction Assessment imposed by the Association as a disciplinary measure for failure of an Owner to comply with the governing instruments may not be treated as an assessment which may become a lien against said Owner's Subdivision Interest which is enforceable by a sale of said interest in accordance with Section 2924, 2924(b) and 2924(c) of the California Civil Code; provided, however, that the



above prohibition shall not apply to charges imposed by the Association for reasonable late payment penalties on delinquent Regular, Special or Reimbursement Assessments and/or charges to reimburse the Association for the loss of interest and costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Regular, Special or Reimbursement Assessments.

**5.2 Foreclosure of Lien:** After the expiration of thirty (30) days following the recording of the Notice of Delinquent Assessment, the Association may enforce any assessment lien established by the recordation of the Notice of Delinquent Assessment, by recording a Notice of Default in the form described in Civil Code Section 2924c(b)1 to commence nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the provisions of Section 2924, et. seq., of the Civil Code (or any similar statutory provisions that may hereafter exist), applicable to the exercise of powers of sale in mortgages and deeds of trust. Such provisions shall be applied and adapted to the foreclosure of the lien by power of sale to the fullest extent reasonably possible and consistent in view of the differences between the lien and mortgages generally (e.g. "Trustor" as used in the statute would refer to the delinquent "Owner" and "Beneficiary" would refer to the "Association"). The Association shall have the power to bid in its own name on the property sold and to hold, lease, mortgage and convey the same for the benefit of all Owners. In the event the enforcement of such lien is by action in Court, reasonable attorneys' fees shall be allowed to the extent permitted by law. In the event of enforcement in the manner provided by law for the exercise of powers of sale in mortgages and deeds of trust, the Association shall be entitled to actual expenses and such fees, including attorneys' fees, as may be allowed by law or as may be prevailing at the time the sale is conducted. If any such default is cured prior to sale or other enforcement of such lien, the Board shall cause to be recorded a certificate setting forth the satisfaction and release of such lien, upon payment by the delinquent Owner of the amount which is delinquent, including interest, late charges, actual expenses, including reasonable attorneys' fees and anticipated expenses in preparing and recording such certificate, incurred by the Association. The sale shall be conducted by the Trustee named in the Notice of Delinquent Assessment or a Trustee substituted in accordance with Section 2934(a) of the California Civil Code.

**5.3 Legal Action:** In addition to the right of the lien herein set forth, the Association may bring a suit at law against a delinquent Owner(s) to enforce his assessment obligation. Any judgment rendered in such an action shall include a sum for reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Owner. The Association may commence and maintain a lawsuit directly on the debt without waiving its right to establish a lien against the Owner's Lot.

**5.4 Waiver of Exemption Rights:** Each Owner does hereby waive, to the extent of any liens created pursuant to this Article, the benefit of any exemption law in effect at the time any assessment, regular or special, becomes delinquent or any lien is imposed pursuant to the terms hereof.

## ARTICLE VI - USE RESTRICTIONS

Use of the Project and each Subdivision Interest therein shall be restricted in accordance with the following provisions in addition to all other covenants, conditions and restrictions herein contained.

6.1 Residential Use: None of the Lots shall be used except for private single family residential purposes. The number of persons of any age occupying the residential improvement on a Lot shall not be more than two (2) per bedroom. No part of the Project shall be used in any way, directly or indirectly, for any business, commercial or other non-residential purpose.

6.2 Exemption: Notwithstanding Section 6.1 above, Declarant, their successors and assigns, may use the Common Area and Lots for models and model sites, advertising and other purposes incidental and necessary for completion of construction and sales and leasing purposes; provided however, that Declarant shall not unreasonably interfere with any Owner's use or enjoyment of his Lot or the Common Area.

6.3 Construction, Modifications, Alterations and Additions:

- (a) No Owner shall at his or her own expense or otherwise make any alterations or modifications to the exterior of the buildings, fences, railings, or walls situated within the Project without the prior written consent of the Architectural Committee.
- (b) No Owner shall enclose any exterior deck or patio area with walls or roofs without the prior written consent of the Architectural Committee.
- (c) Owners shall only install energy efficient appliances and lighting in the residential improvements on their Lots.
- (d) Owners shall only install Air Pollution Control District approved wood burning devices which shall be limited to:
  - (i) All EPA-Certified Phase II wood burning devices;
  - (ii) Catalytic wood burning devices that emit less than or equal to 4.1 grams per hour of particulate matter that are not EPA-Certified but have been verified by a nationally-recognized testing lab;
  - (iii) Non-catalytic wood burning devices that limit less than or equal to 7.5 grams per hour of particulate matter that are not EPA-Certified but have been verified by a nationally-recognized testing lab;
  - (iv) Pellet-fueled wood heaters; and
  - (v) Dedicated gas-fired fireplaces.
- (e) All building improvements with the Project shall exceed Title 24 requirements for building efficiency by not less than ten percent (10%).
- (f) Prior to commencing any improvements within the Project, the Association shall ensure that a geologic evaluation is conducted to determine if

Naturally Occurring Asbestos (NOA) is present within any area that will be disturbed. If NOA is not present, an exemption request must be filed with the Air Pollution Control District. If NOA is found at the site, the Association shall comply with all requirements outlined in the Asbestos Air Toxics Control Measure.

(g) During the construction phase of the project, the Association shall incorporate the following measures:

(i) Reduce the amount of the disturbed area where possible.  
(ii) Use water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever wind speeds exceed 15 mph. Reclaimed (non-potable) water should be used whenever possible.

(iii) All dirt stock-pile areas should be sprayed daily as needed.  
(iv) All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible.

(v) Building pads should be laid as soon as possible after grading unless seeding or soil binders are used.

(h) Prior to the issuance of construction permits, the Association shall provide construction drawings that illustrate construction methods and designs to minimize impacts to neighboring trees. The plans shall include the location of tree protection fencing to be utilized during construction.

(i) Prior to final inspection, the Association shall submit a report to the Planning and Building Department from a certified arborist that the construction methods and designs illustrated in the project plans have been implemented to the extent feasible. Any changes to the approved plans that were made in the field shall be documented by the arborist.

(j) Prior to issuance of construction permits or improvement plans, the Association shall submit a monitoring plan prepared by a subsurface qualified archaeologist, for the review and approval of the Environmental Coordinator. The monitoring plan consider the findings of the previous pertinent reports (Singer 9/6/05, Gibson; 7/31/97) and shall include:

(i) List of personnel involved in the monitoring activities;  
(ii) Description of how the monitoring shall occur;  
(ii) Description of frequency of monitoring (e.g. full-time, part time, spot checking);

(iv) Description of what resources are expected to be encountered;

(v) Description of circumstances that would result in the halting of work at the project site (e.g. What is considered significant" archaeological resources?);

(vi) Description of procedures for halting work on the site and notification procedures;

(vii) Description of monitoring reporting procedures.

(k) Prior to occupancy, if improvements are bonded for, all public improvements(roads, drainage, utilities) shall be completed.

**6.4 Trees, Shrubs and Plantings:**

(a) No tree, shrub, or planting of any kind shall be allowed to overhang or otherwise encroach upon any sidewalk or other pedestrian way from ground level to a height of ten feet (10') without the prior approval of the Board.

(b) No Owner shall cut, trim, prune, remove, replace, or otherwise alter or affect the appearance or location of any living tree, plant, or other vegetation located in any portion of the Common Area without the prior written consent of the Association. Should any Owner fail to comply with the restriction imposed by this provision, the Association may recover from such Owner the cost of restoring or replacing any such vegetation.

(c) No plants or seeds infected with noxious insects or plant diseases shall be brought, grown, or maintained within the Project.

**6.5 Signs:** No sign or billboard of any kind shall be displayed to the public view on any portion of any Lot except one (1) sign for each Lot of reasonable dimensions advertising the property for sale or rent, or except signs used by Declarant, its successors or assigns to advertise the Project or Subdivision Interests during the construction and sale period. No signs shall be placed or permitted in the Common Area by any Owner.

**6.6 Lawful Use:** No noxious, offensive or unlawful activity shall be carried on, in or upon any Subdivision Interest or any part of the Project, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or which shall in any way interfere with the quiet enjoyment of each of the Owners of his or her respective Subdivision Interest or which shall in any way increase the rate of insurance on the Project or any part thereof.

**6.7 Temporary Structures, Boats and Recreational Vehicles:** No structure of a temporary character, trailer, shed, tent, shack, garage, barn, or other outbuilding shall be placed within the Project at any time or used as a residence, either temporarily or permanently. Trailers, campers, motor homes, boats and similar equipment may be parked in a fenced side or rear yard of a Lot, provided such trailer, camper, motor home, boat or similar equipment is placed or maintained within an enclosed garage or carport originally constructed on said Lot or permitted by the Architectural Committee and which is substantially shielded from view from the roads within the Project and the other Lots by landscaping. No more than one (1) boat and one (1) trailer, camper, motor home or similar equipment shall be parked on any Lot at any given time. The above restriction shall not apply to such equipment used by Declarant in connection with its construction and sales program on the Project.

**6.8 Animals:** No animals, reptiles, rodents, birds, fish, livestock, or poultry shall be kept in or on any Subdivision Interest or elsewhere within the Project except that two (2) domestic dogs and two (2) cats, fish and birds inside bird cages may be

kept as household pets within any Subdivision Interest, provided they are not kept, bred, or raised for commercial purposes. Notwithstanding the above, no loud birds, including but not limited to peacocks, chickens and macaws shall be permitted within the Project at any time. The Association can prohibit the keeping of any animal that in the sole and exclusive opinion of the Board constitutes a nuisance to any other Owner. Each person bringing or keeping a pet upon the Project shall be liable to other Owners, their family members, guests, invitees, tenants, and contract purchasers, and their respective family members, guests, invitees for any damage to persons or property proximately caused by any pet brought upon or kept upon the Project by that person or by members of his family, his guests, or invitees. All dogs must be on a leash when outside their owner's Lot and shall be permitted within the Common Area, when accompanied by their Owner. Owners shall be responsible for any and all damage caused by his animals on or about the Project, and shall remove any excrement deposited anywhere on the Project, including within his or her Lot, by his or her animals.

6.9 Trash Removal: Burning: All rubbish, trash and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. There shall be no outside storage by any Owner on his Subdivision Interest except in areas designated for such storage by the Association. Trash, garbage and rubbish shall be kept only in sanitary containers. In no event shall any Owner or other occupant of any Lot burn trash or refuse within the Project.

6.10 Antennas: Except as expressly provided in Civil Code Section 1376, no radio, telephone or television receiving or transmitting antenna, satellite or external apparatus shall be installed on any Subdivision Interest, or in any part of the Common Area, which is visible from any portion of the Common Area or from the streets adjacent to the Project, except as expressly approved by the Architectural Committee. No Owner shall attach, install or hang or cause to be attached, installed or hung, in or from his Subdivision Interest any air conditioning or other equipment which is visible from any portion of the Common Area or from the streets adjacent to the Project, except as approved by the Architectural Committee. No citizen's band transmission or amateur broadcasting transmission shall be permitted within the Project.

6.11 Vehicle Repairs & Parking: No inoperable vehicles shall be parked or stored on the Project unless parked or stored within an enclosed garage. Except as provided in Section 6.7 above and unless otherwise permitted by the Board, no motor vehicles nor boats shall be parked or left on any portion of the Project for more than twenty-four (24) hours. The Association shall have the right to have towed away any vehicles parked in an unauthorized manner.

6.12 Common Area: The Common Area shall be used only for purposes intended, and no bicycles, scooters, baby carriages or similar vehicles, toys or other articles belonging to any Owner or his guest, invitees or licensees shall be kept

thereon except in any area that may be specifically designated for that purpose by the Association. No Owner shall store anything in the Common Area without prior written consent of the Association, except as herein provided.

**6.13 Liability For Guests:** Each Owner shall be liable to the Association for any damage to the Common Area or to any of the improvements therein and to the other Owners for any damage to their respective Subdivision Interest which may be sustained by reason of the negligence or willful misconduct of said Owner or of his guests, invitees, or lessees to the extent that any such damage shall not be covered by insurance. In the case of joint ownership of a Subdivision Interest, the liability of such Owners shall be joint and several. In the event of personal injury or property damage sustained by any person while physically within the Subdivision Interest of any Owner, and in the further event that any other Owner shall be sued or a claim made against him for said injury or damage, the Owner or Owners of the Subdivision Interest in which said injury or damage occurs shall fully indemnify and hold harmless any such other Owners against whom such claim shall be made and shall further defend any such other Owner(s) at their own expense in the event of litigation, or other legal proceeding regarding such claim; provided, however, that such protection shall not extend to any other Owner whose negligence or willful misconduct may have caused or contributed to the cause of any such injury or damage.

**6.14 Fences and Screens:** Without the prior approval of the Architectural Committee, no Owner shall construct or attach to any structure on his or her Lot or the Common Area any fences, enclosures, walls, awnings, screens, sunshades, patios or balconies.

**6.15 Combustible Materials:** No combustible materials, such as gasoline, kerosine, cleaning solvents and other flammable liquids shall be stored in any Lot; provided however, that reasonable amounts in metal containers may be stored in storage or garage areas.

**6.16 Outside Laundering and Drying:** No exterior clothesline shall be erected or maintained, and there shall be no exterior drying or laundering of clothes on balconies, patios, porches, or other outside areas.

**6.17 Leasing:** An Owner is permitted to lease or rent his or her Subdivision Interest. However, any lease or rental agreement shall be in writing and shall require any tenant to abide by and be subject to all terms and provisions of this Declaration, the Articles, the Bylaws, the Architectural Rules and Association Rules; any lease or rental agreement shall comply with Section 6.19 below and shall specify that failure to abide by such provisions shall be a default under the lease or rental agreement. No Subdivision Interest shall be leased or rented for less than a thirty (30) day period.

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**6.18 Compliance with Law and Insurance Requirements:** Nothing shall be done or kept in any Lot or in the Common Area that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project, without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his Lot that violates any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body. No Owner shall allow his furniture, furnishings, or other personal property to remain outside of the residential improvement on his or her Lot.

**6.19 Restrictions on Delegation of Use:** Any Owner may delegate his rights of use and enjoyment of his Subdivision Interest to the members of his family, his guests, tenants and invitees, and to such other persons as may be permitted by the Bylaws and the Association Rules, subject however, to this Declaration. However, if an Owner has sold his Subdivision Interest to a contract purchaser or has leased or rented it, the Owner, members of the Owner's family, guests and invitees shall not be entitled to use and enjoy any of such rights in the Project while the Owner's Lot is occupied by the contract purchaser or tenant. Instead, the contract purchaser, or tenant, while occupying such Lot, shall be entitled to use and enjoy such rights, and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenant were an Owner during the period of his occupancy. Each Owner shall notify the secretary of the Association of the names of any contract purchaser or tenants of such Owner's Subdivision Interest. Each Owner, contract purchaser or tenant shall also notify the Secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment and the relationship that each such persons bears to the Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of assessments or performance of the covenants, conditions and restrictions contained in this Declaration. Any lease, rental agreement or contract of sale entered into between an Owner and a tenant or contract purchaser of a Subdivision Interest shall require compliance by the tenant or contract purchaser with all of the covenants, conditions and restrictions contained in this Declaration, which provision shall be for the express benefit of the Association and each Owner. The Association and each Owner shall have a right of action directly against any tenant or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner. Each Owner shall be responsible for providing copies of this Declaration, as amended, the bylaws and the Association Rules to each person to whom such Owner has delegated his or her rights of use and enjoyment.

**6.20 Garages:** All garages shall be primarily used and maintained on an on-going basis for the enclosed storage of two (2) automobiles.

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6.21 Notification of Right to Farm: All Owners, by acceptance of a deed to any Subdivision Interest, or by execution of a Contract of Sale on any Subdivision Interest, acknowledge that properties near the Project are currently are or potentially could be used for intensive agricultural production and agricultural operations. Each Owner acknowledges that such operations may subject his or her Lot to inconveniences or discomfort arising from such agricultural operations, including but not limited to dust, noise, odors and agricultural chemicals. Such inconveniences may continue for so long as the adjacent property is used for agricultural production and/or agricultural operations. Each Owner accepts such inconveniences or discomfort as a normal and necessary aspect of living in a county with a strong rural character and an active agricultural industry. Each Owner, by acceptance of a deed to any Subdivision Interest, or by execution of a Contract of Sale on any Subdivision Interest, acknowledges that he or she is aware of the Right-to-Farm Ordinance in effect in the County of San Luis Obispo.

## ARTICLE VII - PROPERTY RIGHTS AND EASEMENTS

7.1 Common Area: Prior to the final closing of the first sale of a Lot in the Project, Declarant or its successors or assigns shall convey to the Association title and control of the Common Area, 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.

7.2 Owner's Nonexclusive Easements; Association Rights: Every Owner has a nonexclusive easement of use, enjoyment, ingress, egress, and support in, to, and throughout the Common Area.

Each such nonexclusive easement shall be appurtenant to the respective Lot and shall pass with the title to the Lot. Nonexclusive easements shall be subject to the following rights and restrictions:

(a) The right of the Association to limit the number of guests and tenants using the Common Area.

(b) Subject to the restrictions contained in this Declaration, the right of the Association to repair or maintain the Common Area and to borrow money for such purpose and to use the Common Area as security for such borrowing.

(c) The right of the Association to adopt and enforce Association Rules concerning the control and use of the Common Area and the Project including the right to regulate the kind of vehicles and their speed and the parking of vehicles upon private streets and roadways. Declarant or the Association is specifically 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.

(d) The right of the Association to grant, consent to, or join in the grant or conveyance of easements, licenses, or rights-of-way in, on or over the Common Area.



(e) The rights of Declarant as described in this Declaration.  
(f) The right of the Association to reasonably restrict access to the Common Area or portions thereof, including the right of the Association to suspend the right of an Owner to use any other facility in the Common Area as provided in Section 2.6(f) of the Declaration.

(g) The right of Declarant, its sales agents and representatives to the non-exclusive use of the Common Area for display and exhibit purposes in connection with the initial sale of Subdivision Interests, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than three (3) years after the conveyance of the first Subdivision Interest and provided further, that no such use by Declarant, its sales agents or representatives shall unreasonably restrict the Members in their use and enjoyment of the Common Area.

(h) The right of Declarant, its contractors, subcontractors, agents and employees to the non-exclusive use of the Common Area for purposes of performing any necessary repair work, completion of improvements and construction of improvements on Lots owned by Declarant, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than three (3) years after the conveyance of the first Subdivision Interest and provided further, that no such use by Declarant, its contractors, subcontractors, agents and employees shall unreasonably restrict the Members in their use and enjoyment of the Common Area.

**7.3 Common Driveway Easements:** In those instances where more than one (1) Lot shares a common access road as shown on the Final Tract Map, Declarant hereby grants and reserves reciprocal easements appurtenant to each Lot sharing such common driveway, for purposes of ingress, egress and access to each respective Lot. Neither Owner of such Lots shall use such easement area for any purpose other than ingress and egress to his Lot and shall not store anything in such easement area which could impede its use for ingress, egress and access to the residential improvements on each Lot.

**7.4 Support and Repair Easements:** Each Owner of a Subdivision Interest shall have a non-exclusive easement for support and repair of his Lot in and through the Common Area and all other Lots. Every Lot in the Project shall be subject to an easement through said Lot for support and repair of the Common Area and all other Lots.

**7.5 Entry Rights and Use Rights:** Each Lot and the Common Area shall be subject to the following rights of entry and use:

(a) The right of Declarant or its designees to enter upon any portion of the Project to construct improvements to the property and to make repairs and remedy construction defects, provided that such entry shall not interfere with the use or occupancy of any occupied Lot unless authorized by its Owner, which authorization shall not be unreasonably withheld.

(b) The right of the Association, or its agents, to enter any Lot to cure any violation or breach of this Declaration or the Bylaws, the Association Rules or the Architectural Rules, provided that at least thirty (30) days prior written notice of such violation or breach (except in cases of emergency) has been given to the Owner, and provided that, within the thirty (30) day period such Owner had not acted to cure such violation or breach. The Association shall be entitled to levy a reimbursement assessment for its costs of effecting such cure against the Owner in accordance with the procedures in Section 4.6. The rights of entry and cure shall be immediate in case of an emergency originating upon or threatening any Lot, whether or not its Owner is present.

(c) The right of the Association, or its agents, to enter any of the Lots to perform its obligations and duties under this Declaration, including obligations or duties with respect to construction, maintenance, or repair for the benefit of the Common Area or the Owners in common.

(d) The right of any Owner, or Owner's representatives, to enter the Lot of any other Owner for purposes of performing his or her duties and obligations hereunder or exercising any right granted hereunder, provided requests for entry are made in advance and that entry is at a time convenient to the Owner whose Lot is being entered upon. In case of emergency the right of entry shall be immediate.

#### **ARTICLE VIII - ARCHITECTURAL CONTROL**

8.1 A committee for the control of structural, exterior and landscaping architecture and design ("Architectural Control Committee") within the Project, shall be established, consisting of not less than three (3) persons. Declarant may, at its sole option, appoint all of the original committee persons to the Architectural Control Committee and all replacements until the first anniversary of the original issuance of the Final Subdivision Public Report for the Project. Thereafter, the Board shall have the right to appoint at least one (1) committee person, but Declarant may, at its sole option, appoint a majority of said committee persons until (i) 80% of the Lots have been sold, or (ii) until the fifth anniversary of the original issuance of the Final Subdivision Public Report for the Project, whichever occurs first, and the Board shall appoint the remaining committee persons. Thereafter, the Board shall appoint all of said committee persons. If no committee has been appointed, the board shall act as the Architectural Control Committee ("Committee").

8.2 No improvements shall be made to any Lot and no additions, alterations, repairs or restorations to the exterior or structural portions of any Lot nor changes in or additions of fences, hedges, patios, landscaping, lighting structures, carports, garages, awnings, walls, exterior paint or decor, or other matter visible from the exterior of a Subdivision Interest shall be commenced, constructed, erected, or maintained by any person until the plans and specifications showing the nature, kind, shape, height, materials, color, location and approximate cost of the same shall have been submitted to and approved in writing as to conformity and harmony of external color, design and

location with existing structures in the Project by the Committee. If (i) the Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or (ii) no plans and specifications have been submitted to it, and no suit relating to or arising out of the making of such additions, alterations or changes has been commenced within one hundred and eighty (180) days after the completion thereof, such approval will not be required and this paragraph will be deemed to have been fully complied with as to such particular item.

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

8.4 Liability: Neither the Committee nor any member thereof shall be liable to the Association, any Owner or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, specifications or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; provided, that with respect to the liability of a member, such member has acted in good faith on the basis of actual knowledge possessed by him.

8.5 Board Review: All decisions of the Committee are subject to review by the Board of Directors and may be appealed to the Board. The Committee shall notify the Board of all violations of this article and of any noncompliance with its rulings or with the plans and specifications submitted to and approved by it, after which the Board shall take such actions as it deems necessary in accordance with the provisions of this Declaration.

## ARTICLE IX - RIGHTS OF MORTGAGEES

9.1 Warranty: Declarant hereby warrants that Mortgagees of Subdivision Interests in the Project shall be entitled to the following rights and guaranties:

(a) Notice of Default: A first mortgagee, upon written request, will be entitled to written notification from the Association of any default in the performance by the mortgagor of any obligation under the Association's governing instruments which is not cured within sixty (60) days.

(b) Priority of Mortgagee: Notwithstanding all other provisions of this Declaration, liens created hereunder upon any Subdivision Interest shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any prior recorded mortgage upon such an interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created on the interest of the purchaser at the foreclosure sale to secure all assessments assessed to that purchaser as an Owner after the date of the foreclosure sale. Such a

lien, if claimed, shall have the same effect and be enforced in the same manner as provided herein. The transfer of a Lot on foreclosure of a prior recorded mortgage shall extinguish the lien of assessments that were due and payable prior to such transfer.

(c) **Effect of Breach:** No breach of any provision of these covenants, conditions and restrictions shall invalidate the lien of any first mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon any Owner whose deed is derived through foreclosure or trustee's sale or otherwise.

(d) **Liability For Assessments:** Any first mortgagee who obtains title to a Subdivision Interest pursuant to the remedies provided in the mortgage or judicial foreclosure of the mortgage (but not pursuant to a deed in lieu of foreclosure) will not be liable for such Subdivision Interests' unpaid assessments which accrue prior to the acquisition of title to said Subdivision Interest by the mortgagee.

(e) **Mortgagee Approval:** Unless at least two-thirds (2/3) of the first mortgagees (based upon one (1) vote for each first mortgage owned) or two-thirds (2/3) of Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

- (i) By act or omission, seek to abandon or terminate the Project.
- (ii) Change the pro rata interest or obligations of any individual Lot for the purpose of:
  - (1) Levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards; or
  - (2) Determining the pro rata share of Ownership of each Subdivision Interest in the Common Area and the improvements thereon.
- (iii) Partition or subdivide any Subdivision Interest.
- (iv) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause).
- (v) Use hazard insurance proceeds for losses to any Project property (whether to Lots or to the Common Area) for other than the repair, replacement, or reconstruction of such property, except as provided by statute in case of substantial loss to the Lots and/or Common Area of the Project.
- (f) **Liens:** All taxes, assessments, and charges which may become liens prior to the first mortgage under local law, shall relate only to the individual Subdivision Interests and not to the Project as a whole.

(g) **Reserve Fund:** Association assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those common elements that must be replaced on a periodic basis. Such a reserve fund will be funded through the regular assessments rather than by special assessments.

(h) **Management:** Any agreement for professional management of the Project will not exceed one (1) year and shall be cancelable by either party without

cause and without imposition of a termination fee on ninety (90) days written notice. The approval of at least seventy-five percent (75%) of first mortgagees shall be obtained before the Association terminates a professional management agreement.

(i) Priority in Distribution of Insurance and Condemnation Proceeds: No Owner, or any other party shall have priority over any rights of any first Mortgagees of Subdivision Interests pursuant to their mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Lots or Common Area.

(j) Right to Inspect Books and Records: First mortgagees, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours and (2) to require the submission of any financial data furnished to the Owners by the Association.

(k) Payments by Mortgagees: First mortgagees may, jointly or severally, pay taxes or other charges that are in default and that may or have become a charge against the Common Area, and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance policies on the lapse of a policy, for the Common Area, and such first mortgagees making these payments shall be entitled to immediate reimbursement from the Association.

(l) Right to Furnish Mortgage Information: Each Owner hereby authorizes the first mortgagee on the Owner's Lot to furnish information to the board concerning the status of the first mortgage and the loan it secures.

#### **ARTICLE X - AMENDMENT**

10.1 This Declaration may be amended by the vote or written consent of Members representing not less than sixty percent (60%) of the voting power of each class of Members of the Association. If only one (1) class of membership exists at the time an amendment is proposed, then it must be approved by not less than sixty percent (60%) of the voting power of the Association, which shall include at least a majority of the votes residing in Members other than Declarant. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

10.2 Any such amendment shall become effective upon recording, in the office of the San Luis Obispo County Recorder, of a written instrument setting forth such amendment and signed and acknowledged by a majority of the Board who shall certify in said written instrument that at least sixty percent (60%) of the total voting power of each class of membership of the Association and at least a majority of Members other than the Declarant have given their written approval of such amendment. Provided, however, that no amendment which materially affects the ownership, possession or use of an Owner, either directly or as a member of the Association, shall be valid unless the prior written consent of the California Real Estate Commissioner is obtained, to the

extent that such consent is required by law. Provided, further, that no material amendment shall become effective unless written approval of such amendment is obtained from 51% of the first mortgage holders and not less than sixty-seven percent (67%) or the total voting power of the Association. For purposes of this Section 10.2, the term "material amendment" shall mean amendments to provisions of this Declaration governing the following subjects:

- (a) Voting rights;
- (b) Assessments, assessment liens or the subordination of assessment liens;
- (c) Rights to use the Common Areas;
- (d) Reserves and responsibility for maintenance, repairs and replacement of the Common Area;
- (e) Owners' interest in the Common Area;
- (f) Addition, annexation or withdrawal of property to or from the Project;
- (g) Casualty, liability or fidelity insurance requirements;
- (h) Leasing of Lots;
- (i) Convertibility of Lots to Common Area or Common Area to Lots;
- (j) Establishment of self-management by the Association when professional management has been previously required by any first Mortgagee or any insurer or governmental guarantor of a first mortgage;
- (k) Any provisions that expressly benefit Mortgage holders, insurers or guarantors of mortgages;
- (l) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or

Any mortgagee who receives a written request from the board, delivered by certified or registered mail with a return receipt requested, to approve a proposed amendment or amendments requiring consent under this section who does not deliver a negative response to the Board within thirty (30) days after receipt of the request shall be deemed for all purposes to have consented to and approve the proposed amendment or amendments.

**10.3 Amendment Prior to Close of First Escrow.** Before the close of the first sale of a Subdivision Interest 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.

**10.4 County Approval Required for Certain Amendments.** Notwithstanding any other provision of this Declaration, no amendment, change, modification or termination of the covenants, conditions and restrictions of this Declaration regarding the following provisions shall be effective for any purpose until approved in writing by the Director of Planning and Building of the County of San Luis Obispo, California: (a) regulation of land use; (b) maintenance of the drainage facilities and adjacent landscaping; (c)

maintenance of the Common Areas, including landscaping; (d) energy efficiency requirements and qualified wood burning devices; (e) geologic evaluation prior to any site disturbance; (f) use of garages; (g) adjacent agricultural operations and Right to Farm Ordinance; and (h) dissolution of the Association.

## ARTICLE XI - MISCELLANEOUS PROVISIONS

11.1 **Binding Effect; Term:** The covenants, conditions and restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns for a term of forty (40) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, executed by not less than seventy-five percent (75%) of Owners, shall be recorded within ninety (90) days prior to the expiration of the original term hereof or any ten (10) year extension, canceling and terminating this Declaration.

11.2 **Notice of Transfer:** Upon the lease, sale or other transfer of a Subdivision Interest, either the Owner who transfers the Subdivision Interest or the transferee shall promptly notify the Association in writing of the name and address of the transferee, the nature of the transfer and the Lot number involved, as well as such other information relative to the transfer and the transferee as the Association may reasonably request. An executed copy of the instrument of transfer shall be transmitted to the Association.

11.3 **Enforcement of Restrictions:** After the date on which this instrument has been recorded, these covenants, conditions, servitudes, rights, reservations, limitations, liens, charges and restrictions may be enforced by any and all of the available legal remedies, including, but not limited to, injunctive relief, declaratory relief and action to abate a nuisance by the Association, which shall have the right and duty to enforce the same and expend its assessment funds in pursuant thereof, and/or by any one (1) or more Owners, except that no such Owner shall have the right to enforce independently of the Association any assessment or lien created herein. Failure to enforce any provisions hereof shall not constitute a waiver of the right to subsequently enforce said provision or any other provision hereof.

11.4 **Nuisance:** Every act or omission whereby any provision of the governing instruments is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated, whether the relief sought is negative or affirmative action, by Declarant (so long as he is the Owner of any Subdivision Interest), the Association or any Owner.

11.5 **Violation of Law:** Any violation of any state, municipal or local law, ordinance and regulation, pertaining to the ownership, occupation or use of the Project

or any part thereof is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

11.6 **Liability**: Neither Declarant or any of its agents or employees nor the Association or any of its directors, officers or members shall be liable for any failure to provide any service or perform any duty, function or responsibility stated or provided for in this Declaration or the Bylaws for any injury to or death of any person or loss or damage to the property of any person on the properties or by any other cause, unless the same is attributable to its or his own willful misconduct or gross negligence.

11.7 **Waiver**: No waiver of any breach of any of the covenants or conditions of this Declaration shall constitute a waiver of any succeeding or preceding breach of the same or any other covenant or condition contained herein.

11.8 **Construction**: The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development of a planned residential community.

11.9 **Cumulative Remedies**: Each remedy provided by this Declaration is cumulative and not exclusive.

11.10 **Partial Invalidity**: The provisions of this Declaration shall be deemed independent and severable and the invalidity or partial invalidity of any provision of this Declaration shall not affect the validity or enforceability of any other provision.

11.11 **Binding Effect**: This Declaration, as well as any amendment thereto, and any valid action or directive made pursuant to it, shall be binding on the Declarant and all Owners, their heirs, successors and assigns, grantees, lessees, sublessees, contract purchasers, and guests of the Owners.

11.12 **Attorneys' Fees**: In any action or proceeding whatsoever arising from rights or obligations established hereunder, including, but not limited to, actions for damages resulting from a breach or threatened breach of this Declaration or actions for specific performance hereof, the prevailing party shall be entitled to recover such reasonable sums as and for its attorneys' fees, Court costs and expenses as shall be fixed by the Court, either in the subject action or in a separate action.

11.13 **Enforcement**: The Association shall have the right, power, and authority to enforce, in its own name, on its own behalf, or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration and to enforce, by mandatory, or prohibitory injunction, as it shall elect, or otherwise, all of the provisions hereof. Each Owner who is individually injured or threatened with injury shall also have such rights of action.



11.14 Number: Gender: The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine or neuter, as the context requires.

11.15 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.

11.16 Nonseverability of Component Interests: An Owner shall not be entitled to sever his or her Lot in any Subdivision Interest from his or her membership in the Association and shall not be entitled to sever his or her Lot and membership from the exclusive and non-exclusive easements in and to the Common Area for any purpose. None of the component interests in a Subdivision Interest can be severally sold, conveyed, encumbered or otherwise dealt with and any violation or attempted violation of this provision shall be void.

11.17 Enforcement of Bonded Obligations: If the Association is the obligee under a bond or other arrangement ("bond") to secure performance of a commitment of the Declarant or its successors or assigns to complete Common Area improvements not completed at the time the California Commissioner of Real Estate issues a final subdivision public report for the latest phase of the Project, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a notice of completion has not been filed by the later of (i) sixty (60) days after the completion date specified for the improvement in the "planned construction statement" appended to the bond, or (ii) thirty (30) days after the expiration of any written extension given by the Association.

If the Board fails to consider and vote on the action to enforce the obligations under the bond, or if the Board decides not to initiate action to enforce the obligations under the bond, then on receipt of a petition signed by Owners representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the bond. The Board shall give written notice of the meeting to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. The meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt of the petition. At the meeting, the vote in person or by proxy of a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the bond shall be considered the decision of the Association and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

The Association shall act in a reasonably prompt manner to exonerate Declarant and its surety under any bond in favor of the Association, provided such exoneration is appropriate.

11.18 Disclosure of Adjacent Agricultural Operations: Right to Farm. Each Owner, by acceptance of a deed to any Subdivision Interest, or by execution of a Contract of Sale on any Subdivision Interest, acknowledge that properties near the Project are presently utilized for agricultural production and agricultural operations. Each Owner acknowledges that such operations may subject his or her Lot to inconveniences or discomfort arising from such agricultural operations, including but not limited to, dust, noise, odors and agricultural chemicals. Such inconveniences may continue for so long as the adjacent property is used for agricultural production and/or agricultural operations. Each Owner accepts such inconveniences or discomfort as a normal and necessary aspect of living in a county with a strong rural character and an active agricultural industry. Each Owner further acknowledges they are aware that the County of San Luis Obispo has enacted a Right to Farm ordinance.

IN WITNESS WHEREOF, Declarant has executed this instrument on this  
5 day of January, 2008

THE OLD AVOCADO RANCH, LLC  
a California limited liability company

by:   
ROBERT W. TAKKEN, Manager

*{Notary Acknowledgment Follows}*

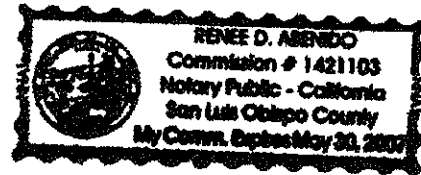
STATE OF CALIFORNIA )  
COUNTY OF SAN LUIS OBISPO ) ss.

On January 5, 2007, before me, Renee D. Abenido, a Notary Public for the State of California, personally appeared **ROBERT W. TAKKEN**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that, he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Renee D. Abenido



My Commission Expires: May 30, 2007

Notary Name: Renee D. Abenido

Notary Registration No.: 1421103

*This area for notarial seal*

Notary Phone: 805/544-3570

County of Principal Place of Business: San Luis Obispo

**EXHIBIT A**

Lots 1 through 51 inclusive of Tract 2758, as shown on the map recorded in Book 29 Pages 54-58 through inclusive of Maps, in the office of the County Recorder of the County of San Luis Obispo, State of California.

**CONSENT OF LIENHOLDER AND SUBORDINATION OF LIEN**

The undersigned beneficiary of the beneficial interest recorded as Document No. 2006022778, under that certain Deed of Trust dated 3/30/06, recorded as Document No. 2006022778 on 4/3/2006, of official records of the County of San Luis Obispo, State of California, consents to all of the provisions contained in the Declaration of Covenants, Conditions and Restrictions executed by Old Avocado Ranch LLC, Robert W. Takken Marff Declarant, dated Jan 5, 2007, in the official records of the County of San Luis Obispo, State of California, and agrees that the lien of the deed of trust shall be junior and subordinate and subject to the Declaration.

**BENEFICIARY**  
FIRST BANK OF SAN LUIS OBISPO

By: Anna D. Phillips 2/14/07  
Its: Vice President, Relationship Manager

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

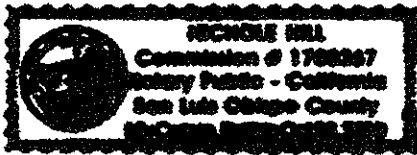
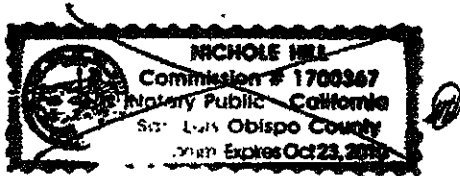
State of California

County of San Luis Obispo } ss.

On 2/14/07 before me, Nichole Hill, N.P.  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Jenna Phillips  
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Nichole Hill  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: Consent of Lienholder + Subordination of Lien

Document Date: 2/14/07 Number of Pages: 1

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_

