

(d) Any and all reasonable rules and regulations pertaining to any such easement, as such rules and regulations may from time to time be established and promulgated by the Association.

## ARTICLE X.

### GENERAL PROVISIONS

Section 10.1 Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless an instrument in writing, signed by the then Owners of a majority of the Lots subject to this Declaration, has been recorded within the year preceding the beginning of any such successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

### Section 10.2 Amendment.

(a) Until the recordation of the grant deed conveying the first Lot located within the Property shall have been consummated, Declarant may amend this Declaration unilaterally by recording an instrument of amendment in the Recorder's Office of the County in which the Property is located, therein identifying the Property and this Declaration, certifying that no sales of Lots within the Property have previously been consummated and setting forth the amendment.

(b) After recordation of a grant deed conveying the first Lot within the Property, subject to the provisions of Article XI hereof, this Declaration may only be amended and/or supplemented in any of the following ways:

(i) By an instrument in writing signed by Members of the Association holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the membership of the Association and by Members of the Association, other than Declarant, holding sixty-six and two-thirds percent (66-2/3%) of the voting power of the Association, excluding Declarant's voting power; provided, however, that so long as the Class B membership within the Association is still in effect, this Declaration may only be amended under this Section 10.2 by an instrument in writing signed by Members entitled to exercise not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of each class of membership.

(ii) By an instrument in writing signed by any two officers of the Association certifying that the amendment provided for in such instrument has been approved by the vote or written consent of Members of the Association holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the membership of the Association and by Members of the Association, other than Declarant, holding sixty-six and two-thirds percent (66-2/3%) of the voting power of the Association, excluding Declarant's voting power; provided, however, that so long as the Class B membership within the Association is still in effect, this Declaration may only be amended under this Section 10.2 by an instrument in writing signed by any two officers of the Association, certifying that the amendment provided for in such instrument has been approved by the vote or written consent of members entitled to exercise not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of each class of membership.

(iii) Notwithstanding any provision to the contrary, the Board may, after the Declarant has completed construction of the development, has terminated construction activities, and has terminated his or her marketing activities for the sale, lease, or other disposition of separate interests within the development, adopt an amendment deleting from any of the governing documents any provision which is unequivocally designed and intended, or which by its nature can only have been designed or intended, to facilitate the Declarant in completing the construction or marketing of the development. Provisions of the governing documents relative to a particular construction or marketing phase of the development, however, may not be deleted under the authorization of this subdivision until that construction or marketing phase has been completed.

The provisions which may be deleted by action of the Board shall be limited to those which provide for access by the Declarant over or across any portion of the Association Property for the purposes of (1) completion of construction of the development, and (2) the erection, construction, or maintenance of structures or other facilities designed to facilitate the completion of construction or marketing of separate interests.

At least thirty (30) days prior to taking action pursuant to this Section, the Board of Directors shall mail to all Owners, by first-class mail, (1) a copy of all amendments to the governing documents proposed to be adopted under this Section and (2) a notice of the time, date and place the Board of Directors will consider adoption of the amendments. The Board of Directors may consider adoption of amendments to the governing

documents pursuant to this Section only at a meeting which is open to all Owners, who shall be given opportunity to make comments thereon. All deliberations of the Board of Directors on any action proposed under this Section shall only be conducted in such an open meeting.

The Board may not amend the governing documents pursuant to this Section without the approval of the Owners, casting a majority of the votes at a meeting or election of the Association constituting a quorum and conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of, and Section 7613 of, the Corporations Code. For the purposes of this Section, "quorum" means more than fifty percent (50%) of the Owners who own no more than two separate interests in the development (except Declarant).

(c) Notwithstanding the foregoing provisions of this Section 10.2, the percentage of the voting power of members of the Association necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision. To be effective, any amendment of this Declaration must be properly recorded in the Office of the County Recorder for the County in which the Property is located.

### Section 10.3 Enforcement.

(a) The Association or any Owner shall have the right to enforce, in 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, and in such action shall be entitled to recover reasonable attorneys' fees as ordered by the court. Failure by the Association or by any Owner to enforce any of the covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter (unless herein specifically provided). The exercise of any rights or remedies as herein provided with respect to any default shall not preclude or affect the subsequent exercise of such rights or remedies at different times or for different defaults. The respective rights or remedies, whether provided by the Restrictions or by law, or available in equity, shall be cumulative.

(b) Without in any manner limiting or attempting to limit the rights of the parties to a dispute to initiate litigation in state or federal courts in order to promote the resolution of any controversy, claim or dispute ("Dispute") pertaining to the enforcement of this Declaration, or other management documents of the Association including, without limitation, the validity, scope and enforceability of this

provision, and/or Disputes which relate to the design, character, quality and condition of the Association Property within the Project or the Off-Tract Maintenance Areas, the parties are hereby encouraged to resolve the Dispute through alternative dispute resolution, such as an unassisted settlement conference between/among the parties, or participation in mediation or arbitration proceedings with an alternative dispute resolution service ("ADR Service"), such as Judicial Arbitration and Mediation Services, Inc., and the American Arbitration Association ("AAA"). If the parties are unable to agree upon an ADR Service, any mediation shall be conducted by AAA in accordance with AAA's commercial mediation rules, and any arbitration shall be conducted by AAA in accordance with the AAA's commercial arbitration rules. Any up-front and all progress fees paid to the ADR Service shall be paid equally by the parties to such Dispute. The aforesaid requirements shall not apply if an applicable statute of limitations would expire within one hundred twenty (120) days prior to one party informing the other of a Dispute.

If so chosen by the parties, the alternative dispute resolution process shall be initiated by serving a Request for Resolution. The party receiving such Request for Resolution shall have thirty (30) days either to accept or reject the request to resolve the Dispute by ADR Service. If not accepted within the thirty (30) day period, such Request for Resolution shall be deemed rejected. If accepted, the alternative dispute resolution process shall be initiated not later than forty-five (45) days following acceptance of the Request for Resolution and shall be completed as expeditiously as possible thereafter. In addition, if a civil action has been filed to enforce any provisions of the governing documents, on stipulation of the parties, the action may be stayed upon agreement of the parties and referred to the ADR Service.

Section 10.4 Declarant's Right to Cure Alleged Defects. In the event of a Dispute or claim made by an Owner and/or the Association against Declarant, it is Declarant's intent to resolve all such Disputes and claims regarding "Alleged Defects" in any portion of the Association Property or the Lots in an amicable fashion and without the necessity of time-consuming and costly litigation. Accordingly, the Association and all Owners (individually and/or collectively "Claimant") shall be bound by the following claim resolution procedures:

(a) Notice to Declarant. In the event that a Claimant discovers any Alleged Defect, Claimant shall, within thirty (30) calendar days after discovery of such Alleged Defect, notify Declarant, in writing, at:

Pacific Bay Properties  
4041 MacArthur Boulevard  
Suite 500  
Newport Beach, CA 92660  
Attention: Karin T. Krogius

of the specific nature of such Alleged Defect ("Notice of Alleged Defect");

(b) Right to Inspect and Cure. Within a reasonable period of time after receipt by Declarant of the Notice of Alleged Defect, which period shall not exceed sixty (60) days, Declarant and Declarant's agents and representatives shall have the irrevocable right, upon reasonable notice to Claimant, to enter onto or into the Association Property and shall be provided full access for the purposes of inspecting the Alleged Defect and, if deemed necessary by Declarant, taking and completing appropriate repair, replacement or other corrective action as Declarant shall deem reasonable and appropriate under the circumstances; and

(c) Legal Actions. If Declarant denies responsibility for the claim, or if the parties cannot in good faith agree on an appropriate remedy or alternative dispute forum as provided in Section 10.3(b) above, the Claimant may institute litigation in any court of competent jurisdiction to restore the claim.

Section 10.5 Notices. Any notice permitted or required to be delivered as provided for herein shall be in writing and may be delivered either personally or by mail. If delivery is made by certified or registered mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail in the State of California, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of notice, or to the Lot owned by such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 10.6 No Rights Given to Public. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose whatsoever.

Section 10.7 Termination of Any Responsibility of Declarant. In the event Declarant shall convey fee title to all of the Property to any individual or individuals, entity or entities, then and in such event Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such individual or individuals, entity or entities shall be obligated to perform all such duties and obligations of Declarant.

Section 10.8 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Improvements. If the Association Property has not been completed prior to the recordation of the grant deed conveying the first Lot within each phase of the Property and where the Association is the obligee under a bond or other arrangement to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that improvement in the planned construction statement appended to the bond. If the Association has given an extension in writing for the completion of the Association Property, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after expiration of the extension. A special meeting of Members of the Association for the purpose of voting to override a decision of the Board not to initiate action to enforce the obligations under the bond or on the failure of the Board to consider and vote on the question shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of the Members of the Association other than Declarant shall be required to take action to enforce the obligations under the bond, and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

Section 10.9 Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 10.10 Headings. Section headings are inserted for convenience only and are not intended to be a part of this document or in any way to define, limit or describe the scope or intent of the particular section to which they refer.

Section 10.11 Number and Gender. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and neuter, and vice versa.

Section 10.12 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community with Association Property for the use and benefit of the Lot Owners, and to the extent provided for herein of their tenants, servants and guests, and for the maintenance of such areas.

Section 10.13 Condition to Filing Any Civil Action Against Declarant Alleged Design or Construction Defect.

(a) Not later than thirty (30) days prior to the filing of any civil action by the Association against the Declarant or other developer of the Property or any of the improvements located thereon for alleged damage, design or construction defect to the Association Property, alleged damage, design or construction defect in any portion of the Lots that the Association is obligated to maintain or repair, or alleged damage to the Lots that arises out of, or is integrally related to, damage to the Association Property or Lots that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member of the Association who appears on the records of the Association when the notice is provided. This notice shall specify all of the following:

(i) That a meeting will take place to discuss problems that may lead to the filing of a civil action.

(ii) the options, including civil actions, that are available to address the problems.

(iii) The time and place of this meeting.

Notwithstanding the foregoing provisions of this Section 10.13(a), if the Association has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Association may give the notice, as described above, within thirty (30) days after the filing of the action.

(b) Before the Association commences any action for damages against Declarant or other developer of the Property or any improvements located thereon based upon a claim for defects in the design or construction of the Property or any of the improvements located thereon, all of the requirements set forth in Section 1375 of the California Civil Code as such Section is from time to time amended, shall be met, except as otherwise provided in such Section.

Section 10.14 City Enforcement. The City of Newport Beach shall have the right, but not the obligation, to enforce any of the covenants and restrictions set forth in this Declaration which pertain to areas of public concern such as, but not limited to, the adherence to ordinance regulations of the City.