

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FLYING-O RANCH-STANDARD SUBDIVISION
(INCLUDING CANCELLATION OF ORIGINAL DECLARATION)

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HEADING	DESCRIPTION	PAGE
Preamble	Recitals and Cancellation of Original Declaration	3
Article 1	Definitions	6
Article 2	Term and Amendment	8
Article 3	Restrictions and Prohibited Uses	9
Article 4	Ranch Parcels, Home Sites, Cattle Easement Area and Cattle Ranch Parcel	13
Article 5	Variances	15
Article 6	Required Approval of All Changes to Ranch Parcels	16
Article 7	Design Committee	18
Article 8	Association – Function	19
Article 9	Association – Membership and Management	21
Article 10	Assessments	25
Article 11	Easements	28
Article 12	Miscellaneous	31

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
FLYING-O RANCH-STANDARD SUBDIVISION

This Declaration of Covenants, Conditions and Restrictions for Flying-0 Ranch-Standard Subdivision (the "Declaration") is made this 22nd day of May, 1997, by Frank S. Wyle as Trustee of the Frank and Edith Wyle Revocable Trust dated February 22, 1980, as amended ("Wyle"), Thomas Wheeler and Janet Wheeler, husband and wife ("Wheeler"), Alfred Tichenor and Melinda Tichenor, husband and wife ("Tichenor"), Kevin M. Meagher and Diana C. Meagher, Trustees of the Meagher Family Trust U/D/T dated March 7, 1994 ("Meagher"), Lane Wipff and Christine Wipff, husband and wife ("Wipff"), Jose de la Torre and Marta de la Torre ("de la Torre") and Robert M. Stone ("Stone") and Wyle-0'Neals Cattle Ranch, Inc., a California corporation ("WOCRI") (collectively the "Declarant"), with reference to the following facts:

- A. Wyle is the owner of that certain real property in the County of Madera, California, more particularly described in Exhibit "A" attached hereto; Wheeler is the owner of that certain real property in the County of Madera, California more particularly described in Exhibit "B" attached hereto; Tichenor is the owner of that certain real property in the County of Madera, California, more particularly described in Exhibit "C" attached hereto; Meagher is the owner of that certain real property in the County of Madera, California, more particularly described in Exhibit "D" attached hereto; Wipff is the owner of that certain real property in the County of Madera, more particularly described in Exhibit "E" attached hereto; de la Torre is the owner of that certain real property in the County of Madera, California, more particularly described in Exhibit "I" attached hereto; Stone is the owner of that certain real property in the County of Madera, California, more particularly described in Exhibit "J" attached hereto; and WOCRI is the owner of that certain real property in the County of Madera, California, more particularly described in Exhibit "F" attached hereto; which properties together collectively commonly known as the Flying-0 Ranch (herein the "Ranch").
- B. All property in the Ranch is presently subject to the Declaration of Covenants, Conditions and Restrictions for Flying-0 Ranch, dated April 6, 1990, and recorded in the official Records of Madera County, California, as Instrument No. 90-19722 on August 7, 1990 (the "Original Declaration" herein). Declarant owns all of the property in the Ranch and holds all of the votes eligible to vote to amend or cancel the Original Declaration. Declarant intends that the Original Declaration be revoked, canceled and rescinded in its entirety, and that this Declaration replace and supersede the Original Declaration in its entirety.
- C. Declarant as owner of the Ranch is subdividing and developing the Ranch as a planned development of Thirty-Four (34) contiguous parcels of real property consisting of:
 1. Thirty-Three (33) parcels (the "Ranch Parcels"), each consisting of approximately forty (40) acres, and containing a maximum ten (10) acres, which may be one

- separate non-contiguous area constituting several sites, but in any event constituting in the aggregate a Home Site (as that term is hereinafter defined) for location of a single family home dwelling and appurtenant building structures and related improvements, located within a fenced area or fenced areas, with the balance of the acreage within each Ranch Parcel being dedicated to maintenance in a natural state as scenic and as natural open area and for ranching, grazing, and out-of-doors recreation under control and administration of an association whose members are the owners of the Ranch Parcels; and
2. One (1) parcel, consisting of approximately fifty (50) acres (the "Cattle Ranch Parcel") owned by Wyle-O'Neals Cattle Ranch, Inc, (WOCRI), improved with a barn, horse corrals, riding area, and other recreational use amenities, subject to certain easements and rights in favor of the Owners of the Ranch.
- D. The purpose of this Declaration is to establish and maintain through the covenants, conditions and restrictions contained here the concepts and plan for the development and use of the Ranch as the Ranch Parcels and the Cattle Ranch Parcel, to restrict the uses thereof for the common benefit of all of the Owners, and to maintain an open space environment throughout the Ranch and thereby perpetuate a ranch atmosphere in the Sierra Foothill historic tradition and the natural advantages of the area, consistent with usage of the Home Sites within each Ranch Parcel as a single family residence and consistent with individual freedoms and the diverse interests of the owners of the Ranch.
- E. This Declaration shall be read and interpreted in all situations and circumstances in a manner which assures the owners of the Ranch and their successors full enjoyment of the unique natural advantages and beauty of the land in the present and for years to come, and fosters and preserves the character, tradition, history, beauty, flora and fauna of the Ranch.
- F. Declarant intends these covenants, conditions and restrictions to bind and benefit not only Declarant, as the present owner of the Ranch, but also all of Declarant's successors and assigns as owners of the Ranch and those who derive any ownership rights or other interest or right of use in and to the Ranch or any part thereof from or through Declarant or Declarant's successors or assigns, such that the Ranch and each and every part thereof shall be subject to the covenants, conditions and restrictions set forth in this Declaration.

NOW THEREFORE, Declarant hereby declares that the Ranch shall be owned, held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied and improved only upon and subject to the following covenants, conditions, restrictions, limitations, reservations, easements, rights of way, liens, charges, and equitable servitudes, all of which are hereby declared, established, expressed and agreed to be for the benefit and protection of the Ranch and for the owners and users thereof; and to run with the land and be binding upon all parties having or acquiring any right, title and interest in the Ranch or any part thereof whether as sole owners, joint owners, contract

purchasers, lessees, tenants, occupants or otherwise. Any conveyance, transfer sale, assignment, lease, sublease, or other agreement relating to the use and ownership of the Ranch or any part thereof will be and hereby is decreed to incorporate by reference the provisions of this Declaration.

Declarant further declares that the Ranch shall be a "Standard Subdivision". To that end there is no common area owned by the Association or in common by the Owners of the Parcels of real property included herein, and no power exists in the Association to enforce an obligation of an Owner of a parcel with respect to the beneficial use and enjoyment of the ACCESS EASEMENT or CATTLE RANCH AREA by means of an assessment that may create a lien upon the owner's parcel. The Ranch is not a "common interest development" as defined in Section 1351 of the California Civil Code.

Declarant further declares that by this instrument, the Original Declaration is hereby revoked, canceled and rescinded in its entirety, so that following the recordation of this instrument in the office of the County Recorder of Fresno County, California, the Original Declaration shall have no further force or effect. This Declaration replaces and supersedes the Original Declaration in its entirety.

ARTICLE 1DEFINITIONS

- 1.1 Access Roads. The term "Access Roads" shall mean those roads on the Ranch serving to provide access to the Ranch which are within the Access Easement more particularly described in Exhibit "G" hereto, and which are subject to repair and maintenance by the Association at a cost which is part of the Maintenance Expenses.
- 1.2 Assessment. The term "Assessment" shall mean any amount that the Association shall have the right to assess against an Owner and by virtue of such assessment requirement payment thereof, all as provided herein.
- 1.3 Association. The term "Association" shall mean Flying-0 Ranch Community Association, a California non-profit corporation, its successors and assigns, the Members of which are all of the owners of the Ranch, all as more particularly provided in Article 8 hereof.
- 1.4 Cattle Easement Area/Cattle Ranch Area. The terms "Cattle Easement Area" and "Cattle Ranch Area" shall mean all of those portions of the Cattle Ranch Parcel and of each Ranch Parcel lying outside of the one or more areas constituting in the aggregate the Home Site located thereon. All such Cattle Easement Area/Cattle Ranch Area is subject to an easement for the beneficial use and enjoyment of all Owners directly and as Members of the Association, and the Association itself, is described in Article 11 of this Declaration.
- 1.5 Cattle Ranch Parcel. The term "Cattle Ranch Parcel" shall mean that portion of the Ranch consisting of Lot 27 as more particularly described in Exhibit "F" hereto, ownership of which shall be subject to certain easements for the beneficial use and enjoyment of all Owners of the Ranch, as described in this Declaration.
- 1.6 Declarant. The term "Declarant" shall mean, collectively, Wyle, Wheeler, Tichenor, Meagher, Wipff, de la Torre, Stone and WOCRI and the respective successors, assigns and/or designees of each.
- 1.7 Declaration. The term "Declaration" shall mean this First Amended and Restated Declaration of Covenants, Conditions and Restrictions for Flying-0 Ranch, as it may from time to time be amended or supplemented.
- 1.8 Design Committee. The term "Design Committee" shall mean a committee composed as set forth in Article 7 hereof for the purposes therein described
- 1.9 Eligible Votes. The term "Eligible Votes" shall mean the difference between the total number of votes to which all members are entitled pursuant to the Bylaws of the Association and the number of votes as to which voting privileges are, at the time in question, suspended by the Association in accordance with the provisions of the Bylaws.

- 1.10 Home site. The term "Home Site" shall be that portion of each Ranch Parcel, and the Cattle Ranch Parcel, which may be one contiguous area constituting a single site, or several separate non-contiguous areas constituting several sites, designated as a site for a single family home Improvement, appurtenant building Improvements and related Improvements, allocated within an area not to exceed ten (10) acres that is designated from time to time in the manner set forth in Section 4.1 hereof.
- 1.11 Improvement. The term "Improvement" shall mean any structure or physical installation of any type or kind located in or upon the Ranch, whether or not above, below or on the land surface, including plantings and other landscaping.
- 1.12 Majority Vote. The term "Majority Vote" shall mean fifty percent (50%) plus one of the Eligible Votes.
- 1.13 Member. The term "Member" shall mean and refer to an Owner of a Ranch Parcel in his capacity as a member of the Association.
- 1.14 Mortgage. The term "Mortgage" shall mean any security device encumbering all or any portion of the Ranch or any Ranch Parcel thereof, or the Cattle Ranch Parcel, and as used herein the term "Mortgage" shall include any deed of trust.
- 1.15 Mortgagee. The term "Mortgagee" shall mean the record owner of a beneficial interest under a Mortgage, including the beneficiary under a deed of trust.
- 1.16 Owner. The term "Owner" shall mean any person or entity which is the record holder of a fee simple interest in any portion of the Ranch, excluding any entity or person who holds such interest as security for the payment of an obligation but including contract sellers and any mortgagee or other security holder in actual possession of any portion of the Ranch.
- 1.17 Parcel. The term "Parcel" shall mean both the "Ranch Parcels" and also the "Cattle Ranch Parcel" described herein.
- 1.18 Ranch. The term "Ranch" shall mean all that certain real property described in Exhibits "A", "B", "C", "D", "E", "F", "I", and "J" hereto, including all Improvements thereon from time to time.
- 1.19 Ranch Parcel. The term "Ranch Parcel" shall mean any one of the thirty-three (33) subdivided lots which are part of the Ranch and which are described in Exhibit "H" hereto. Unless otherwise provided, "Ranch Parcel" does not include the "Cattle Ranch Parcel".
- 1.20 Super Majority Vote. The term "Super Majority Vote" shall mean at least sixty-six and two-thirds percent (66 2/3%) of the Eligible Votes.

ARTICLE 2TERM AND AGREEMENT

- 2.1 Term. This Declaration and the covenants, conditions and restrictions imposed thereby on the Ranch shall affect and run with the land and shall exist and be binding on all owners, and all persons claiming under them, until December 31 2030, after which time the same shall be extended for successive periods of ten (10) years each unless an instrument signed by Owners possessing a Majority Vote has been recorded in the real property records of Madera County agreeing to terminate this Declaration.
- 2.2 Amendment. This Declaration may be amended by an instrument signed by Owners possessing a Super Majority Vote and recorded in the real property records of Madera County. Notwithstanding the foregoing, the percentage of voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage required to take action under that clause or provision.

ARTICLE 3RESTRICTIONS AND PROHIBITED USES

- 3.1 Home Site. The portion or portions of each Parcel designated as the Home Site in accordance with Section 4.1 hereof shall be used for single family residential purposes and shall contain only such Improvements as are consistent therewith. No more than one main residence structure, one secondary residence, and one or more auxiliary guest houses (which do not include separate cooking facilities) shall be constructed upon any Home Site. All Improvements and personal and other property located within a Home Site shall be kept and maintained by the Owner thereof in a clean, safe, attractive and sightly condition and in good repair. All structures constructed or maintained upon any Parcel shall be architecturally compatible with each other.
- 3.2 Cattle Easement Area. The portion or portions of each Parcel designated as Cattle Easement Area shall be held open and available for use by all owners and their families, guests and invitees and shall be left in a natural state, subject only to brushing and other minor maintenance by the Owner of the Parcel upon which it is located to preserve a pleasing appearance and to maintain safety, and subject to the rights granted to the Association and the Owner of the Cattle Ranch Parcel designated herein.
- 3.3 Business Usage Prohibited. There shall be no trade or business operations operated or maintained upon the Ranch or any part thereof; provided, however, the foregoing shall not prohibit the Association and/or the Owner of the Cattle Ranch Parcel from conducting any grazing, ranching or other similar livestock and animal husbandry activities on the Cattle Ranch Area; and provided further that this provision shall in no way limit or restrict Wyle and Wheeler in conducting their activities prior to and during the sale of all Ranch Parcels.
- 3.4 Construction. All construction on a Parcel shall be prosecuted diligently and continuously from the commencement thereof until completion. No building materials of any kind shall be placed or stored upon any Parcel until the Owner thereof is ready to commence construction, and then such Material shall be placed within the portion of the Parcel designated as the Home Site upon which the structure is to be erected. Any Improvement to a Parcel shall be completed within a reasonable construction period, in no event to exceed eighteen (18) months from commencement.
- 3.5 Drainage. The established drainage pattern from, on or over the Property shall not be obstructed, altered or in any way modified. No water shall be diverted from any stream or water course running through any part of the Ranch. The foregoing, however, shall not prohibit the drilling and maintenance of wells on any Parcel to provide water for domestic usages on the Home Site or for maintenance of a pond or other water landscaping on the Hone Site.
- 3.6 No Temporary Structures. No structures of a temporary character, tents, shacks, garages, barns or other outbuildings shall be used on any Parcel as a residence either temporarily

or permanently and all temporary structures on any Parcel during construction must be approved by the Design Committee and must be removed when construction is completed.

- 3.7 Occupancy. No person shall take up permanent residence upon any Parcel until the residence Improvement to be erected thereon has been completed in accordance with plans approved by the Design Committee, and all required certificates of occupancy or their equivalent have been issued by the appropriate governmental authorities.
- 3.8 Mobile Homes and Trailers. Except to the extent desired by Wyle and Wheeler to be used during the development and sale of Parcels, no motor vehicles, mobile home (other than a manufactured housing Improvement approved by the Design Committee and permanently installed upon a foundation within a Home Site), travel trailer, truck, camper, house trailer, boat, boat trailer, or similar item of equipment shall be kept, parked, stored or maintained within any Parcel except within the confines of a garage or screened from sight of adjoining Parcels.
- 3.9 Unsightliness. No unsightliness shall be permitted on any Parcel. Without limiting the generality of the foregoing: (1) all unsightly structures, facilities, equipment objects and conditions shall be enclosed within an approved structure or appropriately screened from view; (2) refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view; (3) service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view; (4) no lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate; and (5) all rubbish, trash and garbage shall be regularly removed from each Parcel and shall not be allowed to accumulate thereon.
- 3.10 Motor Vehicles. All motor vehicles, including, without limitation, automobiles, trucks, motorcycles, dune buggies, trail bikes, all-terrain vehicles, snow-mobiles and other types of recreational vehicles shall be duly licensed and lawful for use on public roads in Madera County, California and must have mufflers on their exhaust systems and shall be driven only on the Access Roads and other roads or other paths, if any, specifically designated for such use by Declarant or the Association.
- 3.11 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon the Ranch nor shall anything be done or placed on the Ranch which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.
- 3.12 No Annoying Lights, Sounds or Odors. No light shall be emitted from the Ranch which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on the Ranch which is unreasonably loud or annoying; and no odor shall be emitted on the Ranch which is noxious or offensive to others.

- 3.13 No Hazardous Activities. No activities shall be conducted on the Ranch, and no Improvements constructed on the Ranch, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no open fires shall be lighted or permitted on the Ranch except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace, or except such controlled and attended fires required for clearing or maintenance of land that comply with all applicable laws and are approved in writing by the Association.
- 3.14 Restriction on Signs. Except for signs used by Wyle and Wheeler or its agents in the original sale of Ranch Parcels, no signs or advertising devices of any nature shall be erected or maintained on the Ranch except as necessary to identify the ownership of a Ranch Parcel or the Cattle Ranch Parcel and its address; or to show that a Parcel is for sale or for rent; or as may be necessary or desirable to give direction, advise of rules and regulations, or caution or warn of danger; and such signs as may be otherwise required by law. Any signs which are permitted under the foregoing restrictions shall be erected or maintained on the Ranch only with the prior written approval of the Design Committee, which approval shall be given only if such signs shall be of attractive design in keeping with the scenic and rustic nature of the area and shall be as small in size as is reasonably possible and shall be placed or located as directed or approved by the Design Committee.
- 3.15 No Mining and Drilling. The Ranch shall not be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth. The foregoing shall not prohibit the drilling and maintenance of water wells as provided in Section 3.5 hereof.
- 3.16 Hunting; Firearms. There shall be no hunting of birds or animals nor the discharge of firearms or other weapons upon the Ranch, except in connection with target shooting conducted in a safe manner and except for the hunting with a shotgun of game birds or game animals, in season and in accordance with all applicable laws.
- 3.17 Fencing. Each area or site constituting the Hone Site within a Parcel shall be fenced on its perimeter with fencing materials of a size and design sufficient to keep cattle, horses, humans and other livestock from entering onto the Hone Site, and such Home Site perimeter fencing shall be maintained in good condition at all times. All fencing installed or proposed to be installed upon any Parcel must be approved by the Design Committee as consistent with the ranch character of the Ranch. In order to maintain the natural open appearance of the Parcels to the greatest extent possible, fences shall not be permitted on Parcels other than to enclose the area or areas constituting the Home Site or as provided in Sections 3.21 and 4.2 hereof.
- 3.18 Sewage. No outside toilet shall be constructed upon any part of the Ranch, except a temporary facility maintained during, and used exclusively in connection with, the construction of Improvements. All plumbing fixtures, dishwashers, toilets, and sewage disposal systems upon each Parcel shall be connected to the septic tank and system or

other sewage system approved for the Ranch by the County of Madera or such other special district or regulatory authority having jurisdiction thereof.

- 3.19 Further Subdivision. No Parcel shall be further subdivided or otherwise divided into more parcels.
- 3.20 Destruction In the event an Improvement upon any Parcel is destroyed or substantially damaged, the Owner shall within six (6) months following such damage or destruction either submit plans for the reconstruction thereof to the Design Committee and thereafter promptly commence and diligently prosecute such reconstruction to completion or remove such damaged or destroyed Improvement from the Parcel and landscape such portion of the Parcel affected by such removal in order to be in conformance with the existing landscaping.
- 3.21 Swimming Pools. All swimming pools, permanent wading pools, hot tubs, spas, or the like constructed upon any portion of the Home Site of a Parcel shall be enclosed upon completion by fences at least five (5) feet in height. Such fences shall be first approved by the Design Committee and must comply with the other provisions of this Declaration.
- 3.22 Height Restriction. No building or structure shall be constructed, altered or permitted to remain upon the Ranch that exceeds the height limitations imposed by applicable zoning ordinances of the County of Madera, or the rules of the Design Committee, in no event shall the height of any structure exceed twenty-five (25) feet unless otherwise specifically approved by the Design Committee.
- 3.23 Setbacks. All Improvements, and any part thereof, shall be constructed and maintained on each Parcel at a distance of no less than twenty (20) feet from any boundary of the Parcel, as specified by the Design Committee; provided, however, that this limitation shall not apply to the road approach to the Home Site within a Parcel.

ARTICLE 4RANCH PARCELS. HOME SITES, CATTLE EASEMENT AREA AND CATTLE RANCH PARCEL

- 4.1 Designation of Home Site and Cattle Easement Area. From time to time upon application by the owner of a Parcel to the Design Committee for approval of development or construction plans for Improvements on the Parcel, the Owner shall propose, and if reasonable and in accordance with the other provisions of this Declaration, the Design Committee shall designate, by surveyed written description the portion or portions of the Parcel consisting of not more than ten (10) acres in the aggregate as the "Home Site", and the remainder shall be designated as Cattle Easement Area. The final designation shall be within the sole authority of the Design Committee. The Home Site shall be located and configured to the extent reasonably possible in a manner consistent with the desire to secure a natural environment and appearance for the Ranch while providing a reasonably sufficient location and area for construction of the residence, Improvements and associated structures upon the Parcel, and a reasonable landscaped area, including front, side and back yards.
- 4.2 Cattle Easement Area. No Improvements, including fences, plantings and landscaped areas, shall be constructed or maintained upon the Cattle Easement Area of a Parcel other than:
- a) One driveway for access to Home Site;
 - b) Underground septic tank and system;
 - c) Above ground and/or underground utilities; and
 - d) Other landscape, plantings, fences, and other Improvements specifically authorized by the Design Committee upon findings that such proposed landscape, plantings, fences, and other Improvements are compatible with and enhance the natural appearance and environment of the Ranch. Within the Cattle Easement Area, no trees, shrubs, rocks or boulders shall be removed or destroyed, nor shall the natural grasses, wildflowers or other vegetation be removed or destroyed, nor shall the natural soil be disked, graded, tilled, ripped, or otherwise altered, without the prior consent of the Design Committee. Nothing in this paragraph, however, shall prevent an owner from complying with any requirements of law with regard to the ownership or maintenance of the Cattle Easement Area, or to brush or otherwise engage in minor maintenance to preserve a pleasing appearance and to maintain safety.
- 4.3 Cattle Ranch Parcel. In addition to any improvements constructed by the Owner of the Cattle Ranch Parcel within the "Home Site" designated on such Parcel, the "Cattle Easement Area" portion of the Cattle Ranch Parcel shall contain the following improvements, all of which are in place and in good condition as of the date of this Declaration:

- (1) Caretaker's Home - 3 bedroom 2 bath house with deck;
- (2) Barn Facility - 8 stall barn, corrals, fencing and metal roof;
- (3) Well & Pump - 18 gallon per minute well and pump system services Caretaker's Home and Barn Facility;
- (4) Tack room - Includes lockers, office and restroom; and
- (5) Pond and Dam;

(collectively, the "Existing Cattle Ranch Improvements"). The Existing Cattle Ranch Improvements will not be removed without the mutual agreement of the Association and the Owner of the Cattle Ranch Parcel. In addition to the Existing Cattle Ranch Improvements, the "Cattle Easement Area" portion of the Cattle Ranch Parcel shall contain, from time to time, such additional improvements as are mutually agreed upon by the Association and the Owner thereof, consistent with the purposes of this Declaration, including the easements and rights in favor of all of the Owners of the Ranch described herein. All such additional Improvements, if any, together with the Existing Cattle Ranch Improvements, are hereinafter called the "Cattle Ranch Improvements."

The Owner of the Cattle Ranch Parcel shall have the right to establish and improve a "Home Site" thereon, subject to the same rights and restrictions as apply to the 33 Ranch Parcels. Improvements constructed within the Home Site in the Cattle Ranch Parcel, and improvements authorized under Section 4.2 above to service the Home Site constructed outside of the Home Site on the Cattle Ranch Parcel, shall not be considered "Cattle Ranch Improvements."

ARTICLE 5VARIANCES

- 5.1 Variations by Design Committee. The Design Committee may authorize variations from compliance with any of the covenants, conditions or restrictions contained in this Declaration or when circumstances such as topography, natural obstructions or hardship may require; provided, however, that such variations shall be authorized in conformity with the intent and purposes of this Declaration and provided further that in every instance such variance will not be materially detrimental or injurious to the other property covered by this Declaration. All variations must be evidenced in writing.
- 5.2 Effect of Variations. If a variance is granted by the Design Committee, no violation of the covenants, conditions or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive the provisions, covenants, conditions and restrictions contained in this Declaration for any purpose except as to the particular property and particular provision covered by the variance.

ARTICLE 6REQUIRED APPROVAL OF ALL CHANGES TO PARCELS

- 6.1 Change in the Existing State of Property. Change in the Existing State of Property shall mean and include, without limitation, the construction of any Improvement, including without limitation utility facilities; the excavation, filling or similar disturbance of the surface of land including without limitation change of grade, ground level or drainage pattern; the clearing, marring, defacing or damaging of trees, shrubs, lawns or plants; or any change or alteration, including without limitation, any change of color, texture or exterior appearance, of any previously approved Change in the Existing State of Property, insofar as the same shall apply to any Parcels.
- 6.2 Approval of Change in Existing State Required. No Change in the Existing State of Property shall be made or permitted, except by Declarant, without the prior written approval of the Design Committee and without compliance with this Article 6. The following sections of this Article 6 shall not be applicable to any Change in the Existing State of Property by Declarant, except as specifically provided therein.
- 6.3 Design Committee Criteria for Approval. The Design Committee shall have complete discretion to approve or disapprove any Change in the Existing State of Property. The Design committee shall exercise such discretion with the following objectives in mind: to carry out the general purposes expressed in this Declaration; to prevent violation of any specific provision of this Declaration; to prevent any change which would be unsafe or hazardous to any persons or property; to minimize obstruction or diminution of the view of others; to preserve visual continuity of the area and to prevent a marked or unnecessary transition between improved and unimproved areas; to assure that any change will be of good and attractive design and in harmony with the rustic and natural setting of the area and will serve to preserve and enhance existing features of natural beauty; and to assure that materials and workmanship for all Improvements are of a quality comparable to other Improvements in the area.
- 6.4 Conditions Precedent to Approval. Prior to expenditures of any substantial time or funds in the planning of any proposed Change in the Existing State of Property, the Owner of a Parcel shall advise the Design Committee in writing of the general nature of the proposed change; shall, if requested by the Design Committee, meet with a member or members of the Design Committee to discuss the proposed Change in the Existing State of Property; shall read or become familiar with any guides or guidelines which may have been prepared or formulated by the Design Committee; and shall, if requested by the Design Committee, furnish the Design Committee with preliminary plans and specifications for comment and review. There shall also be furnished to the Design Committee any and all further information with respect to the proposed Change in the Existing State of Property which the Design Committee may reasonably require to permit it to make an informed decision on whether or not to grant approval to the Change in the Existing State of Property. No proposed Change in the Existing State of Property shall be deemed to have been approved by the Design Committee unless its approval is in writing executed by at

least two (2) members of the Design Committee provided that approval shall be deemed given if the Design Committee fails to approve or disapprove a proposed Change in the Existing State of Property or to make additional requirements or request additional information within forty-five (45) days after a full and complete description of the proposed Change in the Existing State of Property has been furnished in writing to the Design Committee with a written and specific request for approval.

- 6.5 Prosecution or Work After Approval. After approval by the Design Committee of any proposed Change in the Existing State of Property, the work shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Change in the Existing State of Property and with any plans and specifications therefore given to the Design Committee. The Design Committee and its duly appointed agents may enter upon any Parcel at any reasonable time or times to inspect the progress or status of any Change in the Existing State of Property being made or which may have been made.
- 6.6 Waiver. The approval of the Design Committee of the plans and specifications for any Change in the Existing State of Property shall not be deemed to be a waiver by the Design Committee of its rights to object to any of the features or elements embodied in any other plans and specifications for another Change in the Existing State of Property, nor shall such approval be construed as in any manner modifying, altering or waiving any of the covenants, conditions or restrictions of this Declaration.
- 6.7 Certificates and Notices. Upon request of the Owner of a Parcel, the Design Committee shall record a certificate of completion and compliance upon completion of the change in Existing State of Property after having inspected the Change and satisfied itself that the Change in Existing State of Property was completed strictly in accordance with the description thereof and the plans and specification therefore. The Design Committee shall have the right and authority to record a notice to show that any particular Change in the Existing State of Property has not been approved.

ARTICLE 7DESIGN COMMITTEE

- 7.1 Members. The Design Committee shall consist of three (3) members. There may be designated one or more alternate members for each regular member of the Design Committee each of whom shall be authorized to act in the place and stead of the member for whom he is an alternate in the event of that member's absence or inability to act. Members and alternate members of the Design Committee shall be appointed by and shall serve at the a pleasure of Wyle and Wheeler, provided that, at any time, Wyle and Wheeler may assign the right to appoint and remove one or more members and alternate members of the Design Committee to the Association. From and after the earlier of (a) the date ninety percent (90%) of the Parcels have been sold or (b) the date which is five (5) years after the issuance of the Final Public Report for the Ranch, the Board of Directors shall have the power to appoint all of the Members and alternative members of the Design Committee. Wyle and Wheeler or, after assignment of the right to appoint and remove a majority of the members and alternative members to the Association, then the Association shall promptly furnish the names and addresses of the current members and alternate members of the Design Committee to any interested person and the name and address to which all notices and communications to the Design Committee should be directed. Members and alternate members shall serve without compensation, but shall be reimbursed for actual and reasonable expenses incurred by Wyle and Wheeler or the Association, whichever has the right to appoint or remove a majority of the members. Members appointed by Wyle and Wheeler need not be Members of the Association. Members appointed by the Board shall be Members of the Association.
- 7.2 Action by Design Committee. The vote or written consent of any two (2) members shall constitute action of the Design Committee. The Design Committee shall report in writing all approvals and disapprovals of any Changes in the Existing State of Property to Wyle and Wheeler or to the Association, whichever then has the right to appoint and remove a majority of the members and Wyle and Wheeler or the Association, as the case may be, shall keep a permanent record of all such reported action.

ARTICLE 8ASSOCIATION – FUNCTION

- 8.1 General Purposes and Powers. The Association has been formed by Wyle and Wheeler as a non-profit mutual benefit corporation pursuant to the non-profit corporation law of the State of California to maintain, oversee, repair, and keep up the Access Roads and all of the Cattle Ranch Area and to perform such other functions as provided in this Declaration, all for the benefit of all owners of the Ranch. The Association shall be obligated and shall assume and perform all functions and obligations imposed on it or contemplated for it under this Declaration. The Association shall in all of its actions attempt to further and promote the community welfare of all of the Owners. The Association shall have all powers necessary or desirable to effectuate these purposes.
- 8.2 Receive, Hold and Maintain Property and Interests for Benefit Of Members. The Owner of the Cattle Ranch Parcel shall be obligated to and shall hold title to the cattle Ranch Parcel subject to the benefits and burdens described herein. The Owner of the Cattle Ranch Parcel shall be obligated to pay all rants, fees, taxes and assessments relating to, and necessary to preserve same; adequately and fully insure all of said property against casualty loss as hereinafter provided; and provide for the best and highest quality care, operation, management, maintenance, repair and replacement of same, subject to the right of reimbursement from the Association and its Members as described herein.
- 8.3 Access Roads Maintenance Function. With respect to the Access Roads, the Association shall be obligated to and shall provide for the management, maintenance, and repair thereof.
- 8.4 Insurance Function. The Association shall obtain and maintain in force broad form liability coverage on all areas that the Association is obligated to maintain, including the Access Roads and the Cattle Ranch Area, in such amounts and with such deductible provisions as good business practice may dictate, insuring the Association, its Members, and the Owner of the Cattle Ranch Parcel against liability.
- 8.5 Right to Make Rules and Regulations. The Association shall be authorized to and shall have the power to adopt and enforce rules and regulations to regulate the use of the Access Roads and the Cattle Ranch Area, and any and all other facilities and property maintained by the Association to assure fullest enjoyment and use by persons entitled to enjoy and use same. The Association may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from property and facilities operated and maintained by the Association or otherwise. Each Owner, the members of each Owner's family, and his and their guests and invitees shall be obligated to comply with and abide by any such rules and regulations.
- 8.6 Further Powers and Authorities of the Association. The Association shall have all powers and authorities as set forth in its Articles of Incorporation and By-Laws, or that belong to

it by operation of law. The Association shall also be empowered to undertake on behalf of its Members any act or functions which a majority of its Members shall reasonably determine in good faith will promote the recreation, health, safety and welfare of the Members and which is not contrary to the provisions and intent of this Declaration.

- 8.7 No Sale or Abandonment of Property Furnished by Wyle and Wheeler. No "Cattle Ranch Improvements", as defined in Section 4.3 of this Declaration, may be destroyed, permitted to deteriorate or waste, or disposed of, except upon Super Majority Vote of the Members, unless a suitable and adequate replacement or substitute is provided for the use and benefit of the Members.
- 8.8 No Commercial Enterprise on Cattle Ranch Parcel. No real property or Improvements on the Cattle Ranch Parcel shall be used or operated for commercial profit or gain; provided, however, that notwithstanding the foregoing, the Association and the Owner of the Cattle Ranch Parcel may engage in the commercial animal husbandry and ranching activities permitted on the Cattle Ranch Area and may establish reasonable and uniformly applied charges for use of property and facilities on the Cattle Ranch Parcel, to assist in offsetting the costs and expenses of making the facilities within the Cattle Ranch Area of the Cattle Ranch Parcel available to Owners, and the cost and expense of meeting the Association's maintenance responsibilities under this Declaration.
- 8.9 Governmental Successor. Any property or facility owned or held by the Association and any function or activity required to be performed by the Association under the terms of this Declaration may be turned over to a governmental authority which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate.
- 8.10 Implied Rights of Association. The Association shall have and may exercise any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, given to it by law, and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under this Declaration, including, without limiting the generality of the foregoing, the right to engage necessary labor and acquire use of or purchase necessary property, equipment or facilities; employ personnel necessary to manage affairs of the Association; and obtain, and pay for, legal, accounting, management and other professional services as may be necessary or desirable.

ARTICLE 9ASSOCIATION - MEMBERSHIP AND MANAGEMENT

- 9.1 Membership. Each Owner of a Parcel shall be a member of the Association and each such membership shall be appurtenant to the fee simple title to such Parcel. The Owner or Owners (including Declarant) of the Parcel shall be deemed the owner or owners of the membership appurtenant to that property and title to and ownership of the membership for that property shall automatically pass upon transfer of fee simple title to that property. Each Owner or Owners of a Parcel as aforesaid shall be at all times entitled to the benefits and subject to the burdens relating to the membership for such property; provided, however, that there shall be one (1) vote only for each Parcel. Membership in the Association shall be limited to Owners of Parcels.
- 9.2 Declarant Membership. Notwithstanding anything contained herein, so long as Wyle and Wheeler shall be a Member of the Association. Declarant shall have two (2) votes for each Parcel it owns.
- 9.3 Board of Directors. The affairs of the Association shall be managed by a Board of Directors consisting of five (5) persons. The Board of Directors may, however, delegate any portion of its authority, by resolution, to an Executive Committee, or to an Executive Manager or Director for the Association. Members of the Board of Directors, other than those designated by Wyle and Wheeler, shall be elected annually by the Members.
- 9.4 Voting Of Members. Except as otherwise provided in Section 9.2 hereof with respect to Wyle and Wheeler, there shall be one vote for each Parcel which vote shall be shared by all owners, if more than one, and voting by proxy shall be permitted. Voting for Members of the Board shall be by secret written ballot. Every Member entitled to vote at any election of the Board may cumulate his votes and give one candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which his Parcel(s) is (are) entitled, or may distribute his votes on the same principle among as many candidates as he desires; provided that the procedural prerequisites to cumulative voting set forth in Section 7615(b) of the California Corporations Code are satisfied. The entire Board or any individual Director may be removed from office with or without cause by vote of the majority of the voting power of the Members. However, unless the entire Board is removed, no individual Director shall be removed prior to the expiration of his term of office if the number of votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect the Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the most recent election of the Director were then being elected. If any or all of the Directors are so removed, new Directors may be elected at the same meeting. Each Director must be a Member of the Association or a representative of Wyle and Wheeler designated by Wyle and Wheeler.
- 9.5 Notices of Members. A Member shall be entitled to at least thirty days' notice of all meetings in which a vote of Members is to be taken and of the amount of all assessments

which the Member is obligated to pay. Notice shall be considered given when written notice is mailed or telegraphed to a Member addressed to the Member under the name and address for the Member furnished by the Member to the Association and, in any event shall be deemed given when the Member actually receives notice. If a Member fails to furnish a name or address to the Association to which notices may be mailed, the Association shall be entitled to give notice by mail, telegraph or delivery of a written notice to the address of such Member's property, addressed "Care of Owner."

- 9.6 Annual Meetings. The first annual meeting of the Association shall be held within thirty (30) days following the closing of the sale of ten (10) of the Parcels to Owners who shall be other than Wyle and Wheeler. Thereafter, the annual meetings of the Association shall be held within thirty (30) days of the anniversary date of the first annual meeting in each succeeding year.
- 9.7 Budgets and Financial Statements. The Board of Directors of the Association shall cause financial statements for the Association to be regularly prepared and copies to be distributed to each Member of the Association as follows:
- a) A pro forma operating statement (budget) for each accounting year other than the first accounting year (which shall include a reserve for the repair and replacement of Access Roads and Improvements on the Cattle Ranch Parcel) shall be distributed not less than forty-five (45) nor more than sixty (60) days before the beginning of such accounting year of the Association. The budget shall include all of the following:
 - i) The estimated revenue and expenses on an accrual basis.
 - ii) The identification of the total cash reserves currently set aside.
 - iii) The identification of the estimated remaining life and the method of funding used to defray the future repair, replacement, or addition to those major components that are attributable to the areas for which the Association is obligated.
 - iv) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repairs, replacement, or additions to those major components that are attributable to the areas for which the Association is obligated.
 - b) A balance sheet as of the last day of the fifth (5th) month following the month in which shall occur recordation of the first deed of a Ranch Parcel sold to a third party purchaser and an operating statement for the period from the date of recordation of such first deed to the date of such balance sheet, shall be distributed within sixty (60) days after the date of such balance sheet. The operating statement shall include a schedule of assessments received and receivable identified by the description of the Parcel and the name of the person or entity assessed.

- c) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of each fiscal year:
- i) A balance sheet as of the end of such accounting year;
 - ii) An operating {income) statement for such accounting year;
 - iii) A statement of changes in financial position for each accounting year; and
 - iv) For any fiscal year in which the gross income to the Association exceeds \$75,000, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.
- d) If the report referred to in subsection (c) above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review. In lieu of the distribution of the financial statements required by subsection (c), the Board of Directors may elect to distribute a summary of the financial statements to all Members with a written notice that the financial statements are available at the business office of the Association or at the expense of the Association. If any Member requests copies of the financial statements to be mailed to the Member, the Association shall provide the copies to the Member by first class United States mail at the expense of the Association and delivered within five days. The written notice that is distributed to each of the Association Members shall be in at least 10-point bold type on the front page of the summary of the statements.
- e) In addition to financial statements, the Board of Directors shall annually distribute within 60 days prior to the beginning of the fiscal year, a statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of regular and special assessments.
- f) The Board of Directors shall do the following not less frequently than quarterly:
- i) Cause a current reconciliation of the Association's operating accounts to be made and review the same.
 - ii) Cause a current reconciliation of the Association's reserve accounts to be made and review the same.
 - iii) Review the current year's actual reserve revenues and expenses compared to the current year's budget.
 - iv) Review the most current account statement prepared by the financial institution where the Association has its operating and reserve accounts.

- v) Review an income and expense statement for the Association's operating and reserve accounts.
- g) Withdrawal of funds from the Association's reserve account shall require the signatures of either:
 - i) Two members of the Board of Directors; or
 - ii) One member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors.

ARTICLE 10ASSESSMENTS

- 10.1 Member's Obligation to Pay Assessments and Other Amounts. Declarant, with respect to each Parcel, hereby covenants, and each other Owner of each Parcel and each other person or entity possessing any right, title or interest therein, whether or not it be so expressed at the time of acquisition of such right, title or interest, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association Assessments as provided in this Declaration and such reasonable and uniformly applied charges for use of property or facilities which may be established by the Association as provided in this Declaration and such reasonable and uniformly applied fines and penalties imposed for violation of rules and regulations adopted by the Association as provided in this Declaration. All of the foregoing shall be levied and used exclusively to promote the recreation, health, safety and welfare of the residents of the Property, the improvement, operation and maintenance of the Access Roads and the Cattle Ranch Area, and the performance of the duties of the Association as set forth in this Declaration.
- 10.2 Regular Assessments. Commencing as provided in Section 10.5 hereof, each Member of the Association as an Owner of a Ranch Parcel shall be obligated to pay and shall pay to the Association, at least annually, regular Assessments levied by the Association against his Parcel, which assessments must be fixed at a uniform rate for all Parcels. Regular Assessments shall be for the purpose of financing the normal operations of the Association in carrying out its purposes and responsibilities.
- 10.3 Special Assessments. Each Member of the Association shall be obligated to pay and shall pay to the Association, from time to time when required, special Assessments levied by the Association against his Parcel, which assessments must be fixed at a uniform rate for all Parcels. Special Assessments shall be for the purpose of financing capital improvements involving expenditures in excess of \$10,000.
- 10.4 Determination of Total Amount of Assessment. The total amount required to be raised by Assessments for the Association shall be determined at least annually in accordance with the following procedure. The Board of Directors of the Association shall prepare a budget covering at least a one-year period, showing, in reasonable detail, the various functions and matters proposed to be covered by the budget, including construction or replacement of any capital improvements, showing the estimated costs and expenses of such functions or matters, showing the estimated income and other funds which may be received by the Association, and showing the estimated total amount of Assessments required to cover costs and expenses and to provide a reasonable reserve; shall call a meeting of the Members and give thirty (30) days' notice of the time and place thereof to all such Members; and shall furnish a copy of the budget to all such Members at least 30 days prior to such meetings for approval by Majority Vote of the Association Members. The total amount to be raised by Assessments shall be that amount necessary to cover the costs and expenses of functions required to be undertaken or performed by the Association under this Declaration and to fulfill any and all long-term or continuing

commitments of the Association made in connection with or contemplated under any previously approved budget plus such additional amount, if any, determined or approved by the Majority Vote of the Members either at or after such meeting. The Association shall, except as emergencies may require, make no commitment or expenditures in excess of the funds reasonably expected to be available to the Association. Notwithstanding the foregoing, the first Assessments imposed by the Association for the first year of its operation shall be based on the budget prepared by Declarant and provided to each purchaser of a Ranch Parcel from Declarant, and in the event that (a) any annual Assessments shall be increased by more than twenty percent (20%) over those during the immediately preceding year, or (b) during any fiscal year, any special Assessment, or all special Assessments in the aggregate, exceeds 5% of the budgeted gross expenses of the Association for that fiscal year, the approval required therefore shall be by Super Majority Vote of the Eligible Votes, and the quorum required for such vote shall be over 50% of the Members. Any meeting or election of the Association for purposes of complying with the foregoing shall be conducted in accordance with Sections 7510 et. seq., and 7613 of the California Nonprofit Mutual Benefit Corporation Law. The foregoing restrictions on Assessment increases do not apply to increases necessary for emergency situations. An emergency situation is any of the following:

- a) An extraordinary expense required by an order of court.
- b) An extraordinary expense necessary to repair or maintain the Ranch or any part of it that the Association is responsible to maintain when a threat to personal safety on the property is discovered.
- c) An extraordinary expense necessary to repair or maintain the Ranch or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under California civil Code Section 1365, provided that before the imposition or collection of any Assessment as an emergency the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Members with the notice of Assessment.

- 10.5 Commencement of Assessments. The first Assessments commenced on January 1, 1996.
- 10.6 No Lien for Assessments. The Association shall not have the right to a lien under Section 1367 of the California Civil Code against any Parcel to secure payment of any Assessment that is not paid when due.
- 10.7 Personal Liability of Member. The amount of any Assessment, charge, fine or penalty payable by an Owner shall be a joint and several personal obligation to the Association of the persons or entities who constitute the Owner of the Ranch Parcel at the time the amount was payable, their heirs, personal representatives, successors and assigns and

may be recovered by a suit for the money judgment by the Association without foreclosing or waiving any lien securing the same.

- 10.8 Liability of Purchasers. A purchaser of any Parcel subject to this Declaration shall be jointly and severally liable with the seller of the Parcel for all unpaid Assessments, charges, fines or penalties with respect to the Owner of the Parcel, or the membership appurtenant thereto, which had accrued or were payable at the time of the grant or conveyance of the Parcel to such purchaser, without prejudice to such purchaser's right to recover any of said amounts paid by the purchaser from the seller.
- 10.9 Mortgages. No holder of a lien or encumbrance constituting a Mortgage on any Parcel shall be personally liable for any such Assessment, charge, fine or penalty. No amount claimed under the provisions of Article 10 hereof shall in any way defeat, invalidate or impair the rights of any Mortgagee under any recorded Mortgage.
- 10.10 Estoppel Certificate. Upon payment of a reasonable fee not to exceed \$25 and upon written request of any person with an interest in any Ranch Parcel subject to this Declaration or intending to acquire an interest in such Ranch Parcel, the Association shall furnish a written statement setting forth the amount of any unpaid Assessments, charges, fines or penalties, if any, with respect to the Owner of the Ranch Parcel or the membership appurtenant thereto and the amount of the current yearly Assessments payable with respect to the Ranch Parcel, which statement shall be conclusive upon the Association.
- 10.11 Abandonment or Failure to Use. No Owner subject to Assessments, charges, fines or penalties hereunder may exempt himself from liability to such Assessments, charges, fines or penalties, by waiver of the use and enjoyment of the Access Roads or Cattle Ranch Area or other facilities promoted by such Assessments, charges, fines or penalties, or by abandonment of his Parcel.

ARTICLE 11EASEMENTS

- 11.1 Cattle Ranch Area. Each Owner of a Parcel and as a Member of the Association, as well as the Association itself, shall have a non-exclusive appurtenant easement to use the Cattle Ranch Area for recreational and sporting activities consistent (i) with the usage made of the Cattle Ranch Area by the Owner of the Cattle Ranch Parcel and the Association, (ii) with keeping the Cattle Ranch Area in a scenic and natural condition, (iii) with the covenants, conditions and restrictions of this Declaration, and (iv) with rules and regulations promulgated by the Association. Each Owner may delegate his right of use under said non-exclusive easement for the benefit of his family and his guests and invitees.
- a) Recreational Amenities. Further to the foregoing, the Association shall have a right, easement and obligation to use, maintain and operate the "Cattle Ranch Improvements", as defined in Section 4.3 of this Declaration, located now or in the future on the Cattle Ranch Parcel for the use and benefit of all Owners and Members of the Association, and their guests. To that end, the Association shall, to the extent feasible, pay the costs of so maintaining and operating said facilities directly, and in addition, where such direct payment is not feasible, shall reimburse the Owner of the Cattle Ranch Parcel for such cost, together with a pro-rata cost of the real property taxes assessed against the Cattle Ranch Parcel, proportionate to the assessed value of the Improvements and the portion of the real property within the Cattle Ranch Parcel operated and maintained by the Association. The Association shall obtain the funds necessary to pay such costs through Assessments, as provided in Article 10 of this Declaration, or through use fees, or a combination of the two, as may be determined by Majority Vote of the Members of the Association.
- b) Cattle Ranching. The Owner of the Cattle Ranch Parcel, and the Association in the event that the Association so elects, shall have the right to graze cattle and conduct customary cattle-ranching activities within all of the Cattle Easement Area subject to the provisions of this Declaration intended to preserve the scenic and aesthetic nature of the Ranch as a whole; provided that the party exercising this right shall apply the net profits derived from such activities, if any, to defray the costs payable by the Association under sub-paragraph (a) of this Section 11.1, above, and under Section 11.05, below.
- 11.2 Entry or Use Rights. Each Parcel shall be subject to the following rights of entry and use:
- a) The right of the Association, or its agents, to enter any part of any parcel to cure any violation or breach of this Declaration or the Bylaws or the Association Rules, provided that at least thirty (30) days prior written notice of such violation or breach (except in cases of emergency) has been given to the owner of the Parcel in question, and provided that, within the thirty (30) day period, such Owner has not cured such violation or breach. The Association shall be entitled to levy a special assessment for

its costs of effecting such cure against the Owner in accordance with the procedures contained in Section 10.4. The rights of entry and cure may be exercised without prior notice in case of an emergency threatening Injury to any person or to any part of the Ranch, whether or not the Owner of the Parcel to be entered is present;

- b) The right of the Association, or its agents, to enter any part of any Parcel to perform its obligations and duties under this Declaration, including obligations or duties with respect to construction, maintenance, or repair for the benefit of the Cattle Easement Area or the Owners in common, including, but not limited to, watering, planting, cutting, removing, and otherwise caring for the landscaping upon the Cattle Easement Area and cleaning, repairing, replacing and otherwise maintaining or causing to be maintained any other items. The rights of entry and cure may be exercised without prior notice in case of an emergency originating threatening injury to any person or to any part of Ranch, whether or not the Owner of the Parcel to be entered is present; and
- c) The right of the Association and owners (or their representatives) of adjoining Parcels of entry upon and access to slopes and drainage ways located upon a Parcel when such access is essential for the maintenance or stabilization of slopes or drainage, or both, on such adjoining Parcels, provided requests for entry are made in advance and that entry is at a time convenient to the Owner whose Parcel is being entered upon. In case of emergency the right granted hereby may be exercised without prior notice.

11.3 Utilities. There is hereby reserved to each Owner of a Parcel and as a Member of the Association, as well as the Association itself, a non-exclusive easement and right-of-way in and on the Ranch or any part thereof for the purpose of ingress and egress, and construction, location and maintenance of utilities providing service to the Cattle Ranch Parcel and/or any Ranch Parcel, including but not limited to electricity, gas, telephone and television service for the Ranch, or any part thereof; provided, however, that the exercise of this easement shall not result in damage to existing Improvements unless adequate compensation is paid for any such damage by the party exercising such rights. Each Owner of a Parcel and as a member of the Association, as well as the Association itself, shall have the right of reasonable access to the Ranch or any part thereof for the purpose of maintaining, replacing and enlarging utility services as required; provided that the use of such right of access shall be exercised in such manner so as not to materially inconvenience or interfere with the use and enjoyment of the Ranch or any part thereof; and provided further that a utility installation providing utility availability and/or service to all or a portion of the Ranch shall not be altered, modified or changed in such a manner as to impair or interfere with availability or service of such utilities to its users.

11.4 Accessibility. Utility easements in the Ranch shall at all times be open and accessible to public agencies having jurisdiction, and to public and quasi-public utility corporations and other persons erecting, constructing, or servicing such utilities and to Declarant and its successors and assigns, all of whom shall have the right of ingress and egress thereon and therefrom, and the right and privilege of doing whatever may be necessary in, under and for which said easements, reservations and rights of way are reserved or granted.

- 11.5 Access Roads. Each Owner of a Parcel and as a Member of the Association, as well as the Association itself, shall have a non-exclusive easement and right of way appurtenant to his property for ingress and egress to and from the Ranch, his Parcel, and streets and roads adjacent to the Ranch over and on the Access Roads located or to be located on the Ranch. Each Owner may delegate his right under said non-exclusive easement for the benefit of his family, his guests and invitees.

In connection with the foregoing, the Association shall maintain the Access Roads in good condition and repair, and shall pay the costs thereof. The Association shall obtain the funds necessary to pay such costs through Assessments, as provided in Article 10 of this Declaration.

- 11.6 Easements on Cattle Ranch Parcel and Ranch Parcels. The easements and rights-of-way granted or reserved by this Declaration or dedicated to the public utilities situated in, on or over the Cattle Ranch Parcel or any Ranch Parcel shall be maintained by the owner thereof except to the extent to which the Association or a public agency or utility company is responsible.

ARTICLE 12MISCELLANEOUS

- 12.1 Enforcement Rights. The following person shall have the right to enforce the provisions of this Declaration:
- a) The Declarant, so long as Declarant owns any portion of the Ranch;
 - b) Any Owner of a Ranch parcel within the Ranch;
 - c) The Owner of the Cattle Ranch Parcel;
 - d) The Association;
 - e) The Design Committee; and
 - f) The County of Madera or any political subdivision or agency thereof.
- 12.2 Deemed to Constitute a Nuisance. Every act or omission which results in a breach of any provision, covenant, condition or restitution contained in this Declaration is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or in equity against an owner shall be applicable and may be exercised by any party entitled to enforce this Declaration, including, but not limited to the right, privilege and license to enter upon such property where said violation or breach exists and to summarily abate and/or remove at the expense of the Owner any thing or condition which is or results in such breach. No such entry by Declarant or its agents shall be deemed a trespass or subject such party to liability to the owner for such entry and/or any action taken to remedy or remove such breach. Each such party entitled to enforce this Declaration shall also have the right to prosecute a proceeding at law or in equity to enjoin or prevent a breach, to cause such breach to be abated or remedied, and to recover damages for such breach. The costs of any abatement, remedy or removal hereunder shall be a binding personal obligation on the Owner of the property upon which such breach occurred.
- 12.3 Attorneys' Fees. In any legal or equitable proceeding for the enforcement of any provision in this Declaration, the losing party or parties shall pay the costs and expenses of suit. Including but not limited to reasonable attorneys' fees of the prevailing party or parties. The prevailing party or parties shall be entitled to said costs and expenses even though such action is settled prior to judgment.
- 12.4 Cumulative Remedies. All remedies provided herein or at law or in equity are deemed to be cumulative and not exclusive.
- 12.5 Failure to Enforce is No Waiver. The failure of any party entitled to enforce this Declaration to utilize these enforcement provisions shall in no event be deemed a waiver

of the right to do so thereafter or in other cases. Nor of the right to enforce any other restriction.

- 12.6 Amendments to Declaration. No amendment to this Declaration shall affect the rights of the Mortgagee of any Mortgage on any Ranch Parcel or the Cattle Ranch Parcel which is made in good faith and for value, provided that any such Mortgage is recorded prior to the recordation of such amendment; and provided further that the benefit of this Section 12.6 shall not apply to the Mortgage of any such Mortgage if such Mortgagee shall (i) join in the execution of such amendment.
- 12.7 Breach. No breach of any provision of this Declaration shall impair or invalidate the lien of any recorded Mortgage made in good faith and for value and encumbering any Parcel.
- 12.8 Run With Land. Each provision, covenant, condition and restriction contained in this Declaration shall be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude running, in each case, as a burden with the title to each parcel of property now or hereafter subject to this Declaration and, both as a real covenant and an equitable servitude, shall be a burden upon and binding on each such parcel of property and upon each person or entity owning any right, title or interest in such parcel of property for so long as such person or entity owns any such right, title or interest, and shall be deemed a condition subject to which title to each parcel of property which is subject to this Declaration is and shall at all times be held.
- 12.9 Limited Liability. Neither Declarant, the Association, the Board of Directors of the Association, the Design committee nor any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.
- 12.10 Successors and Assigns of Association. This Declaration shall be binding upon assigns of the Association whether voluntary or involuntary by operation of law or otherwise, except to the extent provided in any written assignment which has the written approval of Declarant. The successors of the Association shall be bound by this Declaration.
- 12.11 Severability. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or valid and enforceable part of a provision of this Declaration.
- 12.12 Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any Covenant contained in this Declaration.
- 12.13 No Waiver. Failure to enforce any covenant, condition or restriction in this Declaration shall not operate as a waiver of any such covenant, condition or restriction, or of any other provision or condition hereof.
- 12.14 Notice. Except as otherwise provided, any notice permitted or required to be delivered may be done so either personally or by mail. If delivery is made by mail, it shall be

deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Board of Directors of the Association for the purpose of service of such notice, or to the property of such person which is subject to this Declaration if no address has been given to the Board of Directors. Such address may be changed from time to time by notice in writing to the Board of Directors of the Association.

12.15 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating and establishing the development of the Ranch in keeping with the natural setting to the greatest extent possible and shall be construed and governed in accordance with California law. 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; provided, however, that where this Declaration imposes a greater restriction upon the use or occupancy of any residence or upon the construction of residences or structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, then the provisions of this Declaration shall control.

12.16 Governmental Regulation. All valid governmental enactments, ordinances and regulations are deemed to be a part of this Declaration and to the extent that they conflict with any provision, covenant, condition or restriction hereof, said conflicting governmental enactment, ordinance and regulation shall control and the provision, covenant, condition or restriction hereof in conflict therewith shall be deemed (i) amended to the extent necessary to bring it into conformity with said enactment, ordinance or regulation while still preserving the intent and spirit of the provision, covenant, condition or restriction; or (ii) stricken herefrom should no amendment conforming to the governmental enactment, ordinance or regulation be capable of preserving the intent and spirit of said provision, covenant, condition or restriction.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

THE FRANK AND EDITH WYLE REVOCABLE TRUST, DATED FEBRUARY 22, 1980, AS AMENDED

By FRANK S. WYLE, Trustee

(This scanned/OCR'd document does not include the pages of notarized signatures nor the formal descriptions of which participants owned which properties at the time of the signing.)