

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR IGNACIO CREEK

*(Recorded March 11, 1974, Marin County, CA
Revisions: May 13, 1993, December 15, 2016)*

THIS DECLARATION is made on the date hereinafter set forth by IGNACIO CREEK DEVELOPMENT CORPORATION, a California corporation, hereinafter referred to as "*Declarant*"

WITNESSETH

WHEREAS, Declarant is the Owner of certain property in the City of Novato, County of Mann, State of California. which is more particularly described in Exhibits "A" and "B", attached hereto and incorporated herein by reference thereto;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of enhancing and protecting the value, desirability and community-wide attractiveness of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "*Association*" shall mean and refer to IGNACIO CREEK HOMEOWNERS' ASSOCIATION, INC., its successors and assigns.

Section 2. "*Owner*" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Residence Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "*Properties*" shall mean and refer to that certain real property described in Exhibits "A" and "B" attached hereto, and such additions thereto as are hereinafter brought within the jurisdiction of the Association, by effective Annexation as set forth in Exhibit "C".

Section 4. "*Common Area*" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Residence Lot is described in Exhibit "B", attached hereto and incorporated herein by reference thereto. Additional Common Area may be Annexed as provided herein.

Section 5. "*Residence Lot*" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area. The initial Residence Lots are described in Exhibit "A". Additional Residence Lots which may be subjected to these Restrictions are described in Exhibit "C".

Section 6. "*Declarant*" shall mean and refer to IGNACIO CREEK DEVELOPMENT CORPORATION, a California corporation, its successors and assigns if such successors or assigns should acquire more than one

undeveloped Residence Lot from the Declarant for the purpose of development.

Section 7. “*Mortgage*” shall also mean and refer to and be interchangeable with Deed of Trust. “*Mortgagee*” shall also mean and refer to and be interchangeable with beneficiary of a Deed of Trust.

ARTICLE II *PROPERTY RIGHTS*

Section 1. *Owners’ Easements of Enjoyment.* Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Residence Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Residence Lot remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations after notice and a hearing by the Board of Directors of the Association;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as the Association may deem proper;
- (d) The right of the Association to enact and enforce rules and regulations affecting use of the Common Area in furtherance of these Restrictions.

The above easement is subject to exclusive easements appurtenant to the various Residence Lots for encroachments on the Common Area, as originally constructed by Declarant.

Section 2. *Delegation of Use.* Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. Any such delegation of right of enjoyment shall not be a delegation of the obligation to pay assessments.

ARTICLE III *MEMBERSHIP AND VOTING RIGHTS*

Section 1. *Every Owner of a Residence Lot shall be a member of the Association.* Membership shall be appurtenant to and may not be separated from ownership of any Residence Lot which is subject to assessment, or may be subject to assessment if Annexed as provided herein. No owner shall have more than one (1) membership.

Section 2. *The Association shall have two (2) classes of voting membership:*

Class A. Class A members shall be all Residence Lot owners with the exception of the Declarant and shall be entitled to one (1) vote for each Residence Lot owned. When more than one (1) person holds an interest in any Residence Lot, all such persons shall be members. The vote for such Residence Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Residence Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Residence Lot owned. Declarant shall also be entitled to three (3) votes for each *Residence Lot* shown on any final recorded subdivision map affecting the property described in Exhibit “C”, which may be Annexed hereto, as therein provided. The Class B membership shall cease and be converted to Class A membership

on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership (including Residence Lots which may be Annexed); or
- (b) Two (2) years from the date of the issuance of the most recent public report issued by the California Department of Real Estate regarding the Properties, or any portion thereof (including any phase of the overall development); or
- (c) On September 1, 1976.

ARTICLE IV *COVENANT FOR MAINTENANCE ASSESSMENTS*

Section 1. *Creation of the Lien and Personal Obligation of Assessments.* The Declarant, for each Residence Lot owned within the Properties, hereby covenants, and each Owner of any Residence Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest at nine percent (9%) per annum, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Declarant shall not be liable for assessments for Residence Lots described in Exhibit "C" until Annexation thereof as provided in Exhibit "C".

Section 2. *Purpose of Assessments.* The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties thereby preserving the architecture and appearance of the housing development as a whole and thus benefiting the entire community.

Section 3. *Annual Assessment for Class B Members.* As long as there are Class B members of the Association, they shall not be assessed for maintenance of individual residential structures within the Properties until each Residence Lot dwelling is completed, or 120 days from the issuance of all building permits for the dwelling to be constructed on that Residence Lot. In addition, there shall be no assessment for any Residence Lots within the real property described in Exhibit "C" until such Residence Lots are Annexed.

Section 4. *Special Assessments for Capital Improvements.* In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment aggregating over One Thousand and No/100 Dollars (\$1,000.00) shall have the vote or written assent of fifty-one percent (51%) of each class of members.

Section 5. *Special Assessments for Violations.* The Association may levy a special assessment against any Owner for violation of any of the covenants contained in this Declaration or the violation of any of the rules duly adopted by the Association covering the use of the Common Area or Residence Lots. The Association shall have the authority to adopt rules for the use of the Common Area and Residence lots in furtherance of these

Restrictions. The Association shall have the authority to adopt a schedule of fines and penalties for the violation of any of the covenants herein contained and the violation of any such rules duly adopted. Said schedule of fines and penalties for the violation of rules duly adopted and covenants herein contained, save and except the covenant to pay assessments, shall not exceed suspensions of rights to use the Common Area and facilities for a period of *thirty (30) days* and fines and penalties of *Fifty and No/100 Dollars (\$50.00)* for each such violation. If after due notice and a hearing as shall be required by such rules the Owner continues to violate such covenant or rule or fails to cure such violation, the Association may impose an additional fine of *Fifty and No/100 Dollars (\$50.00)* for each day the violation continues, and shall assess such Owner and shall enforce such assessment in the manner hereinafter provided for nonpayment of assessments.

Section 6. *Notice and Quorum for any Action Authorized Under Section 4.* Any action authorized under Section 4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than ten (10) nor more than sixty (60) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one percent (51%) of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

Section 7. *Uniform Rate of Assessment.* Except as provided in Section 3, both annual and special assessments must be fixed at a uniform rate for all Residence Lots within the Properties and may be collected on a monthly basis.

Section 8. *Date of Commencement of Annual Assessments: Due Dates.* The annual assessments provided for herein shall commence as to all Residence Lots within the Properties on the first day of the month following the conveyance of the Common Area described in Exhibit "B". The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Residence Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge not exceeding *Twenty and No/100 Dollars (\$20.00)* furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Residence Lot have been paid.

Section 9. *Effect of Nonpayment of Assessments: Remedies of the Association.* A lien shall attach against each Residence Lot for the amount of the annual assessment as of January 1st of each calendar year for that calendar year's assessment. The lien for the first annual assessment shall attach as of the commencement of such assessment as herein above provided. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of nine percent (9%) per annum. In the event of a default or defaults in payment of any assessment and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation as follows:

- (a) By suit or suits at law to enforce each such assessment obligation. Any judgment rendered in any such action shall include, where permissible under any law, a sum for reasonable attorney's fees in such amount that the Court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment, it shall be the duty of the Association by any authorized officer thereof to execute and deliver to the judgment debtor an appropriate satisfaction thereof.
- (b) At any time within ninety (90) days after the delinquency of any assessment, the Association may give a notice to the defaulting Owner, which said notice shall state the date of the delinquency, the amount of the delinquency, and the interest charge for such delinquency, and

make a demand for payment thereof. If such delinquency and interest is not paid within ten (10) days after delivery of such notice, the Association may elect to file a claim of lien against the Residence Lot of such delinquent Owner. Such claim of lien shall state (1) the name of the delinquent Owner or reputed Owner, (2) a description of the Residence Lot against which the claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Association pursuant to the terms of these Restrictions (giving the date of execution and the date, book and page reference of the recording herein in the Office of the Recorder of the County of Mann, and (5) that a lien is claimed against said described Residence Lot in an amount equal to the amount of the stated delinquency plus interest. Any such claim of lien shall be signed and acknowledged by an authorized officer of the Association. Each delinquency may constitute a separate basis for a claim of lien. Any such claim of lien may be foreclosed by appropriate action in Court or in the manner provided by law for foreclosure of a Mortgage under power of sale. In the event such foreclosure is by action in Court, reasonable attorney's fees shall be allowed to the extent permitted by law. In the event the foreclosure is as in the case of a Mortgage under power of sale, any authorized officer of the Association shall be deemed to be acting as the agent of the Mortgagee and, shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. A certificate of sale shall be executed and acknowledged by any authorized officer of the Association or by the person conducting the sale. A deed upon foreclosure shall be executed in like manner.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Residence Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded first Mortgage (meaning a Mortgage with first priority over other Mortgages). Sale or transfer of any Residence Lot shall not affect the assessment lien. However, the sale or transfer of any Residence Lot which is subject to any recorded first Mortgage, pursuant to a decree of foreclosure or trustee sale under such Mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. Pursuant to the terms of Section 9 (b) hereof, liens may be created on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed thereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien shall have the same effect and be enforced in the same manner as provided herein.

Section 11. Exempt Property. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of California shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V USES PROHIBITED AND PERMITTED

Section 1. Residential Use. No Residence Lot shall be used for any purpose other than one single family residence; provided, however, that Residence Lots owned by Declarant or its nominee may be used as models and sales offices and construction offices for the purpose of selling the dwellings in the Properties until all of the dwellings thereon (and in Annexed parcels) are sold by Declarant.

Section 2. Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Area, except that *dogs under twenty-five (25) pounds in weight only* or other household pets, such

as cats, birds or fish, may be kept in the Units subject to rules and regulations adopted by the Board. The Board may order the immediate removal of any pet which causes excessive noise, in the Board's sole discretion, or otherwise creates a nuisance. The Board may limit the number of pets in any Residence Lot.

Section 3. *Garages and Parking Spaces.*

- (a) Boats and other recreation vehicles may be kept within the enclosed garage areas only, or in areas designated by the Association, subject to the rules and regulations adopted by the Association.
- (b) Each Garage will either be granted in fee or as an exclusive easement to a Residence Lot Owner.
- (c) One (1) Open Parking Space may be available for the exclusive use of the Residence Lot Owner, as provided in his deed; no charge shall be imposed by the Association for such use.
- (d) The remaining unassigned Open Parking Spaces shall be subject to the control of the Association. The Association may reserve a portion or all of them for guest parking. Or, the Association may license the exclusive use of extra spaces to individual Owners, and in connection therewith, may impose a monthly fee for the use thereof, and impose a lien on the Owner's Residence Lot for any such fee which is not paid, as provided herein.
- (e) Each Residence Lot Owner shall keep his Garage and open Parking Space(s) in a neat and orderly condition; only passenger automobiles may be parked in Open Parking Spaces, except as otherwise permitted by the Board, in writing.

Section 4. *Antennas.* No antennas, including but not limited to antennas used for amateur radios, television, FM radio or AM radio shall be erected or maintained upon the outside of any building on the Properties except such antennas as are initially installed during the construction of the buildings or as are thereafter approved by the Architectural Control Committee.

Section 5. *Fences.* No fences, hedges or walls shall be erected, moved, relocated or maintained on the Properties other than as are initially installed during the construction of the buildings unless approved by the Architectural Control Committee, and, as long as there are Class B votes, the approval of the Declarant.

Section 6. *Businesses.* No business of any kind shall be established, maintained, operated, carried on, permitted or conducted on the Properties or any part thereof, except the business of Declarant in completing the construction of residences on the Property and of disposing of the same by sale, lease or otherwise.

Section 7. *Miscellaneous Restrictions.*

- (a) No noxious or offensive activity, shall be carried on, nor shall anything be done or placed on the Residence Lots or Common Area which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Property, or in their enjoyment of Common Areas. Without limiting any of the foregoing, no horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Residence Lot and improvements located thereon, shall be placed or used on any such Residence Lot or improvements. This paragraph shall not preclude the use of outdoor patio speakers for hi H, stereo or radios where the sound level is maintained at a reasonable level with respect to adjoining Property Owners.
- (b) No garbage and trash shall be placed and kept in covered containers. In no event shall such containers be maintained so as to be visible from neighboring property. The Association may provide for a common system of trash collection, in which event all trash shall be placed in the common containers provided. No portion of any Residence Lot shall be used for the storage of building materials or other materials other than in connection with approved

construction.

- (c) No outside clothesline or other outside clothes drying or airing facilities shall be maintained on any Residence Lot or in the Common Area.
- (d) There shall be no exterior fires, except barbecue fires contained within receptacles thereof
- (e) There shall be no exterior newspaper tubes.
- (f) No sign of any kind shall be displayed to the public view on or from any Residence Lot or the Common Area, without the prior consent of the Association, except:
 - (1) Such signs as may be required by legal proceedings, or the prohibition of which is precluded by law;
 - (2) During the time of construction of any residence or other improvement by Declarant, job identification signs;
 - (3) Such signs as may be required for traffic control and regulation of open areas within the area;
 - (4) One identification sign designating each particular Dwelling Unit and one sign identifying each group of Dwelling Units, subject to the approval of the Architectural Control Committee as to suitability;
 - (5) One "For Sale" sign of customary and reasonable dimensions; and
 - (6) During the course of Declarant's sales program, any and all signs deemed necessary or desirable by Declarant, in Declarant's sole discretion, to facilitate sales of the residences; Declarant may locate such signs on the Common Area and the Residence Lots.
- (g) The maintenance of accumulated waste plant materials is prohibited.
- (h) No basketball standards or fixed sports apparatus shall be attached to any dwelling, garage or carport or be erected on any Residence Lot.
- (i) Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Association:
- (j) None of the rights and obligations of the Owner, Owners and Owners of the Common Area created herein, or by Deed, shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor an Owner or owners or in favor of the Owners of the Common Area if said encroachment occurred due to the willful conduct of said Owner, Owners or of the Owners of the Common Area.

Fences originally constructed by Declarant inside or outside the Residence Lot boundary shall not be relocated except as provided herein; that portion of any Residence Lot which is on the exterior of the original fence shall be treated, used and maintained as Common Area unless and until relocated as provided herein; that portion of the Common Area upon which any privately owned structure, fence, fireplace, or portion of a residence is originally constructed by Declarant shall be treated, used and maintained as if it were a portion of the Residence Lot so encroaching, unless and until relocated as provided herein, with the consent of the Owner of the Residence Lot.
- (k) No vehicles of any type shall be permanently or semi-permanently parked on the Properties or any Residence Lot for purposes of accomplishing repairs thereto or the reconstruction thereof.
- (l) Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Association. No Owner shall permit anything to be done or kept on his Residence Lot or in the Common Area which will result in the cancellation of insurance on any residence or any part of the Common Area, or which would be in violation of any law. No waste will be committed in the Common Area.

Section 8. *Painting, etc.* There shall be no exterior painting of residences, patios, garages, fences, or yard walls by anyone other than the Association or its agent. There shall be no replacement of original roofs or

utility laterals, nor shall any major landscaping in front yards be accomplished, by anyone other than the Association or its agent.

Section 9. Common Areas. Other than work performed by *Declarant* in connection with development of the Common Area, no improvement, excavation or work which in any way alters any Common Area from its natural or existing state on the date such Common Area was conveyed by Declarant to the Association shall be made or done except upon strict compliance with, and within the Restrictions and limitations of, the following provisions of this Section:

- (a) No person other than the Association or its agents shall, on Common Area:
 - (1) Construct, reconstruct, refinish, alter or maintain any improvement;
 - (2) Make or create any excavation or fill;
 - (3) Change the natural or existing drain age;
 - (4) Cut, trim, mow, destroy or remove any tree, shrub or other vegetation; (provided, however, that any governmental agency may accomplish the foregoing within the Common Area in those locations where an easement has been granted to such agency).
- (b) The Association may:
 - (1) Reconstruct, replace or refinish any improvement or portion thereof upon Common Area in accordance with the original design, finish or standard of construction of such improvement when such Common Area was conveyed by Declarant to the Association and which was approved by the governmental entity having jurisdiction;
 - (2) Construct, reconstruct, replace or refinish any road improvement or surface upon any portion of Common Area designated on a subdivision map as a private road or parking area;
 - (3) Replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of Common Area;
 - (4) Maintain and landscape the Common Area;
 - (5) Place and maintain upon Common Area such signs as the Association may deem necessary for the identification of the Properties and of roads, the regulation of traffic, including parking, the regulation and use of Common Area and for the health, welfare and safety of Owners and guests.
- (c) The Association shall:
 - (1) Maintain, repair and preserve all vehicular and pedestrian bridges within the Properties, including those bridges crossing Ignacio Creek; such bridges shall be deemed Common Area for maintenance purposes;
 - (2) Maintain, repair and preserve all lateral sewers and building sewers (as defined in the Plumbing Code) serving the Properties, except for those sewer laterals which have been dedicated to Sanitary District No. 6 of Marin County; any bridge which is utilized for structural support of a sewer line shall be maintained in such a manner that it will not interfere with the public's usage of such public sewer.

ARTICLE VI ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specification showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The foregoing

does not apply to Declarant, or Declarant's assignee, in its development of the Properties or other parcels to be Annexed.

ARTICLE VII *RESIDENCE LOT MAINTENANCE*

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Residence Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, down spouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces or landscaping of private enclosed Patio Areas.

Section 2. Other Maintenance. Other Residence Lot maintenance shall be performed by the Owner thereof, at his sole expense. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Residence Lot is subject.

The Association or its agents may enter any Residence Lot when necessary in connection with any maintenance, landscaping or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association, at the expense of the maintenance fund.

ARTICLE VIII *PARTY WALLS*

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Residence Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful, acts or omissions shall apply thereto. If two (2) walls are so constructed on the dividing line, they shall together constitute the party wall.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in tide.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be a majority of all the arbitrators.

ARTICLE IX
OBLIGATION TO REBUILD

Section 1. Residence Insurance. The Association shall have the duty to purchase, carry and at all times to maintain in force, fire insurance with extended coverage endorsement covering all of the Residence Lots, the improvements thereon and appurtenant thereto, for the interest of the Association and of all Owners and their Mortgagees, as their interests may appear, in such amounts and with such endorsements and coverage as shall be considered good sound insurance coverage for properties similar in construction, location and use. Such insurance will be in an amount which shall be equal to the maximum insurable replacement value, costs, as determined annually by the insurance carrier. *{Revised 05-13-1993; 12-15-2016}*

Section 2. Damage and Destruction Affecting Residences Insurance Proceeds. If all or any portion of any residence is damaged or destroyed by fire or other casualty (i) which is actually covered by a policy or policies of insurance then in effect in favor of the Association, (ii) the involved insurance carrier(s) acknowledge(s) such coverage, any dispute with regard to which having been undertaken by or at the expense of the affected owners, (iii) and the cost of repair of the damage or destruction does not exceed \$10,000 per residence; then, subject to the following provisions of this **Article IX, Section 2**, the Association will effect (or at the Association's option, reimburse the owner for) the repair of such damage or destruction; provided, however, that the owner or owners of the affected residence or residences, and not the Association, shall bear the expense of any deductible or deductibles amounts under such policy or policies of insurance, and the Association shall have the right to reimbursement from such owner or owners, enforceable by special assessment, for the amount of such deductible which may have been borne by the Association. If all or any portion of any residence is damaged or destroyed by fire or other casualty and the cost of repair of the damage or destruction does not exceed \$10,000 per residence but the damage or destruction is either (i) not covered by a policy or policies of insurance then in effect in favor of the Association, or (ii) the involved insurance carrier(s) fail or refuse to acknowledge(s) such coverage, any dispute with regard to which having been undertaken by or at the expense of the affected Owners; then the Association shall have no obligation to effect or to reimburse the owner for the cost of repair of such damage or destruction. If all or a portion of any residence is damaged or destroyed by fire or other casualty and the cost of repair of the damage or destruction exceeds \$10,000 per residence, then the following rules shall be applicable: *{Revised 05-13-1993}*

- (a) If the cost of repairing or rebuilding the residence does not exceed the amount of insurance proceeds initially offered or paid by the insurance carrier by more than Ten Thousand and No/100 Dollars (\$10,000.00) per residence;
 - (1) All insurance proceeds shall be paid to a commercial bank or trust company designated by the Board of Directors of the Association, to be held for the benefit of the Owners of the damaged residence or residences and the Mortgagees, as their interest shall appear.
 - (2) The Board of the Association shall levy a special assessment against the Owners of the Residence Lots upon which the casualty has occurred equal to the difference between the cost of repairing or rebuilding and the amount of available insurance proceeds, which said sums shall be secured by the lien provided for herein and shall be payable into the fund held by the insurance trustee. The Board may advance the amount of the special assessment to the insurance trustee from Association general funds or reserves if the Board determines that the residence, as so rebuilt and reconstructed, will furnish adequate security for the repayment of said advances by operation of the assessment lien.
 - (3) When the amount held by the insurance trustee is sufficient to pay the costs of repair and reconstruction, the Board, as agent for the Owners, shall thereupon contract for the repair or reconstruction of the residences, paying the cost of such work from the amount held by the insurance trustee, said repair or reconstruction to be for the purpose of returning the

residences substantially to their appearance and condition immediately prior to the casualty.

- (4) Notwithstanding the foregoing, any Owner of a residence which has suffered damage may apply to the Board for reconstruction, rebuilding or repair of his residence in a manner which will provide for an exterior appearance and design different than that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete plans, specifications, working drawings and elevations showing the proposed reconstruction and the end result thereof. The Board shall grant such approval only if the design proposed by the Owner would result in a finished residence in harmony of exterior design with other residences on the Properties, and the Owner shall have deposited with the insurance trustee any additional monies required to complete reconstruction in such changed manner. Failure of the Board to act within sixty (60) days after receipt of such a request in writing coupled with drawings and plot plans showing the full and complete nature of the proposed change shall constitute approval thereof.
 - (5) In any event, the owner or Owners of any damaged residence and the Board shall be obligated to proceed with all due diligence hereunder and commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after the damage occurs, unless prevented by causes beyond their reasonable control.
- (b) If subparagraph (a) is inapplicable with respect to any residence, then all insurance proceeds with respect thereto shall be paid to the insurance trustee designated in the manner provided above, and:
- (1) The Owner of such residence shall elect in writing among the following alternatives:
 - (i) To rebuild and reconstruct the residence substantially in accordance with the condition it was in immediately prior to the casualty; or
 - (ii) To rebuild and reconstruct the residence in a different manner subject to the approval of the Board applicable thereto and provided that such changed residence shall provide for reconstruction and proper support for all party walls upon the Residence Lot; or
 - (iii) To provide such support and exterior finish as may be required by reconstruction of any and all party walls damaged by such casualty, to remove from the balance of the Residence Lot all wreckage or remains of the residence and leave the Residence Lot in a level, clean and landscaped condition.

The election shall be exercised by a written notice given to the Board within sixty (60) days after the date of such damage or destruction (or within thirty (30) days after the amount of insurance award initially offered becomes known, whichever is the later) which said notice shall plainly state the alternative which has been elected and shall be submitted together with the items required pursuant to the provisions hereof. In the event that any Owner fails to make an election as required pursuant to the terms hereof, then the Board shall have the power and authority as agent for the Owner, said agency being coupled with an interest, to make the election on the Owner's behalf. Said election shall be binding upon and inure to the benefit of the Owner, his successors and assigns. In accordance with the terms of any such election, the Board shall be entitled to draw upon and make use of the insurance proceeds awarded or paid for the account of said Owner by reason of the casualty as herein provided.

- (2) Any Owner who elects the first alternative set forth in paragraph (b) (1) above shall deposit with the insurance trustee cash or security satisfactory to the Board in an amount sufficient to pay the cost of reconstructing his residence over and above the available insurance proceeds.

- (3) Any Owner who elects the second alternative set forth in paragraph (b) (1) above shall provide with his written election plans, specifications, drawings and elevations sufficient to show the work which he proposes to be performed and the finished product which will result therefrom upon his Residence Lot. The Board shall approve such proposal only if it finds that the reconstructed and rebuilt residence which would result therefrom is compatible in exterior design with the other residences and structures upon the Properties and provides the structural support required to fulfill the Owners party wall obligations. Failure of the Board to approve or reject any such proposed change within sixty (60) days after the date of submission thereof shall be conclusively deemed an approval thereof. In the event the Board approves such a proposed change, the Owner, within ten (10) days thereafter, shall deposit with the insurance trustee cash or security satisfactory to the Board in an amount sufficient to pay the cost of reconstructing the residence as so changed over and above the available insurance proceeds. In the event the Board denies the proposed change, the Owner shall, within thirty (30) days thereafter, elect as between alternatives (i) and (iii) set forth in paragraph (b) (1) above.
- (4) Any Owner who elects the third alternative set forth in paragraph (b) (1) above shall deposit with the insurance trustee cash or security satisfactory to the Board over and above the available insurance proceeds in an amount sufficient to provide the requisite structural support and exterior surface structure of any party walls in accordance with the Owner's party wall obligations, to demolish any remnants of the damaged residence upon the Residence Lot and to clear, level and landscape the surface thereof
- (c) In the event that any Owner does not promptly and diligently perform the obligations on his part to be performed pursuant to the terms of this paragraph and the Board does not diligently proceed to enforce the terms hereof, then any Owner or Mortgagee of any Residence Lot within the Properties or any part thereof, or interest therein, may bring an action in equity to enforce the performance of such obligation.
- (d) In any event, if there is a damage or destruction affecting any Residence Lot which is not fully repaired or reconstructed within two (2) years from the date thereof (with extension for delays not the fault of the Owner thereof), then the Board shall be authorized to use any insurance proceeds available by reason of said damage or destruction for the purpose of pursuing the third alternative paragraph (b) (1) above restoring the site to a level, clean and landscaped condition subject only to such structural supports and exterior surface construction as may be required in connection with the maintenance of any party wall thereon.
- (e) There shall be no abatement or reduction in the regular or special assessments herein provided for due to the total or partial destruction of improvements on any Residence Lot; provided, however, that that portion of the assessments which is for the exterior maintenance of the improvements of Residence Lots shall not be assessed or collected from an Owner who has elected the third alternative under paragraph (b) (1) of this Article, after completion of the requirements set forth therein.

ARTICLE X

GENERAL PROVISIONS

Section 1. *Enforcement.* The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. *Severability.* Invalidation of any one of these covenants or restrictions by judgment or court

order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty-five (35) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by the vote or written assent of seventy-five percent (75%) of each class of Owners, as herein provided; the amendment shall become effective upon recordation of an instrument executed by the President or Secretary of the Association setting forth the amendment and certifying that such vote or written assent has been attained. Provided, however, that such instrument shall not be recorded sooner than the seventh (7th) calendar day following the attainment of such vote or written assent, during which period all Owners shall have been afforded the opportunity to review the signatures or other evidence of such vote or written assent, by means of their having been posted on the Association website, or being given substantially equivalent exposure, and having been made available for inspection at the Association office. *(Revised 12-15-2016)*

Section 4. Annexation.

- (a) Additional residential property and Common Area may be annexed to the properties with the consent of two thirds (2/3) of each class of members.
- (b) Additional land within the area described in Exhibit "C" hereto, may be annexed by the Declarant without the consent of other Owners or members within the period and in the manner described in Exhibit "C".

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have hereunto set its hand and seal this 6th day of March 1974.

IGNACIO CREEK DEVELOPMENT CORPORATION,
a California corporation,

By /s/ Jack Gallagher, Vice President

By /s/ Donald Lindsay, Secretary