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**REPLACEMENT RESTATED DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS & EASEMENTS FOR TRACT NO. 4321, PLANNED DEVELOPMENT,  
MIRA BELLA AT THE LAKE**

The attached Restated Declaration of Covenants, Conditions, Restrictions & Easements for Tract No. 4321, Planned Development, Mira Bella At The Lake replaces in whole the Restated Declaration of Covenants, Conditions, Restrictions & Easements for Tract No. 4321, Planned Development, Mira Bella At The Lake recorded April 15, 2014, in the official records of Fresno County Recorder's Office as document no. 2014-0042547.

RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS & EASEMENTS  
FOR  
TRACT NO. 4321  
PLANNED DEVELOPMENT  
MIRA BELLA AT THE LAKE

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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**MIRA BELLA AT THE LAKE**

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OF  
COVENANTS, CONDITIONS, RESTRICTIONS & EASEMENTS  
FOR  
TRACT NO. 4321  
PLANNED DEVELOPMENT  
MIRA BELLA AT THE LAKE**

This Restated Declaration of Covenants, Conditions, Restrictions & Easements for Tract No. 4321 Planned Development Mira Bella at the Lake (the "Declaration") is made by SFB Properties, Inc., a California corporation, Mira Bella Corporation, a California corporation, Garold C. Brown and Carol A. Brown (collectively the "Declarant").

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**RECITALS**

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A. Declarant owns that certain real property located in Fresno County, California, which is more particularly described in attached Exhibit "A" (the "Development").

B. This Declaration shall initially apply only to the Development, as the initial Phase of a multi-phased planned development known as Mira Bella at the Lake. All or portions of the real property more particularly described in attached Exhibit "B" (the "Subsequent Phase Property") may be made subject to this Declaration by annexation in accordance with the terms of Article 14 of this Declaration. As property is annexed, the annexed property shall become part of the "Development", as defined herein. The Development and the Subsequent Phase Property are hereafter referred to as the "Overall Development".

C. Declarants hereby declare that all of the Development shall be held, sold and conveyed subject to the following easements, restrictions, associations, reservations, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development. These covenants, easements, restrictions, conditions, associations and reservations: (i) create a general plan and scheme for the subdivision development, sale and use of the Development as a "planned development" as that term is defined in California Civil Code Section 4175; (ii) are for the benefit and protection of the Development and for the protection and enhancement of the desirability, value and attractiveness of all Lots and Common Area located therein; (iii) run with the Development and bind all parties having or acquiring any right, title or interest in the Development or any part thereof; and (iv) inure to the benefit of the successors and assigns of each Owner of any property within the Development.

D. If the Development is built out to its maximum proposed size, the Overall Development may contain approximately 180 Lots and Residences. Notwithstanding the anticipated development of the Overall Development in accordance with the plan of phased development contemplated by this Declaration, nothing in this Declaration shall be construed or interpreted to commit Declarant to the development of any portion of the Subsequent Phase Property in accordance with any present planning, or to the annexation of all or any part of the Subsequent Phase Property to this Declaration, whether or not it is so developed.

E. All of the covenants, conditions, and restrictions set forth in this Declaration shall constitute enforceable equitable servitudes as provided in California Civil Code Section 5975, shall constitute covenants that shall run with the real property comprising the Development, and shall be binding upon and inure to the benefit of each Owner of any portion of such real property or of any interest therein and their heirs, successors, and assigns.

F. Declarant previously Recorded the Declaration of Covenants, Conditions, Restrictions & Easements Tract No. 4321 Planned Development Mira Bella at the Lake on August 12, 2005, as Document No. 2005-0185533, Official Records of Fresno County, and the First Amendment to Declaration of Covenants, Conditions, Restrictions & Easements Tract No. 4321 Planned Development Mira Bella at the Lake on December 21, 2006, as Document No. 2006-0266512, Official Records of Fresno County (collectively the "Prior Declaration"). Pursuant to Section 16.04.1 of the Prior Declaration, Declarant, by having not conveyed a Lot to a purchaser, may rescind the Prior Declaration. Declarant, by executing and Recording this Declaration, hereby rescinds and revokes the Prior Declaration. Upon the Recording of this Declaration, the Prior Declaration shall have no force or effect on any portion of the Development.

G. The Development will initially consist of 56 Lots and Residences, and 4 Common Area parcels. The Owners of each Lot is a Member of the Mira Bella at the Lake Homeowners Association, and the Association will own and maintain the Common Area within the Development for the benefit of the Owners and Residents.

## ARTICLE 1 DEFINITIONS

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1.1 Definitions, Generally. When the words and phrases described in this Article are used in the Declaration, they will have the meanings set forth in this Article. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires. The use of the term "may" in this Declaration indicates discretion or choice, and the use of the term "shall" in this Declaration means imperative, mandatory or imposing an absolute duty. Except as otherwise provided herein, all capitalized terms used in this Declaration shall have the same meanings as set forth in this Article 1.

1.2 Absolute Majority. "Absolute Majority" shall mean a majority of the Total Voting Power of the Association.

1.3 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, Recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.

1.4 Architectural Review Committee. "Architectural Review Committee" shall mean the committee created pursuant to Article 8 of this Declaration.

1.5 Architectural Rules. "Architectural Rules" shall mean the rules and regulations adopted by the Board pursuant to Section 8.5 of this Declaration.

1.6 Assessment. "Assessment" shall mean a charge levied by the Association against an Owner and his or her Lot as provided in Article 6 of this Declaration. "Assessment" shall include any or all of the following:

(a) Regular Assessments. Regular Assessments, which shall have the meaning set forth in Section 6.5 of this Declaration.

(b) Enforcement Assessments. Enforcement Assessments, which shall have the meaning set forth in Section 6.8 of this Declaration.

(c) Reimbursement Assessments. Reimbursement Assessments, which shall have the meaning set forth in Section 6.7 of this Declaration.

(d) Special Assessments. Special Assessments, which shall have the meaning set forth in Section 6.6 of this Declaration.

1.7 Association. "Association" shall mean the Mira Bella at the Lake Homeowners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.8 Board. "Board" shall mean the governing body of the Association.

1.9 Bylaws. "Bylaws" shall mean the Bylaws of the Association as they shall be adopted by the Members and any duly-adopted amendments thereof.

1.10 Common Area. "Common Area" shall mean all real property owned or maintained by the Association for the common use and enjoyment of the Owners and Residents of the Development. The Phase 1 Common Area within the Development shall consist of Outlots A, B, C and F, as shown on the Subdivision Map for Phase 1, and additional Common Area may be designated in Declarations of Annexation.

1.11 County. "County" shall mean Fresno County, California, and its various departments, divisions, employees and representatives.

1.12 Declarant. "Declarant" shall mean SFB Properties, Inc., a California corporation, Mira Bella Corporation, a California corporation, Garold C. Brown and Carol A. Brown, each with respect to its/his or her own property. The term "Declarant" shall also mean any successor or assign of Declarant, provided a certificate, signed by Declarant and Declarant's successor or assign, is Recorded against the portion of the Development which the successor or assign assumes the rights and duties of Declarant. Except as otherwise expressly provided in this Declaration, any act, consent, or decision of the Declarant under this Declaration shall be that of the Declarant or Declarants owning a majority of the Lots subject to the Declaration, without regard to other Declarants that hold less than a majority, singular or in combination with other Declarants, of the Lots subject to the Declaration.

1.13 Declaration. "Declaration" shall mean this instrument, as it may be amended from time to time. If any Supplemental Declarations or Declarations of Annexation are approved and Recorded in accordance with Article 14, below, then following such Recordation any reference to this Declaration shall mean this Declaration as amended and supplemented by the Supplemental Declaration(s) and any Declarations of Annexation.

1.14 Declaration of Annexation. "Declaration of Annexation" shall mean a declaration annexing real property to the Development and subjecting the real property described therein to this Declaration, all as more particularly described in Article 14, below.

1.15 Development. "Development" shall mean (a) the real property described in Exhibit "A", and (b) each Phase described in a Declaration of Annexation, together with all Improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

1.16 Director. "Director" shall mean a member of the Board.

1.17 Governing Documents. "Governing Documents" shall mean the articles of incorporation, Bylaws, Declaration, Rules (including the Architectural Rules), and the policies and resolutions duly adopted by the Board.

1.18 Improvement. "Improvement" shall mean all structures and improvements including without limitation buildings, landscaping, paving, fences, and signs.

1.19 Lot. "Lot" shall mean any plot of land shown upon a Subdivision Map for any portion of the Development, with the exception of the Common Area lots.

1.20 Member. "Member" shall mean an Owner, and refers to membership in the Association. An Owner's membership rights shall not vest until the Owner's Lot is subject to Association Regular Assessments.

1.21 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all dues, Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents, as may be more particularly set forth in the Bylaws.

1.22 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense, excluding any debt of Declarant. "First Mortgage" shall mean any Recorded Mortgage on a Lot with first priority over other Mortgages on such Lot. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

1.23 Owner. "Owner" shall mean any person, firm, corporation or other entity in which fee title to a Lot is vested as shown by the Official Records of the office of the County Recorder, including the purchaser under an installment land contract, but excluding those having such interest merely as security for the performance of an obligation. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust. A person or entity is not an Owner due to (a) community property or other equitable rights not shown of Record; or (b) rights of adverse possession not shown of Record. Where the context requires, the term "Owner" shall include the members of the Owner's household and the Owner's guests, tenants/lessees and invitees; provided, however, that such persons are not "Owners" for purposes of exercising voting rights in the Association.

1.24 Phase. "Phase" shall mean that portion of the Development, consisting of Lots, and Common Area, that is subject to a specific final subdivision public report, issued by the California Bureau of Real Estate. For the purposes of this Declaration, including the determination of when Regular Assessment payments to the Association shall commence with respect to a Lot and the commencement of membership voting rights for a Lot's Owner, the Development shall be initially allocated into one (1) of three (3) Phases, which, for reference purposes only, the first three (3) Phases are described as Phase "1", Phase "2" and Phase "3". Prior to the conveyance of a Lot within a Phase, Declarant may Record a Supplemental Declaration which modifies the allocation of Lots and Common Area described in this Section and for the purpose of designating Lots and Common Area of future Phases, which may include an increase or decrease in the number of Phases. The Lots and Common Area parcels within each of the first three (3) Phase are as follows:

(a) Phase "1". Lots 1 through 14, inclusive, 17 through 21, inclusive, 25 through 29, inclusive, 33 through 37, inclusive, 41, 42, 43, 46, 47, 49 through 53, inclusive, 55 and 56, and Common Area Outlots A, B, C and F, all as shown on the Subdivision Map, and any other property or Improvements not included within the Common Area that the Association is obligated to maintain.

(b) Phase "2". Lots 15, 16, 22, 23, 24, 44, 45, 48 and 54, as shown on the Subdivision Map, and any other property or Improvements not included within the Common Area that the Association is obligated to maintain.

(c) Phase "3". Lots 30, 31, 32, 38, 39 and 40, as shown on the Subdivision Map, and any other property or Improvements not included within the Common Area that the Association is obligated to maintain.

1.25 Record; Recordation; Filed. "Record," "Recordation", and "Filed" shall mean, with respect to any document, the recordation or filing of such document in the Official Records of the County Recorder's office.

1.26 Residence. "Residence" shall mean a residential structure located upon a Lot which is designed for human residential use and occupancy.

1.27 Resident. "Resident" shall mean any person who resides in a Residence on a Lot within the Development whether or not such person is an Owner.

1.28 Rules. "Rules" shall mean the rules and regulations governing the use, occupancy, management, administration, and operation of the Development or any part thereof as adopted and published by the Board from time to time, and the Architectural Rules as adopted and published by the Board from time to time.

1.29 Simple Majority. "Simple Majority" shall mean a majority of the votes of the Members (i) represented and voting at a meeting at which a quorum is present, or (ii) cast by written ballot (in conformity with California Corporations Code Section 7513) in which the number of ballots received equals or exceeds the number required to establish a quorum.

1.30 Subdivision Map. "Subdivision Map" shall mean the final subdivision map Filed with the County Recorder for any portion of the Development.

1.31 Supplemental Declaration. "Supplemental Declaration" shall mean any declaration (as defined in California Civil Code Section 4135), Recorded pursuant to Section 14.4, below, which supplements this Declaration and which may affect only a portion of the Development. A Supplemental Declaration may be entitled as an amendment to the Declaration in order to satisfy County Recording requirements.

1.32 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, excluding any Lots as to which an Owner is not then a Member in Good Standing.

## ARTICLE 2 HOMEOWNERS ASSOCIATION

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2.1 Management and Operation. The Association, through the Board, shall manage and operate the Development in accordance with the applicable provisions of the Governing Documents and the applicable provisions of California law. The Association shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

2.2 Membership. Every Owner of a Lot shall be a Member of the Association and shall remain a Member thereof until such time as his or her Lot ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered,

pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.

2.3 Voting.

(a) Commencement of Voting Rights. Voting rights attributable to the ownership of Lots shall vest upon the commencement by the Association of Regular Assessments against those Lots.

(b) Classes of Membership. The Association shall have the following two (2) classes of voting membership:

(i) Class A Members. Class A Members shall initially be all Owners except Declarant and shall have one (1) Class A membership for each Lot owned.

(ii) Class B Members. Declarants shall be the only Class B Member, and each Declarant shall have one (1) Class B membership for each Lot owned.

(c) Membership Voting Rights. Only Members in Good Standing shall be entitled to vote. The voting rights and other privileges of each class of membership and the conversion of Declarant's Class B membership into Class A memberships shall be as set forth in the Bylaws.

(d) Suspension of Voting Rights. A Member's voting rights may be temporarily suspended under those circumstances described in subsection 10.5(c), below.

(e) Limitations on Declarant Voting Rights. With the exception of any membership vote pursuant to Section 3.7, below (relating to the enforcement of bonded obligations), no provision of any Governing Document requiring approval of a prescribed majority of the voting power of the Association other than Declarant is intended to preclude Declarant from casting votes attributable to any Lots owned by Declarant. Instead, approval by the Association's Members requires the approval of a bare majority of the Class B voting power as well as the approval of the prescribed majority of the Class A voting power. Once the Class B membership has been converted to Class A membership, the intent is to require the approval of a bare majority of the Total Voting Power of the Association as well as the approval of the prescribed majority of the Total Voting Power of the Association other than Declarant.

2.4 Board. The affairs of the Association shall be managed by or under the direction of a Board. The number and qualifications of Directors shall be as established in the Bylaws, and the members of the Board shall be elected as provided in the Bylaws. The Board shall have all of the powers and duties set forth in any provision of the Governing Documents, including without limitation such powers and duties as may be expressly set forth in this Declaration.

2.5 Association Rules. The Board shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such rules and regulations, which shall be known as "Rules", as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association. The Rules may concern, but need not be limited to, matters pertaining to use of the Common Area, signs, collection and disposal of refuse, minimum standards for maintenance of property, parking and traffic regulations, rental or leasing of Lots, the keeping of pets on Lots, and any other subject matter within the jurisdiction of the Association as provided in the Governing Documents or by law.

2.6 Manager and Other Personnel. The Board shall have the power and authority to employ a manager and such other persons or entities as the Board shall deem appropriate to assist it in managing the Development and conducting the business and affairs of the Association, as more particularly set forth in the Bylaws.

2.7 Capital Improvements. The Board shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Common Area, provided that in any fiscal year expenditures for capital improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year except upon the approval of at least a majority of each class of Members. This limitation shall not apply to the expenditure of any funds accumulated in a reserve fund for capital improvements so long as the expenditure is for the purpose for which the fund was established nor shall it apply to any reconstruction governed by Article 12 of this Declaration. For purposes of this Section "capital improvements" is defined as any (i) substantial discretionary addition to the Common Area, (ii) voluntary significant upgrade to Common Area materials, or (iii) discretionary material alterations to the appearance of the Development.

2.8 Sale or Transfer of Association Property. The Board shall have the power to sell the Association's property provided that the Board shall not, in any fiscal year, sell property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without approval of at least a majority of each class of Members, and as provided in Section 3.8, below, if applicable.

2.9 Transfer or Dedication of Common Area to Public Agency or Utility. The Board shall have the power to dedicate or transfer all or any part of the Common Area to a public agency, authority or utility or other person or entity for such purposes and subject to such conditions as may be agreed to by the Board, and upon the approval of at least a majority of each class of Members.

2.10 Borrow Money. Except as limited by Section 3.8, below, the Board shall have the power to borrow money in the name of the Association.

2.11 Mortgage of Association Property. The Board shall have the power and authority to mortgage, pledge, encumber, or otherwise hypothecate the real and personal property of the Association for money borrowed or debts incurred by the Association, except as provided in Section 3.8, below.

2.12 Mergers and Consolidations. The Association may (i) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as the Association, or (ii) annex additional property to the Development, in accordance with Section 14.2, below.

2.13 Dissolution. So long as there is any lot, parcel or area for which the Association is obligated to provide management, maintenance, preservation or control, the prior written consent of the County and the consent of all Members must be obtained for the Association to (i) transfer all or substantially all of its assets, or (ii) file a certificate of dissolution.

2.14 Contract for Utilities. The Association shall acquire and pay out of the Assessments levied and collected in accordance with this Declaration, sewer, water, refuse collection, telephone, gas and electric power, gardening service and other utilities and services for the Common Area, including park strips; also acquire and pay for out of the Assessments levied and collected in accordance herewith any sewer, water, refuse collection, gas and electric services and other utilities rendered to Residence Lots in the Development not separately metered or billed to individual Residence Lots. To the extent any such utilities or services are separately metered or separately rendered to the Residence Lots, the Owners of such Residence Lots shall be primarily responsible for the payment thereof.

2.15 Limitation of Liability. Neither the Association or its Directors, officers, employees, agents or committee members (collectively and individually referred to as the "Released Party") shall be personally liable for damages or in equity to any of the Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or pursuant to the Bylaws, even if such Released Party is negligent, provided that such Released Party has not acted in bad faith. This standard of care and limitation of liability shall extend, without limitation, to matters such as (i) the establishment of the Association's annual financial budget, (ii) the funding of Association reserve accounts, (iii) the discharge of the Association's maintenance, repair and replacement obligations, (iv) the enforcement of the Governing Documents, and (v) to any other fiduciary duties or responsibilities imposed by law or the Governing Documents.

2.16 Agreements with Lenders. The Association may enter into such agreements as may be necessary in order to facilitate the financing of Lots within the Development as may be required by prospective lenders, and holders, insurers or guarantors.

## ARTICLE 3 COMMON AREA

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3.1 Purpose of Common Area. Subject to the provisions of the Declaration, the Common Area shall be held, maintained, and used to meet the common interests of the Owners, the members of the Owners' households, and the Owners' tenants and guests as provided in the Governing Documents.

3.2 Conveyance of Common Area. Declarant shall convey fee simple title to the Common Area parcels within any Phase of the Development to the Association, free of all encumbrances and liens, with the exception of current real property taxes (which shall be prorated as of the date of such conveyance) and any easements, conditions and reservations then of Record, including those set forth in this Declaration. Such conveyance shall be made prior to, or concurrently with, the first transfer or conveyance by Declarant of a Lot to a purchaser. The Association shall be deemed to have accepted the Common Area conveyed to it when (i) a grant deed conveying title to the Common Area has been Recorded in the Official Records of the County and (ii) assessments for the Phase in which the Common Area is located have commenced.

3.3 Owners Non-Exclusive Easements of Enjoyment. Every Owner shall have a non-exclusive easement for ingress, egress, and use of the Common Area roadways. Every Member in Good Standing shall have a non-exclusive easement for use of, and enjoyment in, to, and throughout the recreation facilities within the Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

(a) Adoption of Rules. The right of the Board to establish and enforce reasonable Rules governing the use of the Common Area and the facilities thereon including, without limitation, Rules (i) limiting the number of guests of Members permitted to use the Common Area and the facilities thereon at any one time, (ii) limiting the hours of use of the Common Area and the facilities thereon, (iii) regulating the use of the Common Area and the facilities thereon for group activities, and (iv) regulating parking upon and use of the Common Area roadways, provided that no Owners shall be denied ingress and egress over Common Area roadways to such Owner's Lot;

(b) Facilities Fees. The right of the Board to charge reasonable admission and other use fees for any facilities situated upon the Common Area;

(c) Suspension of Use. The right of the Board, as more particularly addressed in the Bylaws, to suspend an Owner's right to use the recreational facilities located on the Common Area for (i) any period during which any Assessment against such Owner's Lot remains unpaid, and/or

(ii) for violations of the Governing Documents by an Owner or any person for whom an Owner is responsible, provided that no Owners shall be denied ingress and egress over Common Area roadways to such Owner's Lot;

(d) Granting of Easements. The right of the Board to grant easements and rights of way in, on, over, or under the Common Area;

(e) Transfer to Public Agency. The right of the Board to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility;

(f) Encumber. Except as limited by Section 3.8, below, the right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association;

(g) Perform Obligations. The right of the Association or its authorized agents to perform its obligations under this Declaration, including, without limitation, obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area;

(h) Establish Signage. The right of the Association to establish, construct, maintain, repair and replace entrance signs, privacy gates, street signs, lights, maps, directories and other similar improvements upon the Common Area;

(i) Association Use Areas. The right of the Association to establish, construct, maintain, repair and replace facilities upon the Common Area including without limitation storage facilities and workshops, which may be necessary or convenient in the discharge of the Association's duties and the exercise of its rights under the Governing Documents; and

(j) Development, Sales and Inspections. The right of Declarant and its employees, sales agents, prospective purchasers, customers and representatives, to enter upon and to use the Common Area for development and sales activities in accordance with Article 15, below. Such use shall not unreasonably interfere with the rights of use and enjoyment of the other Owners as provided herein. Declarant shall also have the right to inspect the Development in accordance with Article 15, below.

3.4 Assignment of Rights of Use. Upon occupancy of a Lot by a tenant, the Owner shall be deemed to have assigned all Common Area rights exclusively to the tenants of such Lot except that such Owner shall continue to have an easement for ingress and egress to such Owner's Lot to the extent necessary to discharge the Owner's obligations and rights as a landlord. Any Common Area rights of enjoyment assigned pursuant to this Section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. It is the express purpose and intent of the provisions of this Section to limit the right of use and enjoyment of the Common Area to Residents and their guests.

3.5 Common Area Construction. Following the conveyance of a Common Area lot or parcel to the Association, no person or entity other than the Association, its duly-authorized agents, or the majority Declarant: (i) shall construct, reconstruct, refinish, alter, or maintain any Improvement upon the Common Area, (ii) shall make or create any excavation or fill upon the Common Area, (iii) shall change the natural or existing drainage of the Common Area, or (iv) shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

3.6 Mechanic's Liens. In the event there shall be Recorded against the Common Area a notice of mechanic's lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered

for any Owner or his or her Lot, such Owner shall immediately cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be granted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

3.7 Enforcement of Bonded Obligations.

(a) Board Consideration of Enforcement. If any of the Common Area Improvements within the Development have not been completed when the California Real Estate Commissioner issues a final subdivision public report for the Development, and if the Association is the obligee under a bond or other arrangement ("bond") to secure performance of a commitment of Declarant to complete such Common Area Improvements, then 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 Improvements for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the "planned construction statement" appended to the bond. However, if the Association has given an extension in writing for the completion of any Common Area Improvement, the Board shall consider and vote on the action to enforce the obligations under the bond only if a notice of completion has not been filed within thirty (30) days after the expiration of the extension.

(b) Member's Rights to Call Meeting Regarding Enforcement of Bonds. If the Board fails to consider and vote on the action to enforce the obligations under the bond or decides not to initiate action to enforce the obligations under the bond, then on the petition in writing to the Board signed by Members representing not less than five percent (5%) of the Total Voting Power of the Association other than Declarant, the Board shall call a special membership meeting 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 meeting shall be called by the Board by fixing a date not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of said petition. Notice of the meeting shall be given to all Owners entitled to vote in the manner provided in the Bylaws for notices of special membership meetings. 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 deemed to be the decision of the Association and the Board shall then implement the Owners' decision by initiating and pursuing appropriate action in the name of the Association.

3.8 Ownership of Outlots. Ownership of all Outlots (except for Outlots conveyed to Waterworks District No. 18) shall be held by the Association for the benefit of all Owners. No Outlot shall be developed, except as allowed by the Fresno County Zoning Ordinance, nor shall any Outlot be divided or be encumbered by a mortgage or other lien as security for a debt without the prior written consent of the Fresno County Board of Supervisors, and sixty-six and two-thirds percent (66-2/3%) of the Owners and Mortgagees. The County is the intended beneficiary of this provision and shall have the right to enforce this provision by all available remedies, legal and equitable.

4.1 Offensive Conduct, Nuisances, Noise. No noxious, harmful or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or unsightly, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area and facilities thereon or the use and enjoyment of their Lots or Residences. Without limiting any of the foregoing, no Resident shall permit noise, including without limitation the barking of dogs or excessively loud music, to emanate from the Resident's Lot, vehicles, or the vehicles of guests and invitees, which would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area. Nothing in this Section shall be construed to limit the Association's ability to discharge its duties in accordance with the Governing Documents or otherwise manage the Development. Notwithstanding any other provision of this Declaration, the Overall Development shall be subject to this Section 4.1. The fact that other Sections of Article 4 are not specifically referenced as to the Overall Development in no manner means that such prohibited activity or condition would not be prohibited by the broad language in this Section 4.1. Further, the Rules may address and further define the nature of what constitutes a nuisance or unsightly item used in this Section 4.1.

4.2 Residential Use. Except as specifically provided in Section 4.3, 4.22 and 4.23, below, no Lot, or any portion thereof, shall be occupied or used for other than residential purposes.

4.3 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except:

(a) Professional and Administrative. Those professional and administrative occupations as may be permitted by, and which are conducted in conformance with, all applicable governmental ordinances provided that there is no external evidence thereof, and further provided that the Board may, in its complete discretion, prohibit the conduct of any such activities which the Board determines to be incompatible with the nature and character of the Development or which, in the Board's opinion, may or does otherwise negatively impact the quality of life and property values within the Development.

(b) Development and Sales of Residences. As more particularly provided in Article 15, below, Declarant shall be entitled to use Residences as models, sales or rental offices or construction headquarters for the purpose of constructing Residences and marketing of Residences within the Development or for development projects located outside of the Development.

(c) Rental Office. A rental or management office for the Development, provided that Residences within the Development shall not be used for motel or other short-term occupancy.

(d) Permitted by Law. Those other businesses which by law must be permitted to be conducted within the Development, including, but not limited to the businesses described in Sections 4.22 and 4.23, below.

4.4 Use of the Common Area. All use of the Common Area, including, but not limited to, use for ingress and egress by foot or vehicle, and for recreational purposes, shall be subject to the Governing Documents. No alterations or additions to the Common Area shall be made except as authorized by the Board pursuant to the Governing Documents. Nothing shall be placed, kept, stored, or parked on the Common Area without the prior written consent of the Board, except by the Association. Without limiting

the foregoing, no Owner shall place rubbish, debris, or other unsightly or unsanitary materials on the Common Area. Each Owner shall avoid causing damage to the Common Area.

4.5 Requirement of Architectural Approval. As addressed in greater detail in Article 8, construction, installation, modification, or alteration of buildings, outdoor structures, fences, awnings, outdoor lighting and all other exterior Improvements are subject to approval of the Architectural Review Committee.

4.6 Sports Apparatus. Unless otherwise permitted by Rules adopted by the Board, no sports apparatus, whether portable or fixed, including without limitation basketball standards or skateboard ramps shall be permitted within the Development. As used in this Section, the term "sports apparatus" does not include bicycles, roller skates, roller blades or any other similar unpowered wheeled equipment, provided that the Board shall have the discretion to adopt Rules governing the use of such unpowered wheeled equipment.

4.7 Window Coverings. Drapes, window shades, or shutters shall be installed in the windows of all Residences and garages and shall comply with any Rules adopted by the Board. In no event shall windows be painted, nor shall aluminum foil, newspaper, bed sheets, cardboard or similar materials be placed in windows. All window coverings shall be maintained in good repair and condition at all times.

4.8 Signs. To the extent permitted by law, the Board may adopt limitations on signs including, without limitation, restrictions on the size of the signs, the duration of their posting, and their location.

4.9 Antennas. No outside television antenna, aerial, satellite dish or similar device for the transmission or reception of television, radio, satellite, or other signals of any kind, are permitted within the Development, except as provided in this Section. Antennas or satellite dishes with a diameter or diagonal measurement not greater than one (1) meter which are designed to receive direct broadcast satellite services, video programming services via multi-point distribution services, or television broadcast signals (collectively "Permitted Dishes") may be erected, placed or installed on a Lot, subject to the following restrictions, provided that the application of these restrictions do not unreasonably delay installation or expense, or preclude reception of an acceptable quality signal:

(a) Not Visible from Streets. All Permitted Dishes shall be placed in locations which are not visible from the streets within the Development.

(b) Preferred Placement List. All Permitted Dishes shall be installed at locations in accordance with a prioritized list of placement preferences, if such a list is adopted by the Board.

(c) Reasonable Rules. All Permitted Dishes shall be installed in accordance with such reasonable restrictions which may be imposed as part of the Architectural Rules.

(d) Post Installation Review. The Architectural Review Committee may review the location and installation of Permitted Dishes after installation. After its review, to the extent permitted by law, the Architectural Review Committee may require a Permitted Dish be moved to a preferred location designated by the Committee.

4.10 Trash Disposal. The Association shall contract for waste disposal and recycling services with a single hauler as required by the County, and each Owner shall be required to pay the monthly charges for service as part of the monthly Regular Assessment for each Lot, commencing upon the completion of a Residence upon a Lot. The Association shall also encourage recycling and conservation efforts and require participation in curbside programs instituted by the County. Trash, garbage, accumulated waste plant

material and all other waste and refuse shall be deposited only in covered sanitary containers or recycling containers in accordance with the following provisions:

(a) Screened Containers. No trash, garbage, rubbish, or other waste material shall be allowed to accumulate on any Lot unless stored in an appropriate sanitary, covered disposal container that is located within an enclosed area adjacent to the Owner's Residence and screened from the view from the Common Area, the streets or any other Residences.

(b) Trash Pickup. The containers may be placed for pickup at a reasonable time prior to trash collection and shall be promptly stored as specified in subsection 4.10(a) after collection. All containers shall be placed away from parked vehicles and other obstructions. The Board shall adopt Rules regulating the placement of containers for trash collection, including specific limitations on the period of time during which containers may be placed for collection.

(c) Trash Storage. No Owner or Resident shall permit or cause any garbage, trash or other waste or refuse to be kept upon any portion of any Lot outside of the Residence or elsewhere in the Overall Development, except in sanitary, covered disposal containers.

#### 4.11 Vehicles and Parking.

##### (a) Limitations on Types of Vehicles.

(i) Recreational Vehicles. No trailer, motor home, recreational vehicle, camper, or boat shall be parked, kept or permitted to remain within the Overall Development unless placed or maintained completely within an enclosed garage, and provided that the parking of such recreational vehicle or trailer does not displace the parking of otherwise permitted vehicles within the garage. The Board, in its complete discretion and upon such basis and terms as it deems prudent, shall have the power to adopt, modify and repeal Rules permitting the temporary use and parking within the Development of vehicles otherwise prohibited by the provisions of this subsection.

(ii) Commercial Vehicles. No truck, van or commercial vehicle shall be parked, kept or permitted within the Development unless placed or maintained completely within an enclosed garage, except for such limited times as are necessary for deliveries, the performance of maintenance, repair and replacement of Improvements within the Development and other similar situations, and then subject to any Rules adopted by the Board which may include, without limitation, a limit on the time of day or days of the week when such vehicles may be present within the Development. The term "truck, van or commercial vehicles" shall not include sedans or standard size cars, pickup trucks and vans which are used for both business and personal uses, provided that any signs or markings of a commercial or governmental nature on such vehicles shall be unobtrusive as determined by the Board.

(b) Condition of Vehicles. No unreasonably noisy vehicles and no vehicles (including, without limitation, scooters, motorcycles or other motorized devices) emitting foul smelling or offensive exhaust fumes shall be operated within the Development. No dilapidated, unsightly, inoperable, or abandoned vehicle shall be parked, kept or permitted to remain upon any area within the Development unless completely enclosed within a garage. Each vehicle operated or located within the Development shall maintain, and the Board shall have the authority to require written evidence of, current registration which permits the vehicle to be legally operated on public streets.

(c) No Vehicle Repairs. No vehicle maintenance, or repairs of any kind may be made to vehicles within the Development except such emergency repairs as are necessary to remove the vehicle from the Development and except within an enclosed garage.

(d) Parking of Permitted Vehicles. Vehicles permitted by this Section 4.11 may be parked within the Development only as follows:

(i) Garage Parking. Owners and Residents shall utilize their Residence's garage as the primary parking space for vehicle parking, and shall not utilize any other parking space otherwise permitted by this Section 4.11, unless the garage is occupied by a parked vehicle.

(ii) Driveway Parking. Provided a vehicle is parked within the Lot's garage, Residents may park permitted vehicles wholly within the driveway located on such Owner's Lot. Vehicles parked within a driveway shall not extend into the Common Area roadway serving the Development.

(iii) Common Area Parking. Residents shall not park vehicles within the Common Area parking spaces. Only vehicles of guests and invitees shall be parked within the Common Area parking spaces, provided such vehicles are not parked within the Common Area overnight for more than two (2) nights within any seven (7) day period. The nominal movement of any vehicle for the purposes of preventing the application of this subsection shall be ineffective.

(iv) No Parking Fire Lane. Curbs within the Development next to fire hydrants shall be painted red and labeled "No Parking Fire Lane". Any vehicle parked within the No Parking Fire Lane shall be subject to immediate towing. The Association shall establish procedures for authorizing the towing of any unauthorized vehicle parked within a designated No Parking Fire Lane.

(e) Parking Rules and Enforcement. In order to prevent or eliminate parking problems within the Development, or to further define and enforce the restrictions contained in this Section, the Board shall have the authority to adopt further reasonable rules and restrictions regarding vehicles and parking within the Development as the Board may deem prudent and appropriate. The Board shall also have the power to impose sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such authority and power shall include, without limitation:

(i) Towing of Vehicles. The power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Development in violation of any of the provisions of the Governing Documents, provided that towing of vehicles of guests and other non-Residents of the Development shall be subject to the provisions of applicable law. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Lot Owner responsible or whose household members, tenants, or guests are responsible for the presence of such vehicle.

(ii) Parking Fines. The power and authority to fix and impose fines for violations of this Section in accordance with California Civil Code Section 5850(a).

4.12 Garages. No garage shall be remodeled or used as a workshop, storage space, hobby facility or for any other use or facility which would interfere with the ability of the Owner of the Lot to accommodate at least two (2) vehicles.

4.13 Compliance with Laws. Nothing shall be done or kept anywhere within the Development which violates any local, state or Federal law, ordinance, statute, rule or regulation.

4.14 Animals.

(a) Household Pets. No animals, reptiles, rodents, birds, fish, livestock, or poultry shall be raised, bred or kept on any Lot or other portion of the Development except that a reasonable number, as determined by the Board, of domesticated birds, cats, dogs or aquatic animals kept within an aquarium, may be kept, provided that they are not kept, bred, or maintained for any commercial purposes and they are maintained under reasonable control at all times, all in conformance with any County ordinances. Each dog must be restrained on a leash held by a responsible person capable of controlling it whenever it is outside of its owner's Lot.

(b) Owner's Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such pet. The Board shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to pets, including without limitation fines for failure to remove and dispose of pet waste as required by this subsection. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Development by such person or by members of his or her household, tenants, guests, or invitees. Each Owner and Resident shall indemnify the Association and its officers, Directors, and agents against any and all claims, damages, losses, demands, liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner or Resident, members of his or her household, guests, tenants, or invitees. Dog barking audible from within an adjacent Lot's Residence for more than ten (10) minutes within an hour shall constitute a nuisance pursuant to this Declaration.

(c) Pet Rules. The Board may adopt and enforce pet Rules in addition to the provisions of this Section. Such Rules may include, without limitation, regulations regarding the presence of pets on the Common Area and requirements that pets be registered with the Association. The Association shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance or danger to any other person.

(d) Leash Law. The Association shall enact a leash law within the Development boundaries to be administered by the Association. In addition, the Association shall conduct an education program to discourage free-roaming pets within the Development. Provisions of the leash law shall include: (i) signs shall be posted in the Common Areas notifying Owners of the leash law; (ii) the Board shall appoint a Member to be an animal control officer and the animal control officer shall respond to complaints as well as act on violations of the leash law; and (iii) a system of written warnings and fines for successive violations shall be established by the Board.

4.15 Rental of Lots. An Owner shall have the right to rent his or her Lot subject to the provisions of the Governing Documents, including without limitation the following specific requirements:

(a) Notification of the Board. The Owner shall notify the Association of the duration of the lease, a term of which shall not be less than thirty (30) days, and shall provide the Association with (i) the names of the tenants, (ii) the names of the members of the tenants' household, (iii) the tenants' telephone numbers, and (iv) such other information as the Board deems appropriate. The Association may, in its discretion, adopt a form for the provision of the information required by this subsection, together with an acknowledgment by the tenants that they have read, understand and agree to abide by the Governing Documents, which form shall be submitted to the Association for each rental of a Lot.

(b) Owner Responsibility. Each Owner renting a Lot shall be strictly responsible and liable to the Association for the actions of such Owner's tenant in or about all Lots and Common Area and for each tenant's compliance with the provisions of all Governing Documents. An Owner renting a Lot shall provide the tenant with copies of the Governing Documents and all subsequent amendments. Owners renting a Lot shall provide the Board with a forwarding address so that the Owner may be contacted.

(c) Indemnification of Association. Every Owner of a Lot that is occupied by persons other than the Owner pursuant to a rental agreement or otherwise, agrees to and shall indemnify and defend the Association, its officers, Directors, managers, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, including but not limited to attorneys' fees arising out of the conduct or presence of the occupants of the Lot upon the Development, including any such cost, loss, claim or damages arising or alleged to have arisen out of the enforcement or nonenforcement by the Association of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys' fees incurred by the Association to enforce the Governing Documents against such occupants, shall be reimbursed to the Association by the Owner and may be assessed by the Association as a Reimbursement Assessment.

(d) Requirements of Written Rental Agreement. Any rental of any Lot shall be only by written rental agreement which shall expressly provide (i) that it is subject to all of the provisions of the Governing Documents, (ii) that the tenants of such Lot shall comply with all provisions of the Governing Documents, and (iii) that any violation of any provisions of the Governing Documents shall constitute a breach and default of the terms of such rental agreement. The rental agreement shall not attempt to, nor shall any such agreement be effective to, transfer membership in the Association to the lessee. Any lease or rental agreement entered into between an Owner and a lessee or renter shall be for a minimum term of thirty (30) days.

(e) Requirement of Inclusive Rental Agreement. No Owner may rent or hire any garage, accessory building, or similar improvement to anyone who does not have the right of possession of the entirety of the Residence on the Lot.

4.16 Clotheslines and Sideyard Storage. No exterior clotheslines or other outside clothes drying or airing facility shall be erected or maintained upon any Lot, except below the fence-line. No personal property shall be stored along the side yard area immediately adjacent to a Residence's garage.

4.17 Equipment. No power equipment, hobby shop, or carpenter shop shall be maintained on the Development, except within the confines of a garage or upon the prior approval of the Board.

4.18 Exploration for Minerals. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in the Development or any portion thereof, nor shall oil wells, tanks, tunnels, or mineral excavations or shafts be permitted upon the surface of any portion of the Development.

4.19 Burning. There shall be no exterior fires whatsoever on Lots or in the Development, except barbecue fires and outdoor fireplaces located only upon Lots and contained with receptacles and/or enclosures designed for such purpose. No Owner or Resident shall permit any condition to exist on his or her Lot, including, without limitation, trash piles, or weeds, which create a fire hazard or is in violation of local fire regulations.

4.20 Activities Affecting Insurance. Nothing shall be done or kept within the Development which will increase the rate of insurance maintained by the Association without the prior written consent of the Association. No Owner shall permit anything to be done or kept within the Development which would result in cancellation of any insurance policy maintained by the Association or any other Owner.

4.21 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof. Notwithstanding the preceding, if any Lot is owned by two (2) or more co-tenants as tenants in common or as joint tenants, this Section shall not be deemed to prevent a judicial partition by sale as between such co-tenants.

4.22 Family Day Care Centers. No family day care center shall be permitted within the Development except as specifically mandated by California Health and Safety Code Section 1597.40 and other applicable statutes. The owner/operator of any permitted day care facility shall provide the Association with prior written notice as to the facility's operation, and shall comply with all local and state laws regarding the licensing and operation of a day care center and, in addition, shall:

(a) Association Additional Insured. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center, in accordance with Health & Safety Code Section 1597.531. This subsection 4.22(a) is intended to be and shall be conclusively deemed to be the written notice to the operator and owner from the Association as specified in Health & Safety Code Section 1597.231;

(b) Indemnify. Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability action, cost (including attorneys' fees and costs) or cause of action arising out of the existence and operation of the day care center;

(c) Association Rules. Abide by and comply with the Association's Rules;

(d) Responsibility. Supervise and be completely responsible at all times for all persons for whom day care services are provided, while such persons are within the Development; and

(e) Proof of Insurance. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these provisions, or other reasonable requests.

4.23 Community Care Facilities. Except for residential facilities defined as community care facilities under Health & Safety Code Section 1502, no health care facilities operating as a business or charity shall be permitted in the Development. The owner/operator of any permitted community care facility shall provide the Association with prior written notice as to the facility's operation, and shall comply with all local and state laws regarding the licensing and operation of a community care facility and, in addition, shall:

- (a) Association Additional Insured. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the community care facility;
- (b) Indemnify. Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability action, cost (including attorneys' fees and costs) or cause of action arising out of the existence and operation of the community care facility;
- (c) Association Rules. Abide by and comply with the Association's Rules;
- (d) Responsibility. Supervise and be completely responsible at all times for all persons for whom community care services are provided, while such persons are within the Development; and
- (e) Proof of Insurance. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the community care facility to these provisions, or other reasonable requests.

4.24 Variances. The Board shall be authorized to grant reasonable variances from the provisions of Article 4 of this Declaration upon written application from any Owner provided that the Board determines, in its sole discretion, that the specific application of the restriction to such Owner will (i) cause substantial undue hardship to the Owner, or (ii) fail to further or accomplish the common plan for the Development as contemplated by this Declaration. The Board shall have the power to limit any variance granted in scope or duration or otherwise impose such specific requirements as the Board may, in its complete discretion, see fit to require. The Board shall follow the following procedures in acting on any request for a variance:

- (a) Initial Board Determination. The Board, in its sole discretion, shall make an initial determination whether or not the variance on its face meets the requirements set forth in this Section. If the Board determines that it does not meet the requirements, the variance request shall be denied and the Board shall so notify the applicant within thirty (30) days of the Board's decision. If the Board determines that the variance does meet the requirements, the procedures set forth in the remainder of this Section shall be followed.
- (b) Board Hearing. The Board shall conduct a hearing on the variance within forty-five (45) days of the receipt of the written request for a variance. Notice shall be given to all Members not less than fifteen (15) days prior to the date of the hearing. Members may submit comments in writing prior to the hearing and/or appear at the hearing. The Board shall establish a reasonable time limit for Member comments during the hearing. No decision regarding the request for variance shall be made until the conclusion of the hearing.
- (c) Board Decision. After the conclusion of the hearing, the Board shall, in its sole discretion, either grant or deny the request for variance in accordance with the standards set forth in this Section. As more fully discussed above, if the Board grants the variance request, the Board may impose such conditions as the Board deems appropriate and shall so notify the applicant within thirty (30) days of the Board's decision.

## ARTICLE 5

## IMPROVEMENTS TO LOTS/RESIDENCES; DISCLOSURES

5.1 Approval by Architectural Review Committee. Except for Improvements constructed or installed by Declarant, no building, fence, wall, pool or spa equipment, or other structure or Improvement shall be erected, altered or placed on any Lot until building plans, specifications and a plot plan showing the

location of structures on the Lots have been submitted to the Architectural Review Committee for review and approval as described in Article 8, below.

5.2 Solar Systems. Subject to limitations imposed by California law, the Board shall be entitled to adopt, as part of the Architectural Guidelines, reasonable regulations regarding the installation of solar systems. These rules may include limitations on placement and design of such systems to the extent necessary to avoid an unsightly appearance from neighboring Lots or Common Area.

5.3 Drainage. No Owner shall do any work, construct any Improvement, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Owner's or any adjacent Lots or parcels or Common Area as established in connection with the approval of the final subdivision and parcel maps applicable to the Development, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Review Committee, and all other public authorities having jurisdiction.

5.4 Mechanical Devices. No poles, wires, machines, equipment, air conditioning units or similar objects shall be allowed on the exterior or roofs of any Residence, or any part thereof, except such as are installed as part of the initial construction of the Development by the Declarant, or replacements to the initial construction, or such as are approved in writing by the Architectural Review Committee.

5.5 Exterior Lighting and Fixtures. No exterior lighting other than that which is a part of the original construction or reconstruction of the Development by the Declarant shall be installed or maintained on any Lot by the Owner without the prior written consent of the Architectural Review Committee. The Architectural Review Committee shall not approve exterior lighting that is unreasonably intrusive, invasive or annoying to neighboring Owners. For the purposes of this Section, ordinary light fixtures attached to the Residence utilizing non-directional white or yellow incandescent bulbs of 100 watts or less are presumed to be reasonable, subject to the discretion of the Architectural Review Committee. The Board of Directors may establish Architectural Guidelines regarding the placement of holiday lighting and decorations, including, but not limited to, the duration of display prior to and following the celebrated holiday.

5.6 Temporary Buildings. No out building, tent, shack, or shed or other temporary building or Improvement of any kind shall be placed upon any portion of the Development either temporarily or permanently, except such sheds or construction shacks as may be maintained by Declarant upon the Common Area in connection with its development of all phases of the Development.

5.7 Prefabricated Buildings. No prefabricated storage shed or structures or any kind, nature, size or configuration shall be permitted on a Lot.

5.8 Accessory Structures. No accessory structures shall be constructed, placed or maintained upon any Lot prior to the completion of the construction of the Residence thereon, except by the prior written approval or permission of the Architectural Review Committee; provided, however, that this restriction shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of structures upon any Lot.

5.9 Mailboxes. Mail delivery will not be made to mailboxes installed on individual Lots in the Development. Instead, mailboxes for each Lot will be included in a group of boxes called a "gang" mailbox. The United States Postal Service will specify the location the "gang" mailboxes in the Development.

5.10 Individual Propane Tanks. The location of propane tanks ("Tanks") and related pipes, pipelines and equipment on a Lot shall be approved by the Architectural Review Committee prior to installation, in accordance with all applicable County codes, ordinances and regulations. The Tanks shall

be enclosed within a separate six foot (6') fenced area, that will screen the Tank from view of adjoining Lots with rear or side yards at the same elevation as the Lot on which the Tank is situated. All fences enclosing or screening Tanks must be approved by the Architectural Review Committee prior to installation. Alternatively, Owners of Lots are encouraged, but not required, to bury all Tanks and related pipes, pipelines and equipment.

5.11 Uniform Fences. The Architectural Review Committee may establish uniform standards and a uniform style for all individual Lot fences within the Development, including, but not limited to, the maximum and minimum height and the materials to be utilized in connection with the construction thereof. The Architectural Review Committee must approve, in writing, the location of all fences within the Development and supervise the construction thereof to insure that the same will be in strict compliance with the uniform standards.

5.12 Additional Provisions Concerning Construction and Alteration of Improvements. In addition to all other covenants contained herein, the construction and alteration of Residences and other Improvements within the Development is subject to the following:

(a) Minimum Square Footage. Each Residence constructed on Lots 1 through 19 shall have a fully enclosed habitable floor area (exclusive of roofed or unroofed porches, decks, terraces, garages, carports or other outbuildings) of not less than Eighteen Hundred (1,800) square feet. Each Residence constructed on Lots 20 through 56 shall have a fully enclosed habitable floor area (exclusive of roofed or unroofed porches, decks, terraces, garages, carports or other outbuildings) of not less than Two Thousand Two Hundred (2,200) square feet. Upon the annexation of Lots 57 and 58 to this Declaration, each Residence constructed on Lots 57 and 58 shall have a fully enclosed habitable floor area (exclusive of roofed or unroofed porches, decks, terraces, garages, carports or other outbuildings) of not less than Eighteen Hundred (1,800) square feet. All Residences shall also have attached or detached enclosed garages for a minimum of two (2) automobiles. Covered carports are prohibited.

(b) Height Restrictions. No Residence or structure shall be constructed, altered or maintained upon any Lot that exceeds the height limitations imposed by the applicable zoning ordinances of the County, conditions of approval for the Development or the Architectural Rules.

(c) Setbacks. The Property Development Standards of the Fresno County Zoning Ordinance for the R-1-B District shall apply except as follows:

(i) Front Yard. Front yard setbacks on a Lot shall be a minimum of twenty-five feet (25') for Lots 1 through 18, inclusive, and twenty feet (20') for Lots 19 through 56, inclusive, measured from the property line. It is understood that all Improvements, construction and development on Lots shall occur within the front one hundred thirty feet (130') of each Lot, as required by the conditions of approval for the Development; provided, however, that the envelope of a Residence on a Lot shall be at least fifteen feet (15'), and the envelope of any covered patio or deck on a Lot shall be at least ten feet (10'), from the hinge point of any slope or embankment located within the rear yard of such Lot.

(ii) Garages. All Residences shall be constructed with enclosed garages. Each garage shall be equipped with an automatic garage door opener.

(iii) Maximum Height. Notwithstanding subsection 5.13(b), above, Residences or structures shall have a maximum height no greater than three (3) stories not to exceed forty feet (40'). Building heights on uphill Lots shall not exceed the maximum height when

measured from the average elevation of the front of the Residence or structure or at any other location when measured from the finished grade along a slope parallel and immediately adjacent to the building line.

(d) Landscaping. All Lots shall be landscaped with a combination of trees, shrubs, ground cover, lawn, natural vegetation, limited decorative rock, bark and similar materials. Construction of earthen berms will be permitted as long as interference of natural drainage does not occur. Landscaping shall be designed so as to complement, protect and harmonize with the natural terrain, existing trees and vegetation and shall be consistent with generally accepted customary and conventional landscape designs. Stones, gravel, concrete and similar materials shall be used for complimentary and supplemental purpose and no Lot shall be landscaped entirely with such materials. All buildings and landscaping on Lots shall be placed in the development area encompassing the front one hundred and thirty feet (130') of each Lot as required by the County conditions of approval for the Development; provided, however, that the envelope of a Residence on a Lot shall be at least fifteen feet (15'), and the envelope of any covered patio or deck on a Lot shall be at least ten feet (10'), from the hinge point of any slope or embankment located within the rear yard of such Lot. All landscaping in the front, back and side yards of each Lot shall be completed within sixty (60) days after final inspection by the County. Landscaped areas on each Lot shall be limited to an area of four thousand (4,000) square feet to be comprised of fifty percent (50%) hybrid bermuda turf and fifty percent (50%) drought tolerant plants, except for corner Lots and Lots on main access roads where the maximum landscaped area shall be limited to five thousand (5,000) square feet. As used herein, "main streets" shall refer to all streets except those which terminate at a cul-de-sac. To the extent feasible, one (1) fifteen (15) gallon medium or large sized tree, compatible with Climate Zone 9 of the Western Garden Boom and approved by the Architectural Review Committee shall be planted for each one thousand (1,000) square feet of landscaped area for reasons of fire protection, slopes, or other constraints, trees that cannot be planted on Lots may be substituted by planting within the Development's open space areas such as median islands, paved areas and other Common Area in which energy conservation can be optimized. Said landscaping shall be selected, placed, irrigated and maintained by the Association.

(e) Building Standards. All structures built on a Lot shall be in compliance with the current Architectural Rules, as well as the requirements of the Fresno County Fire Protection District and Building Code Requirements of the Fresno County Public Works and Planning Department. Building Structures or portions thereof which are constructed of wood, concrete or steel columns which extend above the ground shall be totally enclosed with materials similar and compatible to those used in the remainder of the Residence's or structure's exterior so that the columns are not visible from the exterior of the completed Residence or structure. Notwithstanding the immediately preceding sentence, decorative and architectural columns, patio posts and supports, and other decorative exterior facade features are permitted on a Residence or structure, provided they are constructed of materials and finishes compatible to those used in the remainder of the Residence or structure, and have been approved, in advance, as to design, location and materials, by the Architectural Review Committee.

(f) Reflective Finishes. No reflective finishes other than glass or exterior hardware shall be used on the exterior surfaces of Residences or structures or inside of windows of the

Residence or structure so that the same will be visible to adjoining Lots or Common Areas. All exterior finishes and colors shall be complimentary with the architectural setting of each Lot and must be approved by the Architectural Review Committee.

(g) Maintenance of Lot During Construction. During the progress of the construction of any Improvement upon a Lot, the Owner and Owner's agents shall keep and maintain the Lot free from accumulations of waste materials, rubbish and other debris resulting from the construction. Paper, plastic, nails and other construction debris, of any kind or nature, shall be retained on site during construction and not allowed on adjacent streets, Lots or Common Area. After the completion of the construction of an Improvement upon a Lot, the Owner shall cause to be removed therefrom all waste materials, rubbish and debris as well as all tools, appliances, construction equipment, temporary structures, signs, machinery, equipment and surplus materials, and shall leave the Lot in a neat and clean condition.

5.13 Typical Grading Plans. The Declarant shall prepare a set of "typical" grading plans for a range of Lot types having slopes from 0-10%, 10-20%, and over 20%. This information, along with Best Management Practices for temporary and permanent erosion control, shall be made available to all Owners.

5.14 Proposed Storage Lot Area.

(a) Sale, Lease or Rent. Declarant intends, but is not required, to develop all or part of that portion of the property depicted and described on Exhibits "B-1" and "B-2" attached hereto (the "Proposed Storage Lot Area"), as an additional planned development by developing a maximum of one hundred forty (140) storage lots ("Storage Lots"). Declarant intends, but is not required to construct an individual enclosed storage unit ("Storage Unit") on each of the Storage Lots. If Declarant develops Storage Lots and Storage Units within the Proposed Storage Lot Area, Declarant intends to offer the Storage Lots and Storage Units for sale, lease or rent, exclusively to Owners of Lots in the Development, on a "first come, first serve" basis. Owners of Lots who purchase, lease or rent a Storage Lot or Storage Unit from Declarant shall, in turn, be prohibited from selling, leasing, subleasing, transferring or assigning the Storage Lot or Storage Unit, or any portion thereof, to any person or entity other than Owners of Lots in the Development, including Declarant.

(b) Separate Association. The Proposed Storage Lot Area, if developed by Declarant, shall not participate or be included in, or become part, of the Development. The Association shall not be responsible for and shall have no jurisdiction over, the Proposed Storage Lot Area. If Declarant develops the Storage Lots and Storage Units in the Proposed Storage Lot Area said Storage Lots and Storage Units shall be subject to the separate covenants, conditions, restrictions and easements created by Declarant in connection with the development of Storage Lots and Storage Units in the Proposed Storage Lot Area. Further, if Declarant develops Storage Lots and Storage Units in the Proposed Storage Lot Area, a separate owners association shall be formed by Declarant to operate the Proposed Storage Lot Area in accordance with the provisions of such separate set of covenants, conditions, restrictions and easements created by Declarant in connection therewith. Such separate owners association, if established, may establish rules and regulations for the use and occupancy of the Storage Lots and Storage Units.

(c) Payment of Proportionate Share. If the Proposed Storage Lot Area is developed by Declarant, the separate owners association for the Proposed Storage Lot Area shall pay a proportionate share of all operation and maintenance costs associated with using the streets and roads in the Development for ingress and egress to and from the Storage Lots and Proposed Storage Lot Area pursuant to a joint maintenance agreement to be negotiated between the Association and

the separate owners association for the Proposed Storage Lot Area, but if an agreement cannot be reached, the provisions of California Civil Code Section 845 shall apply.

**5.15 Notice of Agricultural Operations.** Fresno County has adopted a Right-To-Farm ordinance that alerts prospective property owners that much of the land in rural areas of the County include agricultural properties. The ordinance informs them that lawful and properly conducted agriculture and agriculture-related activities are permitted. Further, it protects farmers against nuisance complaints resulting from normally acceptable activities. The purpose of the Right-To-Farm ordinance is to recognize that agricultural practices can sometimes cause some discomfort and inconveniences for neighboring residents. Many practices are a necessary function of certain agricultural operations and are protected when done in accordance with the law. The County's Right-To-Farm Notice is as follows:

#### RIGHT-TO-FARM NOTICE

It is the declared policy of Fresno County to preserve, protect, and encourage development of its agricultural land and industries for the production of food and other agricultural products. Residents of property in or near agricultural districts should be prepared to accept the inconveniences and discomfort associated with normal farm activities. Consistent with this policy, California Civil Code 3482.5 (right-to-farm law) provides that an agricultural pursuit, as defined, maintained for commercial uses shall not be or become a nuisance due to a changed condition in a locality after such agricultural pursuit has been in operation for three years.

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### ARTICLE 6 ASSESSMENTS AND LIENS

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#### 6.1 Covenant of Owner.

(a) Owner's Assessment Obligation. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (i) Regular Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens as hereinafter provided.

(b) Owner's Personal Obligation. Each Assessment levied by the Association under this Article, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of Record of any Lot shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is Record Owner of such Lot. After an Owner transfers of Record any Lot he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. The seller of any Lot under an installment land contract shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is Recorded.

6.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and shall be secured by a lien upon the property against which such Assessment is levied, notwithstanding the transfer of Record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been Recorded as provided in this Declaration and by law. The priority of all such liens on each Lot shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Lot for succeeding months.

6.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively for (i) managing and operating the Development, (ii) conducting the business and affairs of the Association, (iii) maintaining and promoting the property values of the Owners and Residents of the Development, (iv) improving and maintaining the Common Area and, to the extent provided for in the Governing Documents or by law, the Lots situated within the Development, (v) enforcing the Governing Documents, and/or (vi) otherwise benefitting the Owners.

6.4 Authority of the Board. The Board shall have the power and the duty to levy Regular Assessments and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.

6.5 Regular Assessment.

(a) Calculation of Estimated Requirement. Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, or as otherwise provided by law, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Association for such fiscal year (including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis) to manage, administer, operate, and maintain the Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with this Declaration. The funds required by the Association pursuant to this subsection shall be assessed among the Owners of Lots as "Regular Assessments" as further provided in this Section 6.5.

(b) Allocation of Regular Assessment. Regular Assessments shall be allocated and assessed equally among the Lots within the Development by dividing the amount by the number of Lots, so that each Lot bears an equal share of the Regular Assessment.

(c) Payment of Regular Assessments. Unless the Board shall designate otherwise, Regular Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

(d) Increases in Regular Assessment. Pursuant to California Civil Code Section 5605, except as otherwise provided by law, the Board shall not increase the Regular Assessment for any fiscal year above the amount of the Regular Assessment for the preceding fiscal year by more than the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Owners voting on any such increase in the Regular Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Owners of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws. Any meeting or election of the Association for purposes of complying with California Civil Code Section 5605 shall be conducted in accordance with Chapter 5

(commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

(e) Commencement of Regular Assessment. Regular Assessments shall commence as to each Lot within a Phase of the Development on the first day of the first month following the month in which the first conveyance occurs for the sale of a Lot within a Phase to a person other than Declarant pursuant to a specific final subdivision public report. Each Lot within the Development shall thereafter be subject to its share of the then established annual Regular Assessment. The first annual Regular Assessment shall be pro rated, if necessary, according to the number of months remaining in the fiscal year established in the Association's Bylaws.

(f) Partial Assessment Exemption for Uncompleted Common Area. All Owners, including Declarant, shall be exempt from the payment of that portion of any Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Common Area Improvement that is not completed at the time Assessments commence. The Assessment exemption provided by this subsection shall be in effect only until the earliest of the following events: (A) a notice of completion of the Common Area has been Recorded; or (B) the Common Area has been placed in use.

#### 6.6 Special Assessments.

(a) Purpose of Special Assessments. If at any time during any fiscal year the Regular Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of Improvements located in the Development, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

(b) Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots within the Development in the same manner as Regular Assessments.

(c) Approval of Special Assessments. Except in the case of an emergency situation as defined in California Civil Code Section 5610, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws. Any meeting or election of the Association for purposes of complying with California Civil Code Section 5605 shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

6.7 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his or her Lot (i) if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such Owner or his Lot into compliance, or (ii) in the event that the Association has expended funds performing repairs as authorized by Section 7.4 of this Declaration or for any other reasons specifically authorized by the provisions of this Declaration. A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Association, including costs of collecting from an Owner any amount which the Owner

is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied.

6.8 Enforcement Assessments. The Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.

6.9 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Regular Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Regular Assessment fixed for the preceding fiscal year shall be the amount of the Regular Assessment for the ensuing fiscal year until a new Regular Assessment is levied.

6.10 Offsets. Except as permitted by subsection 6.5(f), above, all Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

6.11 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to late charges not to exceed the maximum rate permitted by law. In addition, interest on all sums imposed in accordance with this Article, including the delinquent Assessments, reasonable fees and costs of collection, and reasonable attorneys' fees, at an annual interest rate not to exceed twelve percent (12%), shall commence thirty (30) days after the Assessment becomes due. The Association may Record a lien against an Owner's Lot for delinquent Assessments and all Additional Charges as provided in Section 6.12, below, and in accordance with the Davis-Stirling Common Interest Development Act, California Civil Code Section 4000 et seq.

6.12 Assessment Liens.

(a) Notice of Collection and Lien Enforcement Procedure. At least thirty (30) days prior to Recording a lien upon an Owner's Lot to collect an Assessment debt that is past due under this Article 6, the Association shall notify the Owner in writing by certified mail of the following:

(i) A general description of the Association's collection and lien enforcement procedures and the method of calculation of the amount, a statement that the Owner has the right to inspect the Association records, pursuant to California Corporations Code Section 8333, 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 Assessments and Additional 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 attorneys' 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 by submitting a written request to meet with the Board to discuss a payment plan for the Assessment and Additional Charges debt noticed pursuant to subsection 6.12(a)(ii).

(v) The right of the Owner to dispute the Assessment and Additional Charges debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program.

(vi) The right of the Owner to request alternative dispute resolution with a neutral third party before the Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(vii) A statement that an Owner may, but is not obligated to, pay under protest any disputed charge or sum levied by the Association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise.

(b) Payments Made by Owner. Any payments made by the Owner toward the debt set forth shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the Additional Charges. 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) Owner's Authority to Bring Small Claims Action. If a dispute exists between the Owner of a Lot and the Association regarding any disputed charge or sum levied by the Association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits stated in California Code of Civil Procedure Sections 116.220 and 116.221, the Owner of the Lot may, in addition to pursuing dispute resolution pursuant to California Civil Code Section 5900 et seq., pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorneys' fees, late charges, and interest, if any, pursuant to California Civil Code Section 5650(b), and commence an action in small claims court pursuant to California Code of Civil Procedure Section 116.110 et seq. Nothing in this subsection shall impede the Association's ability to collect delinquent assessments as provided in California Civil Code Section 5700 et seq.

(d) Meet and Confer Program. Prior to Recording a lien for delinquent Assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program or alternative dispute resolution with a neutral third party. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(e) Decision to Record a Lien. The decision to Record a lien for delinquent Assessments, which is otherwise permitted by this Section 6.12, shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Directors in an open meeting. The Board shall record the vote in the minutes of that meeting.

(f) Payment Plan. An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed. The Association shall provide the Owners the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one (1) or more members to meet with the Owner. Payment plans may incorporate any Assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to Record a lien on the Owner's Lot to secure payment of delinquent Assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

(g) Recordation of the Notice of Delinquent Assessment. The amount of the Assessment, plus any Additional Charges shall be a lien on the Owner's Lot from and after the time the Association causes to be Recorded, a Notice of Delinquent Assessment, which shall state the amount of the Assessment and Additional Charges imposed, a legal description of the Lot against which the Assessment and Additional Charges are levied, and the name of the Record Owner of the Lot against which the lien is imposed. The itemized statement of the charges owed by the Owner shall be Recorded together with the Notice of Delinquent Assessment.

(i) The Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale.

(ii) The Notice of Delinquent Assessment shall be signed by the President of the Association.

(iii) A copy of the Recorded Notice of Delinquent Assessment shall be mailed by certified mail to every person whose name is shown as an Owner of the Lot in the Association's records, and the notice shall be mailed no later than ten (10) calendar days after Recordation.

(iv) Within twenty-one (21) days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall Record or cause to be Recorded a lien release or notice of rescission and provide the Owner of the Lot a copy of the lien release or notice that the delinquent Assessment has been satisfied.

(h) Assessment Liens for Repair of Common Areas. Unless otherwise permitted by law, a Reimbursement Assessment imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Areas and facilities for which the Member or the Member's guests or tenants were responsible may not be characterized nor treated as an Assessment that may become a lien against the Member's Lot enforceable by the sale of the interest pursuant to Section 6.13, below.

(i) Enforcement Assessments and Penalties. An Enforcement Assessment or monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for late payments of Assessments, may not be characterized nor treated as an Assessment that may become a lien against the Member's Lot enforceable by the sale of the interest pursuant to Section 6.13, below.

(j) Assignment of the Association's Lien Right. The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under Federal or State law, when acting within the scope of that charter or license, as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection. After the expiration of thirty (30) days following the Recording of a lien, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code Section 2934a. Any sale by the trustee shall be conducted in accordance with California Civil Code Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. The fees of a trustee may not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d, plus the cost of service for either of the following:

(i) The notice of default pursuant to California Civil Code Section 5710(b).

(ii) The decision of the Board to foreclose upon an Owner's Lot as described in California Civil Code Section 5705(d).

(k) Actions Against Owners. Nothing in this Section or in California Code of Civil Procedure Section 726(a) prohibits actions against the Owner of a Lot to recover sums for which a lien is created pursuant to this Section or prohibits the Association from taking a deed in lieu of foreclosure.

(l) Lien Recorded in Error. If it is determined that a lien previously Recorded against a Lot was Recorded in error, the Association shall, within twenty-one (21) calendar days, Record or cause to be Recorded a lien release or notice of rescission and provide the Owner of the Lot with a declaration that the lien filing or Recording was in error and a copy of the lien release or notice of rescission.

(m) Notice of Default. A notice of default shall be served by the Association on the Owner's legal representative, in accordance with the manner of service of summons pursuant to California Code of Civil Procedure Section 415.10 et seq. The Owner's legal representative shall be the person whose name is shown as the Owner of a Lot in the Association's records, unless the Owner in writing, delivered to the Association in a manner that indicates that the Association receives it, designates another person as his or her legal representative.

(n) Secondary Address. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this Section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the pro forma operating budget pursuant to California Civil Code Section 5300(a). The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at

any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

(o) Failure to Comply with Procedures. If the Association fails to comply with the procedures set forth in this Section, the Association shall, prior to Recording a lien, recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Owner of the Lot.

(p) Collection of Delinquent Assessments. If the Association seeks to collect delinquent Regular Assessments or Special Assessments of an amount less than One Thousand Eight Hundred Dollars (\$1,800), not including any accelerated assessments, and Additional Charges, the Association shall not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(i) By a civil action in small claims court.

(ii) By Recording a lien on the Owner's Lot which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, and Additional Charges, equals or exceeds One Thousand Eight Hundred Dollars (\$1,800) or the Assessments secured by the lien are more than twelve (12) months delinquent. If the Board elects to Record a lien under these provisions, prior to Recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in California Civil Code Section 5900.

(iii) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

#### 6.13 Foreclosure of Association Assessment Liens.

(a) Conditions Permitting Foreclosure. Except for Assessments owed to the Association by Declarant, if the Association seeks to collect delinquent Regular Assessments or Special Assessments of an amount of One Thousand Eight Hundred Dollars (\$1,800) or more, not including any accelerated assessments, or Additional Charges, or any Assessments secured by the lien that are more than twelve (12) months delinquent, the Association may use judicial or non-judicial foreclosure subject to the following conditions:

(i) Meet and Confer Program. Prior to initiating a foreclosure on an Owner's Lot, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(ii) Decision to Foreclose. The decision to initiate foreclosure of a lien for delinquent Assessments that has been validly Recorded shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Directors in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all Members. The Board shall maintain the confidentiality of the Owner or Owners of the Lot by identifying the matter in the minutes by the Owner's Lot number as shown on the Subdivision Map, rather than the

name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least thirty (30) days prior to any public sale.

(iii) Notice. The Board shall provide notice by personal service in accordance with the manner of service of summons pursuant to California Code of Civil Procedure Section 415.10 et seq., to an Owner of a Lot who is a Resident of the Lot or to the Owner's legal representative, if the Board votes to foreclose upon the Lot. The Board shall provide written notice to an Owner of a Lot who is not a Resident of the Lot by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Lot may be treated as the Owner's mailing address.

(iv) Right of Redemption. A nonjudicial foreclosure by the Association to collect upon a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the Lot may be redeemed from a foreclosure sale under this subsection ends ninety (90) days after the sale. In addition to the requirements of California Civil Code Section 2924f, a notice of sale in connection with the Association's foreclosure of a Lot shall include a statement that the Lot is being sold subject to the right of redemption created by California Civil Code Section 5715(b).

(b) Declarant Exception. The limitation on foreclosure of Assessment liens for amounts under the stated minimum in this Section does not apply to Assessments owed by Declarant.

(c) Recordation of Lien in Error. If it is determined through dispute resolution pursuant to the Association's "meet and confer" program or alternative dispute resolution with a neutral third party that the Association has Recorded a lien for a delinquent Assessment in error, the Association shall promptly reverse all Additional Charges, costs imposed for the notice, and costs of Recordation and release of the lien and pay all costs related to the dispute resolution or alternative dispute resolution.

(d) Small Claims Court. The Association may appear and participate in a small claims action through an agent, a management company representative, or bookkeeper who appears on behalf of the Association.

6.14 Priority. The lien of the Assessments provided for under this Article, including interest and costs (including attorneys' fees), shall be prior and superior to (a) any declaration of homestead Recorded after the Recordation of this Declaration, and (b) all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of Record made in good faith and for value and Recorded prior to the date on which a lien against the respective Lot was Recorded. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

6.15 Association Funds. All Association accounts shall be maintained in one (1) or more banks or other depositories selected by the Board, which accounts shall be clearly designated as belonging to the Association. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be used for the purposes set forth in Section 6.3, above.

6.16 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article.

6.17 Trustee's Deed Upon Sale. The Association may Record a request that a Mortgagee, trustee, or other person authorized to Record a notice of default regarding any Lot mail to the Association a copy of any trustee's deed upon sale concerning the Lot. The request shall include the legal descriptions or the assessor's parcel numbers of the Lots, the name and address of the Association, and a statement that it is an association as defined in California Civil Code Section 4080. Subsequent requests of the Association shall supersede prior requests. The request shall be Recorded before the filing of a notice of default. The Mortgagee, trustee, or other authorized person shall mail the requested information to the Association within fifteen (15) business days following the date the trustee's deed is Recorded.

## ARTICLE 7 MAINTENANCE OF PROPERTY

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7.1 Association Responsibilities. The Association shall have the following maintenance responsibilities:

(a) Common Area. The Association shall maintain the Common Area, including, but not limited to, open space, water features, private streets, fire roads, swimming pool, tennis courts, curb, gutter, walkways, parking areas, landscaping, parking lot, perimeter fences situate on the boundary lines of the Development, entry gates and related structures and facilities, in good condition and repair.

(b) Utility Connections. Utility lines and connections, including without limitation, electrical, cable television, telephone and telecommunication lines, which are located on, under, or over the Common Area, shall be maintained, repaired and replaced by the Association or by the utility company providing such service. All on-site sewer, water and storm drainage facilities and connections located within the Common Area shall be maintained, repaired and replaced by Fresno County Waterworks District No. 18, as provided in Section 7.2(e), below.

(c) Non-Standard Entry and Exit Improvements. The Association shall maintain, repair and restore the Improvements installed within the public right-of-way immediately adjacent to the entrance and exit to the Development that are, essentially, continuations of the Improvements installed within the Development, including paving, median island, landscaping and related Improvements.

(d) Maintenance Manual. The Association shall comply with provisions of any Common Area maintenance manual, if one is provided by Declarant to the Association. The Board may, from time to time, make appropriate revisions to any maintenance manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained.

(e) Association Inspections.

(i) Common Area Inspections. The Association shall regularly inspect, maintain and repair the landscaping, irrigation, and drainage systems serving the Common Area, and any Improvements constructed upon the Common Area. The Association shall employ the services of a professional landscape architect, maintenance contractor, reserve

study analyst or other such professional person to assist the Association in performing such inspections. The inspector shall provide written reports of their inspections to the Association and, if requested by the Declarant, to the Declarant promptly following completion thereof. If requested by Declarant, Declarant shall be invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems within the Common Area. The Board shall report the contents of such written reports to Declarant (if not already provided by the inspector directly) if so requested by Declarant and to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the next regularly scheduled Board meeting. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes.

(ii) Lot Access. As part of the inspection of Common Area, should an Association inspector require access over any Lot, there is hereby created a nonexclusive easement in favor of the Association, and its officers, agents, employees and independent contractors, in accordance with Sections 7.6 and 9.4, below, to conduct such inspections and to provide such maintenance, repair and replacement. Any damage to any structure, landscaping or other improvements caused by the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

(f) Compliance with Warranties. The Association shall have the duty to execute all necessary documents to effectuate any warranties offered by Declarant as to the Common Area or any property maintained by the Association.

(g) Owner's Responsibility for Consequential Damage. An Owner is responsible for the cost of repair of those portions of the Owner's Lot and Residence, including fixtures and personal property, which are required to be maintained by the Owner, even if the cause of the damage originates from a source maintained by the Association, unless the cause is the gross negligence of the Association or its agents. As an example, water damage to a Residence that is caused by an Association maintained irrigation system is the responsibility of the Owner even though the repair of the irrigation system is the responsibility of the Association.

(h) Other Association Property. The Association shall maintain, repair and replace all other real and personal property that may be acquired by the Association, keeping such property in good condition and repair.

7.2 Owners' Responsibilities. Each Owner shall be solely and exclusively responsible for the maintenance, repair and replacement of his or her Lot and all Improvements thereon, and shall keep the same in good and attractive condition and repair. Each Owner's obligations shall include, without limitation, the following:

(a) Residence and Other Improvements. Each Owner shall maintain, in good and attractive condition and repair, the Residence and other buildings and Improvements located on his or her Lot. The garage door for the garage of the Residence shall be maintained in good condition, appearance and repair.

(b) Landscaping. Each Owner shall maintain all landscaping on his or her Lot in a neat and attractive condition, including landscaping within the area between the curb and the property line of the Owner's Lot. Prior to commencing installation of landscaping, each Owner shall comply with the drainage restrictions described in Section 5.3, above, and shall obtain Architectural Review Committee approval of the proposed landscaping.

(c) Owner Maintenance of Party Improvements. Each Owner shall maintain, repair and replace all party walls, if any, in accordance with the following provisions:

(i) General Rules of Law to Apply. Each wall, fence, planter, driveway or walkway, if any, which is built as a part of the original construction of the Residences within the Development and placed on the dividing line between the Lots shall constitute a party wall. The general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(ii) Sharing of Repair and Maintenance. The cost of maintenance and repair of a party wall shall be equally shared by the Owners who make use of the wall without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(iii) Weatherproofing. Notwithstanding any other provision of this section, an Owner who by his or her negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(d) Utility Connections. Utility lines and connections, including without limitation, water, sewer, electrical, cable television, telephone and gas lines, which are located on, under, or over any Lot and which provide service to the Residence or other Improvements located upon such Lot, shall be maintained, repaired and replaced by the Owner of such Lot or by the utility company providing such service.

(e) Waterworks District No. 18. Fresno County Waterworks District No. 18 shall maintain, repair, replace, all water, sewer, storm drainage, Brow Ditches and Drainage Pipes constructed or installed for the purpose of providing service to the Development. Except for the Brow Ditches and Drainage Pipes, all water, sewer and storm drainage facilities located and/or placed on individual Lots, that are required for connection to facilities owned by Fresno County Waterworks District No. 18, in order to obtain service from such facilities for the Development, shall be maintained by the Owner of the respective Lot at his/her/their sole cost and expense.

7.3 Compliance With Architectural Provisions. An Owner's right and responsibility for maintaining, repairing or replacing any portions of his or her Lot, including landscaping, shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control, including Article 8.

7.4 Owner Failure to Maintain. The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement which is the responsibility of an Owner is necessary to preserve the appearance and value of the property comprising the Development, or any portion thereof, and may notify an Owner of the work the Board deems necessary. Subject to the authority of the Board to authorize immediate emergency repairs as specified in Section 7.6, in the event an Owner fails to perform such work within ten (10) days after notification by the Board to the Owner, the Board may, after written

notice to the Owner and the right of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

7.5 Owner Liability. In the event the need for any maintenance, repair, or replacement by the Association is caused by the willful or negligent act or omission of an Owner, members of any Owner's household, or an Owner's tenants, guests, invitees, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment.

7.6 Authority for Entry of Lot. The Association or its agents may enter any Lot, whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is responsible or which it is authorized to perform, including without limitation the authorization provided in Section 9.4. Although under no obligation to do so, the Board, in its complete and sole discretion, may enter or may authorize the Association's agents to enter any Lot to effect emergency repairs where such repairs are necessary for safety reasons or to prevent or discontinue damage to the entered Lot, any other Lot or the Common Area. The cost of performing any such emergency repairs shall be charged to the Owner as a Reimbursement Assessment. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

7.7 Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

7.8 Association Liability. The Association shall not be responsible or liable for any maintenance, repair, or replacement of a Lot or any Improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the negligence or fault of the Association, its employees, contractors, or agents.

7.9 Board Discretion. Except as provided in subsections 7.1(d), (e), and (f), above, the Board shall have the discretion to determine the manner, method, extent and timing of the performance of any and all maintenance, repair and replacement obligations imposed upon the Association by this Article.

7.10 Inspection of Property Maintained by Association. For all property and Improvements required to be maintained by the Association pursuant to Section 7.1, above, the Board shall cause the inspection of the condition of such property and Improvements as provided in this Section. Inspections shall be conducted in accordance with any applicable maintenance manuals, and in the absence of inspection frequency recommendations in any applicable maintenance manuals, at least once every three (3) years, in conjunction with the inspection required for the reserve study conducted pursuant to Section 9.3 of the Bylaws.

## ARTICLE 8 ARCHITECTURAL CONTROL

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### 8.1 Architectural Review Process.

(a) Purpose of Architectural Regulation Authority. It is intended that the Development be developed with various Improvements that are architecturally compatible and aesthetically pleasing, and that those initial Improvements be maintained in essentially the same condition and appearance as originally developed for the duration of the term of this Declaration. The architectural and use controls set forth herein are to facilitate those intentions and purposes and are to be construed consistent therewith. Subject to the criteria described in Section 8.8, below, the

Architectural Review Committee shall review all proposed Improvements and changes to existing Improvements regarding (i) design, (ii) harmony of external design in relation to the nature and character of the Development and the Improvements thereon, and (iii) location in relation to surrounding structures, topography, finished grade elevation.

(b) Submission of Plans and Specifications. Except as provided in subsection 8.1(c), the construction, installation, placement or alteration of Improvements visible from the exterior of a Residence shall be subject to this Article 8.

(i) Residences and Structures. All Improvements including without limitation Residences, buildings, fences, walls, obstructions, balconies, screens, patio covers, awnings, or other structures of any kind, shall not be commenced, located, erected, painted, or maintained within the Development, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee. Notwithstanding this subsection, and provided that the existing color and finish were approved by the Architectural Review Committee in the first instance, an Owner may repaint and refinish the exterior of the Improvements on his or her Lot in an identical color and finish without the approval of the Architectural Review Committee.

(ii) Enclosed Yard Area. If the Lot includes an enclosed yard area, all Improvement and proposed landscaping within such area which is or may become visible above the fence line or which alter the Lot's drainage, and all Improvements which generate noise, including but not limited to motorized equipment, shall be subject to the approval of the Architectural Review Committee in accordance with this Article.

(c) Exemption of Declarant from Committee Approval Requirements. Declarant shall not be subject to the provisions of this Article 8 and shall not be required to seek the approval of the Architectural Review Committee with respect to any of its activities within the Development.

## 8.2 Establishment of Architectural Review Committee.

(a) Composition of the Committee, Generally. The Architectural Review Committee shall consist of three (3) members. The composition of the Architectural Review Committee will evolve during the development of the Development, as follows:

(i) Initial Declarant Appointments. Declarant may appoint all of the members of the Architectural Review Committee and all removals and replacements until the first anniversary of the issuance of the California Bureau of Real Estate final public report for Phase 1.

(ii) Initial Board Appointment. Beginning with the first anniversary of the issuance of the first California Bureau of Real Estate final public report for Phase 1 issued following the Recordation of this Declaration, Declarant may appoint, remove, and replace a majority of the members of the Architectural Review Committee. The remaining member of the Architectural Review Committee shall be appointed by the Directors other than Declarant or Declarant's representative.

(iii) Full Board Appointments. At the earlier to occur of: (A) the conveyance by Declarant of ninety percent (90%) of the Lots within the Development; or (B) the fifth

(5<sup>th</sup>) anniversary date of the original issuance of the California Bureau of Real Estate final public report for Phase 1 issued following the Recordation of this Declaration, the Architectural Review Committee shall become a committee of the Association and all members of the Committee shall be appointed by the Board.

(b) Board as Committee. If at any time there shall not be a duly-constituted Architectural Review Committee, the Board shall exercise the functions of the Architectural Review Committee in accordance with the terms of this Article.

8.3 Duties. It shall be the duty of the Architectural Review Committee to consider and act upon proposals or plans submitted to it, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration. All decisions regarding proposed Improvements shall be made in good faith and shall not be unreasonable, arbitrary, or capricious.

8.4 Meetings. The Architectural Review Committee shall meet as necessary to properly perform its duties hereunder. Every act done or decision made by a majority of the members of the Architectural Review Committee shall be the act or decision of the Architectural Review Committee. The Architectural Review Committee shall keep and maintain a record of all actions taken by it at such meetings or otherwise. The Architectural Review Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Architectural Review Committee function.

8.5 Architectural Rules. The Board may, from time to time, adopt, amend, and repeal rules and regulations to be known as Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards and procedures for Architectural Review Committee review and guidelines for architectural design, placement of Residences and other structures, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Development; provided, however, that the Architectural Rules shall not be in derogation of the minimum standards required by this Declaration. The Architectural Rules may also impose limits on the days and hours of construction and impose any other restrictions and regulations which the Board deems appropriate to limit the impact of construction activities on the Residents.

8.6 Application. Any Owner proposing to perform any work of any kind whatever, which requires prior approval pursuant to this Article, shall apply for approval by notifying the Association, in writing, of the nature of the proposed work and furnishing such information and documentation as the Architectural Review Committee or Board may require, including without limitation samples of proposed paints in such sizes and formats as the Committee or the Board may deem appropriate. In accordance with subsection 10.5(c), and in addition to any other remedies the Association may have, the Board may impose a fine against any Owner who fails to submit an application, and obtain the required approval thereof, prior to proceeding with any Improvement for which approval is required pursuant to this Article. Except as provided in the last sentence of subsection 8.1(b)(i), any Owner who paints his or her Residence or any other Improvement without first submitting an application and obtaining the approval required by this Article may be required, in the Board's discretion, to repaint the Residence or Improvement.

8.7 Fees. The Architectural Review Committee may charge a reasonable fee or fees for its review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors. In addition to review fees, the Architectural Review Committee may require an Owner to post a deposit for major or even minor Improvements when submitting plans to the Committee to ensure compliance with the Architectural Rules and this Declaration. The Committee shall establish a schedule or formula for determining a different amount of the deposit, and may require a separate deposit for proposed landscaping improvements. Owners acknowledge that all or a portion of any deposit may be forfeited to the

Association if the Owner fails to properly and timely complete works of Improvement in accordance with approved plans and specifications or if an Owner or an Owner's agents cause damage to the Common Area. Prior to any deposit forfeiture, the Architectural Review Committee shall provide the Owner with notice and an opportunity to be heard, in accordance with California Civil Code Section 4820.

8.8 Grant of Approval. The Architectural Review Committee shall grant the requested approval only if:

(a) Application. The Owner has complied with the application submission procedures established by this Declaration and any applicable Architectural Rules;

(b) Plans and Specification. The Architectural Review Committee finds that the plans and specifications conform to both (i) this Declaration, and (ii) the Architectural Rules in effect at the time such plans were submitted to the Committee, unless a variance is granted from such Architectural Rules pursuant to Section 8.18;

(c) Aesthetics and Workmanship. The Architectural Review Committee determines that the proposed Improvements would be consistent with the standards of the Development and the purposes of this Declaration as to workmanship, design and materials, as to harmony of exterior design with the existing structures, and as to location with respect to topography and finished grade elevations; and

(d) Compliance With Law. The decision regarding the requested approval of the proposed Improvement does not violate any governing provision of law, including but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), or a building code or other applicable law governing land use or public safety, and is in conformance with California Civil Code Sections 4720 and 4735.

8.9 Form of Approval. All approvals and denials of requests for approval shall be in writing and no verbal approval of a request for approval is permitted by any member of the Architectural Review Committee or the Association. The Architectural Review Committee may approve a request for approval subject to the Owner's consent to any modifications made by the Architectural Review Committee. If the Owner does not consent to the modifications, the request for approval shall be deemed denied in its entirety.

8.10 Appeal of Denial to Board. In accordance with California Civil Code Section 4765(a)(5), unless the Architectural Review Committee is comprised of the members of the Board, who make their decision at a Board meeting, if an Owner's Improvement application is disapproved by the Architectural Review Committee, the applicant shall be entitled to request reconsideration by the Board. The Board shall consider the reconsideration request at a meeting held in accordance with California Civil Code Section 4900.

8.11 Time for Architectural Review Committee Action. Any request for approval which has not been acted upon by the Architectural Review Committee within forty-five (45) days from the date of receipt thereof by the Architectural Review Committee shall be deemed approved. The Owner requesting approval shall have the burden of establishing the date of receipt of the request for approval by the Architectural Review Committee by evidence in the form of either a copy of such request for approval date-stamped by the Association or by a return receipt provided by the U. S. Postal service acknowledging that such request for approval was delivered to the Association.

8.12 Commencement. Upon receipt of approval pursuant to this Article, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion

of all installation, construction, reconstruction, refinishing, alterations, and excavations pursuant to such approval, commencement to occur, in all cases, within six (6) months from the effective date of such approval or upon such later date as the Board may in its discretion designate. If the Owner shall fail to comply with this Section, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the time for commencement, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

8.13 Completion. The Owner shall, in any event, complete the installation, construction, reconstruction, refinishing, or alteration of any Improvement, within eighteen (18) months after commencing construction thereof, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section, the Board shall proceed as though the failure to complete the Improvements was a non-compliance with approved plans.

8.14 Inspection. Inspection of work and correction of defects therein shall proceed as follows:

(a) Owner's Notice of Completion. Upon the completion of any installation, construction, reconstruction, alteration, or refinishing of the exterior of any Improvements, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Architectural Review Committee.

(b) Committee Inspection. Within sixty (60) days after the receipt of such written notice, the Architectural Review Committee, or its duly authorized representative, may inspect such Improvement to determine whether it was installed, constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the Architectural Review Committee finds that such installation, construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying particulars of non-compliance and shall require the Owner to remedy such non-compliance.

(c) Hearing Regarding Non-Compliance. If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the Architectural Review Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the Architectural Review Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the Architectural Review Committee and, in the discretion of the Board, to any other interested party.

(d) Determination of Non-Compliance. At the hearing the Owner, the Architectural Review Committee and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either, grant a variance for such non-compliant Improvement,

remove the non-complying Improvement, or remedy the non-compliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.

(e) Failure to Notify Owner of Non-Compliance. If, for any reason, the Architectural Review Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of a notice of completion from the Owner, the Improvement shall be deemed to be in accordance with the approved plans. The Owner shall have the burden of establishing the date of receipt of the notice of completion by the Architectural Review Committee by evidence in the form of either a copy of such notice date-stamped by the Association's office or by a return receipt provided by the U. S. Postal service acknowledging that such notice was delivered to the Association.

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

8.16 Estopel Certificate. Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall provide an Owner with an estoppel certificate, certifying (with respect to any Lot of such Owner) that as of the date thereof, either: (i) all Improvements made and other work completed by such Owner comply with this Declaration, or (ii) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in a Lot through him, shall be entitled to rely on such certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

8.17 Liability. Neither Declarant, Association, Board, the Architectural Review Committee nor any member or representative thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any portion of the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 8.16, whether or not the facts therein are correct; provided, however, that the Architectural Review Committee, the Board or any member or representative thereof has acted in good faith on the basis of such information as may be possessed by it or him. Without in any way limiting the generality of the foregoing, the Architectural Review Committee, the Board or any member or representative thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Review Committee. Every Owner, by acquiring title to a Lot or portion thereof agrees not to bring any action or suit against Declarant, Association, Board, the Architectural Review Committee, or their members or representatives seeking to recover any such damages.

#### 8.18 Variances.

(a) Reasonable Variances. The Architectural Review Committee, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article and those minimum construction standards in Article 5, in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships.

(b) Criteria for Variances. The Architectural Review Committee must make a good faith written determination that the variance is consistent with one (1) or more of the following criteria: (i) the requested variance will not constitute a material deviation from any restriction contained herein or that the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) that the variance relates to a requirement land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect, to any other Lot or Common Area within the Development. At the request of the Architectural Review Committee the Association Board is authorized and empowered to execute and Record a notice of any variance granted pursuant to this Section in a form acceptable to the County Recorder's Office.

8.19 Compliance With Governmental Requirements. The application to the Architectural Review Committee, and the review and approval of any proposals, plans, or other submittals, shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on Declarant, Association, Board, the Architectural Review Committee, or their members as to the accuracy, efficacy, or sufficiency of such proposals, plans or other submittals.

## ARTICLE 9 EASEMENTS

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9.1 Easements in General. In addition to all easements reserved and granted on the Subdivision Map and the easements specified in Article 3, there are hereby specifically acknowledged, reserved and granted for the benefit of the Lots and the Owners in common and for each Lot and Owner severally, and for the Association, as their respective interests shall exist, the easements and rights of way as particularly identified in this Article.

9.2 Utility Easements. Easements over and under the Overall Development or any portion thereof for the installation, repair, maintenance, and replacement of (i) electric, telephone, telecommunications, water, gas, and sanitary sewer lines, meters, and facilities, (ii) cable lines and facilities, (iii) drainage facilities, (iv) walkways, and (v) landscaping, as shown on the Subdivision Map, and as may be hereafter required or convenient to service the Development, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the Common Area except for those installations maintained by utility companies, public, private, or municipal.

### 9.3 Easements Granted by Board.

(a) Non-Exclusive Easements. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of (i) constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, telecommunications, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and (ii) for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association. Each Owner, in accepting a deed to a Lot, expressly consents to such easements and rights of way. No such easements may be granted if they would materially interfere with the use, occupancy, or enjoyment by an Owner or Resident of his or her Lot without the consent of the affected Owner of the Lot.

(b) Exclusive Use Common Area Easements. Subject to the restrictions imposed by California Civil Code Section 4600, the Board shall have the authority to execute and Record a maintenance agreement designating portions of the Common Area as "exclusive use common area," for the benefit of an appurtenant Lot, for the purpose of promoting an efficient division of the use and maintenance responsibilities between the Owners and the Association. A maintenance agreement may be made with any Owner of adjacent property, including Declarant.

9.4 General Association Easements for Maintenance, Repair and Replacement. The Association shall have a non-exclusive easement in, on, over or under every Lot as reasonably necessary to (i) maintain and repair the Common Area, (ii) perform maintenance upon a Lot which is not performed by its Owner as provided by Section 7.4 and Section 7.6, and (iii) otherwise perform its obligations under this Declaration.

9.5 Sideyard Maintenance Easements. In order to permit each Lot's Owner to have sufficient access for the maintenance, repair, and reconstruction of a Residence or the fence, the Owner of each Lot within the Development shall have reciprocal non-exclusive ingress and egress easements and rights of use of the sideyard between the adjacent Lots' Residences and the Lots' common boundaries. An Owner's right of use pursuant to this Section 9.5 shall be irrevocable, and no Owner or Resident shall install any Improvement or take any action which impedes the adjacent Lot's Owners or Residents from utilizing the sideyard area pursuant to this Section. The Association shall also have a non-exclusive easement and right of access to inspect for compliance with, and to enforce the provisions of, this Section. Such entry pursuant to this Section shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

9.6 Utility Maintenance and Repair Easements. Wherever sanitary sewer connections or water connections or electricity, gas or telephone, television lines or drainage facilities are installed within the Development, which connections, lines or facilities, or any portion thereof, lie in or upon Lots owned by other than the Owner of the Lot served by said connections, the Owners of any Lots served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter such Lots or to have utility companies enter therein, or any portion thereof, to repair, replace and generally maintain said connections as and when the same may be necessary. Wherever sanitary sewer house connections and/or water Residence connections or electricity, gas or telephone lines or drainage facilities are installed within the Development, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his Lot. All utility companies having easements on the property covered by this Declaration shall have easements for cleaning, repairing, replacing, and otherwise maintaining or causing to be maintained service in all underground utility lines, including, when reasonably necessary, the entry into an improvement constructed upon a Lot for uncovering any such lines. Any Owner or utility company exercising the rights granted in this Section shall be obligated to restore the Lot and the Residence entered to substantially its former condition.

9.7 Encroachment Easements. The Common Area and each Lot within the Development is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any minor encroachment due to engineering errors, errors in original construction, settlement or shifting of structures, or any other similar cause. There shall be valid easements for the maintenance of such encroachments as long as they shall exist. Notwithstanding the preceding, in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if such encroachment occurred due to the wilful misconduct of such Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots or Common Area shall be permitted and that there shall be valid easements for the maintenance of such encroachments so long as they shall exist.

9.8 Brow Ditch Easement. Declarant and Fresno County Waterworks District No. 18, and their assigns shall have and are hereby granted the following easements over various Lots in the Development as shown and depicted on the Improvements Plans for the Development approved by the County (the "Improvement Plans"):

(a) Character of Easement. The easement granted herein is an easement in gross.

(b) Description of Easement. The easement granted herein is an easement for the furnishing, construction, installation, repair, replacement and maintenance of brow ditches for drainage purposes (the "Brow Ditches") located on various Lots in the Development as shown and depicted on the Improvement Plans.

(c) Location. The easement granted herein is located on and applicable to those Lots in the Development as shown and depicted on the Improvement Plans. The Brow Ditches shall be located on those Lots in the Development as shown and depicted on the Improvement Plans at such convenient places as Declarant shall determine, in its sole discretion.

(d) Installation and Maintenance. The Declarant and Fresno County Waterworks District No. 18 are hereby granted an easement for the purpose of installing, maintaining, repairing the Brow Ditches in good condition as necessary according to applicable County and Waterworks District standards.

(e) Exclusiveness of Easement. The easement granted herein is exclusive to Declarant and Fresno County Waterworks District No. 18. No Owner or permittee, nor the Association shall interfere with the rights of Declarant or the Fresno County Waterworks District No. 18 under this Section 9.8.

(f) Secondary Easements. The easement granted herein includes any and all use of the Development reasonably necessary and appropriate to the construction, installation, repair, replacement and maintenance of the Brow Ditches, including incidental rights of construction, maintenance, repair and replacement of the Brow Ditches, the right of access for ingress and egress over and through the Development as shown on the Improvement Plans, and the right to generate such noise as is reasonably necessary in connection with, including but not limited to such noise as is generated by the ordinary operation and use of the Brow Ditches.

9.9 Drainage Pipe Easements. Declarant and Fresno County Waterworks District No. 18, and their assigns shall have and are hereby granted the following easements over Lots as shown and depicted on the Improvement Plans:

(a) Character of Easement. The easement granted herein is an easement in gross.

(b) Description of Easement. The easement granted herein is an easement for the furnishing, construction, installation, repair, replacement and maintenance of drainage pipes for drainage purposes (the "Drainage Pipes") located on certain Lots, as shown and depicted on the Improvement Plans.

(c) Location. The easement granted herein is located on and applicable to those Lots in the Development as shown and depicted on the Improvement Plans. The Drainage Pipes shall be located within the easement described above at such convenient places as Declarant shall determine, in its sole discretion.

(d) Installation and Maintenance. The Declarant and Fresno County Waterworks District No. 18 are hereby granted an easement for the purpose of installing, maintaining, repairing the Drainage Pipes in good condition as necessary according to applicable County and Waterworks District standards.

(e) Exclusiveness of Easement. The granted herein is exclusive to Declarant and Fresno County Waterworks District No. 18. No Owner or permittee, nor the Association shall interfere with the rights of Declarant or the Fresno County Waterworks District No. 18 under this Section 9.9.

(f) Secondary Easements. The easement granted herein includes any and all use of the Development reasonably necessary and appropriate to the construction, installation, repair, replacement and maintenance of the Drainage Pipes, including incidental rights of construction, maintenance, repair and replacement of the Drainage Pipes, the right of access for ingress and egress over and through the Development as shown and depicted on the Improvement Plans, and the right to generate such noise as is reasonably necessary in connection with, including but not limited to such noise as is generated by the ordinary operation and use of the Drainage Pipes.

9.10 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.

## ARTICLE 10 ENFORCEMENT

10.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance. In addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association, its officers, the Board or by any Owner. The Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.

10.2 Violation of Law. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

10.3 Owners' Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her household and his or her tenants, contractors and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Lot is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

10.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Lot.

### 10.5 Rights and Remedies of the Association.

(a) Rights Cumulative. The Association, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive. The Board shall

not be obligated to take action to enforce a provision of the Governing Documents if, in the exercise of discretion, the Board determines that acting to enforce the provision is not likely to foster or protect the interests of the Association and its Members as a whole. In the event a violation occurs by a Subsequent Phase Property owner, such owner shall constitute an Owner under this Article 10 for purposes of enforcement of the Governing Documents.

(b) Member Not In Good Standing. Upon a determination by the Board, after prior notice to the affected Member and an opportunity for a hearing, that such Member has violated any provision of the Governing Documents including a failure to pay any Assessment when due, the Board shall give notice in writing to such Member that he or she is deemed not to be a Member in Good Standing. Such Member shall be deemed to remain in that status until such time as the Board shall determine in writing that the violation which resulted in the Board's determination has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member shall again be deemed to be a Member in Good Standing of the Association. Such Member shall be so notified in writing with a copy given to the Secretary.

(c) Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or his or her tenants, contractors, guests, pets or invitees, the Board shall have the power to impose sanctions against the Owner. Such sanctions may include, without limitation, the imposition of fines and/or the suspension of an Owner's rights as a Member, including an Owner's voting rights or an Owner's right to use the recreational or community facilities on the Common Area, except for ingress and egress to the Owner's Lot. Except as provided in Section 10.7 below, imposition of sanctions shall be effective only after the Board has held a hearing as provided in California Civil Code Section 5855(c). The payment of any such fine may be enforced as an Enforcement Assessment as provided in Section 6.8 of this Declaration as well as in any manner permitted by law. Further, each Owner shall be obligated to pay Reimbursement Assessments levied by the Board for reimbursement of any costs incurred by the Association relating to violation of any provisions of the Governing Documents by such Owner, members of such Owner's household, or his or her tenants, contractors, guests, pets or invitees.

(d) Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of Article 6 of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its officers or Board, or by any Owner or by their respective successors in interest.

(e) Limitation on Disciplinary Rights. The Association shall not have the power and authority to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgement is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to Article 6 of this Declaration. The provisions of this subsection shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

10.6 Disciplinary Rules. The Board or a committee appointed by the Board for that purpose may adopt rules and regulations that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such rules, when approved and adopted by the Board, shall be deemed to be a part of the Association Rules provided for in, and constituting a part of, the Governing Documents.

10.7 Emergency Situations. The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development, (ii) a traffic or fire hazard, or (iii) a threat of material damage to or destruction of the Development or any portion thereof. Notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that constitutes an emergency situation, the Association may undertake immediate corrective action. Hearings with respect to such corrective action shall be held following the corrective action in accordance with California Civil Code Section 5855, and no disciplinary action may be taken without compliance with California Civil Code Section 5855(c).

10.8 Alternative Dispute Resolution. California Civil Code Section 5900 et seq. shall be complied with respect to any dispute subject to such Sections.

10.9 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.

10.10 Notices. Any notices required or given under this Article shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board, if any. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Association.

10.11 Costs and Attorneys' Fees. In the event any action is taken to enforce any of the provisions of the Governing Documents, the prevailing party shall be entitled to recover the full amount of all costs incurred, including attorneys' fees, in enforcing any Governing Document provision. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, without limitation, the imposition of a Reimbursement Assessment as provided in Section 6.7 of this Declaration.

10.12 Owner Indemnification. Each Owner, by acceptance of his or her deed, agrees for himself or herself and for the members of his or her household, his or her tenants, guests or invitees, to (i) indemnify each and every other Owner for, (ii) to hold each and every other Owner harmless from, and (iii) to defend each and every other Owner against, any claim of any person for personal injury or property damage occurring within the Lot of such Owner, except that such Owner's liability may be diminished to the extent that the injury or damage occurred by reason of the negligence of any other Owner or person temporarily visiting in such Lot or is fully covered by insurance.

10.13 No Obligation to Enforce. None of the provisions of this Declaration shall obligate or be construed to obligate Declarant, or its respective agents, representatives or employees, to undertake any affirmative action to enforce the provisions of this Declaration, or to undertake any remedial or corrective action with respect to any actual or asserted violation hereof or thereof.

11.1 Types of Insurance Coverage. The Association shall, at the discretion of the Board, purchase, obtain and maintain the following types of insurance, if and to the extent they are available at a reasonable premium cost:

(a) Property Insurance. The Association shall obtain and maintain a master or blanket policy of property insurance, written on all risk, replacement cost basis, on all Common Area, and all Improvements within the Development for which the Association has an obligation to maintain or insure. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be redetermined on an annual basis. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this Section shall contain an agreed amount endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall name as insured the Association and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 11.4, below.

(b) General Liability Insurance. To the extent such insurance is reasonably obtainable, a policy of comprehensive general liability insurance naming as parties insured the Association, each Director, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000.00) during such time as the Development consists of one hundred (100) or fewer Lots, and not less than Three Million Dollars (\$3,000,000) during such time as the Development consists of more than one hundred (100) Lots, or such greater limits as may be required by California Civil Code Section 1365.9, covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to common interest development projects similar in construction, location, facilities, and use.

(c) Director's and Officer's Liability Insurance. To the extent such insurance is reasonably obtainable the Association shall maintain individual liability insurance for its Directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least One Million Dollars (\$1,000,000.00).

(d) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this subsection, demolition, flood, earthquake, and workers' compensation insurance. The Board may also purchase and maintain fidelity bonds or insurance in an amount not less than three (3) months operating expenses and one hundred percent (100%) of the Association's reserves, which, if purchased, shall contain an endorsement of any person who may serve without compensation.

(e) Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 11.1 is for any reason unavailable, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as

possible, the coverage hereinabove described. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

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

11.3 Individual Owner's Property Insurance. Each Owner shall purchase and at all times maintain a policy of property insurance insuring the Owner's Lot, Residence, any Improvements to the Owner's Lot, and personal property. An Owner's individual insurance coverage shall be at least equal to an "HO-3" homeowners' policy.

11.4 Trustee. All insurance proceeds payable under Section 11.1, above, and subject to the rights of Mortgagees under Article 13, below, may, in the discretion of the Board, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank or financial institution in the County that agrees in writing to accept such trust.

11.5 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 11.1, above. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

## ARTICLE 12 DAMAGE OR DESTRUCTION; CONDEMNATION

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12.1 Damage to or Destruction of Association Maintained Improvements. In the event of damage to or destruction of any Improvement to the Common Area or to any other real property owned by the Association, the Board shall, in its discretion and based upon considerations such as the existence of insurance proceeds from insurance coverage for such damage or destruction and the frequency of use of the Improvement, determine whether to repair or replace the damaged or destroyed Improvement. If any such damage or destruction was insured against and the insurance proceeds are insufficient to cover the costs of repair or replacement of the damaged or destroyed Improvement, and if the Board elects to repair or replace the Improvement, the Association may levy a Special Assessment against the Members as provided in this Declaration to cover the additional cost of the repair or replacement not covered by the insurance proceeds. If the Board elects not to repair or replace the Improvement, the applicable insurance proceeds shall be used in the manner consistent with the purposes of the Association and as determined by the Board.

12.2 Damage to or Destruction of Owner Maintained Improvements. In the event of damage to or destruction of the Improvements on any Lot, the Owner of such Lot shall (i) completely repair or rebuild the Improvements to the same state as they existed prior to such damage or destruction or in any other manner approved by the Architectural Review Committee in accordance with Article 8 of this Declaration, or (ii) completely remove all remaining portions of such damaged or destroyed Improvements. Such repair, rebuilding, or removal shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction and shall be completed within one (1) year after the date of commencement unless a longer period is agreed to in writing by the Board.

12.3 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement among the condemning authority, the Association and each of the affected Owners, shall be paid

to the Association and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association. The Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

12.4 Condemnation of Lots. If an entire Residence or Lot, or so much thereof as to render the remainder unfit for use as a Residence, is condemned or taken for a public or quasi-public use, pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Owner's membership in the Association shall terminate as of the last day of the month in which the condemnor obtains the right to possession, or upon Owner's vacating the premises, whichever occurs last. If only a portion of such Residence or Lot is taken and the remainder is fit for use as a Residence, the Owner shall continue to be a Member of the Association. In any condemnation action involving an Owner's Residence or Lot, the Association shall have the right to seek compensation for any damages incurred by the Association.

12.5 Appraisals. Where the provisions of this Article require an independent appraisal of property, said appraisal shall be made by a qualified real estate appraiser selected in the discretion of the Board.

## **ARTICLE 13** **PROTECTION OF MORTGAGEES**

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13.1 Amendments Affecting Mortgages. No amendment of this Declaration shall affect any of the material rights of the holder of any Mortgage which is made in good faith and for value, if such Mortgage is Recorded prior to the Recording of such amendment.

13.2 Default by Owner; Mortgagee's Right to Vote. In the event of a default by any Owner under a Mortgage encumbering such Owner's Lot, the Mortgagee under such Mortgage shall, upon: (a) giving written notice to the defaulting Owner; (b) Recording a Notice of Default in accordance with California Civil Code Section 2924; and (c) delivering a copy of such Recorded Notice of Default to the Association, have the right to exercise the vote of the Owner at any regular or special meeting of the Association held only during such period as such default continues.

13.3 Breach; Obligation After Foreclosure. No breach of any provision of this Declaration by Declarant, the Association or any Owner shall impair or invalidate the lien of any Recorded Mortgage made in good faith and for value and encumbering any Lot. Declarant, Owners, and the Association and their successors and assigns, shall be obligated to abide by all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes provided for in this Declaration with respect to any person who acquires title to or any beneficial interest in any Lot through foreclosure, trustee's sale or otherwise.

13.4 Right to Examine Books and Records of the Association. All Mortgagees, insurers and guarantors of any Mortgages on any Lot shall have the right, upon written request to the Association, to:

(a) Association Records. Examine current copies of the Governing Documents and the Association's books, records and financial statements, during normal business hours;

(b) Financial Statements. Require the Association to provide an audited statement for the preceding fiscal year; and

(c) Notice of Meetings. Receive a written notice of all meetings of the Association and designate a representative to attend all such meetings.

13.5 Amendments Requiring Mortgagee Approval.

(a) Compliance Requirements. After the conveyance of a Lot to an Owner other than a Declarant, unless 67% of the total voting power of the Association or at least 67% of all eligible Mortgagees (based upon one vote for each eligible Mortgage owned) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

- (i) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. However, the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause;
- (ii) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;
- (iii) Fail to maintain fire and extended property insurance coverage on insurable Common Area property on a current replacement cost basis in an amount not less than 100% of the insurable value (based upon current replacement costs); or
- (iv) Use property or hazard insurance proceeds for losses to any Association property, including Common Area, for other than the repair, replacement, or reconstruction of such Common Area.

(b) Approval Presumed. Approval may be assumed when an eligible Mortgagee fails to submit a response to any written proposal for an amendment within sixty days (60) after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

13.6 Declaration to Conform With Mortgage Requirements. It is the intent of this Article that the Governing Documents and the development in general, shall now and in the future meet all requirements of any institutional Mortgagee intending to secure its Mortgage by a Lot or necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot by FREDDIE MAC, FANNIE MAE or the Veterans' Administration. The provisions of this Article may be amended solely by the vote of the Board in order to conform to any requirements of the secondary lender market.

**ARTICLE 14**

**ANNEXATIONS AND SUPPLEMENTAL DECLARATIONS**

14.1 Annexation of Subsequent Phase Property. An owner of any portion of the Subsequent Phase Property shall have the unilateral right to annex all or any portions of the Subsequent Phase Property to the Development so as to be subject to this Declaration and so that membership in the Association shall be appurtenant to ownership of Lots within the annexing Phase. Such annexation shall not require the approval of the Association, its members, or any Mortgagees.

14.2 Annexation of Other Property. In addition to the unilateral right of annexation of all or any portion of the Subsequent Phase Property without the consent of the Association or its Members, any real property which is not subject to this Declaration may annex to and become subject to this Declaration with the approval by vote or written consent of (1) the property owner, (2) Members entitled to exercise not less than two-thirds of the voting power of each class of membership of the Association, and (3) the Board. After the Class B membership has ceased, the approval of the Members required by this Section shall require the affirmative vote of at least two-thirds of the voting power of Members other than Declarant. Upon obtaining

the requisite approval of the Members pursuant to this Section, the owner of the annexing property shall Record a Declaration of Annexation and, if appropriate, a Supplemental Declaration, as more particularly described in Section 14.4, below.

14.3 Declarations of Annexation. To effectuate an annexation, a Declaration of Annexation shall be Recorded covering the applicable portion of the annexing real property. The Declaration of Annexation shall identify the Lots and Common Area, if any, within the annexing property, and shall be signed by the owner of the annexing property and, in cases where membership and Board approval are required, shall include a certificate, signed by any two (2) officers of the Association attesting to the fact that the required Member and Board approval has been obtained. A Declaration of Annexation may include a Supplemental Declaration which adds or modifies restrictions and rights with respect to the annexing property.

14.4 Supplemental Declarations. A Supplemental Declaration may be Recorded against all or any portion of the Development or any annexing property, upon the written consent of the Owners. The Supplemental Declaration may include restrictions which are different from the restrictions contained in this Declaration. A Supplemental Declaration may not alter the general common plan or scheme created by this Declaration, revise any restriction imposed by a governmental entity as a condition of Subdivision Map approval (without the consent of that entity) or revoke the covenants, conditions and restrictions imposed by this Declaration with respect to portions of the Development already subject to this Declaration.

14.5 Commitment Concerning Reserve Contributions Relating to Rental Programs. If Residences in an annexing Phase have been used and occupied under a rental program conducted by the Declarant which has been in effect for a period of at least one (1) year as of the date of closing of escrow for the first sale of a Lot in the annexing Phase, Declarant shall provide a written commitment to pay to the Association, concurrently with the close of escrow for the first sale of a Lot in the annexing Phase, appropriate amounts for reserves for replacement or deferred maintenance of Common Area in the annexing Phase necessitated by or arising out of such use and occupancy.

## ARTICLE 15

## DECLARANT'S DEVELOPMENT RIGHT

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### 15.1 Declarant's Right to Develop the Development.

(a) Majority Declarant's Development Rights. The Association and Owners shall not do anything to interfere with the right of the Declarant or Declarants who own the Lots in Phase 1 ("majority Declarant" solely for the purposes of this Article 15, Sections 15.1 and 15.2), to subdivide, sell, or rent any portion of the Development, or the right of such majority Declarant to complete excavation, grading, construction of Improvements or other development activities to and on any portion of Development or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as such majority Declarant deems advisable in the course of development of the Development, so long as any Lot or any portion of the Development is owned by majority Declarant. Such right shall include, but shall not be limited to, all grading work as may be approved by the County or other agency having jurisdiction, and erecting, constructing and maintaining on or within the Development such structures, signs and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or installation by majority Declarant may impair the view of such Owner, and hereby consents to such impairment.

(b) Other Declarant Development Rights. The Association and Owners shall not do anything to interfere with the right of the Declarant or Declarants who own the Subsequent Phase Property ("Subsequent Phase Property Declarant" solely for the purposes of this Article 15, Sections

15.1 and 15.2), to subdivide, sell, or rent any portion of the Subsequent Phase Property, or the right of such Subsequent Phase Property Declarant to complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Subsequent Phase Property or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as such Subsequent Phase Property Declarant deems advisable in the course of development of the Subsequent Phase Property, so long as any Lot or any portion of the Subsequent Phase Property is owned by the Subsequent Phase Property Declarant. Such right shall include, but shall not be limited to, all grading work as may be approved by the County or other agency having jurisdiction, and erecting, constructing and maintaining on or within the Subsequent Phase Property such structures, signs and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or installation by Subsequent Phase Property Declarant may impair the view of such Owner, and hereby consents to such impairment.

15.2 Use of Common Area by Declarant.

(a) Use by Majority Declarant. Majority Declarant, may enter upon the Common Area to complete the development, improvement and sale of Lots and the construction of any landscaping or other Improvement to be installed on the Common Area as described in section 15.1 above. The majority Declarant shall have the right to keep the vehicular access gates open between the hours of 6:30 a.m. and 8:00 p.m. The majority Declarant shall also have the right of nonexclusive use of the Common Area without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right the majority Declarant hereby reserves; provided, however, that such use rights shall terminate on the 90<sup>th</sup> day following issuance of a certificate of occupancy on the last Lot within the Overall Development. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein and all direct costs and expenses associated with such majority Declarant's sales and promotional activities (including, without limitation, any costs or expenses required to clean or repair any portion of the Common Area that are damaged or cluttered in connection with such activities) shall be borne solely by such majority Declarant and any other sponsor of the activity or event. The rights reserved to majority Declarant by this Section shall extend to any employee, sales agents, prospective purchasers, customers and/or representatives of majority Declarant.

(b) Use by Subsequent Phase Property Declarant. Subsequent Phase Property Declarant, may enter upon any Common Area located within the Subsequent Phase Property to complete the development, improvement and sale of Lots and the construction of any landscaping or other Improvement to be installed on the Subsequent Phase Property's Common Area as described in Section 15.1 above. The Subsequent Phase Property Declarant shall have the right to keep the vehicular access gates open between the hours of 6:30 a.m. and 8:00 p.m, provided a portion of the Subsequent Phase Property is subject to Final Subdivision Public Report issued by the California Bureau of Real Estate. The Subsequent Phase Property Declarant shall also have the right of nonexclusive use of the Common Area located within the Subsequent Phase Property without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right the Subsequent Phase Property Declarant hereby reserves; provided, however, that (i) such aforementioned rights shall only be applicable during the period of time that the Subsequent Phase Property is subject to a valid Final Subdivision Public Report; and (ii) such use rights shall terminate on the 90<sup>th</sup> day following issuance of a certificate of occupancy on the last Lot within the Overall Development. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein and all direct costs and expenses associated with such Subsequent Phase Property Declarant's sales and promotional activities (including, without limitation, any costs or expenses required to clean or repair any portion of the Common Area that

are damaged or cluttered in connection with such activities) shall be borne solely by such Subsequent Phase Property Declarant and any other sponsor of the activity or event. The rights reserved to Subsequent Phase Property Declarant by this Section shall extend to any employee, sales agents, prospective purchasers, customers and/or representatives of Subsequent Phase Property Declarant.

15.3 Amendment of Development Plans. With respect to the real property owned by a Declarant, such Declarant may amend its plans for its portion of the Development and apply for changes in zoning, use and use permits, for any property within the Development.

15.4 Independent Design Review. For so long as Declarant has the right to appoint any members of the Architectural Review Committee, Declarant shall have the right to initiate action to correct or prevent any activity, condition or Improvement that is not in substantial compliance with approved plans and specifications to the same extent as the Association, after having a reasonable opportunity to do so, does not initiate enforcement action.

15.5 Disclaimer of Declarant's Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth in a Recorded instrument with the County Recorder, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Development may or will be carried out, or that any land now controlled or owned or hereafter controlled or acquired by Declarant is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

15.6 No Amendment or Repeal. So long as Declarant owns any portion of the Overall Development, the provisions of this Article may not be amended or repealed without the consent of Declarant.

## ARTICLE 16 AMENDMENT

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16.1 Amendment Before First Conveyance. Before the conveyance of the first Lot within Phase 1 to a purchaser other than Declarant pursuant to a specific final subdivision public report, and subject to the County approval requirements of subsection 16.2(c), below, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant of an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be Recorded.

16.2 Amendment After First Conveyance Pursuant to Public Report. After the conveyance of the first Lot within Phase 1 to a purchaser other than Declarant pursuant to a specific final subdivision public report, this Declaration may be amended or revoked in any respect upon compliance with the following provisions:

(a) Member Approval Requirements. Except as provided in this Section and Section 13.5, above, any amendment to this Declaration shall be approved by the vote or assent by written ballot of an Absolute Majority, including the holders of not less than a majority of the Total Voting Power of each class of Members. If a two-class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership, as provided in the Association's Bylaws, any amendment thereof will require the vote or assent by written ballot of both: (i) an Absolute Majority of the Association; and (ii) the vote of a majority of the Total Voting Power held by Members other than Declarant. Notwithstanding the foregoing, 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.

(b) Additional Approvals of Declarant for Amendments to Particular Provisions. For so long as a Declarant owns a lot or parcel within the Overall Development the provisions of this Declaration which are for the benefit of Declarants, including, but not limited to Section 5.12(a) and Articles 15 and 16, shall not be amended without the prior written consent of all Declarants.

(c) Additional Approvals of County for Amendments to Particular Provisions. The provisions of Sections 2.13, 3.8, 4.10, 4.14(d), 5.4, 5.12(c) and (d), 5.14, 7.1(a), this subsection 16.2(c), and 17.1, and any other provision of this Declaration which relates to a County condition of approval for the Subdivision Map, may not be amended without the prior written consent of the County.

(d) Right of Amendment if Requested by Governmental Mortgage Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant and the Association reserve the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by Governmental Mortgage Agencies which require such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot. Any such amendment shall be effectuated by the Recordation, by Declarant or the Association, of a Certificate of Amendment duly signed by or on behalf of the authorized agents, or authorized officers of Declarant or the Board, as applicable, with their signatures acknowledged, specifying the Governmental Mortgage Agency, or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of Lots and Common Area comprising the Development and all persons having any interest therein.

(e) Right of Amendment if Requested by County. Anything in this Article to the contrary notwithstanding, Declarant and the Association reserve the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the County to reflect a modification of the development permits which requires a conforming amendment to this Declaration. The Association shall Record any amendment requested by the County within sixty (60) days of receipt of a request from the County. Any such amendment shall be effectuated by the Recordation of a Certificate of Amendment duly signed by or on behalf of the authorized agents, or authorized officers of Declarant, or the Association as applicable, with their signatures acknowledged, specifying the County requested the amendment and setting forth the amendatory language requested by the County. Recordation of such a Certificate shall be deemed conclusive proof of the County's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of the real property comprising the Development and all persons having an interest therein.

(f) Right of Amendment by Board. The Board may, without the approval of the Members, amend any part of this Declaration to the limited extent necessary to comply with a change in applicable federal, state or local legislation, and to correct typographical errors.

16.3 Restatements. This Section describes the methods for restating the Declaration after an amendment.

(a) General. The Board has the right, by resolution without the necessity of consent by the Members, to restate this Declaration when it has been properly amended pursuant to its requirements for amendment. Such restatement shall be effective upon execution of the restatement by any two (2) officers of the Association and its Recordation. Upon Recordation of the restatement, the restatement shall supersede the prior declaration and its amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all real property subject to the Declaration as established by the Declaration's initial date of Recordation.

(b) Form of Restatement. The restatement shall restate the entire text of the original document, with these exceptions: (i) changes incorporating all amendments approved by the Owners; (ii) changes made to rearrange or delete the text for consistency with the approved amendments; (iii) changes made to delete material no longer legally effective or legally required, such as the provisions described in Article 15 once Declarant no longer owns any portion of the Overall Development; (iv) the addition of a statement that the Board has authorized the restatement pursuant to this Section; (v) changes made to delete any provision declared illegal by constitutional or statutory enactment, by regulation, or by controlling judicial opinion; and (vi) changes needed to distinguish the restatement from the original document, such as title, section, or subsection numbering changes.

16.4 Bureau of Real Estate. An amendment to this Declaration, Bylaws, or other governing instruments of the Association shall require immediate notification of the California Bureau of Real Estate in accordance with Section 2800 of the Commissioner's Regulations, or if a successor regulation is adopted this provision shall be automatically amended in the same manner, so long as the Development, or any portion thereof, is subject to an outstanding Final Subdivision Public Report.

16.5 Effective Date of Amendment. The amendment will be effective upon the Recording of a Certificate of Amendment, duly executed and certified by any two (2) officers of the Association setting forth in full the amendment so approved and that the approval requirements of this Article have been duly met. If the consent or approval of any governmental authority, Mortgagee, or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

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

## ARTICLE 17 GENERAL PROVISIONS

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17.1 Term. This Declaration continues in full force and effect unless an amendment terminating this Declaration is unanimously approved by the Owners and the County and Recorded in accordance with Article 16, above.

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

17.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.

17.4 Statutory References. Any reference to a California or federal statute, code or regulation shall also incorporate and include any successor statutes or laws.

DATED: April 11, 2014

DECLARANT

MIRA BELLA CORPORATION,  
a California corporation

By Donavon Harris  
Donavon Harris, President

STATE OF CALIFORNIA )  
) ss.  
COUNTY OF Fresno)

On April 11, 2014 before me, Isabel F. Trejo, a Notary Public, personally appeared Donavon Harris, 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.

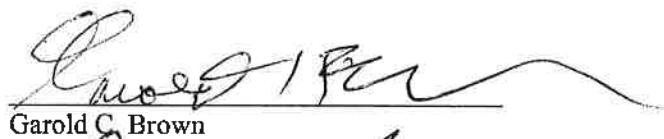
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

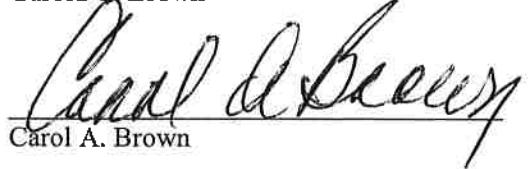
WITNESS my hand and official seal.

Isabel F. Trejo  
Notary Public



DATED: March 28, 2014 DECLARANTS

  
Garold C. Brown

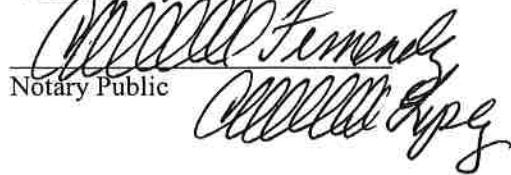
  
Carol A. Brown

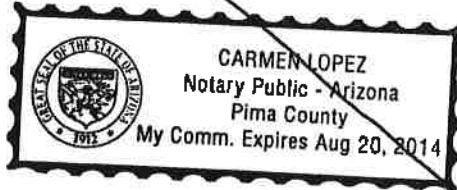
~~ARIZONA~~  
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Pima )

On March 28, 2014 before me, Carmen Lopez a Notary Public, personally appeared Garold C. Brown and Carol A. Brown, 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.

  
Notary Public



## ACKNOWLEDGMENT

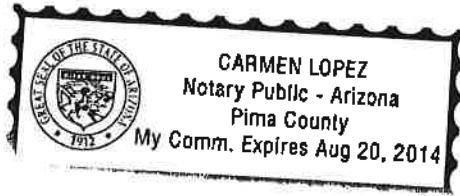
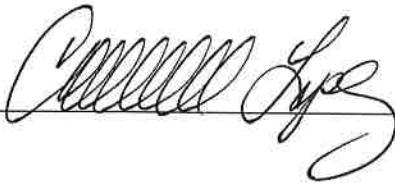
State of Arizona      )  
                            ) ss.  
County of Pima      )

On March 28, 2014, before me, Carmen Lopez, Notary Public, personally appeared Garold C. Brown and Carol A. Brown, 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



DATED: April 14, 2014

DECLARANT

SFB PROPERTIES, INC.,  
a California corporation

By: Robert Hemsath  
Robert Hemsath, President  
a/k/a

Robert E. Hemsath

STATE OF CALIFORNIA )  
                          ) ss.  
COUNTY OF Fresno )

On April 14, 2014, before me, Corina Cadena, a Notary Public, personally appeared Robert E. Hemsath, 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.

Corina Cadena  
Notary Public



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE DEVELOPMENT**

All of the real property located in the County of Fresno, State of California, which is more particularly described as follows:

Parcel 1:

Lots 1 through 52, inclusive, 54 and 56, and Outlots A, B, C and F, all as shown on the Subdivision Map of "Tract No. 4321, Lake View", filed for record on December 30, 2002, in Volume 67 of Plats, at Pages 1 through 6, of the Official Records of Fresno County.

Parcel 2:

Lot 53, as shown on the Subdivision Map of "Tract No. 4321, Lake View", filed for record on December 30, 2002, in Volume 67 of Plats, at Pages 1 through 6, of the Official Records of Fresno County.

**EXCEPTING THEREFROM** beginning at the Northeast corner of said Lot 53; thence North 88° 21' 37" West, a distance of 195.87 feet; thence South 10° 47' 32" East, a distance of 65.07 feet; thence North 75° 33' 01" East, a distance of 192.44 feet; thence North 14° 56' 20" West, a distance of 10.65 feet to the true point of beginning.

Parcel 3:

Lot 55, as shown on the Subdivision Map of "Tract No. 4321, Lake View", filed for record on December 30, 2002, in Volume 67 of Plats, at Pages 1 through 6, of the Official Records of Fresno County.

**EXCEPTING THEREFROM** the following described area:

Beginning at the Southeast corner of said Lot 55; thence along a curve concave to the West with a central angle of 36° 33' 48" and a radius of 265.00 feet, a distance of 10.44 feet; thence North 73° 52' 34" West, a distance of 181.96 feet; thence South 00° 46' 46" West, a distance of 10.37 feet; thence South 73° 52' 34" East, a distance of 182.20 feet to the true point of beginning.

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF THE SUBSEQUENT PHASE PROPERTY**

All of the real property located in the County of Fresno, California, more particularly described as follows:

Parcel 1:

Lots 1 and 2, and the road "Via Monte Bella", all as shown on the Subdivision Map of "Tract No. 5670", filed for record on December 23, 2005, in Volume 74 of Plats, at Pages 8 and 9, of the Official Records of Fresno County.

Parcel 2:

Being portions of Sections 8 and 17, Township 11 South, Range 21 East of the Mount Diablo Base and Meridian, and more particularly described as follows:

Beginning at the South quarter corner of said Section 8, thence along the West line of the Southeast quarter of said Section 8, N00° 22' 24"E, a distance of 2628.48 feet to the center quarter corner of said Section 8; thence along the West line of the Northeast quarter of said Section 8, N00° 23' 09"E, a distance of 1316.45 feet to the Northwest corner of the Southwest quarter of the Northeast quarter of said Section 8; thence along the North line of said Southwest quarter of the Northeast quarter, S88° 55' 31"E, a distance of 145.00 feet; thence leaving said North line, S25° 00' 32"E, a distance of 156.61 feet; thence Southeasterly, along the arc of a non-tangent curve concave Southwesterly, having a radius of 50.00 feet, whose radial bears N06° 10' 59"E, through a central angle of 82° 17' 35", an arc distance of 71.81 feet; thence Southeasterly, along the arc of a reverse curve concave Easterly, having a radius of 40.00 feet, through a central angle of 50° 48' 25", an arc distance of 35.47 feet; thence S52° 19' 50"E, a distance of 179.95 feet; thence Southeasterly, along the arc of tangent curve concave Southwesterly, having a radius of 175.00 feet, through a central angle of 51° 06' 58", an arc distance of 156.13 feet; thence S35° 47' 57"E, a distance of 28.38 feet; thence Westerly, along the arc of a non-tangent curve concave Southerly, having a radius of 215.00 feet, whose radial bears N19° 36' 59"E, through a central angle of 46° 22' 25", an arc distance of 174.01 feet; thence N58° 17' 45"W, a distance of 123.35 feet; N71° 13' 52"W, a distance of 166.26 feet; S54° 28' 37"W, a distance of 49.94 feet; S00° 46' 46"W, a distance of 425.52 feet; S01° 08' 06"W, a distance of 478.51 feet; S00° 04' 32"W, a distance of 1202.26 feet; S89° 37' 36"E, a distance of 602.38 feet N61° 27' 33"E, a distance of 222.97 feet; thence Southeasterly, along the arc of a non-tangent curve concave Southwesterly, having a radius of 250.00 feet, whose radial bears N48° 41' 28"E, through a central angle of 07° 11' 42", an arc distance of 31.39 feet; thence N55° 53' 10"E, a distance of 50.00 feet; N67° 02' 15"E, a distance of 163.90 feet; N28° 48' 14"W, a distance of 170.76 feet; N69° 27' 24"E, a distance of 192.25 feet; N66° 01' 48"E, a distance of 66.00 feet; thence Northwesterly, along the arc of a non-tangent curve concave Southwesterly, having a radius of 288.00 feet; whose radial bears N66° 01' 48"E, through a central angle of 02° 21' 49", an arc distance of 11.88 feet; thence N69° 27' 24"E, a distance of 268.05 feet; N11° 30' 15"E, a distance of 290.72 feet; N21° 29' 29"W, a distance of 635.43 feet; N49° 40' 13"E, a distance of 545.04 feet to the Southwesterly right of way line of Millerton Road; thence along said right of way line, Southeasterly along the arc of a non-tangent curve concave Southwesterly, having a radius of 505.00 feet; whose radial bears N20° 50' 56"E, through a central angle of 48° 04' 29", an arc distance of 423.73 feet; thence S21° 04' 35"E, a distance of 213.74 feet; thence Southeasterly, along the arc of a tangent curve concave Northeasterly, having a radius of 595.00 feet; through a central angle of 42° 46' 27", an arc

**EXHIBIT "B" Continued**

distance of 444.20 feet; thence S69° 42' 10"E, a distance of 78.43 feet; thence leaving said Millertown Road right of way line, along a line parallel to the Easterly line of the Northeast quarter of the Southeast quarter of said Section 8, S00° 41' 00"W, a distance of 1065.48 feet to the South line of the Northeast quarter of the Southeast quarter of said Section 8; thence along said South line, N88° 58' 03"W, a distance of 413.50 feet to the Northeast corner of the West half of the Southeast quarter of the Southeast quarter of said Section 8; thence along the East line of said West half, S00° 36' 22"W, a distance of 1315.93 feet to the Northeast corner of the West half of the Northeast quarter of the Northeast quarter of said Section 17; thence along the East line of said West half, S00° 35' 02"W, a distance of 329.86 feet; thence N88° 54' 28"W, a distance of 1983.56 feet to the West line of the Northeast quarter of said Section 17; thence along said West line, N00° 18' 21"E, a distance of 329.56 feet to the point of beginning containing 123.62 acres more or less.

Parcel 3:

A portion of the East  $\frac{1}{2}$  of Section 17, Township 11 South, Range 21 East of the Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at the Northeast corner of said Section 17, thence S64° 29' 18"W, a distance of 736.80 feet to the Northeast corner of the South  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 17, which corner is the "true point of beginning"; thence the following described courses:

Along the East line of the West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 17, S00° 35' 02"W, a distance of 989.61 feet to the Southeast corner of the said  $\frac{1}{2}$ ; thence along the South line of said West  $\frac{1}{2}$ , N88° 52' 48"W, a distance of 659.65 feet to the Southwest corner of said West  $\frac{1}{2}$ ; thence along the South line of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 17, N88° 52' 48"W, a distance of 1319.12 feet to the Southwest corner of said Northwest  $\frac{1}{4}$ , thence along the West line of said Northwest  $\frac{1}{4}$ , N00° 18' 21"E, a distance of 988.70 feet to the Northwest corner of the South  $\frac{1}{2}$  of the North  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 17; thence along the North line of the South  $\frac{1}{2}$ , S88° 54' 28"E, a distance of 1322.36 feet to the Northeast of said South  $\frac{1}{2}$ ; thence along the North line of the South  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 17, S88° 54' 28"E, a distance of 661.20 feet to the "true point of beginning", containing 44.98 acres, more or less.

TOGETHER WITH portions of the East  $\frac{1}{2}$  of Section 8, and the East  $\frac{1}{2}$  of Section 17, Township 11 South, Range 21 East of the Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at the Southeast corner of said Section 8, thence along the South line of said Section 8, N88° 55' 02"W, a distance of 661.72 feet to the Southeast corner of the West  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 8, and also being the "true point of beginning", thence along the following described courses:

Leaving the South line of said Section 8, and along the East line of the West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 17, S00° 35' 02"W, a distance of 329.86 feet to the Southeast corner of the North  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 17; thence leaving said East line and along the South line of said North  $\frac{1}{2}$ , N88° 54' 28"W, a distance of 661.20 feet to the Southwest corner of said North  $\frac{1}{2}$ ; thence along the West line of said North  $\frac{1}{2}$ , N00° 29' 38"E, a distance of 329.76 feet to the Northwest corner of said North  $\frac{1}{2}$ , which point also being the Southwest corner

EXHIBIT "B" Continued

of the West  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 8, thence along the West line of said West  $\frac{1}{2}$ , N00° 31' 43"E, a distance of 1315.37 feet to the North line of said West  $\frac{1}{2}$ ; thence along the North of said West  $\frac{1}{4}$ , S88° 58' 03"E, a distance of 663.49 feet to the Northeast of said West  $\frac{1}{2}$ ; thence along the east line of said West  $\frac{1}{2}$ , S00° 36' 22"W, a distance of 1315.93 feet to the "true point of beginning", containing 25.02 acres more or less.

EXCEPTING THEREFROM, a portion of the East  $\frac{1}{2}$  of Section 8, Township 11 South, Range 21 East of the Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at the Southeast corner of said Section 8, thence along the South line of the Southeast  $\frac{1}{4}$  of said Section 8, N88° 55' 02"W, a distance of 661.72 feet to the "true point of beginning"; thence along the following described courses:

Continuing along said South line, N88° 55' 02"W, a distance of 430.01 feet; thence leaving said South line, N02° 07' 09"W, a distance of 630.99 feet; S39° 54' 16"E, a distance of 334.38 feet; S89° 28' 55"E, a distance of 242.79 feet to the East line of the West half of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 8; thence along said East line, S00° 36' 22"W, a distance of 380.00 feet to the "true point of beginning", containing 4.41 acres more or less.

ALSO EXCEPTING THEREFROM, that portion of the following described parcel located in the East  $\frac{1}{2}$  of Section 8, Township 11 South, Range 21 East of the Mount Diablo Base and Meridian which lies East of the West line of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 8.

Beginning at the Southeast corner of said Section 8, thence N53° 08' 45"W, a distance of 1448.38 feet to the "true point of beginning"; thence along the following described courses: N80° 45' 22"W, a distance of 194.45 feet; N18° 23' 27"W, a distance of 289.53 feet; S86° 04' 56"E, a distance of 330.21 feet; S09° 15' 06"W, a distance of 287.15 feet to the "true point of beginning."