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VALLEMAR BLUFFS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION CONTAINS A JUDICIAL REFERENCE PROVISION AND A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. ARBITRATION INCLUDES A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY. YOU MUST READ THE JUDICIAL REFERENCE AND ARBITRATION PROVISIONS CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON SEX, GENDER IDENTITY, GENDER EXPRESSION, FAMILIAL STATUS, RACE, COLOR, RELIGION, ANCESTRY, NATIONAL ORIGIN, DISABILITY, MEDICAL CONDITION, GENETIC INFORMATION, MARITAL STATUS, SEXUAL ORIENTATION, CITIZENSHIP, PRIMARY LANGUAGE, IMMIGRATION STATUS, OR SOURCE OF INCOME AS DEFINED IN SUBDIVISION (P) OF SECTION 12955 OF THE GOVERNMENT CODE, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

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VALLEMAR BLUFFS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth, by MOSS BEACH ASSOCIATES, LLC, a California limited liability company, hereinafter referred to as "Declarant," is made with reference to the following facts:

A. **Location of Property.** Declarant is the owner of certain property located in the County of San Mateo ("County"), State of California, more particularly described on the Map entitled Tract No. _____, filed for record in the Office of the Recorder of the County of San Mateo, State of California, on _____, 201__, in Book _____ of Maps, page(s) _____ ("Map").

B. **Owner's Interest.** The development shall be referred to as the "Project" as defined in Section 1.26. Each Lot shall have appurtenant to it a membership in the VALLEMAR BLUFFS HOMEOWNERS ASSOCIATION, a nonprofit mutual benefit corporation.

C. **General Plan of Improvement.** Declarant intends by this Declaration to impose upon the Project, as defined and described in this Declaration, mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of Lots.

NOW, THEREFORE, Declarant hereby declares that all of the Project described above shall be held, sold, leased, mortgaged, encumbered, rented, used, occupied, improved and conveyed subject to the following declarations, limitations, easements, restrictions, covenants, and conditions, which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and desirability of the Project and every part thereof, and which shall run with the Project and be binding on Declarant and its successors and assigns, and on all parties having or acquiring any right, title or interest in or to the described Project or any part of it, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS AND INTERPRETATIONS

1.1. **"Articles":** The Articles of Incorporation of the Association, as amended from time to time.

1.2. **"Association":** The VALLEMAR BLUFFS HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Lots in the Project.

1.3. **"Board" or "Board of Directors":** The governing body of the Association.

1.4. **"Budget":** A written, itemized estimate of the Association's income and Common Expenses prepared and adopted by the Association pursuant to the Bylaws.

1.5. **"Bylaws":** The Bylaws of the Association, as amended from time to time.

1.6. **"Common Expenses":** The actual and estimated expenses the Association incurred for inspecting, maintaining, repairing, operating and replacing the Conservation Easement Area and all sums designated Common Expenses by or pursuant to the Declaration, Articles, or Bylaws.

1.7. **"Conservation Easement Area":** The area within Lots 1-4 designated "Conservation Easement" on the Map.

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- 1.8. "County": The County of San Mateo.
- 1.9. "Declarant": MOSS BEACH ASSOCIATES, LLC, a California limited liability company and any successor or assign that expressly assumes the rights and duties of the Declarant under this Declaration in a recorded written document.
- 1.10. "Declaration": This Declaration, as amended or supplemented from time to time.
- 1.11. "Deed of Conservation Easement": The deed establishing a conservation easement within the Project, recorded the ___ day of _____, 2017, Document No. _____, San Mateo County Records.
- 1.12. "First Lender": Any person, entity, bank, savings and loan association, insurance company, or other financial institution holding a recorded First Mortgage on any Lot.
- 1.13. "First Mortgage": Any Mortgage recorded in the County made in good faith and for value on a Lot with first priority over other Mortgages encumbering the Lot.
- 1.14. "Foreclosure": The legal process by which a Lot owned by an Owner who is in default under a Mortgage is sold, pursuant to California Civil Code section 2924a et seq. or sale by the Court pursuant to California Code of Civil Procedure § 725a et seq. and any other applicable laws.
- 1.15. "Governing Documents": This Declaration, as amended from time to time, the exhibits, if any, that are attached to the Declaration, together with the other basic documents used to create and govern the Project, including the Map, the Articles, the Bylaws, and the Rules, and the Vallemar Bluffs Area Adaptive Management and Monitoring Plan and any Design Guidelines adopted by the Board or the Association.
- 1.16. "Hazardous Materials": Any substance, material or waste which is or becomes: (i) regulated by any local or regional Governmental authority of the State of California or the United States Government as a hazardous waste; (ii) is defined as a "solid waste," "sludge," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "non-RCRA hazardous waste," "RCRA hazardous waste," or "recyclable material," under any federal, state or local statute, regulation, or ordinance, including, without limitation, Sections 25115, 25117, 25117.9, 25120.2, 25120.5 or 25122.7, 25140, 25141 of the California Health and Safety Code; (iii) defined as a "Hazardous Substance" under section 25316 of the California Health and Safety Code; (iv) defined as a "Hazardous Material," "Hazardous Substance" or "Hazardous Waste" under Section 25501 of the California Health and Safety Code; (v) defined as a "Hazardous Substance" under Section 25281 of the California Health and Safety Code; (vi) asbestos; (vii) petroleum products, including, without limitation, petroleum, gasoline, used oil, crude oil, waste oil, and any fraction thereof, natural gas, natural gas liquefied, methane gas, natural gas, or synthetic fuels, (viii) materials defined as hazardous or extremely hazardous pursuant to the California Code of Regulations; (ix) pesticides, herbicides and fungicides; (x) polychlorinated biphenyls; (xi) defined as a "Hazardous Substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); (xii) defined as a "Hazardous Waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; (xiii) defined as a "Hazardous Substance" or "Mixed Waste" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., and regulations promulgated thereunder; (xiv) defined as a "Hazardous Substance" pursuant to Section 401.15 of the Clean Water Act, 40 C.F.R. 116; (xv) defined as an "Extremely Hazardous Substance" pursuant to Section 302 of the Superfund Amendments and Reauthorizations Act of 1986, 42 U.S.C. Section 11002 et seq.; or (xvi) defined as "medical waste" pursuant to Section 25023.2 of the California Health and Safety Code, Chapter 6.1 (Medical Waste Management Act).
- 1.17. "Lot": Each Lot or parcel shown on the Map.

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- 1.18. **"Map"**: That Map, described above in Introductory Paragraph A.
- 1.19. **"Member"**: An Owner who is entitled to membership in the Association as provided herein.
- 1.20. **"Mortgage"**: A mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by sublease or assignment) given as security for the repayment of a loan or other financing which encumbers a Lot, made in good faith and for value.
- 1.21. **"Mortgagee"**: The holder of a Mortgage including the beneficiary of a deed of trust that constitutes a Mortgage.
- 1.22. **"Mortgagor"**: A Person who encumbers his Lot with a Mortgage, including a trustor of a deed of trust that constitutes a Mortgage.
- 1.23. **"Occupant"**: A Person who legally occupies a Lot, including, without limitation, a tenant or guest, invitee, renter, lessee, family member, or relative.
- 1.24. **"Owner"**: The record Owner, whether one (1) or more persons or entities, of fee simple title to any Lot which is a part of the Project but expressly excluding those persons or entities having an interest merely as security for the performance of an obligation, until such person obtains fee title hereto, and those parties who have leasehold interests in a Lot. If a Lot is sold under a recorded contract of sale, the purchaser under the contract of sale, rather than the holder of the fee interest, be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.
- 1.25. **"Person"**: A natural person, a corporation, a partnership, a trust, or other legal entity.
- 1.26. **"Project"**: All of the real property above described on the Map including all improvements and structures erected or to be erected on that real property, subject to this Declaration.
- 1.27. **"Residence"**: The residential structure that is located within a Lot.
- 1.28. **"Rules"**: The rules adopted from time to time by the Board or the Association pursuant to Section 4.2.A.

ARTICLE II. DESCRIPTION OF PROJECT AND CREATION OF PROPERTY RIGHTS

- 2.1. **Description of Project**: The Project consists of four (4) Lots, and all improvements thereon.
- 2.2. **Easements; Conservation Easement Area**: Each of the Lots shown on the Map shall have appurtenant to it as the dominant tenement an easement over the Conservation Easement Area as the servient tenement for ingress and egress, and for use and enjoyment, subject to the Deed of Conservation Easement.

The foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not unreasonably interfere with the use, occupancy or enjoyment of all or any part of the Lot servient to them or to which they are appurtenant.

- 2.3. **Easements to Accompany Conveyance of Lot**: Easements that benefit or burden any Lot shall be appurtenant to that Lot and shall automatically accompany the conveyance of the Lot, even though the description in the instrument of conveyance may refer only to the fee title to the Lot.

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2.4. Maintenance Easement: An easement over each Lot is reserved by Declarant, and is hereby granted to the Association, for the purpose of entering upon the Project to perform such maintenance, if any, as the Association may do in accordance with the provisions of Section 4.1.A of this Declaration.

2.5. Drainage Easements: An easement over and under each Lot as the servient tenement is reserved in favor of each other Lot as the dominant tenement for the purpose of allowing the Association's agents to enter the Lot to maintain that portion of an in-tract storm drainage system located thereon. No Owner or Occupant shall commit any act that would interfere with the operation of any drainage system (including drainage swales) installed on the Owner's Lot, each Owner shall maintain the system free of debris and other obstacles at all times. Reciprocal appurtenant easements between adjoining Lots are reserved for the flow of surface water.

2.6. Other Easements: Each Lot is subject to all easements, dedications, and rights of way granted or reserved in, on, over and under the Project as shown on the Map.

2.7. Rights of Entry and Use: The Lots shall be subject to the following rights of entry and use:

A. The right of the Association's agents to enter any Lot to cure any violation of the Governing Documents, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association;

B. The access rights of the Association to inspect, maintain, repair or replace improvements or property located in the Conservation Easement Area as described in Section 4.2.B;

C. The easements described in this Article II;

D. The right of the Association's agents to enter any Lot to perform maintenance as described in Section 4.1;

E. The rights of the Declarant during the construction period as described in Section 7.6.

2.8. All Easements Part of Common Plan: Whenever any easements are reserved or created or are to be reserved or created in this Declaration, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Lots are specifically mentioned as subject to or benefiting from a particular easement. Easements referred to in this Declaration that are created by grant deeds subsequent to the date of this Declaration shall be part of the common plan created by this Declaration for the benefit of all property Owners within the Project.

ARTICLE III. ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

3.1. Association to Manage Conservation Easement Area: The Association shall manage the Conservation Easement Area in accordance with the provisions of the Governing Documents.

3.2. Membership: The Owner of a Lot shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Membership shall be held in accordance with the Articles and Bylaws.

3.3. Transferred Membership: Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Lot to

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which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Lot. On any transfer of title to an Owner's Lot, including a transfer on the death of an Owner, membership passes automatically with title to the transferee.

A Mortgagee does not have membership rights until it obtains title to the Lot through Foreclosure or deed in lieu of Foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his membership. On notice of a transfer, the Association shall record the transfer on its books.

3.4. Membership and Voting Rights: Membership and voting rights shall be as set forth in the Bylaws.

3.5. Members' Obligations to Association: Each Owner is responsible for payment of 1/4th share of Common Expenses. The Association does not have assessment and/or lien powers.

ARTICLE IV. DUTIES AND POWERS OF THE ASSOCIATION

4.1. Duties: In addition to the duties enumerated in the Articles and Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality of those duties, the Association shall perform the following duties:

A. Maintenance: The Association shall inspect, maintain and repair the following:

(1) **Conservation Easement Area Maintenance:** The Conservation Easement Area, all improvements and landscaping thereon, in a manner consistent with the Deed of Conservation Easements.

(2) **Conservation Easement Area Landscaping:** Landscaping maintenance shall include prudent management practice necessary to sustain and promote the natural habitat and native species.

(3) **Cooperation of Owners/Occupants:** Each Owner and Occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance obligations described above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance problems for which the Association is responsible and access to the Owner's or Occupant's Lot and as may be necessary to inspect and, if appropriate, to perform any necessary maintenance.

B. Insurance: The Association shall obtain and maintain such policy or policies of insurance as are required by Section 6.1 of this Declaration.

C. Payment of Expenses and Taxes: The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business.

D. Enforcement: The Association and the Board shall be responsible for the enforcement of this Declaration, and for the billing to and collection from the Owners of the Common Expenses.

E. Annual Budget: During the month of December of each year, the Association shall establish a budget for all expenses of the Project for the coming year, including maintenance, insurance and management. Each Lot Owner shall be responsible for payment of its share of the budgeted expenses, and other expenses incurred by the Association during the year. On request of any Owner, the Association shall prepare and distribute any financial statements and reports that may be required by law.

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4.2. **Powers:** In addition to the powers enumerated in the Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association and the Board, where applicable, shall have the following powers:

A. **Adoption of Rules:** The Association or the Board, by majority vote, may adopt reasonable Rules not in conflict with the law, or with the Governing Documents, relating to the use of the Conservation Easement Area and all its facilities, and the conduct of Owners and Occupants with respect to the Project and other Owners. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners. All changes to the Rules will become effective fifteen (15) days after they are sent to the Owners via first-class mail or by any system or technology designed to record and communicate messages.

B. **Access:** For the purpose of performing inspections and maintenance of the Conservation Easement Area, the Association's agents or employees shall have the right to enter the Conservation Easement Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner or Occupant as practicable, and any damage caused by such entry shall be repaired at the expense of the Association.

C. **Enforcement:** The Board shall have the authority to enforce this Declaration as per Section 7.1 hereof.

D. **Contracts:** The Board shall have the power to contract for goods and/or services for the Conservation Easement Area, subject to limitations set forth in the Bylaws, or elsewhere in this Declaration. The Board shall not enter into any contracts with an independent contractor until it meets the requirements of Section 6.1.A.(2) herein.

E. **Other Powers:** In addition to the powers contained herein, the Board may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code section 7140.

ARTICLE V. USE RESTRICTIONS

In addition to all of the covenants contained in this Declaration, the use of the Project and each Lot in the Project is subject to the following:

5.1. **Use of Lot:** No Lot shall be occupied and used except for residential purposes by the Owners or Occupants and no business shall be conducted in any Lot, except that a Lot may be used as a combined Residence and executive or professional office by the Owner or Occupant thereof, so long as such use: (a) does not interfere with the quiet enjoyment by other Owners; (b) does not include visiting clients; (c) business activities take place solely inside the Lot; (d) does not generate in-person visits by suppliers or clientele; (e) complies with all laws, regulations and ordinances applicable to the Property, including zoning, health and licensing requirements; (f) otherwise complies with this Declaration and is consistent with the residential character of the Property; (g) no signs, logos, billboards, or other advertising materials or devices are displayed in the windows of the Lot, or on exterior of the Residence, or on any Conservation Easement Area, to advertise the activity; (h) the existence or operation of the business is not apparent or detectable outside the Lot by sight, sound or odor; and (i) the business does not increase the liability or casualty insurance obligation or premium of the Association. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be erected or used on any Lot at any time as a Residence, either temporarily or permanently.

Notwithstanding the foregoing, Declarant, its successors or assigns, may use any Lot or Lots in the Project owned by Declarant for a model home site or sites and display and sales/construction office during construction and until the last Lot is sold by Declarant.

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The number of permanent residents, unless applicable law provides otherwise, shall be limited as follows: No more than two (2) persons per bedroom shall be permitted as permanent residents. A "permanent resident" means any Person residing in the Lot more than sixty (60) days out of any twelve (12) consecutive month period, provided that one (1) person shall be allowed in addition to the maximum number of permanent residents otherwise permitted in each Lot.

No health care facilities operating as a business or charity, unless permitted by law or ordinance which preempts this restriction.

No family day care home shall be permitted within the Project except as specifically authorized by California Health and Safety Code section 1597.40 and other applicable state statutes. The owner/operator of any such day care facility shall comply with all local and state laws regarding the licensing and operating of a day care home and, in addition, shall:

- A. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care home;
- B. Defend, indemnify and hold the Association harmless from any liability arising out of the existence and operation of the day care home;
- C. Abide by and comply with all of the Association's Rules;
- D. Supervise and be completely responsible for children at all times while they are within the project; and,
- E. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the day care home to these conditions, or other reasonable requests.

No Lot or Lots or any portion thereof in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time-sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Lot or Lots or any portion thereof or Residence thereon in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time. This Section shall not be construed to limit the personal use of any Lot or any portion thereof in the Project by any Owner or Occupant, nor shall it be interpreted to disallow an Owner from trading the temporary use of its Lot for the right to use another dwelling on a temporary basis, provided the frequency of such exchange is in accordance with the Rules.

5.2. Nuisances: No noxious, illegal, or seriously offensive activities shall be carried on within any Lot, or in any part of the Project, nor shall anything be done thereon that may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of the Owners' Lots, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any Residence or other building in the Project. The Board is entitled to determine if any device, noise, odor or activity constitutes a nuisance.

5.3. Radio, Television, and Internet Antennas: No Owner shall construct, install and/or use and operate a radio and/or television antenna, satellite dish, Internet dish or an antenna one meter or more in diameter or diagonal measurement, other signal reception or transmission devices or related

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equipment in the Project, without the consent of the Board, which the Board shall have the discretion to withhold, subject to applicable legal requirements. In considering whether to approve applications for any such devices to be located, the Board shall consider and give great weight to considerations of aesthetics, safety within the community, uniformity of appearance, and the requirements of any applicable laws. The Board shall, in acting upon requests for approval of a satellite dish or other signal reception or transmission devices comply with Federal Communications Commission regulations. The Board may adopt other Rules for installation and operation of any satellite dish or other signal reception or transmission devices that comply with FCC regulations.

5.4. **Drainage:** No Owner, Member or Occupant shall do or cause anything to be done that would alter or interfere with the Project drainage patterns or block or alter the natural flow or engineered flow of surface water or interfere with drainage patterns within the Project.

ARTICLE VI. INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

6.1. **Insurance:** The Association shall obtain and maintain the following insurance:

A. Association Insurance:

(1) An occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members, against liability incident to the use of the Conservation Easement Area;

(2) workers' compensation insurance (statutory limits) to the extent required by law (or such greater amount as the Board deems necessary). All independent contractors who contract with the Association shall be required to carry appropriate general liability insurance, automobile liability insurance coverage and workers' compensation coverage, and shall indemnify the Association with respect to any claims from such independent contractor, or independent contractor's employees, with regards to claims for liability and workers' compensation claims from any independent contractor who performs any service for the Association. Independent contractors shall be required to carry a minimum of \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate under the general liability requirement naming the Association as an additional insured for their work. Independent contractors shall also carry a minimum of \$1,000,000 combined single limit for auto liability covering all owned, hired and non-owned automobiles;

(3) fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

(4) directors and officers' liability insurance covering all past, present and future directors and officers of the Association;

(5) such other insurance as the Board in its discretion considers necessary or advisable.

B. Representation for Claims. Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

C. Waiver of Subrogation. Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, Directors and Members, and the Owners and Occupants of the Lots (including Declarant) and Mortgagees; and cross-liability and

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severability of interest coverage insuring each insured against liability to each other insured.

All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, Directors and Members, and the Owners and Occupants of the Lots and Mortgagees; and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

D. Review of Policies. The Association shall periodically (and not less than annually) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

E. Copies of Policies; Notice to Members. The Association shall distribute annually to the Members a summary of the Association's insurance policies. The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any policy. If the Association receives any notice of non-renewal of a policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

F. Limitation on Liability. The Association, and its Directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder. In such event, the Board immediately shall notify each Member and any Mortgagee entitled to notice that the insurance will not be obtained or renewed. At the request in writing of any three (3) Members, the Board shall make provisions for a vote of the Members of the Association to uphold or reverse the decision of the Board to cancel or to not renew any insurance the Association is required by this Declaration to carry.

6.2. Condemnation: If all or any part of a Lot is taken by eminent domain, the award shall be disbursed to the Owner of the Lot, subject to the rights of the Owner's Mortgagees. If necessary, the remaining portion of the Project shall be resurveyed to reflect such taking.

ARTICLE VII. GENERAL PROVISIONS

7.1. 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 the Governing Documents, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. Failure by the Association or by any Owner to enforce the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter. Failure by the Association to enforce the Governing Documents shall not be deemed to constitute approval of or a consent to any violation or failure to comply with the Governing Documents.

7.2. Invalidity of Any Provision: Should any provision or portion of this Declaration be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

7.3. Term: Subject to Section 7.4, the covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to terminate the same.

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7.4. Amendments:

A. Unilateral Amendment by Declarant: Notwithstanding any other provisions of this Section, at any time prior to the first Close of Escrow in the Project, Declarant may unilaterally amend or terminate this Declaration by recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. Notwithstanding any other provisions of this Section, Declarant (for so long as Declarant owns any portion of the Project) may unilaterally amend this Declaration by recording a written instrument signed by Declarant in order to: (i) conform this Declaration to the rules, regulations or requirements of VA, FHA, DRE, Fannie Mae, Ginnie Mae or Freddie Mac; (ii) amend, replace or substitute any Exhibit for any purpose to the extent that the Exhibit affects portions of the Project that have not yet been conveyed to the Association or for which there has been no Close of Escrow, as applicable; (iii) amend, replace or substitute any Exhibit to correct typographical or engineering errors; (iv) include any Exhibit that was inadvertently omitted from the Declaration at the time of recording; (v) comply with any city, county, state or federal laws or regulations; and, (vi) correct any typographical errors.

B. Amendment by Members: After sale of the first Lot, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of a majority of Members. However, the percentage of voting power necessary to amend a specific Section shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that Section. Any amendment must be certified in writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County.

C. Agreements Among Owners: In any situation where agreement between or among Owners is required, agreement or consent shall not be withheld unreasonably.

7.5. Rights of First Lenders: No breach of any of the covenants, conditions and restrictions contained in this Declaration shall render invalid the lien of any First Lender on any Lot made in good faith and for value, but all of those covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale, or otherwise.

Implied approval may be assumed when a Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after the Mortgagee actually receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

7.6. Limitation of Restrictions on Declarant: Declarant is undertaking the work of construction of a residential development and incidental improvements upon the Project. The completion of that work and the sale, rental, and other disposal of the Lots and Residences is essential to the establishment and welfare of the Project. In order that work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

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

B. Prevent Declarant or its representatives from erecting, constructing and maintaining on the Project (except within Lots owned by others), such structures as may be reasonable and necessary for developing the Project as a residential community and disposing of the same by sale, lease or otherwise; or,

C. Prevent Declarant from conducting on the Project (except within Lots owned by others) its business of completing the work and of establishing a plan of residential ownership and of

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disposing of the Project in Lots by sale, lease or otherwise; or,

D. Prevent Declarant from maintaining or displaying such sign(s), pennants, banners and flag(s) anywhere in the Project (except within Lots owned by others) as may be necessary for the sale, lease or disposition thereof for the duration of Declarant's marketing.

The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project, and, until then, this Section shall not be amended without Declarant's consent. So long as Declarant, or its successors and assigns, owns one (1) or more of the Lots described herein, Declarant, or its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Lots by their Owners, while completing any work necessary to said Lots.

7.7. Termination of Any Responsibility of Declarant and Acceptance of Obligations by the Association: In the event Declarant shall assign or convey all of its rights, title and interest in and to the Project to any successor Declarant, then and in such event, Declarant shall be relieved of the performance of any further duties or obligations under this Declaration arising after such conveyance, and such successor Declarant shall thereafter be obligated to perform all such duties and obligations of the Declarant. The obligations of Declarant to the County contained in the conditions of approval for the Project, which obligations are intended to be on-going after Declarant has sold its interest in the Project, shall become the obligations of the Association, and the Association shall indemnify Declarant against any liability arising out of the performance or non-performance of those obligations after Declarant has sold its interest in the Project and/or turned over the maintenance and management of the Project to the Association.

7.8. Owners' Compliance: Each Owner or Occupant of a Lot shall comply with the provisions of this Declaration, and to the extent they are not in conflict with the Governing Documents, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys' fees, or (5) any combination of the foregoing.

In the event of a violation of the Governing Documents, the Association may if permitted by applicable law, record a Notice of Violation against the Lot of the non-complying Owner. Upon recording a Notice of Violation, the Association shall have complete discretion in deciding whether, when and how to proceed with enforcement, and any delay after recording a Notice of Violation shall not give rise to a defense of waiver or estoppel in favor of a non-complying Owner. The Association may take action to enforce compliance against a subsequent Owner who acquires a Lot with a recorded Notice of Violation. The right of the Association to record a Notice of Violation shall be in addition to all other rights and remedies the Association may have at law or under the Governing Documents.

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

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

7.10. Fair Housing: No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of his Lot to any person of a specified race, sex, sexual orientation, gender, gender identity, gender expression, age, marital status, color, religion, physical handicap, national origin, familial status, source of income or disability of that person.

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7.11. **Dispute Resolution:** The Board is authorized to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings.

A. Claims for Declaratory Relief or Enforcement of Governing Documents: Prior to the filing of an enforcement action, including a civil action solely for declaratory relief or injunctive relief to enforce the Governing Documents, or for declaratory, injunctive or writ relief in conjunction with a claim for monetary damages, the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution and in the event that mediation fails to resolve the matter to binding arbitration.

B. Arbitration of Disputes: If a dispute is the subject of binding arbitration under this Declaration, the following shall apply:

(1) Costs and fees of the arbitration, including ongoing costs and fees of the arbitration shall be paid as agreed by the parties, and, if the parties cannot agree, as determined by the arbitrator; provided, however, if the Declarant is a party to the arbitration, then any fee to initiate arbitration shall be paid by Declarant, but the cost of arbitration shall ultimately be borne as determined by the arbitrator;

(2) a neutral and impartial individual with at least ten (10) years' experience in real estate construction arbitration shall be appointed to serve as arbitrator, with the arbitrator to be selected by mutual agreement of the parties. If the parties are unable to agree on an arbitrator within fifteen (15) days after any party initiates the arbitration, a neutral and impartial arbitrator shall be selected by JAMS. In selecting the arbitrator, the provisions of §1297.121 of the California Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in §1297.121, or in §1297.124 of the California Code of Civil Procedure;

(3) venue of the arbitration shall be in the County;

(4) the arbitration shall commence in a prompt and timely manner in accordance with (i) the Commercial Rules of JAMS, or if the rules do not specify a date by which arbitration is to commence, then (ii) by a date agreed upon by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrator. The arbitrator shall apply California substantive law in rendering a final decision. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages. When the arbitrator is prepared to make the award, the arbitrator shall first so inform the parties, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the parties resolve the matter, the arbitrator shall not make any award. If the parties do not so resolve the matter within the ten (10) day period, the arbitrator shall make the award on the eleventh day following the arbitrator's notice of being prepared to make the award;

(5) the arbitration shall be conducted in accordance with the Commercial Rules of JAMS;

(6) the arbitration shall be conducted and concluded in a prompt and timely manner;

(7) the arbitrator(s) shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration. The arbitrator(s) shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error;

(8) a judgment upon the award rendered by the arbitrator may be entered in

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any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement.

(9) Participation by Other Parties. An Owner, the Association and Declarant, to such extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration; and,

(10) **ARBITRATION OF DISPUTES.** BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY DISPUTE RELATING TO OR BASED UPON CLAIMS FOR DECLARATORY RELIEF OR ENFORCEMENT OF THE GOVERNING DOCUMENTS DECIDED BY NEUTRAL BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND AS PROVIDED IN SECTION 7.11.B. DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP ANY RIGHTS DECLARANT, THE ASSOCIATION AND EACH OWNER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A JURY TRIAL. DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" (SECTION 7.11.B) PROVISION. IF DECLARANT, THE ASSOCIATION OR ANY OWNER REFUSES TO SUBMIT TO ARBITRATION, DECLARANT, THE ASSOCIATION OR SUCH OWNER MAY BE COMPELLED TO SUBMIT TO ARBITRATION UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

7.12. "General Rules": This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for creating and operating a residential development and maintaining the Conservation Easement Area. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

7.13. "Articles, Sections and Exhibits": The Article and Section headings have been inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration.

7.14. "Priorities and Inconsistencies": If there are conflicts or inconsistencies between the Governing Documents, then the provisions of this Declaration shall prevail.

7.15. "Severability": The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

7.16. "Statutory References": All references made in this Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this ____ day of _____, 201__.

MOSS BEACH ASSOCIATES, LLC,
a California limited liability company

By: _____
Name: _____
Its Manager

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT - CIVIL CODE SECTION 1189

A notary public or other officer completing the certificate verifies only the identity of the individual who signed the document to which the certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 201__ before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

(SEAL)