



**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
CHEYENNE LAKE**

November 2000  
(Recorded August 1, 2003)

Recommendations of May 1, 2021

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
CHEYENNE LAKE INC.**

THIS DECLARATION is made on the date hereinafter set forth by CHEYENNE LAKE, INC., a California Corporation (herein referred to as "Declarant").

**SECTION 1  
RECITALS**

1.01. Description of Real Property. Declarant is the Owner of that certain real property in County of San Bernardino, State of California, which is more particularly described on Exhibit "A" attached hereto and incorporated herein.

1.02. Single Phase. Declarant has improved or intends to improve the Project by subdividing it into 11 residential lots ("Lots") and 5 common area lots with improvements ("Common Area").

1.03. Ownership Interests. Each Owner shall receive fee title to his/her Lot and a membership in the Cheyenne Lake Homeowners Association ("Association"), which shall hold title to the Common Area, a non-exclusive easement for use, enjoyment, ingress and egress over the Common Area, and such other interests as are provided herein.

1.04. Common Plan for Project. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project and interests therein conveyed and to establish thereon a Planned Development.

NOW, THEREFORE, Declarant hereby declares that the real property described on Exhibit "A" shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Project, in accordance with the plan for improvement of the Property and the division thereof into Lots. Pursuant to California Civil Code Sections 1353 and 1354, all of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land, be enforceable as equitable servitudes, and shall be binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Property or the Project.

## **SECTION 2**

### **DEFINITIONS**

In addition to other definitions provided for herein, the following terms shall have the following meanings:

2.01. "Articles" shall mean the Articles of Incorporation of Cheyenne Lake Homeowners Association and any amendments thereto.

2.02. "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Project, which is to be paid by each Lot Owner as determined by the Association.

2.03. "Association" shall mean the Cheyenne Lake Homeowners Association, a California non-profit mutual benefit corporation, the members of which shall be the Owners of Lots in the Project, their successors and assigns.

2.04. "Association Rules" shall mean rules and regulations regulating the use and enjoyment of the Common Area, which may be amended by the Board from time to time.

2.05. "AWSA Waterski" shall mean the American Water Ski Association, or its successor, or any substitute sanctioning body selected by the Board as provided in Section 4.20 below.

2.06. "Board" or "Board of Directors" shall mean the governing body of the Association, which includes one owner from each lot.

2.07. "Bylaws" shall mean the Bylaws of the Association, as amended from time to time.

2.08. "Common Area" means all real property owned by the Association for the common use and enjoyment of the Owners and shall include, upon conveyance to the Association, the plot of land designated as Lots V, W, X, Y and Z as shown on the Subdivision Map, the Common Area shall also mean the Lake, Roadway, Lakeshore and any other plot of land which may be conveyed to the Association.

2.09. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Project and any reasonable reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Project Documents.

2.10. "County" shall mean the County of San Bernardino, California, the County in which the Project is located.

2.11. "Declarant" shall mean Cheyenne Lake, Inc., a California Corporation, its successors and assigns, if such successors and assigns are assigned the rights of Declarant pursuant to Section 15.10 hereof or if such successor or assign is a mortgagee acquiring Declarant's interest in the Project by foreclosure or by deed in lieu of foreclosure.

2.12. "Declaration" shall mean this Declaration, and any amendments, modifications or supplements thereto.

2.13. "Eligible First Mortgagee" shall mean a First Mortgagee who has requested notice by sending a written request to the Association, stating both its name and address and the Lot number or address of the Lot it has the mortgage on.

2.14. "Final Public Report" shall mean the final public report issued by the California Department of Real Estate or any successor state agency pursuant to the California Subdivided Lands Act (Business & Professions Code Section 11000 et seq.) as it may be amended from time to time.

2.15. "Improvements" shall mean all structures and improvements on the Project, including, but not limited to, buildings, paving, fences, signs, docks and landscaping.

2.16. "Lake" shall mean the lake, a portion of which is located on Lots X and Y, and Lots 1 through 11, inclusive, described as "Lake Easement" on the Map. The Association shall be granted an easement for recreational and maintenance purposes over that portion of the Lake lying within Lots 1 through 11, inclusive. The Lake shall be Common Area.

2.17. "Lakeshore" shall mean the area located on a portion of Lots 1 through 11, inclusive, as described as "Lakeshore Easement" on the Map. The Association shall be granted an easement for recreational and maintenance over the Lakeshore. The Lakeshore shall be Common Area.

2.18. "Lot" shall mean any parcel of land shown on the Map, and any other parcel of land designated as "Lot" in any recorded supplement to the Declaration, with the exception of the Common Area.

2.19. "Map" shall mean that subdivision map entitled "Tract No. 15619", recorded on **June 1, 2005**, 199\_, in Book \_\_\_\_\_ of Maps, Page \_\_\_\_\_, in the Official Records of San Bernardino County.

2.20. "Member" shall mean a person or entity holding a membership in the Association as provided herein. Each Owner or Co-Owner of a Lot shall be a member.

2.21. "Mortgage" shall mean a mortgage or deed of trust encumbering a Lot or other portion of the Project. A "Mortgagee" shall include the beneficiary under a deed of trust and any guarantor or insurer of a Mortgage. "First Mortgage" or "First Mortgagee" is one having priority over all other Mortgages or holders of Mortgages encumbering the same Lot or other portion of the Project. A "First Mortgagee" shall include any holder, insurer, or guarantor of a First Mortgage on a lot or other portion of the Project. Where any provision of the Project Documents requires the approval of a First Mortgagee, the approval of the holder, insurer or guarantor of that First Mortgage shall be deemed to be the required approval.

2.22. "Owner" or "Owners" shall mean the record holder or holders of title, if more than one, to any Lot in the Project. This shall not include contract sellers or persons or entities having any interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale (or a recorded memorandum of such contract), the purchaser, rather than the fee Owner, shall be considered the "Owner".

2.23. "Project" shall mean the entire real property described in Exhibit "A" attached hereto, including all structures and improvements erected or to be erected thereon or on such additional properties which may be brought within the jurisdiction of the Association.

2.24. "Project Documents" shall mean and include this Declaration, as amended from time to time, the exhibits, if any, attached hereto, together with the other basic documents used to create and govern the Project, including the Map, Articles and Bylaws (but excluding unrecorded Rules and Regulations adopted by the Board or the Association).

2.25. "Property" or "Properties" shall mean the entire real property described on Exhibit "A" attached hereto, including all structures and improvements erected thereon or on such additional properties which may be brought within the jurisdiction of the Association.

2.26. "Quorum" shall mean a majority of those entitled to act, except in the case of a quorum necessary for the imposition of Regular and Special Assessments set forth in Section 8.

2.27. "Roadway" shall mean the private road located on portions of Lot X, Y, and Z and Lots 1 through 11, inclusive. The Association shall be granted an easement for ingress, egress, utilities, and maintenance purposes over the roadway located within Lots 1 through 11, inclusive.

2.28. Cheyenne Lake HOA Rules and Regulations shall mean those rules and regulations adopted by the Association by action of its Board, which govern use of the Lots, Common Area (and, in particular, the Lake, docks and water ski facilities within the Common Area), and the conduct of the Owners and members of the Association.

2.29. "Separate Interest" shall mean a Lot.

2.30. "Subdivided Property" shall mean the entire real property described on Exhibit "A" attached hereto, including all structures and improvements erected thereon or on such additional properties which may be brought within the jurisdiction of the Association.

2.31. "Subdivider" shall mean the Declarant.

2.32. "Unit" shall mean a dwelling structure on a Lot.



## SECTION 3

### PROPERTY RIGHTS

3.01. Common Area. The Common Area shall be owned, either in fee or easement interest by the Association for the use and benefit of the Members. Lots V, W, X, Y and Z shall be conveyed to the Association free of money encumbrances prior to or concurrently with the close of escrow of the sale of the first Lot. The Common Area shall be maintained by the Association as provided in Section 5.01. When the Common Area is conveyed by Declarant to the Association, an easement shall be deemed automatically reserved over the Common Area in favor of Declarant for drainage and encroachment purposes and for ingress and egress from the Common Areas for the purpose of completing improvements thereon or for the performance of necessary repair work.

3.02. Exclusive Use Common Areas. The following described portions of the Common Area, referred to as the "Exclusive Use Common Areas", are hereby set aside and allocated for the exclusive use of the Owner of the Lot to which they are adjacent or appurtenant to which may be conveyed by Deed by the Declarant or Association: a dock, and adjoining slip area, which is, or will be located within the lake adjacent to each Lot. No other Owner, or any other person, shall have the right to make use of the portion of the Common Area within another Owner's Exclusive Use Common Area.

3.03. Partition Prohibited. The Common Area shall remain undivided as set forth above. Except as provided by California Civil Code Section 1359, no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Lot owned by two or more persons and division of the sale proceeds is not prohibited hereby, but partition of title to a single Lot is prohibited.

3.04. Annexation of Additional Property. Additional Property may be annexed to and become subject to this Declaration by the following method set forth in this Section. Upon annexation, additional parcels shall become subject to this Declaration without the necessity of amending individual sections thereof.

A) Annexation Pursuant to Approval. Upon approval in writing of the Association, pursuant to vote or written consent of two-thirds (2/3) of the total votes residing in Members other than the Declarant, the Association and the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation. Said Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property, as are consistent with the scheme of this Declaration. Said Declaration shall include designation of Lots and/or Common Areas for the purpose of this Declaration.

B) Effect of Annexation. Assessments collected from Owners in the property may be expended by the Association without regard to the particular phase from which such assessments came. All Owners shall have ingress and egress to all portions of the Common Area throughout the property, subject to the provisions of this Declaration, the Bylaws of the Association and the **Cheyenne Lake HOA** Rules and Regulations of the Association in effect, which however may be modified from time to time.

C) Quality of Construction. Future improvements to the Project will be consistent with initial improvements in terms of materials used and quality of construction.

3.05. Easements. In addition to any and all other easements contained in this Declaration, the Properties shall be subject to the following easements:

A) Owners' Easements. Every Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Area, including ingress and egress to and from his/her Lot. However, such nonexclusive easements shall be subordinate to, and shall not interfere with, exclusive easements over the Exclusive Use Common Area, if any. Each such nonexclusive easement shall be appurtenant to and shall pass with the title to the Lot, subject to the following provisions:

1) Section 9 of this Declaration authorizes the Board to impose monetary penalties, temporary suspensions of an Owner's rights as a Member of the Association or other appropriate discipline for failure to comply with the governing instruments provided that the established procedures are followed for notice and hearing which satisfy the minimum requirements of Corporations Code Section 7341 with respect to the accused Member before a decision to impose discipline is reached. These procedures are set out in Section 12 of the Bylaws.

2) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds of the Members agreeing to such dedication or transfer has been recorded, provided, however, that no such dedication shall impair the ingress and egress to any individual Lot.

3) The right of the Association to charge reasonable admission and other fees for the use of any facility or improvement situated in the Common Area, and to grant easements or licenses to non-owners for access to and use of the Common Area, provided that the similar rights of Owners are not unreasonably restricted thereby.

B) Easements for Utilities and Maintenance. Easements over and under the Project for the installation, repair and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities, heating facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping as shown on the recorded map of the Property, and as may be hereafter required or needed to service the Project, or any annexable Property thereto, are hereby reserved by Declarant and its successors and assigns, including the Association and appurtenant utility companies, together with the right to grant and transfer the same.

C) Encroachment Easements. Each Lot within the Project is hereby declared to have an easement over any adjoining Common Area for the purpose of accommodating any encroachment due to minor engineering errors, minor errors in original construction, settlement, shifting of the building, accretion, erosion or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of all Lots in the Project agree that minor encroachments over the Common Area adjoining the Lot due to minor engineering errors, minor errors in construction, settlement or shifting of the building, or accretion, erosion or any other cause shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

D) Entry for Repairs. The Board may authorize its agents and employees to enter upon any Lot and/or Exclusive Use Common Area when necessary in connection with any maintenance, landscaping or construction for which the Association is responsible, to effect emergency repairs or to effect necessary repairs which the Lot Owner has failed to perform as required by this Declaration. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association. Except in case of an emergency, 24-hour advance notice shall be given to the Owner or occupant.

E) Declarant Reservation of Easements. Declarant hereby reserves easements over the Common Area for drainage and encroachment purposes, and for ingress and egress from the

Common Areas for the purpose of completing improvements thereon or for the performance of necessary repair work.

F) Future Exclusive Use Common Areas. The Association may grant an Owner an easement on the Common Area adjacent to the Owner's Lot for the purpose of improving and maintaining a dock and adjoining slip area.

G) Additional Association Easements. The Association, or its duly authorized agent, shall have the right at any time, and from time to time, without liability for trespass or otherwise, to enter upon the Lots for the purpose of repairing or fortifying the banks of the Lake, dredging, or otherwise maintaining or improving the Lake. In performing any such work, docks, floats, structures, and plantings may be removed where necessary or convenient, but all removed items shall be returned in good condition, except that the Association can remove and not replace any item not installed with the consent required by this Declaration or not conforming to the conditions of the consent given and such items shall not be reinstalled without the Association's consent. This subsection shall not be construed as placing any duty on the Association to perform any such work.

3.06. Provisions Restricting Delegation of Use. No Owner may delegate their rights of use and enjoyment of the Project, including any recreational facilities, to the members of their family, their guests, tenants, employees, and invitees, and to such other persons as may be permitted by the Bylaws and the Association **Cheyenne Lake HOA** Rules and Regulations, subject however, to this Declaration.

## SECTION 4

### USE RESTRICTIONS

4.01. Use of Lots. Except for any Common Area improvements located on a Lot, no Lot, or any portion thereof, shall be occupied and used except for single family residential purposes by the Owners, their contract purchasers, lessees, tenants or social guests. The provisions of this Section shall not prohibit trade or business or commercial activity or home occupations, so long as they are merely incidental to the use of the Lot as a dwelling, are permitted by local law, are conducted in such a manner as to not adversely affect other Owners' use and enjoyment of the Project, and have received prior written approval of a majority of the Board.

4.02. Garages. Each Owner shall keep his/her garage area, driveways and any storage areas in a neat and orderly condition. Each Owner shall be entitled to the exclusive use of the driveway serving his/her garage and shall keep said driveway clean and free of debris.

4.03. Parking and Vehicle Restrictions.

A) Garages are to be used for the parking of standard passenger vehicles and trucks, boats or the storage of similar items of personal property. Furthermore, garages shall not be converted to living quarters which will preclude the parking of vehicles.

B) No vehicle shall be parked or left on any roadway except within specified parking areas so designated by the Board.

C) No dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Property for longer than ninety (90) days without the approval of the Board.

D) The Board shall have the authority to promulgate as part of the Association **Cheyenne Lake HOA Rules** such further rules and restrictions regarding parking and vehicles within the Properties as may be deemed prudent and appropriate.

4.04. Burning. A burn permit must be obtained from local authorities for all exterior fires, except campfires and barbeque fires. No Owner or resident shall permit any condition to exist on his/her Lot, including, without limitation, trash piles, or weeds, which create a fire hazard or is in violation of local fire regulations.

4.05. Signs. No sign of any kind shall be displayed to the public view on or from any Lot or any portion of the Project without the approval of the Association, except as follows:

A) One sign of customary and reasonable dimensions advertising a Lot for sale, lease, rent or exchange displayed from a Lot; or,

B) Such signs as may be used by Declarant or its assignees in connection with the development of the Project and sale of Lots; or,

C) Such other signs or notices as are required by law or as are otherwise necessary to protect a right provided for by law.

4.06. Animals. No animals, reptiles, rodents, birds, fish, livestock, or poultry shall be raised, bred, kept or maintained for any commercial purposes on any Lot or portion of the Project. Pets shall be allowed on the Common Area as may be permitted by ~~Association Rules~~ **Cheyenne Lake HOA Rules & Regulations**. Owners shall prevent their pets from soiling any portion of the Common Area. Owners shall maintain any animal confinement area in a clean and orderly condition and shall dispose of any animal waste in an enclosed container. The Association can prohibit the keeping of any animal that in the sole and exclusive opinion of the Board constitutes a nuisance to any other Owner.

4.07. Trash; Storage of Materials. All garbage and trash shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. It shall be placed and kept in covered sanitary containers where it is not visible from any neighboring Lot except for a reasonable time prior to or after collection. Garbage and trash shall be placed for pick up as required by the disposal service and any Association **Cheyenne Lake HOA** Rules and Regulations. Fuel docks may be operated within the Common Area.

4.08. Television or Radio Equipment. No television, video or radio poles, antennae, satellite dishes, cables or other transmission and/or reception fixtures or personal property (individually and collectively herein referred to as "Antenna Equipment") shall be installed or maintained on any Lot except as follows:

A) Antenna Equipment that is one meter or less in length or diameter or diagonal measurement, provided that the location, color and screening requirements shall be in accordance with any guidelines imposed by the Architectural Control Committee referenced in this Section, which guidelines shall comply with applicable State and federal laws regulating restrictions on Antenna Equipment; and

B) Antenna Equipment not covered under subsection A) above, the installation of which is approved in advance by the Architectural Control Committee.

Nothing herein shall be construed to restrict in any manner the Board's right to authorize a cable television franchisee or other provider of similar services to provide cable television, radio or other similar services to the Project.

4.09. Right to Lease. No Owner shall be permitted to lease or rent his/her Lot for transient or hotel purposes, which shall include, but not be limited to, rental for any period less than thirty (30) days. All leases and rental agreements must be in writing and be expressly subject to the Project Documents and the Association's **Cheyenne Lake HOA** Rules and Regulations, and the breach of any provision shall be a default under the lease or rental agreement. Subject to the foregoing restrictions, the Owners of Lots shall have the right to lease or rent the same, provided that the Board is notified of the name of the tenant and the duration of the lease or rental agreement. The Owner shall provide the lessee or renter with a copy of the Articles, Bylaws, Declaration and any Association **Cheyenne Lake HOA** Rules and Regulations.

4.10. Architectural Approval. Architectural approval for any project shall be deemed to have been obtained when a Lot owner has obtained written approval for the project from a majority of the Board of Directors. All members of the Board of Directors shall be informed of any proposed project.

No building, fence, wall, obstruction, screen, awning, dock or structure of any kind shall be commenced, erected or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by a majority of the Board of Directors. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board of Directors for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation.

No landscaping on a Lot visible from the roadway or from the Common Area shall be undertaken by any Owner until plans and specifications showing the nature, kind, shape and location of the materials have been submitted to and approved in writing by a majority of the Board of Directors.

Failure of the Board of Directors to act within thirty (30) days after the plans have been submitted to it shall constitute approval.

In the event of the failure of any individual Lot Owner to comply with a written directive or order from the Association, the Association shall have the right and authority to perform the subject matter of such directive or order and the cost of such performance shall be charged to the Owner of the Lot in question and may be recovered by the Association in an action of law against such individual Lot Owner.

4.11. Window Coverings. Windows shall be covered by drapes, shades or shutters and shall not be painted or covered by foil, cardboard or similar materials. Frosted glass shall be acceptable as a window covering. All window coverings visible from the Common Area shall be of a material, design and color which, in the opinion of the Board, is compatible with the exterior design and coloration of adjacent portions of the Project.

4.12. Clotheslines. Clotheslines or other outside clothes drying or airing facility shall be maintained in a neat and orderly condition. Further, no clothes washers, clothes dryers, refrigerators or freezers may be kept, stored or operated on any balcony, patio, porch or other exterior area.

4.13. Power Equipment and Maintenance. No heavy equipment, (i.e., tractors, road graders, scrapers, bulldozers, etc.) of any nature shall be permitted on the Project without the prior written approval of the Board. In deciding to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections.

4.14. Drainage. No Owner shall do any act or construct any improvement which would interfere with the natural or established drainage systems or patterns within the Project without the approval of the Board.

4.15. Liability of Owners for Damage to Common Area. The Owner of each Lot shall be liable to the Association for all damages to the Common Area and/or improvements thereon caused by such Owner, or any occupant of his/her Lot or guest, except for that portion of said damage, if any, fully covered by insurance of the Association. Liability of an Owner shall be established only after notice to the Owner and hearing before the Board.

4.16. Recreational Facilities. Every Member of the Association shall have a right to use the recreational facilities situated on the Common Area, subject to the following provisions:

- A) The right of the Association to charge reasonable fees for the use of any recreational facility by Non-Members;
- B) The right of the Association to deny use after hearing for infringement of Association Rules and Regulations or nonpayment of dues; and,
- C) The right of the Association under Section 3.05 A) 3) of this Declaration.

4.17. Sports Fixtures. All fixed sports apparatus shall be maintained in a safe and clean manner.

4.18. Nuisances. No noxious, illegal, or offensive activities shall be carried on within any Lot, or in any part of the Project, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each Owner's Lot or Common Area, or which shall in any way increase the rate of insurance for the Project or for any Lot, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

4.19. Compliance with Project Documents. Each Owner, contract purchaser, lessee, tenant, guest, invitee or other occupant of a Lot or user of the Common Area shall comply with the provisions of the Project Documents and any Rules and Regulations adopted by the Board.

4.20. Use of Lake and Restrictions; Assumption of Risks.

A) Permitted Uses of Lake. Lake use will be determined by the Association **Cheyenne Lake HOA** Rules and Regulations, which may be modified from time to time.

B) Personal Water Craft. No Personal Water Craft (PWC) will be allowed on the lake.

C) Approved Boats. ~~Only AWSA-approved towboats shall be permitted on the lake. All other boats shall be subject to approval by a majority vote of the Board of Directors.~~

**Participant Safety is of the highest priority to the Cheyenne Lake Homeowners Association. Therefore, all boats shall be subject to approval by a seventy-five percent (75%) majority vote of the Board of Directors to be eligible for use on Cheyenne Lake. The intent of limiting boat size and engine configuration is to prevent lake shoreline erosion, control backwash to help produce the safest conditions for water skiing, prevent damage to docks and boats moored to docks, prevent damage to the jump ramp and prevent damage to any other aspect of the facility that might be impacted by large boat wakes. To be considered for approval a towboat must meet the following criteria:**

- **Twenty-one foot (21') maximum hull length (excluding swim step)**
- **Only mid-engine direct drive or outboard power delivery systems (no "vee" drive)**
- **Maximum ballast four hundred pounds (400 lbs.)**
- **No wake size enhancing devices**
- **No wake shaping devices**

More than one (1) boat will not be allowed to operate on the lake at the same time during the same rotation.

D) Tournament Staging Area. A "Tournament Staging Area" within the Common Area may be designated by the Association and shall be utilized only as permitted by the Rules and Regulations.

~~E) Ski Club. In order to obtain maximum insurance benefits from AWSA and to obtain other benefits from being an AWSA sanctioned ski club, the Board shall initially adopt rules and regulations providing for the creation and operation of the Cheyenne Lake Ski Club ("Ski Club") under the sanction of AWSA. So long as required by such Rules and Regulations, all Owners shall become (and cause their contract purchaser to become) members of the Ski Club and AWSA as necessary to obtain and retain sanction of the Ski Club by AWSA. If an Owner, or contract purchaser fail to join or maintain membership in the Ski Club and/or AWSA, the Association shall have the power to enforce compliance in any manner provided by law or in equity and in any manner provided in this Declaration. The Association may conduct (or cause or allow the Ski Club to conduct) tournaments or other special events within the Common Areas.~~

F) Tournaments. In its discretion, the Association may restrict access to the Lake, Common Area or any Tournament Staging Area to accommodate tournaments, upon at least thirty (30) days notice to the Owners.

G) Risks Associated with Lake. Each Owner purchasing a Lot acknowledges the inherent and unavoidable potential dangers and hazards of (1) purchasing a Lot adjacent to a lake, an unfenced body of water, (2) the sport of water skiing which will frequently occur on the lake and (3) the operation of motorized boats in such lakes. Each Owner, their tenants and contract purchasers, and their respective family members, guests and invitees assume the various risks involved in living and/or coming upon the Project and/or using any lake. Each Owner, tenant and contract purchaser shall execute such waivers or releases of claims, hold harmless agreements or acknowledgements as the Association may require from time to time as a condition to use any lake in the Project or other portion of the Common Area by the Owner, tenant, or contract purchaser or any parties deriving use privilege through them, and each shall be solely responsible to ensure the safety of all persons as a result of their actions or omissions and those of all persons deriving use

privileges through them, including but not limited to the safety of such persons and all other persons present at the Project with the actual or implied permission or consent of any such person, the safety of small children or non-swimmers in the vicinity of any lake, the prevention of unauthorized or other dangerous use of any lake by persons deriving use privileges from the lake, and the proper and safe operation of all watercraft. The Association will not employ or otherwise have available lifeguards, monitors, supervisors or other persons to monitor or supervise use of any lake, the activities of any person on or at any lake or the safety of any person, and no act or omission of the Association shall create any responsibility or obligation of the Association, the Board, the officers of the Association or the Members to monitor or supervise the lake or Common Area use.

H. Risk of Flooding. Each Owner purchasing a Lot acknowledges the possibility of water from any adjacent lake rising onto the Lots and beyond because of unusually heavy rain, mechanical problems with the system providing water to a lake or other causes, and neither Declarant, the Association, the Board, the Committee or any officer or director of the Association, the Board, the Committee of any officer or director of the Association shall be responsible therefore or for any damage resulting therefrom, and each Owner assumes the risk thereof. Each Owner, redesigning and building their house and other improvements on their Lot, shall appropriately elevate and otherwise protect the house and such improvements as the Owner deems appropriate.

I. Closure of Lake for Any Reason. At its discretion, the Association may restrict access to the Lake, Common Area or any Tournament Staging Area to accommodate tournaments, upon at least thirty (30) days notice to the Owners.

J. Limitation on Organized Events. The Association may designate up to ten (10) days for organized events. Additional days of use require prior approval of the Association.



## **SECTION 5**

### **MAINTENANCE OBLIGATIONS**

5.01. Association Maintenance Obligations. The Association shall be responsible for maintaining the following in good condition and repair:

A) Common Area Improvements. The Association shall maintain or provide for the maintenance of all Common Area improvements, to the extent that such improvements are not maintained by a public agency or private/public utility company. This includes but is not limited to, all recreational facilities, roadway improvements, the Lake and related Lake facilities, utility buildings and utility laterals located within the Common Area.

B) Landscaping. The Association shall provide gardening services for all the landscaping within the Common Area. The sprinkling systems originally installed on the Common Area in connection with the landscaping improvements shall also be operated and maintained by the Association.

If any of the maintenance or repair work referred to above is necessitated by the willful or negligent acts of the Owner, his/her family, lessee or renter, guests or invitees, the costs of such special restoration or repairs shall be chargeable to the Owner as provided in Section 8.

5.02. Owners' Maintenance Obligations. Except as provided above, each Owner shall be responsible for maintaining his/her Lot and Unit in good condition and repair, including all improvements and landscaping thereon.

If an Owner fails to maintain his/her Lot or his/her Exclusive Use Common Area as provided herein in a manner which the Board reasonably deems necessary to preserve the safety, appearance and/or value of the Project, the Board may notify the Owner of the work required and request that it be done within a reasonable and specific period. If the Owner fails to perform such maintenance and/or repairs within said period, the Board shall, subject to the notice and hearing requirements set forth in the Bylaws, have the right to enter upon the Lot and/or Exclusive Use Common Area to cause such maintenance and/or repair work to be performed. Cost of any such repair or maintenance shall be charged to the Owner through an Individual Charge as provided in Section 8 hereof.

Notwithstanding the foregoing, in the event of an emergency arising out of the failure of an Owner to maintain his/her Lot and/or Exclusive Use Common Area, the Board shall have the right, through its agents and employees, to immediately enter the Lot and/or Exclusive Use Common Area to abate the emergency and individually charge the cost thereof to such Owner.

## **SECTION 6**

### **ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING**

6.01. Association to Manage Project. The management of the Project shall be vested in the Association in accordance with the Project Documents, and all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project.

6.02. Membership. Each Owner shall be a Member of the Association, and shall remain a Member thereof until such time as ownership ceases for any reason, at which time such membership in the Association shall automatically cease.

6.03. Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Lot. A Mortgagee does not have membership rights until it becomes an Owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. Any person or entity acquiring fee title or equitable title to a Lot, whether by reason of a deed from the Owner or through a foreclosure, shall within fifteen (15) days of acquiring such title inform the Association in writing of the date such title transferred and the name or names in which title is held.

6.04. Voting. Each Lot shall be allowed one vote. When more than one person or entity owns a Lot, all such persons and entities shall determine the vote decision among themselves, but in no event shall more than one vote be cast with respect to any Lot.

6.05. Inspection of Books. All Members shall have reasonable access to inspect the books, records and financial statements of the Association, including annual audited financial statements, when such are prepared, pursuant to this Declaration and subject to the same.

6.06. Co-Owner Votes. The vote for each Lot may not be cast on a fractional basis. If the Co-Owners of a Lot are unable to agree among themselves as to how their vote shall be cast, they shall forfeit the vote on the matter in question. If only one Owner exercises the vote of a particular Lot, it shall be conclusively presumed for all purposes that he/she was acting with the authority and consent of all other Co-Owners of the same Lot. If more than one Co-Owner exercises the vote for a particular Lot, their votes shall not be counted and shall be deemed void.

6.07. Membership Meetings. Regular and special meetings of Members and of the Board shall be held with the frequency and at the time and place and in accordance with the provisions of the Bylaws.

6.08. Notice and Place of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days but not more than ninety (90) days before such meeting to each First Mortgagee requesting notice and to each Member, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting. Meetings shall be held within the Project or at a meeting place as close thereto as possible.

6.09. Board of Directors. The affairs of the Association shall be managed by a Board of Directors, which shall be established, and which shall conduct regular and special meetings according to the provisions of the Bylaws.

## SECTION 7

### POWERS, DUTIES AND LIMITATIONS OF THE ASSOCIATION

7.01. Powers and Duties of Association. In addition to the powers and duties enumerated in its Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Association and the Board shall have the following powers and duties:

A) Delegation of Powers. To delegate all powers to committees, officers or employees of the Association as expressly authorized by the Project Documents.

B) Management Agent. To employ a management agent and to contract with independent contractors to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a firm or person appointed as a managing agent or any other contract providing for services of the developer, sponsor or builder shall not exceed a one year term renewable by the parties for successive one year periods and shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, to terminate the same for cause on thirty (30) days written notice, and either party may terminate without cause and without payment of a termination fee on sixty (60) days written notice.

C) Maintenance. To maintain the Project as required by the provisions of this Declaration.

D) Supervision. To supervise all officers, agents and employees of the Association and see that their duties are properly performed.

E) Assessments, Liens, and Fines. To levy and collect assessments and as provided in the Project Documents, impose fines or take disciplinary action against an Owner for failure to pay assessments or for violation of any provision of the Project Documents. Penalties may include, but are not limited to: fines, temporary suspension of voting rights or rights to use of the facilities on the Common Area, or other appropriate discipline for failure to comply with the governing instruments, provided that the accused Member is given notice and the opportunity to be heard by the Board with respect to the alleged violations before a decision to impose discipline is reached. Such notice and hearing procedures shall satisfy the minimum requirements of Corporations Code Section 7341, which are set forth in Section 12 of the Bylaws.

F) Enforcement of Project Documents. To enforce applicable provisions of the Project Documents for the ownership, management and control of the Project.

G) Adoption of Rules. To adopt, amend and repeal reasonable rules consistent with this Declaration relating to the use of the Common Area and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Project and other Owners. A copy of the Association Rules and Regulations as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Common Area.

H) Records. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by five percent (5%) or more of the total voting power of the Association; keep adequate and correct books and records of account, minutes of proceedings of its Members, Board and committees, and a record of its Members giving their names and addresses.

I) Water and Other Utilities. To acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other utility services as necessary for the Common Area, and Lots if not separately metered.

J) Granting of Easements. To grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.

K) Exercise of Easements. To exercise all easement rights as granted to it in this Declaration for the purpose of performing the maintenance authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of their responsibilities, the Association's agents or employees.

L) Contracts. To contract for goods and/or services for the Common Area facilities and interests or for the Association, subject to limitations elsewhere set forth in the Project Documents.

M) Limit Number of Guests. To limit the number of an Owner's guests who may use any facilities on the Common Area.

N) Title to Common Area. To accept title to the Common Area conveyed to it by Declarant.

O) Acquisition of Property. To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal Property in connection with the affairs of the Association.

P) Budgets. To prepare budgets and financial statements for the Association as prescribed in this Declaration.

Q) Legal and Accounting. To obtain and pay the cost of legal, accounting and other professional services necessary or proper for the maintenance and operation of the Project and the enforcement of the Project Documents.

R) Emergency Repair. To enter upon any privately owned Lot as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common.

S) Election of the Board of Directors. To elect the Members of the Board.

T) Filling Vacancies. To fill vacancies on the Board created by the removal of a Board Member.

7.02. Property Taxes and Assessments. Each Owner shall be obligated to pay any taxes or assessments levied by the County Assessor against his/her Lot and personal property. To the extent not assessed to or paid directly by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Common Area or other property owned by the Association.

The Association shall prepare and file annual tax returns with the federal government and the State of California and make such elections as may be necessary to reduce or eliminate the tax liability of the Association.

7.03. Insurance. The Association shall maintain casualty, liability and other insurance on behalf of the Association as required by the provisions of this Declaration.

7.04. Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against the Common Area, and assess the cost thereof to the Owners responsible for the existence of said lien.

7.05. Payment of Expenses. The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

7.06. Prohibited Acts. The Association, through its Board, shall be prohibited from taking any of the following actions, except with the vote or written assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code Section 7513, of a simple **seventy-five percent (75%)** majority of the voting power of the Association residing in Members other than the Declarant, constituting a quorum consisting of more than ~~fifty (50) percent~~

**seventy-five percent (75%)** of the voting power of the Association residing in Members other than the Declarant:

A) Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year with the following exceptions:

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

2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

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

4) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which the subdivider has a direct or indirect ownership interest of ten percent (10%) or more; or,

5) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

B) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

C) Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

D) Paying compensation to Members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Member or officer to be reimbursed for expenses incurred in carrying on the business of the Association; or,

E) Filling of a vacancy on the Board created by the removal of a Director.

7.07. Action Requiring Consent. The Board shall take the following actions only upon obtaining consents of Members as follows:

A) The consent of two-thirds of the voting power of the Association residing in Members other than the Declarant so long as the Declarant holds or directly controls at least twenty-five percent (25%) of the voting power of the Association, and after the Declarant no longer controls twenty-five percent (25%) or more, the consent of two-thirds of the total voting power of all Members shall be necessary to do the following:

1) Borrow money, and only with the assent (by vote or written consent) of ~~two-thirds (2/3)~~ **seventy-five percent (75%)** of Members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

2) Dedicate, sell or transfer all of or any part of any interest it may have in the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless an instrument has been signed by ~~two-thirds~~ **seventy-five percent (75%)** of the Members agreeing to such dedication, sale or transfer, and any sale of all or substantially all of the corporation's assets must be in compliance with Section 7.07.

3) Participate in mergers and consolidations with other non-profit corporations organized for the same purpose or annex additional residential Property, provided that any merger,

consolidation or such annexation shall have the assent by vote of ~~two-thirds (2/3)~~ **seventy-five percent (75%)** of Members or by the written consent of such Members, excluding Declarant.

B) The consent of one hundred percent (100%) of the Members shall be required so long as there is any Lot, parcel, area, apartment or Unit for which the Association is obligated to provide management, maintenance, preservation or control for the Association to do the following:

- 1) Transfer all or substantially all of its assets; or,
- 2) File a certificate of dissolution.

7.08. Dispute Resolutions. In any dispute in which the Association is a party, the Association may perform any act reasonably necessary to resolve any such civil claim or action through dispute resolution proceedings found in this Section 7.

7.09. Dispute Notification and Resolution Procedure (Declarant Disputes). Any disputes between the Association (or any Owners) and the Declarant or any director, officer, partner, employer, subcontractor or agent of the Declarant relating to this Declaration, the use or condition of the Property, and/or the design, construction and installation of any Improvements located thereon shall be subject to the following provisions:

A) Notice. Any person with a claim against the Declarant or any director, officer, partner, employer, subcontractor or agent thereof (collectively the "Declarant" for purposes of this Section) shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and the proposed remedy (the "Claim Notice").

B) Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Declarant and the claimant shall meet at a mutually acceptable place within the Development to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant and Declarant's representatives shall have full access to the Property that is subject to the claim for the purposes of inspecting the Property. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Development to take and complete corrective action.

If the claim is subject to the provisions of Civil Code Section 1375 as it may be amended from time to time, compliance with the procedures of Civil Code Section 1375 shall satisfy the requirements of this Section.

C) Mediation. If the parties cannot resolve the claim pursuant to the procedures described above (including, if applicable, Civil Code section 1375 procedures), the matter shall be submitted to mediation using a mediator that is acceptable to the parties. If the parties cannot agree on a mediator, any party may petition the superior court of the county in which the Project is located for appointment of the mediator by the presiding judge. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project is located or such other place as is mutually acceptable by the parties.

The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for each settlement of the dispute. The mediator is authorized

to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

Prior to the commencement of the mediation session, the mediator and all parties to the mediation shall execute an agreement pursuant to California Evidence Code section 1152.5(c) or successor statute in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings. Pursuant to California Evidence Code section 1152.5(a), the agreement shall specifically state:

Evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record on the mediation process.

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

D) Judicial Reference. If the parties cannot resolve the claim pursuant to the procedures described in the subsection entitled "Mediation" above, the parties shall submit the dispute to judicial reference using a general referee acceptable to the parties; or, if the parties cannot agree, any party may petition the superior court of the county in which the Project is located for appointment of the general referee by the presiding judge for resolution under Code of Civil Procedure sections 638.1 and 641 through 645 or any successor statutes thereto.

The general referee shall have the authority to try any and all issues in the proceeding, whether of fact or law, and to report a statement of decision. Neither the referee nor any party shall have the right to impanel a jury. The following rules and procedures shall apply in all cases unless the parties agree otherwise:

- 1) the proceedings shall be heard in the county in which the Project is located;
- 2) the referee shall be an attorney or retired judge with at least five (5) years experience in real estate matters;
- 3) any dispute regarding the selection of the referee shall be resolved by the entity providing the reference services or, if no entity is involved, by the court with appropriate jurisdiction;
- 4) the referee may require one or more pre-hearing conferences;
- 5) the parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;
- 6) the referee shall have the power to hear and dispose of motions in the same manner as a trial court judge;

7) the referee shall apply the rules of law, including the rules of evidence, unless expressly waived by both parties;

8) a stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

9) the referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and

10) the referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

Each party retains the same appeal rights of the referee's decision as if the decision were rendered by a trial court judge.

If the Association and/or Owner has complied with the requirements of subsections above and Declarant elects not to participate in the judicial reference proceeding because all necessary and appropriate parties will not participate, the Association, any Owner or Declarant may bring an action in any court of competent jurisdiction to resolve the dispute. The Association and each Owner covenants that each shall forbear from commencing any litigation against the Declarant without complying with the procedures described in subsections 1), 2), 3) and 4) above. If the Association or any Owner breaches the foregoing covenant, Declarant may obtain an appropriate order compelling the Association and/or Owner to comply with the procedures described in subsections 1), 2), 3) and 4). The procedures set forth in subsections 1), 2), 3) and 4) above shall not apply to any action taken by the Association against Declarant for delinquent assessments, which shall be governed by the Section entitled "Assessments". Furthermore, nothing herein shall prevent the Association or any Owner from commencing any legal action which in the good faith determination of the Board or Owner is necessary to preserve any Association's or Owner's rights under any applicable statute of limitations, provided that the Association or Owner shall take no further steps in prosecuting the action until it has complied with the procedures described in subsections 1), 2), 3) and 4).

Notwithstanding any other provision herein to the contrary, in any dispute between the Association and/or any Owner and the Declarant, each party shall bear its own attorneys' fees. The referee may award costs to the party that the referee determines prevailed in the proceeding.

Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the claim shall be considered communications undertaken in the course of effecting a settlement or compromise and as such shall not be admissible as the admission on the part of any party or any representative or agent of the party to be utilized for any such purpose in any action or proceeding.

Nothing herein shall be considered to reduce or extend any applicable statute of limitations.

If for any reason a court refuses to allow the dispute to be resolved through a judicial reference proceeding, the dispute shall be submitted to binding arbitration to the American Arbitration Association; and the rules and procedures outlined above for the judicial reference proceeding shall apply to the arbitration proceeding, including the appeal rights.

7.10. Civil Action Against Declarant. Not later than thirty (30) days prior to the filing of any civil action by the Association against the Declarant for alleged damage to the Common Areas, alleged damage to the Separate Interest that the Association is obligated to maintain or repair, or alleged damage to the Separate Interests that arises out of, or is integrally related to, damage to the Common Areas or Separate Interest that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member of the Association. This notice shall specify all of the following:

A) That a meeting will take place to discuss problems that may lead to the filing of a civil action;



B) The options, including civil actions, that are available to address the problems;

C) The time and place of this meeting; and,

D) Notwithstanding subsection A), if the Association has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Association may give the notice, as described above, within thirty (30) days after the filing of the action.

7.11. Inspection and Maintenance Guidelines. The Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area Improvements.

The Board periodically and at least once every two (2) years, shall review and update the inspection and maintenance guidelines.

The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines.

7.12 First Right of Refusal. The Association shall have the first right of refusal at the price and terms offered on any sale of a lot and shall be required to exercise this right within ~~ten (10)~~ **thirty (30)** days of receiving written notification of the pending sale.

## **SECTION 8**

### **ASSESSMENTS**

8.01. Agreement to Pay; Personal Obligation. Declarant, and its successor in interest, if any, for each Lot owned by it, and each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (1) Regular Annual Assessments; (2) Special Assessments for capital improvements or unusual expenses to be established and collected as hereinafter provided (collectively "Assessments"); and, (3) Individual Charges levied against an individual Owner, to be established and collected as provided in this Declaration and in the other Project Documents.

All Assessments and Individual Charges, together with any late charges, interest, collection costs and reasonable attorney's fees incurred in collecting delinquent Assessments and Individual Charges, shall be the obligation of the Owner of such Lot at the time when the Assessments or Individual Charges fell due. If more than one person or entity was the Owner of a Lot at the time the Assessments or Individual Charges fell due, the obligation to pay each Assessment and Individual Charge shall be joint and several. The obligation for delinquent Assessments and Individual Charges shall not pass to any transferee unless expressly assumed by him. No Owner may exempt himself from liability for his/her Assessments or Individual Charges obligation by waiver of the use or enjoyment of any of the Project.

If an Owner has a dispute with the Association regarding an Assessment levied by the Association, the Owner may pay the Assessment under protest in accordance with the procedures set forth in Civil Code Section 1366.3 or any successor statute thereto.

8.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for paying the costs of and creating reserves for the costs of all obligations which the Association is authorized or obligated to perform as described in this Declaration.

8.03. Regular Annual Assessments and Special Assessments. The provisions of this subsection entitled "Regular Annual Assessments and Special Assessments" are intended to comply with Civil Code Sections 1366(a) and (b) in effect as of January 1, 1997. If this section is amended in any manner, the provisions of this subsection automatically shall be amended in the same manner, provided that if Section 1366(a) or (b) is repealed and no successor statute is enacted with respect to restrictions on Assessments, the provisions of this subsection shall remain in full force and effect. Civil Code Sections 1366(a) and (b) may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

Regular Assessments shall be payable in equal monthly installments, due on the first day of each month, unless the Board adopts some other basis for collection.

Notwithstanding any other provisions contained in this section, the Board may increase assessments necessary for emergency situations pursuant to Section 1366 of the Civil Code.

8.04. Quorum. For the purposes of establishing "Assessments" above, a quorum means more than fifty percent (50%) of the Members of the Association. In addition, any meeting or election of the Association for purposes of complying with this subsection above entitled "Regular Annual Assessments and Special Assessments" 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.

8.05. Equal Division of Regular and Special Assessments. Regular and Special Assessments shall be levied against each Lot (and its Owner) equally.

8.06. Individual Charges. Individual charges may be levied against a Member as follows:

A) As a monetary penalty imposed by the Association as a disciplinary measure for the failure of a Member to comply with the Project Documents and Rules and Regulations; or,

B) As a means of reimbursing the Association for costs incurred by the Association for the repair of damage to Common Areas and facilities for which the Member was responsible, or to otherwise bring the Member and his/her Lot into compliance with the Project Documents. Such Individual Charges (other than reasonable late charges, interest, costs of collection and reasonable attorneys' fees related to the collection of Assessments) are not enforceable through the lien provisions of the Project Documents. All Individual Charges shall comply with California Civil Code Section 1366 to the extent that it is applicable.

8.07. Commencement of Assessments and Individual Charges. The right to levy Assessments and Individual Charges shall commence as to all Lots in the Project on the close of escrow for the first conveyance of a Lot in the Project. Regular Assessments shall commence as to all Lots in the Project on the first day of the month following the first conveyance of a Lot under authority of a Public Report. Thereafter, Regular Assessments shall be levied on the first day of each month.

8.08. Assessment Lien. Each delinquent Assessment or installment shall be a charge and a continuing lien upon the Lot against which each Assessment is made, the lien to become effective upon recordation of a Notice of Delinquent Assessment, subject to any costs of collection (including attorney's fees), late charges, and interest, by taking the following steps:

A) The Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, shall provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the principal owed, interest, any late charges and the method of calculation, any attorneys' fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection.

B) After compliance with the notice requirements of "A" above, the Association may impose a lien against the Owner's Lot in the amount of the delinquent assessment or assessments, plus cost of collection, late charges and interest by recording a Notice of Delinquent Assessment with the county recorder of the county in which the Project is located. The notice shall state the amount of the assessment(s) and other sums imposed in accordance with Civil Code Section 1366 or any successor statute thereto, a legal description of the Owner's Lot in the Project against which the assessment(s) and other sums are levied, the name of the record owner of the Owner's Lot in the Project against which the lien is imposed, and, if the lien is to be enforced by non-judicial foreclosure, the name and address of the trustees authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or an employee or agent of the Association authorized to do so by the Board and a copy mailed in the manner required by Civil Code Section 2924b to all record owners of the Owner's Lot in the Project no later than ten (10) days after recordation.

Any payments made on the delinquent assessment(s) shall be applied first to the principal owed, and only after the principal owed is paid in full shall payments be applied to interest or collection costs. Upon payment of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded with the county recorder of the county in which the Project is located a notice stating the satisfaction and release of the lien thereof.

After the expiration of thirty (30) days following the recordation of the Notice of Delinquent assessment, the Board may enforce any assessment lien established hereunder by filing an action for judicial foreclosure or, if the Notice of Delinquent Assessment contained the name and address of the trustee authorized by the Association to enforce the lien by non-judicial foreclosure, by recording a notice of default in the form described in Civil Code Section 2924c(b)(1) to commence a non-judicial foreclosure. Any non-judicial foreclosure shall be conducted in accordance with the requirements of Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g and

2924h that apply to non-judicial foreclosure of mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of Civil Code Section 2934a. The Association may bid on the Lot at the sale and may hold, lease, mortgage and convey the acquired Lot.

If default is incurred before the sale, including payment of all costs and expenses incurred by the Association, the Association shall record a notice of satisfaction and release of lien and, to the extent required by Civil Code Section 2924(c)(a)(2), a Notice of Rescission. In addition to the remedies described herein, the Board, pending the payment in full of all delinquent Assessments and related charges, may suspend the voting rights of the Owner.

The provisions of this Section are intended to comply with the requirements of Civil Code Sections 1366.3 and 1367 in effect as of January 1, 1997. If these sections are amended or rescinded in any manner the provisions of this Section automatically shall be amended or rescinded in the same manner. The Board is advised to confirm whether any changes have occurred.

## SECTION 9

### ENFORCEMENT OF RESTRICTIONS

9.01. General. The Association or any Owner shall have the right to enforce compliance with the Project Documents in any manner provided by law or in bringing an action for damages, an action to enjoin the violation or to specifically enforce the provisions of the Project Documents, to enforce the liens provided for herein (except that no Owner shall have the right to enforce independently of the Association any Assessment, Individual Charge or Assessment lien created herein) and any statutory lien provided by law, including the foreclosure of any such lien and the appointment of a receiver for an Owner and the right to take possession of the Lot in the manner provided by law. In the event the Association or any Owner shall employ an attorney to enforce the provisions of the Project Documents against any Owner, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other amounts due as provided for herein. All sums payable hereunder by an Owner shall bear interest at the maximum rate permitted by law from the due date, or if advanced or incurred by the Association or any other Owner pursuant to authorization contained in the Project Documents, commencing fifteen (15) days after repayment is demanded. All enforcement powers of the Association shall be cumulative. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

9.02. Specific Enforcement Rights. In amplification of, and not in limitation of, the general rights specified in Section 9.01 above, the Association, or its authorized representative, shall have the following rights:

A) Enforcement by Sanctions.

1) Limitation. The Association shall have no power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his/her Lot on account of a failure by the Owner to comply with provisions of the Project Documents except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association.

2) Disciplinary Action. The Association may impose monetary penalties, temporary suspensions of a reasonable duration (not to exceed 30 days per violation) of an Owner's rights as a Member of the Association or other appropriate discipline for failure to comply with the Project Documents and the Rules and Regulations. Notwithstanding the foregoing, the Association shall have no right to interfere with an Owner's right of ingress to or egress from his/her Lot.

If the Board adopts a policy imposing monetary penalties, the Board shall adopt and distribute to each Member, by electronic mail, or by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties. If requested by a Member being disciplined, the Board shall conduct the disciplinary proceeding in executive session. In such session, the Member, and, if applicable, the Member's counsel, and the Association's counsel shall be entitled to attend. In addition, the Board may interview witnesses and other appropriate parties to the disciplinary proceeding in executive session. The provisions of this paragraph are intended to comply with requirement of Civil Code Section 1363(g) in effect as of January 1, 1997. If the provisions of Section 1363(g) are amended or repealed in any manner, this paragraph automatically shall be amended or repealed in the same manner. Civil Code Section 1363(g) may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

Before disciplinary action authorized under this Section may be imposed by the Association, the Owner against whom such action is proposed to be taken shall be given notice and

the opportunity to be heard in accordance with Section 7341 of the Corporations Code, as set forth in Section 12 of the Bylaws.

B) Suit to Collect Delinquent Assessments or Individual Charges. A suit to recover a money judgment for unpaid Assessments or unpaid Individual Charges, together with late charges, interest, costs and reasonable attorneys' fees shall be maintainable by the Association. In the case of unpaid Assessments, such suit shall be maintainable without foreclosing or waiving the lien securing such unpaid Assessments.

C) Transfer by Sale or Foreclosure. In a sale or transfer of a Lot, the obligation for delinquent Assessments or Individual Charges shall not pass to the transferee unless expressly assumed by him. The sale or transfer of any Lot shall not affect the Assessment lien, nor the right of the Association to impose a lien for Assessments which became due prior to such sale or transfer. However, the sale or transfer of any Lot pursuant to the exercise of a power of sale or judicial foreclosure involving a default under a First Mortgage shall extinguish the lien and right to lien for Assessments which became due prior to such sale or transfer. No transfer of the Lot as the result of a foreclosure or exercise of a power of sale shall relieve the new Owner, whether it be the former beneficiary of the First Mortgage or another person, from liability for any Assessments or Individual Charges thereafter becoming due or from the lien thereof.

D) Waiver of Homestead Benefits. Each Owner to the extent permitted by law, waives, to the extent of any liens created pursuant to the Project Documents, the benefit of any homestead or exemption laws of California in effect at the time any Assessment becomes due.

## SECTION 10

### **BUDGETS, FINANCIAL STATEMENTS AND BANK ACCOUNTS**

10.01. Proposed Budget. At the request of an Owner, not less than seventy-five (75) days before the beginning of each fiscal year, the Board shall prepare or cause to be prepared, a proposed pro forma budget for the forthcoming fiscal year. Any Owner or Mortgagee may make written comments to the Board with respect to said pro forma operating statement. The pro forma operating statement shall be prepared consistently with the prior fiscal year's operating statement and shall include adequate reserves for contingencies and for maintenance, repair and replacement of the Common Area improvements and Association personal Property likely to need maintenance, repair or replacement in the future.

10.02. Adopt Budget. At the request of an Owner, not more than seventy-five (75) days nor less than sixty (60) days before the beginning of each fiscal year, the Board shall meet to review the proposed pro forma budget, any written comments received and any other information available to it and, after making any adjustments that the Board deems appropriate, shall adopt the budget and establish the regular Assessment for the forthcoming fiscal year.

10.03. Budgets, Financial Statements. The following financial and related information shall be regularly prepared and distributed by the Board to all Members of the Association in accordance with Section 1365 of the Civil Code:

A) Budget. At the request of an Owner, a copy of the operating budget shall be annually distributed not less than forty-five (45) days and not more than sixty (60) days prior to the beginning of the Association's fiscal year, which may include any or all of the following:

1) The estimated revenue and expenses of the Association on an accrual basis;  
and

2) A summary of the Association's reserves based on the most recent reserves review or study conducted pursuant to Section 1365.5 of the Civil Code, which shall be printed in bold type and include all of the following:

a) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component.

b) As of the end of the fiscal year for which the study was prepared:

i) The current estimate of cash reserves necessary to repair, replace, restore or maintain the major components; and,

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

c) The percentage that the amount in ii) of subsection 2) b) is to the amount in i) of subsection 2) b).

3) A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any major component, or to provide adequate reserves therefore; and,

4) A general statement setting forth the procedures used by the Board in the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components for which the Association is responsible.

The summary of the Association's reserves disclosed pursuant to subsection 2) shall not be admissible in evidence to show improper financial management of an Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision.

B) Financial Statements. A review of the financial statements of the Association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the Association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statements shall be distributed within one hundred twenty (120) days after the close of each fiscal year.

In lieu of the distribution of the operating budget referred to in subsection 10.03 A) above entitled "Budget", the Board may elect to distribute a summary of the pro forma operating budget to all Members of the Association with a written notice (in at least 10-point bold type on the front page) that the budget is available at the business office of the Association, or at a location within the Project's boundaries, and that copies will be provided upon request and at the expense of the Association. The Association must mail such copies of the pro forma operating budget, by first-class United States mail to any Member requesting same at the expense of the Association, which copies shall be mailed within five (5) days from receipt of such request.

C) Statement of Enforcement Policies. In addition to financial statements, the Board shall, at the request of an Owner, annually distribute within sixty (60) days prior to the beginning of the Association's fiscal year, a statement of the Association's policies and practices in enforcing lien rights or other legal remedies against Members for defaults in the payment of Regular and Special Assessments including the recording and foreclosing of liens against Members' Lots.

10.04. Summary of General Liability. Upon the request of an Owner, a summary of the Association's general liability policy shall be distributed to all Members within sixty (60) days preceding the beginning of the Association's fiscal year. The summary shall include the following information on the policy:

- A) The name of the insurer;
- B) The type of insurance;
- C) The policy limits of the insurance; and,

D) The Association shall, as soon as reasonably practical, notify its Members by **electronic mail or** first-class mail if the policy has been canceled and not immediately renewed or restored or if there is a significant change, such as a reduction in coverage or limits, or an increase in the deductible for any policy.

This summary shall contain, in at least 10-point boldface type, the following statement:

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

The provisions of this subsection are intended to comply with the requirements of Civil Code Sections 1354(i), 1363.05(e) and 1365 in effect as of January 1, 1997. If these Civil Code Sections are amended or repealed in any manner, the provisions of this subsection shall be amended or repealed in the same manner. Civil Code Sections 1354(i), 1363.05(e) and 1365 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

10.05. Reserves and Reserves Study.



A) Reserves. Each annual Regular Assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the major components that the Association is obligated to maintain and repair. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to maintain.

B) Transfer of Reserves. Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Project, temporarily delay the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in maintaining the integrity of these funds and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required herein. The Special Assessment is subject to the Assessment increase restrictions set forth in Subsection 8.03 (entitled "Regular Annual Assessments and Special Assessments") and Civil Code Section 1366(b). The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of the Association of that decision in the next available mailing to all Members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. Unless the governing documents impose more stringent standards, the Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members of the Association at the Association's office.

C) Reserve Study. At least once every three (3) years, the Board may cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore, or maintain as a part of a study of the Reserve Account requirements of the Project if the current replacement value of the major components is equal to or greater than one-half (1/2) of the gross budget of the Association, which excludes the Association's Reserve Account for that period. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the Reserve Account requirements as a result of that review.

The study shall, at a minimum, include:

1) Identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;

2) Identification of the probable remaining useful life of the components identified in subsection 1) as of the date of the study;

3) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in subsection 1) during and at the end of its useful life; and,

4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life after subtracting total reserve funds as of the date of the study.

As used herein, "Reserve Accounts" means moneys that the Board has identified for use to defray the future repair or replacement of, or additions to, those major

components which the Association is obligated to maintain; and "reserve account requirements" means the estimate funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

The provisions of the subsection entitled "Reserves and Reserves Study" are intended to comply with the requirements of Civil Code Section 1365.5(c) and (d) in effect as of January 1, 1997. If these Civil Code Sections are rescinded or amended in any manner, the provisions of the Subsection automatically shall be rescinded or amended in the same manner. Civil Code Section 1365.5(c) and (d) may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

10.06. Bank Accounts. The Association shall deposit all funds collected from Owners pursuant to the Section herein entitled "Assessments" and all other amounts collected by the Association as follows:

A) General. All funds shall be deposited in a separate bank account ("General Account") with a bank located in California. The Association shall keep accurate books and records regarding such account. Funds deposited in such account may be used by the Association only for the purposes for which such funds have been collected.

B) Reserve. Funds which the Association shall collect for reserves for capital expenditures relating to the repair and maintenance of the Lots and Common Area, and for such other contingencies as are required for good business practice shall, within ten (10) days after deposit in the general account, be deposited into an interest bearing account with a bank or savings and loan association selected by the Association, or invested in Treasury Bills or Certificates of Deposit or otherwise prudently invested, which shall collectively be referred to as the "Reserve Account". Funds deposited into the Reserve Account shall be held in trust and may be used by the Association only for the purposes for which such amounts have been collected.

**SECTION 11**  
**INSPECTION OF BOOKS AND RECORDS**

11.01. Inspection by Members.

A) Commencing not later than ninety (90) days after the close of escrow of the first interest in the Project, copies of the documents listed below, as soon as readily obtainable, shall be delivered by the Declarant to the Board of the Association at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the documents listed below shall apply to any documents obtained by the Declarant no matter when obtained or provided, however, such obligation shall terminate upon the earlier of 1) the conveyance of the last subdivision interest covered by a Final Public Report or 2) three (3) years after the expiration of the most recent Public Report for the Project:

- 1) The recorded subdivision Map or Maps for the Project;
- 2) The deeds and easements executed by the Declarant conveying the Common Area or other interest to the Association, to the extent applicable;
- 3) The recorded Declaration for the Project, including all amendments and annexations thereto;
- 4) The Association's filed Articles of Incorporation, if any, and all amendments thereto;
- 5) The Association's Bylaws and all amendments thereto;
- 6) All architectural guidelines and all other rules regulating the use of an Owner's interest in the Project or use of the Common Area which have been promulgated by the Association;
- 7) The plans approved by the local agency or county where the Project is located for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy;
- 8) All Notice of Completion certificates issued for Common Area improvements (other than residential structures);
- 9) Any bond or other security device in which the Association is the beneficiary;
- 10) Any written warranty being transferred to the Association for Common Area equipment, fixtures or improvements;
- 11) Any insurance policy procured for the benefit of the Association, its Board, or the Common Area;
- 12) Any lease or contract to which the Association is a party;
- 13) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, of the Board and of committees of the Board; and,
- 14) Any other instrument which establishes or defines the common, mutual or reciprocal rights or responsibilities of Owners or Members of the Association.

B) If the Project is phased, commencing not later than ninety (90) days after the annexation of additional phases to the Project, copies of those documents listed under subsection A) which are applicable to that phase, shall as soon as readily obtainable, be delivered by Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the documents listed in subsection A) shall apply to any documents

obtained by the Declarant no matter when obtained, provided, however, such obligation shall terminate upon the earlier of 1) the conveyance of the last subdivision interest covered by a Final Public Report or 2) three (3) years after the expiration of the most recent Final Public Report for the Project.

C) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, the Board, and of committees of the Board shall be made available for inspection and copying by any Member of the Association or by his/her duly-appointed representative at any reasonable time and for a purpose reasonably related to his/her interest as a Member at the office of the Association or at such other place within the Project as the Board shall prescribe.

D) In the case of the minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board, other than an executive session, shall be available to Members within thirty (30) days of the meeting and shall be distributed to Members only upon request and payment of the fee prescribed in Section 11.02 C) below.

E) At the time the pro forma operating budget is distributed as required by Section 10 or at the time of any general mailing, Members of the Association shall be notified in writing of their right to have copies of the minutes of meetings of the Board and as to how and where those minutes may be obtained and the cost of obtaining such copies.

11.02. Rules for Inspection by Members. The Board shall establish reasonable rules with respect to:

- A) Notice to be given to the custodian of the records by the Member desiring to make the inspection;
- B) Hours and days of the week when such an inspection may be made; and,
- C) Payment of the costs of reproducing copies of documents requested by a Member.

11.03. Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents.

11.04. Review of Financial Records. The Board shall review on at least a quarterly basis a current reconciliation of the Association's operating and Reserve Accounts, the current year's actual reserve revenues and expenses compared to the current year's budget and an income and expense statement for the Association's operating and Reserve Accounts. In addition, the Board shall review the latest account statements prepared by the financial institutions where the Association has its operating and Reserve Accounts.

11.05. Reserve Account Withdrawal Restrictions. The Board shall require that at least two signatures be needed for the withdrawal of monies from the Association's Reserve Accounts, who either shall be Members of the Board or one Member of the Board and one officer who is not a Member of the Board.

## SECTION 12

### INSURANCE, DESTRUCTION, CONDEMNATION

12.01. Insurance. In addition to other insurance required to be maintained by the Project Documents, the Association, through its Board, shall obtain from generally accepted insurance carriers, and maintain in effect at all times, the following insurance at common expense:

A) Liability Insurance. The Association shall obtain and maintain comprehensive public liability insurance insuring the Association and each Owner against any liability incident to the ownership, use or maintenance of the Common Area, any Association maintenance responsibilities on the Lots, and other maintenance obligations of the Association, 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 \$1,000,000 covering all claims for death, personal injury and Property damage arising out of a single occurrence. Such insurance may include protection against water damage liability, liability for non-owned and hired automobiles, liability for Property of others, and such other risks as are customarily covered with respect to projects similar in construction, location and use. Such policy may provide for a reasonable deductible.

B) Other Insurance. The Board shall purchase and maintain worker's compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association. The Board shall also purchase and maintain insurance on personal Property owned by the Association, and any other insurance that it deems necessary, or that is customarily obtained for projects similar in construction, location and use.

C) 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 12.01. With respect to said Section, the Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

D) Officer and Director Insurance. The Association may purchase and maintain insurance on behalf of any Director, Officer, or Member of a committee of the Association (collectively the "Agents") against any liability asserted against or incurred by the Agent in such capacity or arising out of the Agent's status as such, whether or not the Association would have the power to indemnify the Agent against such liability under applicable law.

E) Waiver of Subrogation. All insurance carried by the Association, or the Owners, shall contain provisions whereby the insurer waives rights of subrogation as to the Association, Directors, Officers, Declarant, Owners, occupants of Lots, their family, guests, agents and employees.

F) Notice of Cancellation. All insurance carried by the Association shall require the insurer to notify any First Mortgagee and Declarant requesting such notice at least fifteen (15) days prior to the effective date of any reduction or cancellation of the policy.

G) Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is adequate.

H) Payment of Premiums. Premiums on insurance maintained by the Association shall be a common expense funded by Assessments levied by the Association.

12.02. Individual Fire, Casualty and Liability Insurance. Each Owner shall obtain and maintain, at his/her expense, fire, casualty and liability coverage with respect to damage or destruction to improvements on Owner's Lot with liability limits of a not less than one million dollars. All such individually carried insurance shall also contain a waiver of subrogation rights by the carrier as to

other Owners, the Association, Declarant and First Mortgagee of such Lot. Proof of current coverage shall be supplied to the Association.

12.03. Destruction.

A) Minor Destruction Affecting Common Area. Notwithstanding Section 12.03 B), the Board shall have the duty to repair and reconstruct the Common Area without the consent of Members and irrespective of the amount of available insurance proceeds or other funds, in all instances of partial destruction where the estimated cost of repair and reconstruction does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The Board may levy a Special Assessment for the cost of such repair and reconstruction to the extent insurance proceeds or other funds are unavailable.

B) Major Destruction Affecting Common Area.

1) Destruction; Proceeds Exceed 85% of Reconstruction Costs. If there is a total or partial destruction of the Common Area, and if the available proceeds of the insurance carried pursuant to Section 12.01 or other available funds are sufficient to cover not less than eighty-five percent (85%) of the costs of repair and reconstruction, the Common Area shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, Members determine that repair and reconstruction shall not take place.

2) Destruction; Proceeds Less than 85% of Reconstruction Costs. If the proceeds of insurance carried pursuant to Section 12.01 or other available funds are less than eighty-five percent (85%) of the costs of repair and reconstruction, repair and reconstruction shall not take place unless, within ninety (90) days from the date of destruction, Members determine that repair and reconstruction shall take place. If repair and reconstruction is to take place, the Board shall execute, acknowledge and record in the office of the County Recorder not later than one hundred twenty (120) days from the date of destruction a certificate declaring the intention of the Members to rebuild.

3) Special Assessment to Rebuild. If the determination is made to rebuild pursuant to the above Sections, the Association may levy a Special Assessment against all Lot Owners to cover the cost of rebuilding not covered by insurance proceeds or other funds.

4) Rebuilding Contract. If the determination is made to rebuild, the Board shall obtain bids from at least three reputable contractors, and shall award the repair and reconstruction work to the least expensive bidder. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

12.04. Condemnation.

A) Condemnation Affecting Common Area.

1) Sale in Lieu. If an action for condemnation of all or a portion of the Common Area is proposed or threatened by an entity having the right to eminent domain, then on the unanimous written consent of all of the Owners and subject to the rights of all Mortgagees, the Common Area, or a portion of it, may be sold by the Board. Subject to Corporations Code Section 8724, the proceeds of the sale shall be distributed among the Lots on the same basis as their Regular Assessment obligations and between the Lot Owners and their Mortgagees as their respective interests shall appear.

2) Award. If the Common Area, or a portion of it, is not sold, but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees. If the judgment of condemnation does not apportion the award, then the award shall be distributed as provided above.

B) Condemnation Affecting Lots. If an action for condemnation of all or a portion of, or otherwise affecting a Lot is proposed or threatened, the Owner and the Mortgagees of the affected Lot, as their respective interests shall appear, shall be entitled to the proceeds of any sale or award relating to the affected Lot.

If any Lot is rendered irreparably uninhabitable as a result of such a taking, the Lot shall be deemed deleted from the Project and the Owners and Mortgagees of the affected Lot, upon receiving the award and any portion of the reserve funds of the Association reserved for the Lot, shall be released from the applicability of the Project Documents and deemed divested of any interest in the Common Area.

## SECTION 13

### MORTGAGEE PROTECTIONS

13.01. Mortgages Permitted. Any Owner may encumber his/her Lot with mortgages.

13.02. Priority of Mortgage. Notwithstanding any other provision of this Declaration, it is hereby provided that a breach of any of the conditions contained in the Project Documents by any Owner or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said Lot or any part thereof. Any lien which the Association may have on any Lot in the Project for the payment of common expense assessments attributable to such Lot will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date of recordation of a notice of delinquent assessment.

13.03. Payment of Taxes or Premiums by Mortgagees. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee which requests the same to be executed by the Association.

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

13.05. Mortgagee's Rights. A First Mortgagee's rights shall include, but not be limited to, the following:

A) Attend Meetings. Any First Mortgagee, upon written request, shall receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

B) Furnish Information. Any Mortgagee may furnish information to the Board concerning the status of any mortgage.

C) Inspect Books and Records. The Association shall make available to Owners, prospective purchasers and First Mortgagees current copies of the Project Documents and the books, records and financial statements of the Association. "Available" means available for inspection, upon written request, during normal business hours.

In addition, if the Project contains fifty (50) or more Lots, the Association must provide an audited financial statement for the immediately preceding fiscal year if the First Mortgagee submits a written request for it. Said financial statement shall be furnished by the Association within a reasonable time following such request. If the Project contains fewer than fifty (50) Lots and there is no audited financial statement available, any First Mortgagee should be allowed to have an audited financial statement prepared at its own expense.

13.06. No Restriction on Owner's Right to Ingress and Egress. Except as allowed in Section 15.09, there shall be no restriction upon any Owner's right to ingress and egress to his/her Lot, which right shall be perpetual and appurtenant to his/her Lot ownership.



13.07. Notices to Mortgagees. Upon written request to the Association, any First Mortgagee shall be entitled to timely written notice of the following:

- A) Any proposed amendment to the Project Documents effecting a change in:
  - 1) The boundaries of any Common Area Lot or the exclusive use rights appurtenant thereto, if any;
  - 2) The interests in the general or exclusive use Common Areas, if any, appurtenant to any Lot or the liability for common expenses appurtenant thereto;
  - 3) The number of votes in the Association appurtenant to any Lot; or,
  - 4) The purposes to which any Lot or the Common Area are restricted.
- B) Any proposed termination of the legal status of the Project as a planned development.
- C) Any condemnation or casualty loss which affects either a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such requesting party.
- D) Any sixty (60) day delinquency in the payment of Assessments or Individual Charges owed by an Owner subject to a First Mortgage held, insured or guaranteed by such requesting party.
- E) Any default in the performance by the affected Owner of any obligation under the Project Documents which is not cured within sixty (60) days.
- F) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

## SECTION 14 AMENDMENTS

14.01. Prior to First Conveyance. Prior to close of escrow on the conveyance of the first Lot, Declarant may amend or revoke this Declaration subject to the requirements of Business and Professions Code Sections 11012 and 11018.7.

14.02. After First Conveyance. After conveyance of the first Lot, this Declaration may be amended or revoked only by the affirmative vote (in person or by proxy) or written consent of Members of the Association. The percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than **75 percent (75%) affirmative vote of the Board of Directors** ~~the prescribed percentage of affirmative votes required for action to be taken under that clause or provision.~~

14.03. Recordation. Any amendment must be recorded and shall become effective only upon being recorded in the County Recorder's Office.

14.04. Unanimous Consent for Specific Amendments. The consent of all Owners shall be required for any amendment of Project Documents effecting a change in:

- A) The boundaries of any Common Area Lot;
- B) The undivided interest in the common elements pertaining to the Lot or the liability for Common Expenses appertaining thereto;
- C) The number of votes in the Owner's Association appertaining to the Lot; or,
- D) The fundamental purposes to which any Lot or the common elements are restricted.

## SECTION 15

### GENERAL PROVISIONS

15.01. Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be binding on the Association and the Owners of any Lots, their legal representatives, heirs, grantees, tenants, successors and assigns, subject to this Declaration, for a term of thirty (30) years from the date this Declaration is recorded. Thereafter, subject to the Section entitled "Amendments", they shall be automatically extended for successive periods of ten (10) years.

15.02. Compliance. Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, the Project Documents and the decisions and resolutions of the Association or the Board, as amended from time to time. Failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, for injunctive relief, or to enforce such provisions, decisions or resolutions.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Project Documents shall be deemed to be binding on all Owners of Lots, their successors and assigns.

15.03. Notices. Any notice permitted or required by the Project Documents may be delivered either personally or by mail **or by electronic mail**. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first-class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Lot of such person if no address has been given to the Secretary.

15.04. Notice of Transfer. No later than fifteen (15) days after the sale or transfer of any Lot under circumstances whereby the transferee becomes the Owner thereof, the transferee shall notify the Association in writing of such sale or transfer. Such notice shall set forth:

- A) The Lot involved;
- B) The name and address of the transferee and transferor; and,
- C) The date of sale.

Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and any action taken by the transferor as an Owner may be recognized by the Association. Prior to receipt of any such notification by the Association, any and all communications required or permitted to be given by the Association shall be deemed duly given and made to the transferee if duly and timely made and given to said transferor.

15.05. Delivery of Project Documents to Transferee. Prior to the transfer of title to a Lot, the transferor shall provide to the prospective transferee a copy of the Project Documents and such other documents and information as are required by California Civil Code Section 1368.

15.06. Easements Reserved and Granted. Any easements appurtenant to a Lot referred to in this Declaration shall be deemed reserved and/or granted by reference to this Declaration in a deed to said Lot.

15.07. Termination of Any Responsibilities of Declarant. If Declarant shall convey all of its right, title and interest in and to the Project to any partnership, individual or corporation, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or corporation shall be obligated to perform all such duties and obligations of the Declarant.

15.08. Mergers and Consolidations. To the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit organizations organized for the same purposes as this Association, provided that any such merger or consolidation shall have the written consent of all of the Members or the assent by vote of two-thirds (2/3) of the Members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be given to all Members at least thirty (30) days in advance, and must comply with the annexation provisions of Section 3.04, incorporated herein by reference.

15.09. Limitation of Restriction on Declarant. Nothing in this Declaration shall be understood or construed to:

A) Prevent Declarant, its contractors, or subcontractors from doing on the Project or any Lot, whatever is reasonably necessary or advisable in connection with the completion of said work; or,

B) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Project, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Project as a residential community and disposing of the same in parcels by sale, lease, or otherwise; or,

C) Prevent Declarant from conducting on any part of the Project its business of completing said work and of establishing a plan of ownership and of disposing of said Project in Lots by sale, lease or otherwise; or,

D) Prevent Declarant from maintaining such sign or signs on any of the Project as may be necessary for the sale, lease or disposition thereof, provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his/her Lot or the Common Area.

The foregoing limitations of the application of the restrictions to Declarant shall terminate upon the sale of Declarant's entire interest in the Project, or three (3) years after the close of the first escrow, whichever occurs earlier.

Any action taken by Declarant pursuant to any provision of this Section will not unreasonably interfere with the Owners' rights and use of the Project.

15.10. Successor. The rights of Declarant in this Declaration may be assigned by Declarant to any successor all or any part of Declarant's interest in the Project, as developer, by an express assignment incorporated in a recorded deed that transfers any such interest to a successor or to a Mortgagee acquiring Declarant's interest in the Project by foreclosure or by deed in lieu of foreclosure.

15.11. Severability. Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Project is located, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

15.12. Estoppel Certificate. Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information:

A) Whether to the knowledge of the Association, the Owner or the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws, or Association Rules and Regulations;

B) The amount of regular and special Assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and,

C) The amount of any Assessments levied against the Owner's Lot that are unpaid as of the date of the statement, including any late charges, interest, or cost of collection that as of the date of the statement are or may be made a lien against the Owner's Lot as provided by this Declaration, the Articles, Bylaws, or Association Rules and Regulations.

15.13. Conflict with Project Documents. If there is a conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order; Articles, Bylaws, and **Cheyenne Lake HOA** Rules and Regulations of the Association.

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

IN WITNESS WHEREOF, Declarant has executed this Declaration.

DATED: \_\_\_\_\_, 20\_\_.

CHEYENNE LAKE, INC.,  
a California Corporation

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

Title: President

**EXHIBIT "A"**

**DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION**

All that certain real Property situated in the County of San Bernardino, State of California, described as follows:

Lots 1 through 11, inclusive, and Lots V, W, X, Y and Z, as shown on the Map entitled "Tract No. 15619", filed for record \_\_\_\_\_, 19\_\_\_\_\_, in Book \_\_\_\_\_ of Maps, Page \_\_\_\_\_, San Bernardino County Records.

**CONSENT OF LIENHOLDER  
AND SUBORDINATION OF LIEN**

The undersigned beneficiary under that certain Deed of Trust recorded \_\_\_\_\_, 19\_\_\_\_, in Book \_\_\_\_\_, Page \_\_\_\_\_, as Instrument/Document No. \_\_\_\_\_, of the Official Records of \_\_\_\_\_ County, California, consents to all of the provisions contained in the attached Declaration and agrees that the lien of the deed of trust shall be junior and subordinate and subject to said Declaration.

Dated \_\_\_\_\_, 20\_\_\_\_.

Lienholder

\_\_\_\_\_

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

Title: \_\_\_\_\_

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

Title: \_\_\_\_\_



State of \_\_\_\_\_)

County of \_\_\_\_\_)

On \_\_\_\_\_ before me,

\_\_\_\_\_

personally appeared

\_\_\_\_\_  
NAME(S) OF SIGNER(S)

\_\_\_\_\_  
NAME(S) OF SIGNER(S)

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

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY

**CAPACITY CLAIMED BY SIGNER**

- “ INDIVIDUAL(S) “ TRUSTEE(S)
- “ CORPORATE \_\_\_\_\_ “ SUBSCRIBING WITNESS
- “ OFFICER(S) \_\_\_\_\_ “ GUARDIAN/CONSERVATOR
- “ PARTNER(S) (Titles) “ OTHER:
- “ ATTORNEY-IN-FACT

**SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(IES)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_