

Attachment E  
Declaration of Protective Restrictions  
For the Homelands and Openlands

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DECLARATION OF PROTECTIVE RESTRICTIONS  
FOR THE  
HOMELANDS AND OPENLANDS  
OF THE  
SANTA LUCIA PRESERVE

Conformed copy of recorded instrument.

WHEN RECORDED, MAIL TO:

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Document No. 9885190

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DECLARATION OF PROTECTIVE RESTRICTIONS  
FOR THE  
HOMELANDS AND OPENLANDS  
OF THE  
SANTA LUCIA PRESERVE

THIS DECLARATION is hereby made on the date hereinafter set forth by RANCHO SAN CARLOS PARTNERSHIP L.P., a California limited partnership, hereinafter referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the Owner of certain real property located in the unincorporated area of Monterey County, California, being Lots 1 through 75 & 135-154, inclusive, as shown on that certain subdivision map of Tract No. 1308, SANTA LUCIA PRESERVE PHASE A, recorded November 24, 1998, in Volume 20 of Maps, "Cities and Towns", at page 8, Official Records of Monterey County, California.

WHEREAS, the said real property is a standard subdivision as defined in Section 11000 of the California Business and Professions Code; and

WHEREAS, it is Declarant's intention to impose upon said real property mutually beneficial restrictions under a general plan of improvement for the benefit of all portions of the Subject Property, and the Owners thereof;

WHEREAS, Declarant is also the Owner of additional real property located in the Greater Monterey Peninsula Planning Area of the unincorporated area of Monterey County, California,

adjacent to said real property, consisting of all of the residential Lots included within the boundaries of the Vesting Tentative Subdivision Map of The Santa Lucia Preserve (PC-94-067) approved by the Monterey County Board of Supervisors on February 6, 1996 (Resolution No. 96-060) and re-approved by the Monterey County Board of Supervisors on August 26, 1997 (Resolution No. 97-360) (the "Later Phase Property"); and

WHEREAS, Declarant is also the Owner of additional real property located in the Carmel Valley Master Plan Area and the Carmel Area Coastal Zone of the unincorporated area of Monterey County, California, adjacent to said real property and the Later Phase Property, portions of which may be proposed for residential development in the future (the "Future Phase Property").

NOW, THEREFORE, Declarant hereby declares that the real property hereafter declared to be subject to this Declaration shall be held, sold, occupied and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding upon all parties having any right, title or interest in the Subject Property or any part hereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

#### ARTICLE I

##### PROPERTY SUBJECT TO DECLARATION

Section 1. Phase A. The real property subject to this Declaration, and located in the unincorporated area of Monterey County, California, is described as follows:

Lots 1 through 75 and 135 through 154, inclusive (but expressly excluding Lots 255 through 263 inclusive) as said Lots are shown and described on the recorded final map of Tract No. 1308, "THE SANTA LUCIA PRESERVE PHASE A" filed for record on November 24 1998, in Volume 20 of Maps, "Cities and Towns", at page 8, Official Records of Monterey County, California. "Subject Property"

Section 2. Annexation of Additional Property. Additional property may become subject to this Declaration by the following procedure:

A. Future Phase Property. If Declarant or Declarant's successor in interest shall develop or cause to be developed as a standard subdivision additional detached single-family residential property

within the Later Phase Property, Declarant shall annex the residential portions (Homelands and Openlands) of such additional real property to the Subject Property of this Declaration, and to bring such additional real property within the general plan and scheme of this Declaration without the approval or consent of the then Owners of the Subject Property, by executing and recording a declaration of annexation declaring such additional real property to be annexed to this Declaration and bound by all of its covenants, conditions and restrictions.

B. Future Phase Property. If Declarant or Declarant's successor in interest shall develop or cause to be developed as a standard subdivision additional detached single-family residential property within the Future Phase Property, Declarant shall have the right, but not the obligation, from time to time to annex such additional real property or any portion or portions thereof to the Subject Property of this Declaration, and to bring such additional real property within the general plan and scheme of this Declaration without the approval or consent of the then Owners of the Subject Property, by executing and recording a declaration of annexation declaring such additional real property to be annexed to this Declaration and bound by all of its covenants, conditions and restrictions.

C. Recordation. Upon the recordation of any such declaration of annexation, all of the real property described in such declaration of annexation shall be included within the meaning of "the Subject Property" for all purposes of this Declaration.

## ARTICLE II

### DEFINITIONS

Certain terms as used in this Declaration, in the deeds conveying the Lots and in the maps filed for record pertaining to this real estate development, shall be defined as follows unless the context clearly indicates a different meaning therefor:

1. "Association" means The Santa Lucia Preserve Association, a California nonprofit mutual benefit corporation, the members of which shall be the Owners of Lots in the Subject Property, their successors and assigns.

2. "Board" means the governing body of the Association, unless some other board is expressly designated.

3. "Building Envelope" means that portion of any Lot designated as a Building Envelope on the Final Map and defined in

this Declaration as a "Homeland", and within which the construction of buildings and accessory and appurtenant structures and improvements is permitted.

4. "Bylaws" means the bylaws of the Association, as amended from time to time.

5. "Grazing Plan" means and refers to the Revised Rancho San Carlos Cattle Grazing and Livestock Management Plan (Sage Associates, February 1994, Revised October 1998), as amended from time to time.

6. "The Conservancy" shall mean and refer to the Santa Lucia Conservancy, the entity responsible for the management of the open space components of the Project, including but not limited to the Openlands and the Wildlands.

7. "Community Services District" shall mean and refer to a Community Services District established by the County of Monterey pursuant to the County Services District Law (Government Code Section 61000 et. seq.) to provide extended governmental services (which may include, but are not limited to security and police protection, structural fire protection services, operation of water and wastewater systems and septic systems, maintenance of roads, bridges, culverts, gates and drainage facilities, and transportation services) to the Project and to levy taxes, rates and other charges within the Project in an amount sufficient to pay for such services.

8. "Declarant" shall mean and refer to the RANCHO SAN CARLOS PARTNERSHIP L.P., a California limited partnership.

9. "Declaration" shall mean and refer to this Declaration.

10. "Declaration of Annexation" shall mean a duly executed and recorded declaration of annexation declaring an addition phase or phases of the Project to be annexed to this Declaration and bound by all of its covenants, conditions and restrictions as provided in Article I, Section 2 of this Declaration.

11. "Design Guidelines" shall mean and refer to The Santa Lucia Preserve Design Guidelines (Hart/Howerton 1998) as the same may be modified from time to time as provided herein.

12. "The DRB" means the Design Review Board authorized to carry out Design Review in accordance with Article III, Section 2 of this Declaration.

13. "Employee Unit" shall mean and refer to a residential unit, whether single family or multi-family, designated and occupied by a person or persons employed within the Santa Lucia Preserve, including, without limitation, the residential unit located on Lot 66, the residential units located on those Lots designated for multiple residential use in sub-section B(ii) of Section 2 below, and Lots designated in a Declaration of Annexation for a subsequent phase or phases of the Project.

14. "Final Map" shall mean and refer to the recorded final subdivision map or parcel map for any portion of the Subject Property. For the first phase of the Project, the Final Map is the final subdivision map of Tract No. 1308, THE SANTA LUCIA PRESERVE PHASE A, recorded on November 24, 1988, in Volume 20 of Maps, "Cities and Towns", at page 8, Official Records of Monterey County, California.

15. "Forest Management Plan" shall mean and refer to the Rancho San Carlos Forest Management Plan (Ralph Osterling Consultants, Inc., February 18, 1994), as amended from time to time.

16. "Homeland" shall mean and refer to all of the area of any Lot located within the Building Envelope as shown on the Final Map.

17. "Lot" shall mean and refer to a subdivided residential Lot as shown and described on any recorded final map of the Subject Property.

18. "Member" means a person or entity entitled to membership in the Association. Each Owner of any Lot in the Subject Property shall be a member.

19. "Mortgage" shall include a deed of trust as well as a mortgage.

20. "Openlands" shall mean and refer to all portions of any Lot located outside of the Homeland and subject to a conservation easement in favor of the Conservancy.

21. "Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of a fee simple title to any Lot which is a part of the Subject Property, but excluding those persons or entities having an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, the vendee-purchaser, rather than the vendee-fee Owner, will be considered the "owner".



22. "Person" means a natural person, a corporation, a partnership, trustee or other legal entity.

23. "Private Road" means and refers to any road shown by name on the Final Map, or on the final map of any other subdivision hereafter annexed to this Declaration, whether paved or unpaved, not owned or maintained by the County of Monterey or any other public entity other than the Community Services District, and excluding Public Roads and Private Driveways.

24. "Private Driveway" means any driveway within the Project leading from any Private Road or Public Road to one or more Homelands.

25. "The Project" shall mean and refer to the entirety of the real estate project known as The Santa Lucia Preserve, including the residential, recreational and open space components thereof, whether located in the Greater Monterey Peninsula Planning Area, the Carmel Valley Master Plan Area or the Carmel Area Coastal Zone.

26. "Public Road" means and refers to any road shown by name on the Final Map, or on the final map of any other subdivision hereafter annexed to this Declaration, whether paved or unpaved, owned or maintained by the County of Monterey, or any other public entity other than the Community Services District, and excluding Private Roads and Private Driveways.

27. Recorded, Recording and/or of Record. Recorded, recording and/or of record in the office of the County Recorder of Monterey County, California.

28. "Resource Management Plan" means and refers to the Resource Management Plan for The Santa Lucia Preserve, dated April, 1994, as amended from time to time.

29. Singular and Plural. The singular and plural number and the masculine, feminine and neuter gender shall each include the other where the context requires.

30. "Subdivision" means and refers to all of the land embraced within the exterior boundaries of the subdivision shown and described on the Final Map, or on the final map of any other subdivision hereafter annexed to this Declaration.

31. "Tentative Map" shall mean and refer to the vesting tentative subdivision map of The Santa Lucia Preserve as approved by the Monterey County Board of Supervisors on February 6, 1996,

by Resolution No. 96-060, and re-approved by the Monterey County Board of Supervisors on August 26, 1997, by Resolution No. 97-360, and any subsequently approved tentative subdivision map, tentative parcel map or vesting tentative subdivision map of any portion of the First Phase Property, the Later Phase Property or the Future Phase Property. Said Resolutions, and the resolutions approving any subsequently approved tentative subdivision map, tentative parcel map or vesting tentative subdivision map of any portion of the First Phase Property, the Later Phase Property or the Future Phase Property are hereby referred to collectively as "the Project Approvals," and the conditions of approval contained in the Project Approvals are hereinafter referred to collectively as "the Conditions of Approval."

32. "Wildlands" shall mean and refer to those portions of the project owned in fee by the Conservancy, designated for open space and conservation uses, and subject to a conservation easement.

### ARTICLE III

#### RESTRICTIONS ON THE USE AND OCCUPANCY OF PROPERTY

##### Section 1. Uses of Property.

A. Restrictions on the Use and Occupancy of Homelands and Openlands. The use and occupancy of all Homelands and Openlands subject to this Declaration shall be subject to the following covenants, conditions and restrictions:

i) Equestrian Use. The Homelands and Openlands of Lots 1, 3, 4, 5, 6 and 26 may be used by the Owner as Full-Time Sites (as defined in the Grazing Plan), and the Homelands of Lots 10, 11, 13, 14, 15, 16, 17, 47, 137, 138, 139, 145, 146, 147, 148 and 149 may be used by the Owner as Part-Time Sites (as defined in the Grazing Plan), for the maintenance, raising, breeding and keeping of horses, subject to the provisions of the Conservation Easement pertaining to the Openlands of such Lots, and subject to the standards and regulations of the Grazing Plan. Except as provided in this sub-section (i) or in a Declaration of Annexation for a subsequent phase or phases of the Project, the keeping of horses on the Homelands or Openlands of any Lot shall be prohibited.

ii) Livestock. Except as expressly provided herein or in the Declaration of Annexation for a subsequent phase or phases of the Project, the maintenance, raising, breeding or keeping of horses, cattle, swine, sheep, goats, chickens, turkeys or other farm animals or fowl, whether for private or commercial purposes,

is prohibited on the Homelands and Openlands of the Subject Property.

iii) Household Pets. No bird, fowl, reptile or animal of any kind shall be raised, bred or kept on the Homelands or Openlands of the Subject Property, except as expressly provided in this sub-section 1.A, and except that domestic household pets, including dogs and cats, may be kept on the Homelands of the Subject Property provided that (a) said household pets are of a reasonable size; (b) said household pets do not exceed a reasonable number on any Lot; (c) no bird, fowl, reptile or animal of any kind shall be kept, bred or maintained for any commercial purpose; (d) said pets are controlled by a leash or other appropriate constraint when outside of a Homeland; (e) said pets do not produce noise or odor which unreasonably disturbs the occupants of other Lots in the Subject Property, or wildlife in any Openlands or Wildlands; and (f) the free roaming of cats and other domestic pets of any kind outside of the Homeland of any Lot is prohibited. The Association shall cause non-complying pets to be removed from the Project in accordance with the procedures set forth in Article IV, Section 2.B. of this Declaration.

iv) Temporary Structures. No tent, shack, trailer, camper, basement, garage, outbuilding, mobile home, modular home or structure of a temporary character shall be installed, constructed, used or occupied on the Homeland or Openlands of any Lot at any time as a residence, either temporarily or permanently.

v) Trade or Business. No trade, business, commercial or transient activity shall be carried on or conducted on the Homeland or Openlands of any Lot, provided, however, that bona fide home occupations are not prohibited on the Homeland of a Lot so long as they are merely incidental to primarily residential use of the Lot, are permitted by local law, are conducted by the occupant of the principal residence on the Lot, and are conducted in such a manner as to not generate additional traffic or otherwise adversely affect other Owners' use and enjoyment of the Project.

vi) Quiet Enjoyment. No noxious, illegal or seriously offensive activities shall be carried on upon the Homeland or Openlands of any Lot or any part of the Subject Property; nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to, or which may in any way interfere with the quiet enjoyment of, each of the Owners of their respective Lot.

vii) Satellite Dishes and Antennas. No satellite dish

or external antenna of any kind shall be allowed on the Openlands of any Lot. A satellite dish or external antenna of any kind shall be allowed on the Homeland of any Lot only if shielded from view from any road, driveway, another Homeland, or from any Openlands or Wildlands (including the Openlands of such Lot).

viii) Sign Control. Except for a) directional or informational signs installed or maintained by Declarant, the Association, the Conservancy or the Community Services District, and b) signs not exceeding six (6) square feet in size containing the property Lot number or address and the Owner's name or property name, and c) signs not exceeding six (6) square feet in size advertising a Lot for sale, no signs, billboards, posters or advertising of any kind or character shall be erected or maintained on any Lot. Signs allowed under sub-sections a) or b) of this sub-section viii shall require Design Review and Approval in accordance with Section 2 of this Article III.

ix) Noise. Activities conducted on the Homelands and Openlands of the Subject Property shall be conducted so as to avoid the emission, generation, amplification or transmission of noise which is inconsistent with the rural and wilderness character of The Santa Lucia Preserve or causes a nuisance to the Owners or occupants of adjacent Homelands. The operation on any Homeland or Openlands of any machine, mechanism, device or contrivance which produces a noise level exceeding 85 dba measured fifty feet therefrom is prohibited. Chain saws, leaf blowers, generators and other devices and machines powered by two-cycle engines shall be muffled in accordance with the best available technology to reduce noise, and the operation of such devices and the production of outside amplified music is prohibited before one hour after sunrise and after sunset except in the case of a *bona fide* emergency.

x) Private Water Sources. No private water wells shall be drilled, stream impoundments or diversions constructed, or other alternate private water sources installed on the Homeland or Openlands of any Lot. Nothing contained in this Sub-Paragraph shall be construed or interpreted to preclude the drilling, improvement, operation, maintenance, repair or replacement on Homelands or Openlands of water wells which are part of the community water system serving the Project.

xi) Fire Fuel Modification. To the extent that compliance is not achieved by the fuel modification activities conducted by the Conservancy on the Openlands, Owners shall comply with the fuel modification requirements of Public Resources Code Section 4291 and Chapter 18.56 of the Monterey County Code in accordance with guidelines published by the Conservancy for the

purpose of diminishing the likelihood and intensity of wildfire by maintaining a "defensible space" around all structures and reducing the volume and density of flammable vegetation in the vicinity of structures.

xii) Rubbish and Odors. No rubbish or debris of any kind (other than *bona fide* composting of bio-degradable vegetation trimmings) shall be permitted to accumulate upon the Homeland or Openlands of any Lot, and no odor shall be permitted to arise therefrom which is or may become detrimental to any of the Subject Property in the vicinity thereof and the occupants thereof and no nuisance shall be permitted to exist upon the Homelands or Openlands of the Subject Property which is offensive or detrimental to any property in the vicinity thereof or to its occupants. Except as expressly provided herein, no dump, burial pit or other solid waste disposal facility shall be used or maintained within the Homeland or Openlands of any Lot.

xiii) Mineral Extraction. Oil drilling, oil development operations, refining operations of any kind, quarrying or other mineral extraction of any kind shall not be permitted upon the Homeland or Openlands of any Lot, nor shall oil wells, tanks (other than approved domestic propane tanks or fire protection water tanks), tunnels, mineral excavations or shafts be permitted upon or in the Homeland or Openlands of any Lot subject to this Declaration.

xiv) Hazardous Activities. No activities shall be conducted, and no structure or improvement constructed or maintained, on the Homelands or Openlands of any Lot which is unsafe, dangerous or hazardous to persons or property. Without limiting the generality of the foregoing, no firearms shall be discharged on the Homelands or Openlands of any Lot except in *bona fide* cases of legally sanctioned defense of persons, property or animals.

xv) Exterior Lighting. Exterior lighting shall be unobtrusive, harmonious with the pastoral character of The Santa Lucia Preserve, and shall be located, designed, constructed and maintained so that only the intended area is illuminated and off-site glare is fully controlled. All exterior lighting shall require Design Review and Approval in accordance with Section 2 of this Article III. Design Approval shall be granted only for exterior lighting which is a) reasonably necessary for the safe use of a driveway serving the Homeland of the Lot; b) emergency lighting connected to a security system, or c) totally concealed from off-site visibility.

xvi) Storage of Building Materials. No lumber, metals,

roofing, siding, excavation or fill dirt, rock or other building materials shall be kept, stored or allowed to accumulate on the Homelands or Openlands of any Lot, except during the ordinary course of approved construction on the Lot, and then only within the building site.

xvii) Fish and Aquatic Life. No fish or other aquatic organisms shall be kept or released in any drainage, pool, pond or other waterbody on the Homeland or Openlands of any Lot except for a completely secure pool or pond located within the boundaries of the Homeland for which approval has been granted by the Conservancy and which is constructed in accordance with Design Review as provided in Section 2 of this Article III.

xviii) Resource Protection. The Homelands and Openlands of the Subject Property are subject to the provisions of the Resource Management Plan. The Homeland and Openlands of each and every Lot within the Subject Property shall be used, occupied, developed, improved and maintained in compliance with the goals, objectives and provisions of the Resource Management Plan, including but not limited to the use of drought-tolerant native landscaping, water-efficient irrigation systems, low flow shower heads and water-conserving toilets; and in compliance with all other resource conservation programs and measures adopted by the County of Monterey or any other governmental entity having jurisdiction over the Subject Property, or by the Conservancy, for the purpose of protecting the identified unique and valuable natural resources of The Santa Lucia Preserve.

xix) Compliance with Zoning Ordinance. All uses conducted on the Homelands and Openlands of the Subject Property, and all development and structures on the Homelands and Openlands of the Subject Property, shall be subject to and comply with the provisions of the Monterey County Zoning Ordinance, and nothing contained in this Section 1 shall be interpreted to permit uses, development or structures in contravention of the Monterey County Zoning Ordinance, or to allow uses, development or structures without first obtaining all applicable permits or entitlements from the County of Monterey pursuant to the provisions of the Monterey County Zoning Ordinance. No structures within the Openlands shall be allowed to interfere with underground utilities or facilities.

xx) Archaeological Resources. If archaeological resources (as defined in Section 21083.2 of the Public Resources Code) or human remains are discovered during construction on the Homelands or Openlands, work shall be halted within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist and, as appropriate, a Native American

representative as designated by the Native American Heritage Commission. If the find is found to be significant, appropriate mitigation measures shall be formulated and submitted to the Monterey County Planning and Building Inspection Department for review and approval.

xxi) Erosion Control. Soil disturbance activities on the Homelands and Openlands, such as road grading, shall be limited to the period between April 15 and October 15 unless winter season operating conditions as provided in the Erosion Control Ordinance (Chapter 16.12, Monterey County Code) are implemented and exposed soil is protected in accordance with the Rancho San Carlos Final Erosion Control Report (Bestor Engineers, 1998).

xvii) Viticulture. Viticulture is prohibited within the Homelands and Openlands of the Project.

B. Restrictions on the Use and Occupancy of Homelands Only. The use and occupancy of all Homelands subject to this Declaration shall be subject to the following covenants, conditions and restrictions:

i) Allowable Structures. Except as provided in sub-sections (i), (ii) and (iii) of this sub-section 1.B, no Homeland shall be occupied and used except for single family residential purposes (including *bona fide* home occupations) by the Owners, their domestic employees, tenants and social guests. No building or structure shall be erected, placed or permitted to remain on any Homeland other than the following as permitted by the Monterey County Zoning Ordinance:

a) One principal residence.

b) One senior citizen unit, subject to the limitation contained in sub-section (iii) of this sub-section 1.B.

c) One caretaker unit on any Lot exceeding two acres in size, or ten acres in size if a senior citizen unit exists on the site, subject to the limitation contained in sub-section (iii) of this sub-section 1.B.

d) One guest house, subject to the limitation contained in Sub-Paragraph (iii) of this sub-section 1.B.

e) Such additional buildings and structures as are clearly appurtenant and accessory to the residential use of the Lot.

f) The Homelands of Lots 15, 17, 73, 136, 138, 139, 147, 148 and 149, and Lots so designated in a Declaration of Annexation for a subsequent phase or phases of the Project, may be occupied and used for one (1) additional residential unit per Lot, subject to first obtaining the following: i) a certificate from Declarant allocating to such Lot one additional unit of the Project's overall allowed residential density, and ii) all required permits from the County of Monterey for such second residential unit, and provided that the total development within the Santa Lucia Preserve shall at no time exceed that permitted by Monterey County Board of Supervisors Resolution No. 93-115.

ii) Multiple Residential Units. The Homelands of Lots 27, 28, 29, 30, 31, 62, 63, 64 and 67, and Lots so designated in a Declaration of Annexation for a subsequent phase or phases of the Project, may be occupied and used for multiple residential units, for persons or families employed in connection with the Project, either attached or detached, subject to first obtaining all required permits from the County of Monterey, and limited to the following number of units:

Lot 27:	2 units
Lot 28:	2 units
Lot 29:	2 units
Lot 30:	2 units
Lot 31:	2 units
Lot 62:	6 units
Lot 63:	2 units
Lot 64:	4 units
Lot 67:	2 units

Lots so designated in a Declaration of Annexation for a subsequent phase or phases of the Project: The number of units specified in such Declaration of Annexation.

Said Homelands of such Lots shall be used solely for residential purposes. No building or structure shall be erected, placed or permitted to remain on the Homelands of said Lots other than residential units not exceeding the number provided in this Sub-Paragraph, and such additional buildings and structures as are clearly appurtenant and accessory to the residential use of the



Lots.

iii) Guesthouses and Caretaker Units. The number of guest houses within the project shall not at any time exceed a number that is equal to 75% of the number of market-rate residential Lots contained within Tentative Maps approved for the Project from time to time; and the number of caretaker and senior citizen units within the project shall not at any time exceed a number that is equal to 50% of the number of market-rate residential Lots contained within Tentative Maps approved for the Project from time to time.

iv) Water Conservation. Occupancy and use of the Homeland of any Lot subject to this Declaration shall comply with the provisions of Monterey County Water Resources Agency Ordinance #3539, including the following water conservation measures: New construction shall incorporate the use of low water use plumbing fixtures including, where applicable, hot water recirculation systems; landscaping of front yards of all homes at the time of construction; and use of drought tolerant plants together with water-efficient irrigations systems. Repair of irrigation system leaks shall be the responsibility of the Owner. Vehicle and building washing shall utilize hoses equipped with shut-off nozzles. No potable water shall be used for sidewalk washing, and potable water shall not be allowed to spill into streets, curbs and gutters. Swimming pools shall not be drained or refilled unless required for structural repairs or for compliance with public health regulations. Decorative fountains shall provide for recirculation within the fountain.

v) Landscaping. Residential development within the Homeland of any Lot subject to this Declaration shall comply with the following standards:

a) Use of native and non-invasive non-native, drought-tolerant and/or fire resistant plant material is mandatory.

b) Extensive use of non-native turf is prohibited.

c) Landscape irrigation systems shall utilize low precipitation sprinkler heads, bubblers, drip systems and timing devices to minimize water use.

d) Landscape design shall incorporate vegetation management and fuel modification principles to reduce the quantity of flammable material conducive to wildfire.

vi) Maintenance. No building or structure upon the Homeland of any Lot subject to the provisions of this Declaration shall be permitted to fall into a state of disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted.

vii) Garbage Service. All residences within the Homelands shall be continuously served by garbage collection service.

viii) Rentals. Except for multi-family units and designated employee housing units, no residence on any Lot, including senior citizen units and caretaker units, shall be let, leased or rented for a term less than one year.

ix) Height Limits. No structure on Lot 65 shall exceed a height of 24 feet; no structure on Lots 28, 29, 30 and 31 shall exceed a height of 18 feet; and no structure on Lot 27 shall exceed a height of 16 feet; as height of structures is defined in the Monterey County Zoning Ordinance.

x) Vehicle Parking and Storage. No trailer, camper, motor home, recreational vehicle, truck (other than standard size pickup truck or standard size van), boat, inoperable automobile, or similar vehicle or equipment shall be permitted upon any area within the Homeland of any Lot unless placed or maintained within a structure or other visual screen, and not visible from any road, driveway, any other Homeland, or from any Openlands (including the Openlands of such Lot) or Wildlands. No Owner shall construct, repair, service or maintain any motor vehicle within the Homeland of any Lot except for emergency repairs or private non-commercial vehicle construction, reconstruction, repair, service or maintenance carried on entirely within an enclosed garage or shop.

xi) Non-native Vegetation. The planting, growing or maintenance of non-native plants or vegetation on the Homeland of any Lot is allowed only in a manner and location which assures that such non-native species will not invade the Openlands or the Wildlands of the Preserve.

xii) Heating. Energy for space heating and water heating shall be provided primarily from propane, solar or other non-electric sources.

xiii) Fences and Walls. No fence or wall shall be constructed or maintained within the Homelands of any Lot, including perimeter fencing, without first obtaining Design Review and Approval in accordance with Section 2 of this Article III. Design Approval shall be granted only for fences and walls which

a) do not encroach on any Openlands of any Lot; b) do not impede the movement of wildlife through the Openlands of any Lot, c) do not alter or obstruct the view from any other Lot or Parcel; and d) are harmonious with the pastoral character of The Santa Lucia Preserve.

C. Restrictions on the Use and Occupancy of Openlands Only. The Openlands of the Subject Property shall be occupied and used solely for open space, recreational and conservation purposes, as more particularly provided in this Sub-Paragraph C:

i) Permitted Uses of Openlands.

The following itemized uses and activities are permitted uses of the Openlands, but may be carried on only by the Conservancy or its licensee:

a) Fuel & Fire Management: The reasonable and prudent management of fuel and fire conditions, including vegetation management, maintenance of fuel breaks, construction and maintenance of fire-safe areas, prescribed burns and fire suppression.

b) Livestock Grazing: Provided that they are not used by the Owner of the Lot for the keeping of horses as provided in sub-section A(i) of this Section 1; and provided further that the Conservancy obtains the written consent of the Owner of the Lot; the Openlands of Lots 1, 3, 4, 5, 6 and 26 may be used exclusively by the Conservancy for the maintenance, raising, breeding and grazing of cattle (including the construction and maintenance of pasture fencing in accordance with sub-section (C)(ii)(k) of this Section 1), subject to the provisions of the conservation easement pertaining to the Openlands of such Lot, and subject to the regulations and standards of the Grazing Plan. Except as provided in this sub-section (b) or in a Declaration of Annexation for a subsequent phase or phases of the Project, the grazing of livestock on the Openlands of any Lot shall be prohibited.

c) Native Plant Cultivation & Use: The propagation, cultivation and transplantation of native plants and seeds for nursery development, reforestation, habitat restoration and enhancement purposes exclusive to the Project.

d) Wildlife & Habitat Management: The restoration, enhancement, reintroduction, exotics-control, and other forms of management useful to support, sustain and enjoy the native biodiversity of the Subject Property, provided that any lawful hunting and fishing shall be managed according to

reasonable and prudent resource management principles, and shall only be conducted on the Openlands of any Lot with the prior written consent of the Owner of that Lot.

e) Education, Recreation & Research: Resource-oriented public education, interpretation, scientific and academic training and research programs, as supervised by the Conservancy; camping, picnicking, hiking, horseback riding and other managed and passive uses, as supervised by Declarant; all such uses subject to the written consent of the Owner.

The following itemized uses and activities are permitted uses of the Openlands, but may be carried on only by Declarant or the Community Services District:

f) Approved Infrastructure and Accessory Uses: The construction, operation and maintenance of approved Project infrastructure, including roads, utilities, driveways, bridges, trails, camp sites, culverts, drainage and erosion control structures and facilities, minor encroachments for landscaping and improvements (other than buildings), which are exclusively accessory to and in accordance with Project Approvals and the Conditions of Approval and the uses permitted by this Declaration.

g) Tree & Wood Removal: The selective and limited removal of standing live trees due to the construction of infrastructure (roads, utilities, etc.) for the approved Project in accordance with the Forest Management Plan and the Conditions of Approval, and selective and limited removal of downed trees and wood exclusive to use on the approved Project, provided that in all cases such removal does not increase erosion or sedimentation in any potentially significant way.

ii) Prohibited Uses of Openlands. The following activities and uses are prohibited on the Openlands:

a) Subdivision & Development: The legal or de facto further subdivision of the Subject Property.

b) Residences & Commercial & Industrial Uses: Residential, commercial and industrial uses, including viticulture and wineries, golf, and commercial harvesting of timber.

c) Mineral Exploration & Development: Exploration, excavation, or surface extraction of any mineral resources.

d) Dumping & Disposal: The dumping or disposal of all non-biodegradable refuse or vegetative materials composed

of non-native plant species, with the exception of composting sites for bio-degradable materials supervised and managed by the Conservancy in accordance with the Monterey County Solid Waste Management Plan.

e) Motorized Vehicles: The use of motorized vehicles on all unimproved roads, trails, and off-road areas, except by Grantor and Grantee, or others under authorization of the Conservancy, for construction, repair or maintenance of the Project infrastructure or accessory facilities and for permitted uses and emergency purposes. No trailer, camper, motor home, recreational vehicle, truck, boat, inoperable automobile, or similar vehicle or equipment shall be permitted upon any area within the Openlands of any Lot. No Owner shall construct, repair, service or maintain any motor vehicle within the Openlands of any Lot except for emergency repairs.

f) Water Development: The impoundment, pumping or removal of water beyond uses for the approved Project, to the extent that such removal would have or be likely to have a potentially significant adverse impact on aquatic life or creek, stream, spring, seep or other natural resources.

g) Agricultural: The tilling, terracing or other use of the Subject Property for agricultural purposes, including viticulture, other than livestock grazing and native plant cultivation and use as specifically provided herein.

h) Structures, Billboards & Signs: The construction, erection or placement of satellite dishes or external antennas of any kind, billboards or markers or signs, other than accessory to the approved Project, such as street, directional, warning, safety, informational and hiking signs, and structures accessory to permitted recreational uses, such as lean-tos, campgrounds and picnic facilities, and fencing, loading, boarding and feed storage facilities accessory to permitted livestock maintenance.

i) Native Vegetation Removal. Direct disturbance or removal of non-toxic and non-invasive native vegetation within the Openlands of any Lot subject to the provisions of this Declaration shall be prohibited except to the extent necessary for the installation, maintenance, repair and replacement of Project Infrastructure, construction and maintenance of fuel breaks and fire-safe areas, and maintenance of view corridors. Any non-toxic or non-invasive native vegetation disturbed or removed as a result of necessary installation of Project infrastructure shall be revegetated with non-toxic and non-invasive native vegetation.

j) Non-Native Plants and Vegetation. The planting, growing or maintenance of non-native plants or vegetation on the Openlands of any Lot.

k) Fences. No fence or wall shall be constructed or maintained within the Openlands of any Lot, including perimeter fencing, except for i) pasture fencing and paddocks constructed and maintained by the Owner under a license granted by the Conservancy on Lots designated as Full-Time Sites in sub-section A(i) of Section 1 of this Article III, and ii) pasture fencing reasonably necessary for cattle grazing constructed and maintained by the Conservancy with the consent of the Owner on Lots designated for cattle grazing in sub-section C(i)(b) of Section 1 of this Article III. Design and construction of all pasture fencing allowed by this sub-section k) shall require Design Review and Approval in accordance with Section 2 of this Article III. Design Approval shall be granted only for fences and walls which a) do not impede the movement of wildlife through the Openlands of any Lot, b) do not alter or obstruct the view from any other Lot or Parcel; and c) are harmonious with the pastoral character of The Santa Lucia Preserve.

## Section 2. Design Review.

A. Approval Required. Every Lot within the Subject Property shall be subject to Design Review as provided in this Section 2.

B. Objectives. The objectives of the Design Review process in The Santa Lucia Preserve as set forth in this Section 2 are the following:

i) To preserve and protect the unique natural and scenic resources and habitat values of The Santa Lucia Preserve.

ii) To create a unique residential community of enduring quality and pastoral character synthesized within the sustained natural beauty of a managed nature preserve.

iii) To promote and inspire the highest level of creativity and sensitivity in planning and design;

iv) To encourage and obtain the siting and construction of imaginative, distinctive and tastefully designed homes and accessory structures consistent with the rural character of the Santa Lucia Preserve and the historic architectural traditions of Monterey, California.

v) To assist the Owner of a Lot and his or her design

professionals in complying with the objectives and standards of Design Review as set forth in this Declaration, and in completing the Design Review process in a timely, efficient and successful manner.

vi) To produce residential development that is sited and designed to be fire resistant and incorporates an on-going program of vegetation management and fuel modification to reduce the risk of bodily injury and property damage from wildfire.

vii) To protect the fundamental property rights of the Owners of Lots by assuring the full use and enjoyment of their Lots consistent with the goals, objectives and policies of The Santa Lucia Preserve.

C. General Authority and Standards. In exercising Design Review pursuant to this Section 2, the Design Review Board ("the DRB") shall, without otherwise limiting the scope of its authority, implement the following general authority and standards:

i) Resource Protection. In order to preserve and protect the natural resources, topography and habitat values of The Santa Lucia Preserve, and to prevent erosion and siltation of natural waterways and other natural areas, the DRB shall exercise control over siting, grading, excavating and tree and vegetation removal, and shall have the power and the duty to disapprove plans for development when alternative siting, design, materials or construction methods can be used to avoid or minimize the necessity for grading, excavation, habitat disturbance, tree or vegetation removal or in any other manner destroying or disturbing the natural topography, vegetation or other resources.

ii) Viewshed Protection. In order to preserve and protect the unique visual resources and the pastoral character of The Santa Lucia Preserve, as well as the extraordinary vistas to and from The Santa Lucia Preserve, the DRB shall exercise control over the siting, height, bulk and mass of structures, exterior materials, colors and lighting, and the removal, alteration, installation and replacement of trees and other vegetation which may provide visual screening.

iii) Forest and Woodland Protection. In order to protect the unique forest and woodland resources of The Santa Lucia Preserve, the DRB shall require compliance with mitigation measures M-12 through M-17 inclusive of the Resource Management Plan and the Homeowner Oak Tree Maintenance Guidelines contained in the Forest Management Plan.

iv) Water Conservation. In order to preserve and protect the water resources of The Santa Lucia Preserve, as well as to prevent the intrusion of invasive and non-native plant species into the flora of The Santa Lucia Preserve, the DRB shall exercise control over landscaping, planting and irrigation systems so as to encourage the use of native, drought-resistant and fire-resistant plant materials, and shall have the power and the duty to disapprove plans which propose the installation or use of high water use, invasive and non-native plant materials or the use of irrigation systems which do not employ the best available technology for conservation of water.

v) Fire Protection. In order to diminish the likelihood and intensity of bodily injury and property loss from wildfire, the DRB shall require site planning, construction materials and landscaping that promotes the maintenance of "defensible space" around all structures by reducing the volume and density of flammable vegetation in the vicinity of structures, and requiring the utilization of fire-resistant landscape materials.

D. Specific Standards. In exercising Design Review pursuant to this Section 2, the DRB, without otherwise limiting the scope of its authority, shall implement and enforce the specific standards and guidelines contained in the Design Guidelines as the same may be modified from time to time.

In furtherance of and consistent with the objectives set forth in sub-section B of this Section 2, and its general authority and standards as set forth in sub-section C of this Section 2, the DRB shall have the authority and the responsibility to adopt and publish and amend the Design Guidelines. The Design Guidelines as so adopted, published and amended need not be uniform for every Lot, but may vary from Lot to Lot based upon the characteristics of the Lot such as slope, vegetation and tree coverage, proximity to resource and habitat areas, natural features such as rock outcroppings, visibility or proximity to roads. The Design Guidelines shall be reasonable, precise, and feasible. The standards and criteria for a Lot shall not be modified by the DRB while an application for that Lot is pending, and in considering an application for Design Review, the DRB shall base its determination upon the standards and criteria which were in effect for that Lot on the date of the Owner's initial pre-design contact with the DRB.

E. Procedures for Design Review.

i) General. The purposes of the Design Review process are to enforce compliance with the objectives and



standards of this Section 2, and to assist the Owners of Lots and their design professionals in complying with said objectives and standards, and in completing the Design Review process in a timely, efficient and successful manner.

ii) Activities Requiring Approval. Except as expressly provided herein to the contrary, no fence, wall, deck, patio, sign (other than directional or informational signs installed or maintained by Declarant, the Association, the Conservancy or the Community Services District, drainage facility, pond, fountain or other ornamental structure, building, satellite dish exceeding 24 inches in diameter, exterior antenna or other structure, or exterior addition to or alteration thereof shall be commenced, constructed, erected, placed or permitted to remain on the Subject Property or any portion thereof, until plans and specifications shall have been submitted to and approved in writing by the Design Review Board ("the DRB").

iii) Design Review Process. All activities requiring Design Review shall comply with the procedures set forth in the Design Guidelines as the same may be modified from time to time. Review shall be based upon conformity with the objectives set forth in sub-section B of this Section 2, and in the specific design guidelines and standards adopted and published by the DRB from time to time pursuant to the provisions of sub-section D of this Section 2, in effect on the date of the Owner's initial pre-design contact. If the decision of the DRB is to disapprove the proposal, the DRB shall provide the Owner with a written statement of the basis for such disapproval to assist the Owner in redesigning the project so as to obtain the approval of the DRB.

iv) Failure to Approve or Disapprove Plans and Specifications. In the event the DRB fails to either approve or disapprove final plans and specifications within thirty (30) days after the same have been submitted to it, it shall be conclusively presumed that the DRB has approved such plans and specifications.

v) Commencement and Completion of Construction. All improvement work approved by the DRB shall be undertaken promptly and diligently pursued to completion. All improvements shall be constructed in strict accordance with approved plans and specifications, and in accordance with the construction procedures adopted and published by the DRB from time to time in accordance with the provisions of sub-section D of this Section 2.

vi) Inspection. Any member of the DRB, or a duly-authorized agent of the DRB, may from time to time at any reasonable hour or hours and upon reasonable notice, enter and inspect any property subject to the jurisdiction of said DRB to

determine compliance with the provisions of this Section 2.

F. Development Rights. Notwithstanding the foregoing, nothing contained in this Article III, Section 2, shall be interpreted or applied so as to deprive the Owner of any Lot of the full exercise of the right to develop within the Homeland of the Lot a complete residential compound consisting of a principal residential structure and such accessory and appurtenant structures, facilities and appurtenances allowed by this Declaration as may be desired by the Owner of the Lot. So long as the design, siting, materials, colors and construction methods are consistent with the restrictions contained herein and the Design Guidelines promulgated from time to time by the DRB as provided herein, nothing contained in this Article III, Section 2, shall be interpreted or applied so as to limit the size of any principal residential structure.

G. Number of Members and Term of Design Review Board Appointed by Declarant. The DRB shall consist of three (3) members. Initially, two (2) of the members shall be appointed by Declarant and the other member shall be appointed by the Board of the Conservancy. When the Declarant no longer owns any of the Lots in any phase of the Project, one (1) of the members shall be appointed by the Board of the Conservancy and the other two (2) members shall be appointed by the Board of the Association. Members shall serve staggered two-year terms.

H. No Liability. Neither Declarant, the Conservancy, the Association nor the DRB or its individual members shall be liable in damages to anyone submitting plans or specifications to them for review, or to any Owner of property affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Such plans and specifications are not approved for engineering design. Every person who submits plans or specifications to the DRB for approval agrees, by submission of such plans and specifications, and every Owner of any of the Subject Property agrees that he or she will not bring any action or suit against Declarant, the Association or the DRB to recover any such damages.

#### ARTICLE IV

##### REMEDIES AND ENFORCEMENT

Section 1. Enforcement by Owners. Each of the covenants, conditions and restrictions contained in this Declaration is intended to be and may be enforced as a covenant running with the

land as a mutual equitable servitude. Any Owner of a Lot, including Declarant, shall be entitled to enforce all conditions, covenants and restrictions contained herein in the manner provided by law for enforcing equitable servitudes. Every act or omission whereby any restriction, condition or covenant in this Declaration set forth or to which the Subject Property or any portion is subject, is violated in whole or in part is declared to be and shall constitute a nuisance and may be enjoined or abated by any Owner. Each remedy provided for in this Declaration shall be cumulative and not exclusive.

Section 2. Enforcement by Association.

A. The Association shall have and exercise powers of enforcement, control and interpretation of this Declaration, including the power to commence and maintain in its own name on behalf of itself and/or any Owner of any Lot, or in the name of or on behalf of and as the agent for any Owner of any such Lot, actions and suits to restrain and enjoin the breach or threatened breach of the provisions of the Declaration, and to pay the expenses therefor.

B. Subject to the procedural requirements set forth in sub-section C of this Section 2, the Association shall have the power and authority to impose reasonable monetary penalties and/or temporary suspensions of the right of any Owner or occupant of the Subject Property to use any services or facilities provided, furnished or operated by the Association as appropriate discipline for violation of or failure to comply with any of the covenants, conditions and restrictions contained in this Declaration or in any rules, regulations, guidelines or procedures duly adopted and promulgated by the Association pursuant to this Declaration.

C. Prior to imposing any monetary penalty or suspension of rights as provided in sub-section B of this Section 2, the Association shall comply with the following procedures which are deemed to be fair and reasonable:

i) Not less than fifteen (15) days' written notice shall be given by certified mail to the person or persons charged, including but not limited to the Owner of the Lot as to which such violation or non-compliance is claimed, which notice shall specify the monetary penalty or suspension of rights which may be imposed and the reason or reasons therefor;

ii) The person or persons charged shall be given an opportunity to be heard, orally or in writing, not less than five (5) days before the effective date of the monetary penalty or the suspension of rights, by the Board of the Association.

D. In the event it is necessary for the Association to bring any sort of legal action to enforce the conditions and covenants set forth in this Declaration, the Association shall be entitled to recover from the defaulting party its reasonable costs and attorneys' fees for the bringing of said enforcement or abatement proceedings.

Section 3. Enforcement by Conservancy.

A. The Conservancy shall have and exercise powers of enforcement of this Declaration, including the power to commence and maintain in its own name on behalf of itself, actions and suits to restrain and enjoin the breach or threatened breach of the provisions of sub-sections A, B(v) and (xi) and C of Article III, Section 1 of this Declaration relative to the use and occupancy of the Openlands and Homelands, and to pay the expenses therefor.

B. Subject to the procedural requirements set forth in sub-section C of Section 2 of this Article IV, the Conservancy shall have the power and authority to impose reasonable monetary penalties and/or temporary suspensions of the right of any Owner or occupant of the Subject Property to use any services or facilities provided, furnished or operated by the Conservancy as appropriate discipline for violation of or failure to comply with any of the covenants, conditions and restrictions contained in this Declaration or in any rules, regulations, guidelines or procedures duly adopted and promulgated by the Conservancy pertaining to the use and occupancy of the Openlands pursuant to this Declaration.

C. Prior to imposing any monetary penalty or suspension of rights as provided in sub-section B of this Section 3, the Conservancy shall comply with the following procedures which are deemed to be fair and reasonable:

i) Not less than thirty (30) days' written notice shall be given by certified mail to the Association and to the person or persons charged, including but not limited to the Owner of the Lot as to which such violation or non-compliance is claimed, which notice shall specify the monetary penalty or suspension of rights which may be imposed and the reason or reasons therefor;

ii) If the violation or non-compliance has not been cured and the Association has not undertaken enforcement as provided in Section 2 above within the thirty days following the written notice, the person or persons charged shall be given an opportunity to be heard, orally or in writing, not less than five (5) days before the effective date of the monetary penalty or the suspension of rights, by the Board of the Conservancy.

D. In the event it is necessary for the Conservancy to bring any sort of legal action to enforce the conditions and covenants set forth in this Declaration, the Conservancy shall be entitled to recover from the defaulting party its reasonable costs and attorneys' fees for the bringing of said enforcement or abatement proceedings.

Section 4. Enforcement by County. The County of Monterey shall have the right to enforce the restrictive use covenants pertaining to the Openlands of the Santa Lucia Preserve as set forth in Article III, Section 1.A and 1.C and to charge any non-complying Owner the reasonable costs of such enforcement.

Section 5. Enforcement of Fuel Modification Requirements. In the event that compliance with the fuel modification

requirements of Public Resources Code Section 4291 and Chapter 18.56 of the Monterey County Code is not achieved by the fuel modification activities conducted by the Conservancy on the Openlands, and the Owner of any Lot fails to comply by April 30th of each year with such fuel modification requirements, the Community Services District shall have the right, after fifteen (15) days' written notice to such Owner, to enter upon the Homeland of such Owner's Lot and perform the work necessary or appropriate to bring the Lot into compliance, and to charge such Owner the reasonable costs of such work.

#### Section 6. Responsibility of Owners.

A. The obligations imposed by this Declaration shall be the joint and several personal obligation of each and every Owner of a Lot. The failure of an Owner to utilize the Lot, or the abandonment thereof, shall not relieve an Owner of the personal obligation to comply with any of the obligations imposed by this Declaration.

B. Each Owner shall be responsible for actions and conduct of such Owner's tenants, lessees, guests, invitees, servants, contractors and agents while in or upon the Project, and for compliance by such Owner's tenants, lessees, guests, invitees, servants, contractors and agents with the applicable covenants, conditions and restrictions contained in this Declaration.

### ARTICLE V

#### DURATION AND MODIFICATION

Section 1. Duration. All of the restrictions, conditions, covenants and reservations set forth in this Declaration shall continue and remain in full force and effect at all times against the Subject Property subject to this Declaration and each part thereof and the Owners thereof, subject to the right to amend, change, modify and terminate provided for in Section 2 of this ARTICLE V until January 1, 2038, provided, however, that all of the said restrictions, conditions, covenants and reservations in this Declaration contained which are subject to expiration shall, as the same are in force immediately prior to such expiration, be continued automatically without further notice from that time for a period of ten (10) years and thereafter for successive periods of ten (10) years each without limitation unless within the six months prior to the expiration of any successive ten (10) year period thereafter, there shall be recorded a written agreement executed by the then record Owners (including mortgagees under recorded mortgages and trustees and beneficiaries under recorded trust deeds) of more than 75% of the Lots embraced within the

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property subject to this Declaration, by the terms of which agreement any or all of said restrictions, conditions, covenants and reservations are changed, modified or extinguished in whole or in part as to all or any part of the property subject thereto in the manner and to the extent therein provided. In the event that any such written agreement or change or modification shall be duly executed and recorded as provided herein, the restrictions, conditions, covenants and reservations as changed or modified thereby shall continue in force for successive periods of ten (10) years unless and until further changed, modified or extinguished in the manner above provided.

Section 2. Modification of Restrictions. This Declaration may be amended by a written document executed by the Owners of 75% of the Lots then subject to this Declaration, and recorded. Notwithstanding the foregoing, the provisions of Article III, Section 1.C of this Declaration may not be amended without the prior written approval of the Conservancy and the Monterey County Board of Supervisors.

## ARTICLE VI

### POWERS AND PURPOSES OF THE ASSOCIATION

THE SANTA LUCIA PRESERVE ASSOCIATION, A California nonprofit mutual benefit corporation, shall have the general rights, powers and duties of a nonprofit corporation subject to the provisions of this Declaration and any limitations imposed hereby, to do and perform each and every of the following for the benefit, maintenance and improvement of the property subject to this Declaration and for the benefit of the Owners thereof, to wit:

#### Section 1. Powers of Association.

A. Enforcement of Restrictions. To exercise such powers of enforcement, control, interpretation, modification and cancellation of this Declaration which now are or hereafter may be vested in, delegated to, or assigned to the Association, and to pay all expenses incidental thereto; to commence and maintain in its own name on behalf of itself and/or any Owner of any Lot, or in the name of or on behalf of and as the agent of any Owner of any such Lot, actions and suits to restrain and enjoin the breach or threatened breach of this Declaration or any portion thereof and to enforce this Declaration and to pay the expenses therefor.

B. Maintenance of Roads. To the extent such functions are not performed by the Community Services District or any other entity, to maintain, repair, manage, restore and replace the Private Roads within the Subject Property subject to this

Declaration, and to assess the various Owners for the cost thereof in accordance with the provisions of Section 4 of this Article VI.

C. Maintenance of Drainage Facilities. To the extent such functions are not performed by the Community Services District, the Conservancy or any other entity, to maintain, repair, manage restore and replace the drainage facilities within the Subject Property subject to this Declaration, and to assess the various Owners of the cost thereof in accordance with the provisions of sub-section A of Section 4 of this Article VI. For the purposes of this Declaration, the term "drainage facilities" shall mean facilities for the detention, retention and conveyance of storm waters within the Project, as shown on the approved subdivision improvement plans for any phase of the Project.

D. Fuel Modification. To the extent not performed by the Community Services District, the Conservancy or any other entity, to carry out on the Openlands and the Homelands of any Lot fuel modification actions as necessary or appropriate in order to achieve compliance with the fuel modification requirements of Public Resources Code Section 4291 and Chapter 18.56 of the Monterey County Code, and to assess the various Owners for the cost thereof in accordance with the provisions of Section 4 of this Article VI.

E. Other Services. To the extent not performed by the Community Services District, the Conservancy or any other entity, to provide, maintain, repair, manage, restore and replace such services and facilities as the Board may determine necessary or appropriate for the safety, security, comfort and well-being of the Owners of the Project.

F. Right of Entry. The Association shall have the right to enter upon the Homelands and Openlands of any Lot as necessary in order to carry out any of the activities which the Association is authorized to do under the provisions of this Section 1. Prior to entering upon the Openland or Homelands of any Lot for such purposes, the Association shall give the Owner of such Lot reasonable notice of the Association's intention to so enter, except in the case of a *bona fide* emergency, in which case no notice shall be required.

G. General Powers. Generally to do any and all things that a nonprofit corporation may lawfully do in operating for the benefit of its members and without profit to said Association, except as expressly limited in this Declaration and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety, and/or



general welfare of the Owners of any property subject to the jurisdiction of the Association.

H. Agency. The authorized powers of the Association are set forth in this Declaration of Protective Restrictions. The Association is irrevocably appointed agent and attorney-in-fact of each and all of the Owners and their successors to exercise the powers delegated to the Association by this Declaration.

I. Failure to Perform. If the Association fails or refuses to exercise any of its powers as set forth in this Section 1, and as a result any of the resources or facilities of The Santa Lucia Preserve are threatened or endangered, the Conservancy, upon written thirty (30) days' notice to the Board of the Association, shall have the right, but not the obligation, to exercise such powers in the place and stead of the Association as necessary to protect the threatened or endangered resources or facilities, and to charge the Association for the reasonable cost of such actions.

J. Delegation of Duties. The Association shall have the right to delegate any of its powers and duties hereunder to The Conservancy, to the Community Services District, or to any other qualified agent or agency selected by the Board of the Association, provided, however, that any such delegation shall have the prior consent of the delegatee.

K. Assumption of Duties. The Association shall have the power to assume responsibility, either temporarily or permanently, to provide, maintain, repair, manage, restore and replace such services and facilities as are currently performed by the Community Services District, and pay the cost thereof, provided, however, that any decision to assume such responsibility on a permanent basis shall require the prior affirmative vote of Owners representing not less than two-thirds (2/3) of the voting power of the Association, and provided further that any decision to assume responsibility for fire protection services, water services and wastewater services and facilities shall also require the prior consent of the Monterey County Board of Supervisors.

Section 2. No Commonly Owned Areas. The Subject Property shall consist of Lots separately owned by the various Owners together with certain nonexclusive easements appurtenant thereto. There shall be no additional contiguous or noncontiguous Lots, parcels or areas owned in common by the Owners of the separately owned Lots; nor shall there be any mutual, common or reciprocal interests in or restrictions upon all or portions of such separately owned Lots other than nonexclusive easements over the Project roads and the restrictions contained therein. It is the

intention of Declarant that this project not be constituted or defined as a "planned development" within the meaning of Section 11003 of the California Business and Professional Code, or a "common interest development" within the meanings of Section 1351 of the California Civil Code.

Section 3. Membership in Association.

A. Number of Memberships. The total number of voting memberships in the Association shall equal the number of legal residential Lots from time to time subject to this Declaration.

B. Qualifications for Membership

1) Each membership shall be owned by the record Owner of the Lot to which said membership is appurtenant; and if a Lot is owned of record by two (2) or more Owners, the membership shall be owned jointly by all of such Owners of record.

2) Such membership interest shall vest immediately upon becoming a record Owner and such record Owner or Owners shall thereupon be entitled to all rights and privileges of membership in the Association and subject to all duties and obligations imposed upon the members of the Association. Such membership interest shall automatically terminate upon ceasing to be a record Owner of such Lot.

C. Voting Rights. The Association shall have two classes of voting members:

1) Class A. Class A members shall be all Owners except Declarant and shall be entitled to one vote for each Lot owned. When more than one person or entity owns a Lot, all such persons and entities shall be members and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

2) Class B. The Class B member shall be the Declarant, who shall be entitled to three votes for each Lot owned.

D. Termination of Class B Membership. The Class B membership shall be irreversibly converted to Class A membership when the total outstanding votes held by Class A members equal the total outstanding votes held by Class B members.

E. Restriction. The voting rights of memberships shall be subject to the restrictions and limitations provided in this Declaration.

F. Election to Board. The Board shall consist of three (3) Owners, elected at an annual meeting of members held in December of each year. Board members shall serve for staggered terms of three (3) years. Cumulative voting shall be allowed in any election of the Board. Board members shall not serve more than two (2) consecutive terms.

Section 4. Maintenance Assessments.

A. Basic Assessments.

1) Preliminary Budget. In order to coordinate its budgeting process with the budgeting of the Community Services District, the Board shall adopt a fiscal year coinciding with the fiscal year of the Community Services District, and shall prepare and circulate to the Members each year in accordance with a schedule which parallels the budgeting schedule for the Community Services District, a proposed budget for the forthcoming fiscal year. The proposed budget shall include estimated costs for all anticipated Association activities, including, but not limited to, the maintenance of the Private Roads and drainage facilities, performing fuel modification activities, and such other services as the Board may determine necessary or appropriate for the safety, comfort and well-being of the Owners residents of the Project, as provided in Section 1 of this Article VI, to the extent that such activities are not anticipated to be performed by the Conservancy, the Community Services District or any other entity, or to be supported by Special Assessments or Special Charges.

2) Final Budget. The final budget for each fiscal year shall be adopted by a majority vote of the Board immediately following adoption by the governing board of the Community Services District of the District's budget for the same fiscal year. In adopting the final budget, the Board shall take into consideration the budget adopted for the Community Services District, and shall adjust the preliminary budget of the Association as necessary or appropriate to reflect the scope and cost of the services to be provided by the Community Services District.

3) Reserves. The preliminary budget and the final budget shall include the creation and maintenance of reasonable reserves for a) the estimated cost to repair, replace, restore or maintain major facilities which are within the responsibility of the Association, and b) the estimated cost of assuming in whole or in part the responsibility to repair, replace, restore or maintain major facilities which are currently within the responsibility of

the Community Services District, the Conservancy or other entity, but which might be assumed by the Association.

4) Allocation of Budgeted Costs. The total budgeted expenses of the Association as reflected in final adopted budget shall be allocated among all of the Lots then subject to this Declaration as the Basic Assessment for the forthcoming year in the following proportions: Ninety-five percent (95%) of the total budgeted expenses shall be allocated to the Lots then subject to this Declaration which are not designated for Employee Units as provided in this Declaration, and five percent (5%) of the total budgeted expenses shall be allocated to the Lots then subject to this Declaration which have been designated for Employee Units as provided in this Declaration. The portion of the total budgeted expenses allocated to the Lots which are not designated for Employee Units shall be divided by the total number of such Lots, and assessed equally to each such Lot as the Basic Assessment for each such Lot; provided, however, that if any such Lots have been granted an allocation of an additional residential unit pursuant to the provisions of Article III, Section 1(B)(1)(f) of this Declaration, the total number of such allocations shall be added to the total number of such Lots, and the Basic Assessment for each such Lot that has been granted such an allocation shall be two times that assessed to Lots that have not received an allocation of an additional residential unit. The portion of the total budgeted expenses allocated to the Lots designated for Employee Units shall be divided by the total number of Employee Units then in existence on such Lots, and assessed to each such Lot in accordance with the number of Employee Units located on each such Lot as the Basic Assessment for each such Lot. The Basic Assessment shall be paid by the Owners of each Lot in two (2) equal semi-annual installments due and payable on the tenth day of December and April of the forthcoming fiscal year.

B. Special Assessments.

1) Purposes. Special Assessments may be levied by the Association upon the Owners of the Lots subject to the basic assessment under this Declaration for the following purposes:

a) For the purpose of defraying in whole or in part the cost of any extraordinary or unexpected repair, replacement, restoration or maintenance of facilities which are within the responsibility of the Association for which the reserves are inadequate;

b) For the purpose of defraying in whole or in part the cost of any extraordinary or unexpected repair, replacement, restoration or maintenance of facilities which are

within the responsibility of the Community Services District, the Conservancy or some other entity, but which the Community Services District, the Conservancy or such other entity is unable to perform, and for which the Association's reserves are inadequate.

2) Adoption of Emergency Special Assessments. Special Assessments for emergency purposes may be adopted by the Board upon the affirmative vote of two thirds (2/3) of the voting power of the Board, without the vote of the Members. For the purposes of this sub-section, "emergency" shall mean and refer to a sudden or unexpected event which poses an immediate threat to the health, safety, welfare or property of the Owners or occupants of the Project.

3) Adoption of Regular Special Assessments. Regular non-emergency Special Assessments may be adopted by the Board upon the affirmative vote of a majority of the voting power of the Board; provided, however, that the Board shall not levy special assessments in any fiscal year which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that year, without the vote or written assent of a majority of the voting power of the Association residing in Members other than Declarant.

4) Allocation of Special Assessments. Special Assessments, whether for emergency or non-emergency purposes, shall be levied among the Owners of all of the Lots then subject to this Declaration in the same manner as the allocation the Basic Assessments as provided in sub-section A.4 of this Section 4.

C. Special Charges. The Association shall be entitled to reimbursement from the Owner of any Lot for any materials or services provided by the Association to or for the benefit of such individual Lot or the Owner thereof if said materials or services were requested by such Owner or were provided by the Association in the exercise of any of its powers under this Declaration. Such special charges shall be a personal obligation of the Owner of such Lot, and shall be due and payable thirty (30) days following the date on which such Special Charges are billed to such Owner.

D. Commencement. The basic assessment shall commence on the month following the closing of the first sale of a Lot in the Subject Property. Assessments shall be paid irrespective of whether the Lot is developed or undeveloped. Declarant shall pay any assessments for unsold Lots subject to this Declaration.

E. Delinquency. Any basic assessment, special assessment or special charge shall be delinquent if not paid in full by the date due and shall bear interest at the maximum rate allowed by law from said date until paid.

F. Right to Access. Every Owner of a Lot subject to this Declaration, his guests, tenants and invitees, shall be entitled to the use of the Public Roads and the Private Roads for purposes of ingress and egress and utilities.

G. Personal Obligation. The obligation to pay the basic assessments and special assessments provided for herein shall be the joint and several personal obligation of each and every Owner of a Lot as to which such assessments are levied. The failure of an Owner to utilize the Lot, or the abandonment thereof, shall not relieve any Owner from the personal obligation to pay such assessments.

Section 5. Maintenance of Drainage Facilities.

A. Yearly Report. Unless performed by the Community Services District, the Conservancy or some other agency or entity, the Association shall commission and pay for a yearly report prepared by a registered civil engineer monitoring the impacts of drainage and the status of maintenance of drainage facilities within the Subject Property. The cost of such yearly report shall be included as part of the budgeted costs of maintaining the drainage facilities as provided in sub-section A(2) of Section 4 above. A copy of such yearly report shall be submitted for the review and approval of the Monterey County Water Resources Agency.

B. Maintenance by Water Resources Agency. If the drainage facilities within the Subject Property are not maintained by the Community Services District or the Conservancy, and if the Association fails to properly maintain, repair or operate the drainage and flood control facilities within the Subject Property, the Monterey County Water Resources Agency, after notice and hearing by the Agency, shall be granted the right to enter any and all portions of the Subject Property (other than individual residences) and to perform the repairs, maintenance or improvements necessary to properly operate the drainage and flood control facilities within the Subject Property. The Agency shall have the right thereupon to collect the cost for said repairs, maintenance and improvements from the Owners in accordance with the terms of a written agreement entered into between Declarant and the Agency concurrent with the filing of the Final Map.

Section 6. Maintenance of Private Driveways. Maintenance, repair and replacement of each Private Driveway shall be the sole responsibility of the Owner or Owners of the Lot or Lots served by the Private Driveway. If the Owner of any Lot fails to maintain such Private Driveway, and the failure to maintain presents a risk of erosion, siltation or damage to significant natural resources,

the Conservancy shall have the right, after fifteen (15) days' written notice to such Owner, to enter upon the Openlands and the Homeland of such Owner's Lot and perform the work necessary or appropriate to bring the Private Driveway into compliance, and to charge such Owner the reasonable costs of such work.

Section 7. Fuel Modification. If the Owner of any Lot fails to comply with fuel modification requirements established by State law or by the agency responsible for fire protection within the Subject Property, the Conservancy shall have the right, after fifteen (15) days' written notice to such Owner, to enter upon the Openlands and the Homeland of such Owner's Lot and perform the work necessary or appropriate to bring such Openlands and Homelands into compliance with requirements, and to charge such Owner the reasonable costs of such work.

## ARTICLE VII

### MISCELLANEOUS

Section 1. Interpretation of Restrictions. In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the preservation and enhancement of values and the promotion of the health, safety, comfort, convenience and general welfare of the Owners and occupants of The Santa Lucia Preserve. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued or which may be adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intent of this Declaration to interfere with or abrogate or annul easements, covenants and/or other agreements between parties; provided, however, that where this Declaration imposes a greater restriction upon the use and/or occupancy of any Lot or upon the construction of buildings or structures or in connection with any other matters that are imposed or required by such provisions of law or ordinance or by such rules, regulations, or permits or by such easements, covenants, and agreements then in that case the provision of this Declaration shall control.

Section 2. Limitation of Restrictions on Declarant. Declarant is undertaking the work of development and construction of a community preserve consisting of a residential subdivision, open spaces, active and passive recreational facilities, habitat and resource conservation and enhancements and incidental improvements upon the Subject Property known as The Santa Lucia Preserve. The completion of that work and the sale, rental and other disposition of the residential Lots is essential to the establishment, maintenance and financing of a sustainable

community preserve, and for the general welfare of the Owners and occupants of The Santa Lucia Preserve. In order that said work may be completed and the Subject Property be established as a fully integrated community preserve as rapidly as possible, nothing in this Declaration shall be understood or construed to:

A. Prevent Declarant, its contractors or subcontractors from doing on the Subject Property or on 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 of the Subject Property, such structures, including temporary trailers, as may be reasonable and necessary for the conduct of its business of completing said work and establishing the Subject Property as a community preserve and marketing of the residential components thereof; or

C. Prevent Declarant from conducting on any part of the Subject Property its business of completing said work and of establishing a community preserve and marketing the residential components of the Subject Property; or

D. Prevent Declarant from maintaining such sign or signs, models or sales offices on or adjacent to the Subject Property as may be necessary for the sale, lease or disposition thereof.

Section 3. Termination of Any Responsibility of Declarant. In the event Declarant shall convey all of its rights, title and interest in and to the Subject Property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Section 4. Binding Upon Owners and Grantees. The undersigned, each present Owner and each grantee hereafter of any part or portion of the property subject to this Declaration, and any purchaser under any contract of sale or lessee or tenant under any lease or tenancy (including a month-to-month tenancy) covering any part or portion of the Subject Property shall be subject to all of the restrictions, conditions, covenants and reservations provided for in this Declaration.

Section 5. Construction and Validity of Reservations. All of said restrictions, conditions, covenants and reservations



contained in this Declaration shall be construed together; but if it shall at any time be held that any one or more of these restrictions, conditions, covenants, or reservations, or any part thereof, is invalid or for any reason becomes unenforceable, no other restrictions, conditions, covenants or reservations or any part thereof shall be thereby affected or impaired.

Section 6. Waiver and Exemptions. The failure by any Owner of any Lot included in the Subject Property or any other person to enforce any of the restrictions, conditions, covenants or reservations to which the Subject Property or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restrictions, conditions, reservations or covenants.

Section 7. Protection of Mortgages or Deeds of Trust. No breach of any covenants, conditions, restrictions, limitations or uses herein contained shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of said matters shall be binding upon any Owner whose title is derived through foreclosure or trustee's sale.

Section 8. Priority of Certain Easements. The covenants, conditions and restrictions contained in this Declaration are subject and subordinate to the following:

A. The easements, covenants and restrictions contained in that certain Deed of Conservation Easement recorded on November 24, 1998, as Document No. 9882397, Official Records of Monterey County, California ("the Conservation Easement").

B. The easements, covenants and restrictions contained in that certain Archaeological/Wetlands/Conservation/Scenic Easement Deed, recorded on November 24, 1998, as Document No. 9882398, Official Records of Monterey County, California ("the County Easement").

IN WITNESS WHEREOF, the undersigned have set their hands this 23rd day of November, 1998.

RANCHO SAN CARLOS PARTNERSHIP, L.P.  
A California Limited Partnership

By: Las Garzas Associates, L.P.,  
A California Limited Partnership  
Its: General Partner

By: Chamisal Developers, L.P.,  
A California Limited Partnership  
Its: General Partner

By: Pacific Union of Monterey, Inc.,  
A California corporation  
Its: General Partner

By /s/ Thomas A. Gray

Thomas A. Gray  
Its: President

By: WB/OLY San Carlos, L.L.C., a Delaware  
Limited Liability Company  
Its: General Partner

By s/s Thomas A. Gray

Its: Attorney-in-Fact

November 19, 1998

STATE OF CALIFORNIA     )  
                                  ) ss  
COUNTY OF MONTEREY     )

On this 23d day of November, 1998, before me, the undersigned, personally appeared Thomas A. Gray, personally known to me or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

/s/ Brian Finegan  
Notary Public in and for the  
State of California

November 19, 1998

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