



AGENDA

CITY OF SEASIDE
BOARD OF ARCHITECTURAL REVIEW

REGULAR MEETING
COUNCIL CHAMBER
440 Harcourt Avenue
Wednesday, March 16, 2016
5:30 PM

PLEASE TURN OFF YOUR CELL PHONES UPON ENTERING THE MEETING

1. **CALL TO ORDER**
2. **ROLL CALL - ESTABLISHMENT OF QUORUM**

BOARD OF ARCHITECTURAL REVIEW

Toby Keller	Chair
Mitsugu Mori	Board Member
Ken Rudisill	Board Member
Kathleen Ventimiglia	Board Member
Bani Kelso	Board Member

3. **REVIEW OF AGENDA**

If there are any items that arose after the 72-hour posting deadline, this is the point in the meeting where a vote may be taken to add the item to the agenda. (A 2/3-majority vote is required).

4. **ORAL COMMUNICATION**

Members of the public wishing to address the Board of Architectural Review on matters within the jurisdiction of the City of Seaside, but not on this agenda, may do so during the Public Comment period for up to three minutes. Public Comments on specific agenda items are heard under that item. For the public record, please state your name.

5. **APPROVAL OF MINUTES**

6. **BUSINESS ITEMS**

- A. **Specific Plan Application #SPL12-01. The Board of Architectural Review (BAR) will consider the proposed architectural design guidelines and development standards for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Draft Specific Plan (the “draft specific plan”); The project is located northeast of the Normandy Road/Parker Flats Cut-off intersection on the former Fort Ord. The design review hearing on the proposed project was continued from July 15, 2015.**

PURPOSE:

The purpose of this item is to review the Board's comments that were received at the July 15, 2015 BAR Meeting on the architectural design guidelines and development standards for the proposed Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Draft Specific Plan (the “draft specific plan”); to receive Staff’s recommendations/clarifications on the Board comments; to take additional public comment on only those items under the Board’s purview (i.e., the architectural design guidelines and development standards); and to take action regarding the recommendations to the Planning Commission and City Council on the architectural design guidelines and development standards in the proposed “draft specific plan.”

RECOMMENDATION:

Staff recommends that the Board review their previous recommendation, receive public comments, ask questions of staff and the applicant on the recommendations/clarifications that Staff has provided from the July 15, 2015 BAR Meeting, ask additional questions of Staff and the applicant on the proposed project, and to take action regarding the BAR recommendations to the Planning Commission and City Council on the architectural design guidelines and development standards for the proposed “draft specific plan.”

7. **REPORTS FROM BOARD MEMBERS**
8. **REPORTS FROM STAFF**
9. **ADJOURNMENT**

Next Regularly Scheduled Meeting:
Wednesday, April 6, 2016
Seaside City Hall
5:30 p.m.

The City of Seaside is an ADA accessible facility and is committed to include the disabled in all of its services, programs and activities. Any person who requires accommodation to be able to participate in this meeting is asked to contact the office of the City Clerk at 899-6707, no fewer than two business days prior to the meeting to allow for reasonable arrangements.

The City Council Chambers is equipped with a portable microphone for anyone unable to come to the podium. Assisted listening devices are also available.

Meetings that are held in the City Council Chambers are broadcast live to all Seaside residents on Comcast Channel 25 and U-verse Channel 99. Meetings are also available through live streaming at:
<http://cyp.telvue.com/player?id=T01629&video=52314&noplaylists=1&width=400&height=300> Videos of past meetings are available on demand through the City's website: <http://www.ci.seaside.ca.us>

Agenda-related writings or documents provided during public meetings are available for public inspection during the meeting or from the office of the City Clerk. This agenda is posted in compliance with California Government Code Section 54954.2(a) or Section 54956.



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 6.A.

TO: Board of Architectural Review

BY: Diana Ingersoll, Deputy City Manager Resource Management Services
Rick Medina, Senior Planner

DATE: March 16, 2016

SUBJECT: **Specific Plan Application #SPL12-01.** **The Board of Architectural Review (BAR) will consider the proposed architectural design guidelines and development standards for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Draft Specific Plan (the “draft specific plan”); The project is located northeast of the Normandy Road/Parker Flats Cut-off intersection on the former Fort Ord. The design review hearing on the proposed project was continued from July 15, 2015.**

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Staff recommends that the Board review their previous recommendation, receive public comments, ask questions of staff and the applicant on the recommendations/clarifications that Staff has provided from the July 15, 2015 BAR Meeting, ask additional questions of Staff and the applicant on the proposed project, and to take action regarding the BAR recommendations to the Planning Commission and City Council on the architectural design guidelines and development standards for the proposed “draft specific plan.”

BACKGROUND

This is a second meeting of the Board of Architectural Review regarding this item. The first was held on July 15, 2015. The staff report for that hearing can be accessed by the following link:<http://http://seasideca.suiteonemedia.com/Web/Player.aspx?id=34&key=-1&mod=-1&mk=-1&nov=0>. The July 15, 2015 BAR Staff Report addresses the project background, site location, land use designations, project description, an overview of the development review and approval process, and staff's analysis of the architectural design guidelines and development standards. It also includes an illustrative conceptual site plan, specific plan land use plan, and specific plan architectural design guidelines. The Draft Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Draft Specific Plan can be accessed by clicking on the following link:<http://draft%20specific%20plan/>.

At the July 15, 2015 BAR Meeting the Board deliberated on the architectural design guidelines and development standards. Due to the amount of comments received that evening, City staff recommended that the item return to the Board with recommendations/clarifications to the questions and comments raised by the Board based on the transcript of the meeting for their consideration in making its design review recommendations to the City Council and Planning Commission. Through a consensus of the Board, the Board agreed to staff's recommendation to have the item come back to the Board at a future date.

Staff reviewed the July 15, 2015 meeting transcript and has identified the main design related comments/discussion points which were discussed and outlined in the Table 1 listed below.

**July 15, 2015 MEETING TRANSCRIPT RECOMMENDATIONS/
CLARIFICATIONS**

Table 1

Board of Architectural Review (BAR Comments/Discussion Points	City staff recommendation on the BAR Comments/Discussion Points
What is an Urban Design Program?	Clarification: In accordance with Section 8.3.3.2 –Development Review and Application Procedures – of the Specific Plan, development applications shall include a Landscape and Urban Design Program (Including detailed landscaping, architectural elevations, signage program and other design details pertinent to the residential or commercial project); Storm Water Control Plan; Statement of Compliance with the Specific Plan, design guidelines, design standards and other elements as required by California Code of Regulations; Statement of Consistency with the Fort Ord Reuse Plan and Master Resolution.

What is a “Cluster Development”?	Clarification: This design would include four-to-six units closely situated together or with common wall development in a clustered townhouse or garden apartment formation. The units would share a common driveway.
Board expressed concern with the large number of small lots (less than 3, 750 sq. ft.).	Recommendation: City staff recommends that the Board continue to discuss the location and grouping of lots of less than 3,750 sq. ft., and provide City staff with a recommendation or direction on how this type of lot should be addressed in the Specific Plan. The Board could evaluate whether lots of this size may not be on adjoining parcels or a percentage of the total lots on a specific block.
Board expressed concern with the provision of a 3’-5” foot side yard setback.	Recommendation: In the Boards deliberation of a side setback of less than five feet, the Board discussed whether to then increase the side setback on the other side to provide a minimum distance of 10 feet between adjoining structures on that side. City staff recommends that the Board review this recommendation and provide City staff with recommended language to amend Table 6.1 in Chapter 6 of the Specific Plan to include the combined setback distances the Board prefers when a setback of less than five feet occurs on one side of a parcel for a single family dwelling.
Board sought clarification on the use of a 10-foot front yard setback.	Clarification: The use of a minimum 10-foot front yard setback is proposed in order to provide variation in the front facades of the dwelling on a block and to allow for a porch projection to pop-out in front of the garage entry. This design feature would also decrease the dominance of the garage door.
Board inquired how the design of a specific style would be carried out on all sides of the dwelling.	Clarification: In accordance with Section 5.2.2.b in Chapter 5 of the Specific Plan, the front façade treatment of single family homes detached and cluster residential buildings should wrap partially around onto the side and rear of the house. The Board would have the ability to condition this type of design feature within the Urban Design Program that would be required for each development

	phase.
Board discussed the number of housing types and layouts that would be required in the Residential 1 area.	Clarification: Table 5.1 of the Specific Plan indicates that a minimum of three floor plans and three elevations would be required. The Board would have the discretion to require additional floor plans and building elevations as part of the approval process of an Urban Design Program for each development phase. The proposed standard is a minimum requirement.
Board inquired to the location of multi-family campus housing	Clarification: The multi-family campus/apartments will be located within Residential Area 3.
The Board inquired about the provision of solar access.	Recommendation: The Board can provide further information and development standards under Chapter 6 of the Specific Plan to provide for the location of solar equipment on roofs and design standards to minimize glare of roof panels.
The Board inquired about bicycle and pedestrian connections to areas within Seaside proper, Marina and CSUMB.	Recommendation: The Board can provide further information and development standards to address how bicycle and pedestrians could be feasibly accommodated within a development Phase as part of the Urban Design Program that would be approved for each development Phase.
The Board inquired about property Maintenance.	Clarification: A set of Conditions, Covenant and Regulations will be adopted for the Specific Plan. The CC&R's will include maintenance standards and programs for the dwellings, front yards, streets, and common open space/trails. Sample CC&R's for the project are provided as Attachment 1.

It is within the Board's purview to continue to deliberate on the draft specific plan's proposed architectural design guidelines and development standards. Should the Board determine to do so, staff recommends the Board consider discussing the architectural design guidelines and development standards component by component. The components are:

1. Architectural Design Guidelines (Chapter 5)
2. Residential(Single-family and multi-family)
3. Commercial (Country Walk)
4. Hotels and Office Park
5. Horse Park, Training Track, and Sport Arena
6. Central Coast Veterans Cemetery (Ancillary Structures)
7. Development Standards (Chapter 6)
1. Residential

2. Commercial and Mixed-use
3. Recreational
4. Central Coast Veterans Cemetery Ancillary Structures
8. Landscape Design Standards (Chapter 7)
9. Circulation Design Standards (Streets and Trails) (Chapter 3)

July 15, 2015 MEETING TRANSCRIPT PUBLIC
COMMENTS

Staff reviewed the July 15, 2015 meeting transcript to determine which public comments are regarding items within the purview of the Board and which are not. Those that are within the purview of the Board are included below. Comments on those items that are not within the purview of the Board will be forwarded to the Planning Commission and City Council, and are included as Attachment 2.

Roelof Wijbrandus – Property Owner of 1495 Mescal Street

- You're looking at zoning. One of the things that didn't come up on the zoning question is – that Seaside does have a zoning law and that you do not allow for card rooms or any kind of gambling. Horse racing does involve gambling and betting, and so I'm really concerned as a resident that this is not compatible with our current zoning laws.

Nina Beatty – No address given

- The reason setbacks exist is because they protect against many things. One of them is noise; and your neighbors; another one is privacy. With less setbacks, that means you're more prone to the radios that are going on that are going on in the house, the kids that are chattering in the yards, the parties that are going on; its less protection for residents. Smaller lots, as you know, by going through streets in Seaside; people are crammed in and it's not a conducive environment for – I mean, you go through a wide street, bigger setbacks; and then you go on a street like Soto and it's difficult to even drive down the street. And I wonder in this "new urbanism neighborhoods", will the applicants be living in these neighborhoods? Or is this something that we're trying to – I fear tonight a language of – we're moving people into this concept but it's not them, its other people that have to get use to a new concept, a new mindset of living in something that isn't natural for them.
- People want yards, they want their privacy. If they have children, they want the safety there. I understand about lawns, I'm an environmentalist, lawns are a thing but at the same time, where are the children going to play? Does the mom always have time to take them across to the park? Not going to take them across to the stadium, not going to take them across to the tennis courts – you know this is families, if you want to attract families to the peninsula, this seems to fly in the face of it.
- There's not enough parking, I mean all of us have fought areas where it was in the legal limits but there wasn't enough parking, especially if you're putting people, a bed, a king size bed means 2 people and that means probably two cars. In a family that has multiple adults, you're going to have multiple cars and fighting for spaces and all of the problems that a neighborhood can generate with that. If Seaside doesn't have standards for certain

things, like I saw up on the slides, why didn't the planning department go to other cities that do have these types of housing development? And say, well for Santa Cruz...or for Salinas...or for Monterey, these are the comparable standards; so you have a comparison. This again, is trying to change people and children; this is not taking into consideration the real needs of people.

Kathy Anderson – No address given

- The City of Seaside needs to take its course and get some tax revenues, the small yards and the parks that's ok – I have children, I have grandchildren, we don't have time for the back yard anymore, so the park is just fine. The smaller yards and the higher ceilings, I really like that because it makes the house seem larger.

Cameron Binkley (Seaside - lives in the area next to where the project is proposed)

- I'd like to see the project housing incorporate more of a sense of military heritage in Fort Ord both in the architectural considerations and also in the naming and the retention of names that relate to the previous military use of the area; like Parker Flats – with the names of roads and trails and things like that should be retained to the extent possible and while I do quiver with the name "Monterey Downs" itself, because it has no historic association with the area. So that's kind of my critique there; and an example of how this can be done successfully to some extent is the East Garrison development which has incorporated some architectural influences of the late military aspects and designs in their building styles and so I think that could be done here. I didn't see any of that in the presentation tonight so to the extent that that could be worked into, I would support that. Finally, I think that the military historic plans, use of patterns, should be considered and I'm not a big fan of squeezing all the houses close together and not having any yards. If you look at the adjacent neighborhoods in this project area, you've got, if you actually go out and visit Fitch Park which is a military housing area which has been redeveloped in recent years. The homes aren't separated by quite more than the margins that are being talked about is being here. And those are very nice neighborhoods, they're very walkable and they in the move of urbanism design philosophy, and I just would like to see more continuity, instead of having a stark contrast between the neighborhoods and the previous military usage that are going to be immediately adjacent to this project. So those are basically my comments, I would also say that as a former dog owner, it is very difficult to have a dog in a small space and the yards that I've seen in recent development, the yards don't provide enough space. Also, I know that there is a tendency, with the parks, which it's great to have these park in these areas, I appreciate that but it's often a tendency to impose restrictions on dogs in those parks so then you'll have the combination of having very small yards for dogs and then you'll have...and you can't predict this but there can be restrictions on the open space use where people can't take their yards. So it's nice to have a bigger yard that is more appropriate for dog use.

Dawn Posten, Non-Profit "Monterey Horse Park"

- Our project has been described in this presentation tonight and I just want to tell you that the horse park will be built in phases and every step of the way we will be coming to the appropriate agencies getting approval, and/or recommendation on how we build our horse park. Our intent is to work with the natural beauty of the former Fort Ord, we anticipate our building to be with local and historical architecture and style to reflect the equestrian nature of the venue. We hope to use the services of John Blackburn a noted

equestrian center architect, he's famous and specializes in healthy barns that are real far out and . His designs include consideration to do traffic flow, efficiency and aesthetic use of the natural environment. Our landscaping will be drought tolerant and native to the area. Monterey Horse Park will be an aesthetic use of the land. Also, the Monterey horse parks acts as a natural transition between the more urban areas and as you're moving to the more active recreational, equestrian competitions, and dog shows, we intend to have at our site – it won't be just horses, and that sorts of things, to the more passive recreation of the national monument. While we don't border on the national monument, we also plan to provide trail connection and staging areas, and in the more developed areas to the less developed areas of the national monument. Thank you very much!

Peter Kaiser, Seaside resident

- I don't think we want to stack and pack people in there like other people have mentioned and put them in smaller-sized lots. Where will people park their RVs and their motor homes? Let's say they have a family business, where do they have some of the things that they need to be self-sufficient and have their family businesses. What do you do when the grandchildren come? And they're not going to want these small houses.

Bill Weigle, Seaside resident

- I think these are architecturally related. I heard it referred to a parking structure, and I guess I hadn't heard that before. But there have been so many pages between the specific plan and the EIR, I think it's close to 4,000 pages, I haven't gotten through it all. So I used Google Earth Pro to try and estimate the size of the large parking lot, so it goes North to Northwest to west of the arena and I ended up with about a 20 acre parking lot. So, I guess my question is, is that a parking structure or is that a parking lot and what is the size of it?

Kay Kline, Seaside Resident

- When I heard that there is a parking structure that is 5 stories and 60 feet high, and that there will be some other buildings that are 50 feet high, I'm realizing that those of us that go up to the National Monument to go hiking, that will be in our view. We're going to see because that land is really high and those buildings are high. I'm hoping and this may not be your area, that another site such as Seaside East could be considered, you know and it wouldn't have to squeezed in there and it wouldn't have to be right next to the National Monument.

Bill Light, Resident of Monterey County

- There are some high buildings out there currently, like the old hospital that's out there, which is now run by the DOD and you can see it as I ride my bike out there. It's actually a nice signal that I'm almost close to the finish line of my ride.
- I think a lot of thought has gone into this design and architecture, how it merges from the University to the National Monument, it's very thoughtful

PUBLIC NOTICE

A public notice regarding the Board of Architectural Review hearing on the draft specific plan architectural design guidelines and design standards was published in the Monterey Weekly on

March 3, 2016.

NEXT STEPS

After the Board of Architectural Review provides a recommendation to the Planning Commission and City Council on the architectural design guidelines and development standards of the Draft Specific Plan, the project applications and Final EIR will then be reviewed by the Planning Commission, who will then make a recommendation to the City Council. If the City Council approves the proposed project, the Fort Ord Reuse Authority (FORA) will review the project for consistency with the Fort Ord Base Reuse Plan. The next step would then be for the City to submit an application to the Monterey County Local Agency Formation Commission (LAFCO) for approval of a Sphere-of-Influence Amendment and Annexation. Prior to LAFCO approval, a Sphere-of-Influence Amendment agreement would need to be executed by the City of Seaside and the County of Monterey.

ENVIRONMENTAL DETERMINATION

Development pursuant to the Specific Plan will be required to comply with mitigation measures in the Specific Plan EIR. The Draft EIR (DEIR) was circulated for public review from March 31, 2015 through June 19, 2015. The DEIR can be accessed by the following link:<http://draft%20eir/>. A Final EIR is being prepared and will be completed prior to the City Council taking action on the various applications.

FISCAL IMPACT

There is no fiscal impact for this item.

ATTACHMENTS

1. Attachment 1 - Sample CC&R's
 2. Attachment 2 - Public Comments that are non-design related to the project
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Recording Requested By
and
When Recorded Return To:

**SAMPLE
DECLARATION OF RESTRICTIONS
FOR SINGLE FAMILY
RESIDENTIAL PHASE OF
MONTEREY DOWNS**

**SAMPLE DECLARATION OF RESTRICTIONS
FOR SINGLE FAMILY RESIDENTIAL PHASE OF
MONTEREY DOWNS**

THIS DECLARATION OF RESTRICTIONS FOR MONTEREY DOWNS ("**Declaration**") is made as of _____, 200 , by MONTEREY DOWNS, LLC a California limited liability company (hereinafter referred to as "**Declarant**"), with reference to the following

RECITALS:

A. Declarant is the owner of certain real property located in the City of Seaside, City of Monterey, State of California, more particularly described on **Exhibit "A"** attached hereto, and referred to herein as "**Phase 1.**"

B. Phase 1 is the first Phase of real property which may become subject to this Declaration. Pursuant to **Section 10.2** below, Declarant may from time to time annex to this Declaration and to the jurisdiction of MONTEREY DOWNS HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation (the "**Association**") some or all of the additional real property described on **Exhibit "B"** (the "**Annexable Property**") as additional Phase(s). This Declaration initially encumbers only Phase 1. Reference in this Declaration to "**Monterey Downs**" refers to Phase 1 described above and such additional Phases as become annexed to this Declaration.

C. Declarant plans to develop Monterey Downs as a Common Interest Development described in §1351(k) of the California CIVIL CODE as a "**Planned Development,**" which shall be developed as a single-family residential community, together with common areas as described in this Declaration. There is no guarantee that all Phases will be developed or annexed to this Declaration or developed or annexed in any particular order. Some Phases may be developed concurrently. Declarant reserves the right during the development of Monterey Downs to change the phasing and the design, size, type and price of the homes to be built in Monterey Downs and the construction and phasing of the development of Monterey Downs.

D. The Owners of Home Sites (as defined below) will be members of the Association. The Association shall also maintain various improvements within certain areas (called "**Common Area**" or "**Association Maintenance Area**"). For example, and not by way of limitation, it is currently intended that the Association be responsible to maintain certain private roads, horse trails, four-rail white fencing, entry monumentation and certain walls located near the entrance to Monterey Downs. Additionally, if the storm drain system, detention basin, street lights and landscaping are privately owned, rather than public facilities, then they shall be deemed to be Common Area Improvements which are included in the Association Maintenance Area and as such, the Association shall be responsible for the maintenance of those privately owned facilities as well. Before selling any of the Home Sites, Declarant wishes to impose the following plan of covenants and restrictions on Phase 1 and on each additional Phase which becomes annexed to this Declaration.

E. **ARTICLE XII OF THIS DECLARATION REQUIRES THAT ANY DISPUTES BETWEEN DECLARANT ON THE ONE HAND AND AN OWNER OR THE ASSOCIATION ON THE OTHER BE RESOLVED BY MANDATORY ARBITRATION. ARTICLE XII ALSO CONTAINS A WAIVER OF JURY TRIAL WITH RESPECT TO ANY SUCH DISPUTES.**

NOW, THEREFORE, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of all of Monterey Downs. Each and every ownership interest in Monterey Downs shall be held, used, occupied, leased, sold, encumbered, conveyed and/or transferred with the following protective covenants and restrictions fixed upon such ownership interest. Each and all of the covenants and restrictions are for the purpose of protecting the value and desirability of and shall inure to the benefit of and shall run with and be binding upon and pass with each Home Site

and Common Area within Monterey Downs and each and every ownership interest therein and shall inure to the benefit of, apply to and bind the respective successors in title or interest of Declarant. The covenants and restrictions herein set forth are enforceable equitable servitudes as described in California CIVIL CODE §1354.

ARTICLE I **DEFINITIONS**

Section 1.1 "Annexable Property" — The real property described on **Exhibit "B"** attached to this Declaration and shown graphically on **Exhibit "C"** to this Declaration.

Section 1.2 "Association Maintenance Area" — Those areas which, in addition to the Common Area Improvements, the Association is obligated to maintain. The Association Maintenance Area may include portions of certain Home Sites and certain areas within public rights of way.

Section 1.3 "Articles" — The Articles of Incorporation of the Association.

Section 1.4 "Association" — MONTEREY DOWNS HOMEOWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation.

Section 1.5 "Board" — The Board of Directors of the Association.

Section 1.6 "Bylaws" — The Bylaws of the Association.

Section 1.7 "City" — The City of Seaside, California.

Section 1.8 "Common Area" — All real property owned in fee by the Association or which the Association holds an easement over for the use and benefit of the Members. It is currently anticipated that the Common Area will consist of an easement over a private road providing access to the Home Sites within Monterey Downs, inclusive of additional private right of way on either side of the private road. The Common Area is described on **Exhibit "D"** to this Declaration and shown graphically on **Exhibit "E"** to this Declaration. The Association will be obligated to maintain the Common Area Improvements within the Common Area and each Owner will be obligated to maintain any Common Area within his or her Home Site outside of the Common Area Improvements.

Section 1.9 "Common Area Improvements" — Those certain improvements installed by Declarant within the Common Area, including, without limitation, (i) the as-built road improvements comprising the private road, (ii) horse trails with four-rail white fencing, and (iii) the entry monumentation, certain walls and certain landscaping located on or along the private road. Additionally, if the storm drain system, detention basin, street lights and landscaping are privately owned, rather than public facilities, then they shall be deemed to be Common Area Improvements. The Association will be obligated to maintain all Common Area Improvements.

Section 1.10 "Declarant" — MONTEREY DOWNS, a California limited liability company, its successors and assigns, if such successor or assign should acquire more than five (5) Home Sites for the purpose of development, and the rights of "Declarant" are assigned to them. The rights of Declarant shall be deemed assigned to any lender of Declarant whose loan is secured by a Mortgage which encumbers any portion of Monterey Downs.

Section 1.11 "Declaration" — This Declaration of Restrictions for Monterey Downs.

Section 1.12 "First Purchaser" — A person who purchases a Home Site under authority of a Final Subdivision Public Report issued by the California Department of Real Estate. Neither Declarant nor any successive Declarant are First Purchasers.

Section 1.13 "Home Site" — Any plot of land within Monterey Downs shown as a separate lot on any final map, parcel map, or certificate of compliance (as such terms are defined in the California

Subdivision Map Act), with the exception of any separate legal lot defined as Common Area (if any). In the event the boundaries of any Home Site are adjusted in compliance with the California Subdivision Map Act, then "Home Site" shall refer to the Home Site as so adjusted.

Section 1.14 "Monterey Downs" — Phase 1 and each additional Phase which is annexed to this Declaration.

Section 1.15 "Member" — An Owner who is entitled to membership in the Association as provided in the Declaration.

Section 1.16 "Mortgage" — A Deed of Trust as well as a mortgage encumbering a Home Site.

Section 1.17 "Mortgagee" — The beneficiary of a Deed of Trust as well as the mortgagee of a Mortgage.

Section 1.18 "Owner" — The record owner(s), whether one or more persons or entities, of fee simple title to any Home Site, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

Section 1.19 "Phase" — A Phase shall consist of those Home Sites (and any Common Area or Association Maintenance Area) within Monterey Downs which Declarant designates as a Phase in a recorded document. Phase 1 is designated in the above Recitals to this Declaration and attached as Exhibit "A". Unless Declarant should make a contrary designation, those Home Sites (and Common Area or Association Maintenance Area, if any) covered by a separate Final Subdivision Public Report (or described in a Final Subdivision Public Report as constituting a separate phase) shall constitute a Phase. "Final Subdivision Public Report" refers to such report issued by the California Department of Real Estate as the report may be amended from time to time. One or more Phases may be annexed by the same Declaration of Annexation.

ARTICLE II
PROPERTY RIGHTS IN COMMON AREA:
CERTAIN ASSOCIATION RIGHTS REGARDING COMMON AREA AND
ASSOCIATION MAINTENANCE AREA

Section 2.1 Owners' Easement of Use. Every Owner shall have a right and easement of ingress, egress and of enjoyment in and to such Common Area which easement shall be appurtenant to and shall pass with the title to the Owner's Home Site. Such right and easement shall be subject to the following provisions:

(a) The right of the Association to suspend the voting rights and right to use of the Common Area (excluding Common Area intended primarily for access purposes) by an Owner for any period during which any Association assessment against his Home Site remains unpaid; and for a period not to exceed thirty (30) days for any infraction of the published rules and regulations of the Association. No suspension shall be effective unless the Owner has been given fifteen (15) days' prior notice of the suspension and the reasons therefor and the Owner has been given an opportunity to be heard by the Board, orally or in writing, not less than five (5) days prior to the effective date of the suspension. Notice may be given to the Owner by any method reasonably calculated to provide actual notice, but if given by mail must be given by first-Class or registered mail sent to the last address of the Owner shown on the records of the Association.

(b) 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 may be agreed to by the Board.

(c) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Common Area and, with the assent of two-thirds (2/3) of each Class of Members, hypothecate any or all real or personal property owned by the

Association.

(d) The right of access, ingress and egress over the Common Area and the right of installation and use of utilities on the Common Area for the benefit of Home Sites.

(e) The right of the Association to grant maintenance, access and utility easements over the Common Area for the sole purpose of maintaining and repairing utilities installed in the Common Area for the benefit of Home Sites.

(f) The right of the Association to adopt rules and regulations relating to the use of the Common Area and the governance of Monterey Downs, so long as any such rules and regulations do not affect Declarant's easement rights.

(g) Subject to the provisions of California CIVIL CODE §1363.07, the right of the Association to grant exclusive use easements to any Owner over, under, upon and across portions of the Common Area and Association Maintenance Area and/or adjust boundaries between one or more of the Home Sites and the Common Area or Association Maintenance Area. The Association's grant of an exclusive use easement to any Owner shall require an affirmative vote of Owners that represent at least sixty-seven percent (67%) of total voting power of the Association as well as an affirmative vote of the Declarant, so long as the Declarant has voting rights. However, no such Owner consent or approval shall be required if the grant of exclusive use easement falls under one or more of the enumerated exceptions to the Owner voting requirements set forth in California CIVIL CODE §§1363.07(a)(1) through (a)(3), inclusive. Also, no such exclusive use easement or boundary adjustment shall interfere with or violate any open space easement or other restrictive easement dedicated to a governmental agency. Any election or proceeding to obtain the consent or approval of the Owners shall be subject to and comply with the provisions of the Common Interest Development Open Meeting Act, as set forth in California CIVIL CODE §§1363.03 – 1363.09, and any election rules adopted by the Board in conformance therewith.

(h) Subject to a concomitant obligation to restore, Declarant and its sales agents, employees and independent contractors shall have:

(i) A non-exclusive easement over the Common Area and Association Maintenance Area for the purposes of (i) making repairs to the Common Area, the Association Maintenance Area or the residences on the Home Sites it owns, provided access is not otherwise reasonably available and (ii) constructing, marketing and maintaining Phase 1 and the Annexable Property, including the construction of residences and related improvements; and

(ii) The other rights and easements (including those of Declarant) set forth in this Declaration.

Section 2.2 Delegation of Use. Any Owner may delegate his rights of enjoyment to the Common Area and facilities to persons who reside on the Owner's Home Site.

Section 2.3 Conveyance of Common Area. Conveyance of the Common Area and Association Maintenance Area to the Association shall be made subject to all covenants, conditions, restrictions, reservations, dedications, easements and other items of the record.

ARTICLE III **MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

Section 3.1 Membership. Every Owner of a Home Site which is subject to assessment by the Association shall be a Member of the Association. Membership is appurtenant to and may not be separated from ownership of a Home Site.

Section 3.2 Voting Rights. The Association shall have three (3) classes of voting membership:

(a) Class A. Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Home Site owned. When more than one (1) person holds an interest in any Home Site, all such persons shall be Members. The vote for the Home Site shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Home Site. The Class A Members shall be entitled to elect, by their sole votes, two (2) members of the Board of Directors (which shall initially be comprised of a total of five (5) members) at the first annual meeting of Members following the adoption of the Amended and Restated Bylaws and thereafter until the Class C Termination Date (defined below). Following the Class C Termination Date, the Board of Directors shall be reduced to three (3) members and the Class A Members will be entitled to vote for all nominees to the Board.

(b) Class B. Class B Member(s) shall be Declarant and shall be entitled to three (3) votes for each Home Site owned; provided, that solely for the purpose of counting votes in order to determine when Class B membership shall cease and convert to Class A membership as provided in Subsection (i) below, Declarant shall be entitled to five (5) votes for each Home Site Owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earlier of the following to occur:

(i) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or

(ii) Ten (10) years following the date of issuance of the most recent Final Subdivision Public Report for Monterey Downs (including the Annexable Property) (the "**Conversion Date**"); provided, however, that if at the time of the Conversion Date less than seventy five percent (75%) of the projected Home Sites are sold, the Conversion Date shall be extended for three (3) additional years.

Class B Members shall have no right to vote in the election of directors until the Class C Termination Date (defined below).

(c) Class C. In addition to other membership it may hold, Declarant shall be the sole Class C Member of the Association. The Class C membership shall be considered a part of the Association's voting power for the sole purpose of the Class C Member electing or replacing three (3) of the five (5) directors initially comprising the Board of Directors, and reference to "each Class of membership" in this Declaration or in the Bylaws or the Articles shall not refer to Class C membership for any purpose other than election of Association directors. The directors shall be elected as set forth in the Bylaws. The Class C membership shall terminate on the fourth (4th) anniversary of the issuance of the Final Subdivision Report for Phase 1 (the "**Class C Termination Date**"); provided, however, that if at the time of the Class C Termination Date less than seventy five percent (75%) of the projected Home Sites are sold, the Class C Termination Date shall be extended for two (2) additional years. The Class C Member shall have the right to cause early termination of the Class C membership for purposes of replacing directors elected by the Class C Member so notifying the Secretary of the Association in writing.

Except with respect to Class C, voting rights shall not commence with respect to a Home Site until the Association's regular assessments have commenced against the Home Site.

Section 3.3 Special Membership of Phase Owner. Prior to the commencement of the Association's regular assessments against the Home Sites within a Phase, the owner of the Phase shall be a Special Member of the Association as set forth in **ARTICLE XIV** below.

ARTICLE IV **COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION**

Section 4.1 Creation of Lien and Personal Obligation for Assessments. Declarant, for each Home Site owned, covenants, and each Owner of a Home Site by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Association:

(a) regular assessments or charges which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Area Improvements and Association Maintenance Area; and (b) special assessments. The regular and special assessments, together with interest, late charges, costs and reasonable attorney's fees, shall (except as otherwise provided in **Section 4.4** below) be a charge on the land and shall be a continuing lien upon the Home Site against which each such assessment is made. The lien shall be effective upon recordation of a notice of delinquent assessment. Each assessment, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Home Site at the time the assessment is due.

Section 4.2 Purpose of Assessments. The assessments levied by the Association shall be used for the improvement, maintenance, repair and replacement of the Common Area Improvements and Association Maintenance Area and for the common good of Monterey Downs, to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Bylaws, this Declaration and the rules and regulations adopted by the Board, and for those other purposes described in this Declaration. The regular assessments shall be determined at least annually by the Board to meet the expenses of the Association, including the establishment of reserve accounts, based upon the annual budget adopted by the Board pursuant to the Bylaws. A special assessment is an assessment the Board, in its discretion, determines necessary if the Association's available funds are or will become inadequate to meet the estimated expenses of the Association for a fiscal year. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board determines appropriate. In addition, a special assessment against a particular Owner only may be levied by the Board as set forth in **Section 4.4**.

Section 4.3 Limitation on Regular and Special Assessments. The Board shall levy regular and special assessments sufficient to perform the obligations of the Association as provided in the Declaration and Bylaws; provided, however, except for assessment increases necessary for emergency situations:

(a) **Limitation If Non-Compliance With Financial Reporting Requirements.** The Board may not increase the regular assessments for any fiscal year unless (i) the Board has complied with the provisions of California CIVIL CODE §1365(a) with respect to the fiscal year or (ii) the increase is approved by Owners casting a majority of the votes at a meeting or election of the Association conducted in accordance with (A) the Common Interest Development Open Meeting Act, as set forth in California CIVIL CODE §§1363.03 - 1363.09, and any election rules adopted by the Board in conformance therewith; (B) Chapter 5 (commencing with §7510) of Part 3 of Division 2 of Title 1 of the California CORPORATIONS CODE; and (C) §7613 of the California CORPORATIONS CODE at which a quorum was present or participated; and

(b) **Limitation Against Certain Increases In Assessment Amounts.** The Board may not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year nor special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expense of the Association for the fiscal year, without the approval of Owners casting a majority of the votes at a meeting or election of the Association conducted in accordance (A) the Common Interest Development Open Meeting Act, as set forth in California CIVIL CODE §§1363.03-1363.09, and any election rules adopted by the Board in conformance therewith; (B) Chapter 5 (commencing with §7510) of Part 3 of Division 2 of Title 1 of the California CORPORATIONS CODE; and (C) §7613 of the California CORPORATIONS CODE at which a quorum was present or participated.

(c) **Emergency Situations.** An emergency situation is any one of the following:

(i) An extraordinary expense required by an order of a court.

(ii) An extraordinary expense necessary to repair or maintain Monterey Downs or any part of Monterey Downs for which the Association is responsible where a threat to personal safety in Monterey Downs is discovered.

(iii) An extraordinary expense necessary to repair or maintain Monterey Downs or any part of Monterey Downs for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget under CIVIL CODE §1365. However, prior to the imposition or collection of an assessment under this Subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of assessment.

(d) Quorum. For purposes of this **Section 4.3**, "quorum" means more than fifty percent (50%) of the Owners. The term "regular assessment for the Association's preceding fiscal year" as used in this **Section 4.3** is deemed to be the regular assessment which would have existed in the absence of any subsidy of assessments agreed to be paid by Declarant. Anything in this **Section 4.3** to the contrary notwithstanding, the limitation on regular and special assessments shall comply with the laws of the State of California at the time the regular or special assessment is levied by the Association.

(e) Notwithstanding the above stated limitation against increases in regular assessments:

(i) The Board may increase regular assessments more than twenty percent (20%) if such increase was shown on an Association budget approved by the California Department of Real Estate and if such increase is allowed by California law; and

(ii) Sums assessed against Owners pursuant to **Section 4.4** below shall not be considered in calculating the increases in assessments; and

(iii) The Board may levy special assessments pursuant to the Bylaws.

The due dates of assessments shall be as the Board establishes them. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Home Site have been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

Section 4.4 Individual Special Assessments. The Association may also impose a special assessment against a Member to reimburse the Association for costs incurred in bringing a Member or the Member's Home Site into compliance with the provisions of the Declaration, the Articles, the Bylaws and the Association rules and regulations, which assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of §7341 of the California CORPORATIONS CODE; provided, however, that except to the extent the special assessment is to reimburse the Association for the cost of collecting assessments, a special assessment levied pursuant to this **Section 4.4** shall not constitute a lien on the Member's Home Site.

Section 4.5 Uniform Rate of Assessment. Both regular and special assessments (other than a special assessment levied against an Owner to bring the Owner or the Owner's Home Site into compliance with the Declaration, Articles, Bylaws or rules and regulations of the Board) shall be fixed at a uniform rate for all Home Sites and may be collected on a quarterly, monthly or other periodic basis as determined by the Board.

Section 4.6 Date of Commencement of Regular Assessments: Due Dates. Regular assessments shall commence as to all Home Sites in Phase 1 on the first day of the month following the first conveyance of a Home Site in Phase 1 to an Owner other than Declarant. The regular assessments shall commence as to all Home Sites in a subsequent Phase on the first day of the month following the first conveyance of a Home Site to an Owner other than Declarant in that Phase. The Board shall fix the amount of the regular assessment against each Home Site and the members must be given notice of any

increase in assessments at least thirty (30) days in advance of the increase. Written notice of the regular assessment shall be sent to every Owner. The due dates for payment of assessments shall be established by the Board.

Section 4.7 Uncompleted Facilities. The Board may exclude from assessments that portion which is for the purpose of defraying expenses and reserves directly attributable to the existence of a Common Area or Association Maintenance Area improvement that is not complete at the time the assessments commence. Any such exemption from assessments attributable to an Association maintained facility shall be in effect only until the earliest of the following events:

(a) The improvement has been completed as evidenced by the recordation of a Notice of Completion; or

(b) The improvement has been installed and placed into use.

Section 4.8 Effect of Non-Payment of Assessments: Remedies of Association. Any assessment made in accordance with this Declaration (including lien and non-lien assessments) shall be a debt of the Owner of a Home Site from the time the assessment is due. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. If an assessment is delinquent, the Association may recover any of the following: (i) reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees; (ii) a late charge on unpaid assessments in an amount not to exceed ten percent (10%) of each assessment or Ten Dollars (\$10.00), whichever is greater; and (iii) commencing thirty (30) days after the assessment becomes due until paid, interest at the rate of twelve percent (12%) per annum on the delinquent assessment and all sums imposed by this Section, including reasonable fees and costs of collection and reasonable attorney's fees. After any assessments levied by the Association affecting any Home Site have become delinquent, the Board may utilize all remedies available under California law, including, but not limited to, suing for damages and, when allowed by applicable California statutes, judicial or non-judicial foreclosure of a lien against the delinquent Owner's Home Site, as provided in CIVIL CODE §1367.1(d). To that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Home Site Owners, shall have the power to bid for the Home Site at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien. **THE ASSOCIATION SHALL COMPLY WITH ALL APPLICABLE STATUTORY REQUIREMENTS IN EXERCISING ITS REMEDIES, INCLUDING SECTIONS 2924, 2924(B), 2924(C), 1367, 1367.1 AND 1367.4 OF THE CALIFORNIA CIVIL CODE, AND ALL OTHER APPLICABLE STATUTES.**

Section 4.9 Subordination of the Lien to First Mortgages. The assessment lien shall be subordinate to the lien of any first Mortgage, and the sale or transfer of any Home Site pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of the assessment as to payments which became due prior to the sale or transfer. No sale or transfer shall relieve the Home Site from lien rights for any assessments thereafter becoming due. When the Mortgagee of a first Mortgage or other purchaser of a Home Site obtains title to the Home Site as a result of foreclosure, the acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to the Home Site which was due prior to the acquisition of title to the Home Site by such acquirer, except for a share of the charges or assessments resulting from a re-allocation of the charges or assessments which are made against all Home Sites.

Section 4.10 Estoppel Certificate. The Association shall furnish or cause an appropriate officer to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Home Site have been paid. A properly executed certificate of the Association as to the status of assessments on a Home Site is binding upon the Association as of the date of its issuance.

Section 4.11 Personal Liability of Owner. No Owner may exempt himself or herself from personal liability for assessments levied by the Association, nor release the Home Site owned by the Owner from the liens and charges for assessments by waiver of the use and enjoyment of the Common

Area or by abandonment of the Owner's Home Site.

Section 4.12 Code Sections Subject To Change. This Article relies on provisions of California statutory law which have been revised frequently. The Board is cautioned to have its legal consultant carefully review statutes in effect as of the date any notices or other actions are taken pursuant to this Article.

ARTICLE V **GOVERNMENTAL REGULATIONS**

Section 5.1 Compliance With Governmental Regulations. The Association, with respect to the Common Area and Association Maintenance Area, and each Owner, with respect to his or her Home Site, shall at all times comply with each governmental ordinance, regulation, restriction or permit which is applicable to the Common Area and Association Maintenance Area and to such Owner's Home Site.

ARTICLE VI **ARCHITECTURAL CONTROLS**

Section 6.1 Architectural Committee. No improvements or exterior changes to any improvements shall be made to any Home Site (including, but not limited to, construction, installation or alteration of any Home Site pad, building or landscaping, installation of any patio cover, room addition, fencing or other improvement) until the plans and specifications therefore showing the nature, design, kind, shape, height, width, color, materials and location have been submitted to and approved in writing by a committee of not less than three (3) and no more than five (5) persons (the "**Architectural Committee**") unless the Architectural Committee has categorically exempted the particular improvements from its review. All members of the Architectural Committee may be appointed and replaced by the Declarant until one year following issuance by the California Department of Real Estate of the original Final Subdivision Public Report for Phase 1. Thereafter, a majority of the members of the Architectural Committee may be appointed and replaced by Declarant and a minority of the members of the Architectural Committee may be appointed or replaced by the Board until ninety percent (90%) of the Home Sites planned for Phase 1 and the Annexable Property have been conveyed of record to First Purchasers or until ten (10) years following issuance by the California Department of Real Estate of the original Final Subdivision Public Report for Phase 1, whichever shall last occur. Thereafter, all members of the Architectural Committee may be appointed or replaced by the Board. Architectural Committee members need not be Members of the Association. Notwithstanding the above, it should be noted that in addition to approval from the Architectural Committee, a homeowner may need approvals from the City as well, including but not limited to approvals from the Zoning Administrator, Board of Architectural Review and/or the Planning Commission as appropriate.

Section 6.2 Architectural Committee Approval. Persons submitting proposals or plans and specifications to the Architectural Committee (each person is referred to as the "**Applicant**") may obtain a dated, written receipt for such plans and specifications and furnish the Architectural Committee with the address to which communications from the Architectural Committee to the Applicant are to be directed. The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alteration, addition or other construction activity contemplated thereby in the locations indicated will not be detrimental to the appearance of Monterey Downs and surrounding real property as a whole, that the appearance of any structure or other improvement will be in harmony with the surrounding structures and improvements, that the character, design, appearance and proposed quality of workmanship will be in harmony with adjacent and/or surrounding structures and/or topography, and that the maintenance thereof will not become a burden on the Association. However, the Architectural Committee shall have the right from time to time to categorically exempt certain types of improvements from review by the Architectural Committee. The Architectural Committee will not have jurisdiction to require removal of any improvements which were exempt from Architectural Committee approval when installed. However, the Architectural Committee does have jurisdiction to approve or disapprove any changes to such improvements or to require landscaping to be trimmed and/or thinned.

Section 6.3 Other Approvals. In addition to Architectural Committee approval, improvements to a Home Site may require approval from the Board of Architectural Review for the City (the “**City BAR**”), the Zoning Administrator and/or the City’s Planning Department, as well as a building permit or other approval from the City and other governmental entities. Any such approvals must be obtained and proof furnished to the Architectural Committee before any work begins on the Home Site.

Section 6.4 Approved Conditions. The design principles for Monterey Downs are established through an approved Specific Plan, a public document which is available to all homeowners. Within the confines of the Specific Plan, the Architectural Committee may condition its approval of proposals or plans and specifications on such changes thereto as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Architectural Committee may adopt, amend or supplement the Architectural Guidelines (i) concerning design and materials standards, rules and guidelines for construction activities; (ii) setting forth procedures for the submission of plans for approval; (iii) requiring a reasonable fee (“**Review Fee**”) payable to the Association for any costs involved to accompany each application for approval; and (iv) specifying additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of plantings, exterior materials and colors. Until receipt by the Architectural Committee of all plans, specifications or other materials deemed necessary by the Architectural Committee, the Architectural Committee may postpone review of any plans submitted for approval and subsequent City of Seaside development permits/entitlements.

Section 6.5 Notification. Decisions of the Architectural Committee and the reasons for decisions shall be transmitted by the Architectural Committee to the Applicant at the address set forth in the application for approval within thirty (30) days after receipt by the Architectural Committee of all materials required by the Architectural Committee (“**Review Period**”). Should the Applicant not have received a decision or a request for additional information or materials from the Architectural Committee before expiration of the Review Period, the application shall be deemed disapproved unless the Applicant submits to the Architectural Committee, within fifteen (15) days after expiration of the Review Period, a written request for decision (“**Request for Decision**”). The Architectural Committee shall have fifteen (15) days after receipt of a Request for Decision in which to transmit its decision to the Applicant. If the Applicant has not received a decision from the Architectural Committee within fifteen (15) days after the Architectural Committee’s receipt of a Request for Decision, the Applicant’s application shall be deemed approved.

Section 6.6 Waiver. The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

Section 6.7 No Liability. Neither the Architectural Committee, nor any members of the Architectural Committee, nor their duly authorized representatives, shall be liable to any Applicant or Home Site Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee’s duties, unless due to the willful misconduct of the Architectural Committee.

Section 6.8 Design Criteria. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, addition or other construction activity on the basis of satisfaction of the Architectural Committee with the grading plan, location of the improvements on the Home Site, the finished ground elevation, the color scheme, finish, design, proportions, architecture, shape, height, style, appropriateness of proposed improvements, effect on adjoining Home Sites, the materials to be used, the kinds, pitch or type of roof proposed, the planting, landscaping, size, height or location of vegetation on a Home Site, and on the basis of aesthetic considerations and the overall benefit or detriment to Monterey Downs and surrounding real property generally which would result from such improvement, alteration, addition or other construction activity.

Although the Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color, schemes, exterior finishes and materials, and similar features, it shall not be responsible for reviewing, nor shall its approval of any plans or design be deemed approval of, any plan or design from the standpoint of adequacy of drainage, structural safety, view impacts or conformance with building or other codes. The Architectural Committee approval of any particular construction activity shall expire and the plans and specifications therefor shall be resubmitted for Architectural Committee approval if substantial work pursuant to the approved plans and specifications is not commenced within twelve (12) months after the Architectural Committee's approval of such construction activity. All construction activities shall be performed as promptly and as diligently as possible and shall be completed within such reasonable period of time specified by the Architectural Committee.

Section 6.9 Deviations. The Architectural Committee may authorize deviations from compliance with any of the architectural provisions of this Article, including, without limitation, restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be in writing and must be signed by at least a majority of the members of the Architectural Committee. The granting of a deviation shall not operate to waive any of the terms and provisions of this Article for any purpose except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all laws and regulations of any governmental authority affecting the use of his Home Site, including, but not limited to, zoning and building requirements of any governmental agency or entity having jurisdiction over the Home Site. All deviations must be reviewed by the City to ensure compliance with the Specific Plan before they can be implemented.

Section 6.10 Architectural Guidelines. The Architectural Committee may adopt rules for the conduct of its affairs and architectural guidelines for construction activities ("**Architectural Guidelines**"), which Guidelines shall be approved by the BAR for consistency with the Specific Plan. The Architectural Guidelines of the Architectural Committee may provide for the pre-approval of certain specified types or categories of construction activities, provided that such pre-approved construction activities are implemented by the affected Owner in conformance with the standards for design, materials and other criteria established in the Architectural Guidelines for such pre-approved construction activities. The Architectural Committee may from time to time adopt, supplement or amend Architectural Guidelines to establish, expand, limit or otherwise modify the categories and criteria for any pre-approved construction activities.

Section 6.11 Consultants. The Architectural Committee shall have the right to obtain the recommendations of consultants and rely on such recommendations in making its decisions pursuant to this Article.

Section 6.12 Consultant to the Architectural Committee. The Architectural Committee shall have the right to utilize a consultant ("**ARC Consultant**") and empower the ARC Consultant with the right to act on behalf of the Architectural Committee in approving, conditionally approving or disapproving application submitted pursuant to this Article; provided, however, any decision of an ARC Consultant may be appealed by the applicant to the full Architectural Committee by the applicant delivering written notice of appeal to the Architectural Committee within ten (10) days after the ARC Consultant's written decision is delivered to the applicant. Any appeal to the Architectural Committee shall be heard de novo by the Architectural Committee; provided, however, the Architectural Committee may consider and weigh the opinions of the ARC Consultant in the matter.

Section 6.13 Architectural Committee's Decision. The Architectural Committee shall comply with the procedural requirements set forth in CIVIL CODE §1378. Among other things, §1378 requires that decision on any proposed work shall be in writing. Additionally, if a proposed change is disapproved by the Architectural Committee, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board (if applicable).

Section 6.14 Reconsideration by the Board. If an applicant's proposed work is disapproved

by the Architectural Committee, the applicant is entitled to reconsideration by the Board at an open meeting of the Board unless the disapproval decision was made by the Board instead of the Architectural Committee or unless the Architectural Committee has the same members as the Board.

Section 6.15 City Board of Architectural Review. Notwithstanding anything to the contrary in this section, the Architectural Committee reserves the right to require an Applicant to submit their plans to the City BAR in addition to or instead of the Architectural Committee if a majority of the Architectural Committee, in its sole discretion, determines a decision by the City BAR is appropriate.

Section 6.16 Declarant Exemption. This Article shall not apply to, and the Architectural Committee shall have no authority or responsibility to review or approve any improvements made by the Declarant, or Declarant's successors and assigns, on any Home Site or to the Common Area or Association Maintenance Area.

ARTICLE VII. **USE RESTRICTIONS**

Section 7.1 In General. Each Home Site shall be held, used and enjoyed subject to the following limitations and restrictions, but also subject to the exemptions of Declarant set forth in this Declaration.

Section 7.2 Residential Use. No Home Site shall be used except for residential purposes; provided, however, Declarant shall have the right to use any Home Site owned or leased by it for model homes, design centers, sales offices, construction staging areas and similar uses until all Home Sites have been sold by Declarant. A Home Site may be used for such home businesses as may be allowed by applicable City (or governmental authority) zoning controls, permits and regulations. All home businesses are required to have a valid permit from the City at all times as well as fully comply with all of the ordinances, permit and regulations of the City to be permitted within Monterey Downs.

Section 7.3 New Building Only. No building of any kind shall be moved from any other place onto any Home Site, nor from one Home Site to another Home Site, without the prior written permission of the Architectural Committee.

Section 7.4 Balconies, Decks and Fences. No balcony or deck shall be higher above the finished grade of the Home Site than the highest dwelling floor level. No balcony or deck shall at any time be used for storage purposes and each shall at all times be kept in a neat and clean appearance and in good repair. No fence or wall or combination of a fence and wall (other than safety railings required by the City or other governmental agencies) shall be higher than six (6) feet above ground where the fence or wall is to be placed in the side and back yards, and no higher than four (4) feet above the ground in the front yard.

Section 7.5 Solar Panels, Antennae, Satellite Dishes. No solar and other energy saving device or system shall be permitted to be installed without the prior written approval of the Architectural Committee. No rooftop or solar panels shall be located in any section of the roof surface or Home Site viewable from any driveway, street, other Home Site or public view. There shall be no outside television or radio antennas, masts, aerials, satellite dishes, transmitter tower or facility, or any device of any type for the reception or transmission of radio or television broadcasts or other means of communication constructed, installed or maintained in Monterey Downs for any purpose whatsoever without prior written approval of the Architectural Committee. No such appliances or installations on exterior roofs of structures shall be permitted unless they are not visible from any driveway, street, other Home Site or public view.

Section 7.6 Diligence in Construction Required. The work of constructing and erecting any building or other structure shall be prosecuted diligently from the commencement thereof, and the same shall be completed within a reasonable time in accordance with the requirements herein contained. No

outbuilding shall be completed prior to the completion of the dwelling, except that temporary storage and convenience facilities may be erected for workmen engaged in building a dwelling on the Home Site, but such temporary facilities shall be removed as soon as the dwelling is completed.

Section 7.7 Drying Yards. No outside drying of clothes, fabrics or similar items shall be permitted if within view from any driveway, street, Home Site or public view.

Section 7.8 No Time-Share. No Home Site shall be divided into a time-share estate or time-share use as defined in California BUSINESS AND PROFESSIONS CODE §11003.5.

Section 7.9 Signs. No sign, poster, billboard, advertising device or other display of any kind shall be displayed to the view from any driveway, street, Home Site or public view without prior written approval of the Architectural Committee. However, the following types of signs are exempt from permit requirements: (i) such signs as may be used by Declarant or Declarant's successor or assigns, in connection with the development of Monterey Downs and the sale or leasing of Home Sites; and (ii) one sign not exceeding four square feet in size on each Home Site advertising the Home Site is for sale or lease, provided the sign is not located in a public right of way and is removed within ten (10) days after the sale or lease of the Home Site.

Section 7.10 Animals. Except as otherwise provided herein, no animals of any kind shall be raised, bred or kept in any Home Site or Monterey Downs, except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in violation of any provision of the Declaration, applicable City ordinances or other applicable laws or regulations. A "reasonable number" shall ordinarily include no more than an aggregate of two (2) dogs and cats per household; provided, however, a reasonable number in any instance may be more or less depending on whether the pets constitute a nuisance to other Owners. No pet shall be kept if the same constitutes a nuisance to any other Owner. Any dispute as to whether a particular pet constitutes a nuisance shall be determined by the Board and the Board's determination shall be binding and conclusive. No animals that the Board determines are vicious shall be permitted within the Community. Animals belonging to Owners or their guests within the Community must be kept within an enclosed area, or on a leash being held by an individual capable of controlling the animal, or in an appropriate carrier or container from which the animal cannot escape. All outdoor enclosure areas for animals, including but not limited to dog runs, constitute accessory structures and are subject to the review and approval of the Architectural Committee. Each Owner shall be liable to each and all remaining Owners, their families and guests, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Community by the Owner or by members of his or her family or his or her guests; and it shall be the duty and responsibility of each Owner to immediately clean up any waste from his or her animals.

Section 7.11 Address Markers. Pursuant to UNIFORM FIRE CODE §901.4.4, all address markers for a residence shall be placed and maintained in such a position as to be plainly visible and legible from the street fronting the residence. The street numbers on such markers shall be maintained in a manner to contrast with their background. The location and size of address markers shall be approved by the Architectural Committee.

Section 7.12 No Commercial Activity: No Nuisance. Except as otherwise provided in this Declaration, including but not limited to Section 7.2, no commercial business shall be conducted on any of the Home Sites and nothing shall be done upon any Home Site which may become an annoyance or nuisance to the neighborhood or other Home Site Owners. Nothing herein stated shall disallow installation of a burglar alarm system. Any Owner who has an alarm system installed shall use reasonable care to prevent false alarm occurrences.

Section 7.13 Drainage. No Owner of a Home Site shall in any way interfere with the established drainage pattern over his or her Home Site from adjoining or other Home Sites, unless adequate provisions have been made for proper drainage. "Established drainage" is defined as the drainage which existed at the time the final grading of the Home Site was originally completed. "Established

drainage" refers to both surface drainage and subsurface drainage, if any.

Any Owner who changes the drainage of his or her Home Site shall be responsible for any damages which might result to the property of such Owner, the property of the Association or to the property of any third party.

Each Owner will permit free access by other Owners of adjacent or adjoining Home Sites to slopes or drainageways located on his or her Home Site which affect said adjacent or adjoining Home Sites, when such access is essential for the maintenance of permanent stabilization of slopes or maintenance of the drainage system or facilities for the protection and use of property other than the Home Site on which the slope or drainage way is located. All Owners shall obtain the approval of the Board, as well as the City's Public Works Department, before changing the drainage on his or her Home Site as well as before entering the Home Site of another Owner.

Section 7.14 Slope Control, Use and Maintenance. Each Home Site Owner shall install, keep, maintain, water, plant and replant all slope banks located on such Owner's Home Site (unless such slopes are located within the Association Maintenance Area), so as to prevent erosion and to create an attractive appearance. All structure, hardscape, planting or other materials shall be included in the Owner's landscaping plans and be reviewed and approved by the Architectural Committee in accordance with this Declaration and the Association rules and regulations. No structure, hardscape, planting or other material shall be placed or permitted to remain or other activities undertaken on any slope banks which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or established drainage patterns and systems, or obstruct or retard the flow of water through drainage channels or established drainage patterns and systems. No retaining wall, steps or deck or similar improvement shall be placed within any slope without Architectural Committee approval.

Section 7.15 No Hazardous Activities. No activities shall be conducted on any portion of Monterey Downs and no improvements shall be constructed on any Home Site which are or might be unsafe or hazardous to any person or property. Reasonable and customary construction activities by Declarant or any Owner shall not be deemed to constitute hazardous activities.

Section 7.16 Unsightly Articles. No unsightly articles shall be permitted to remain on any Home Site so as to be visible from any other portion of Monterey Downs. Without limiting the generality of the foregoing, all refuse, garbage and trash shall be kept from view from any driveway, street, Home Site or public view at all times. No weeds, rubbish, debris, objects or material of any kind shall be placed or permitted to accumulate upon any Home Site which render such portion unsanitary, unsightly, offensive or detrimental to any other Home Site in the vicinity thereof or its occupants. Trash, garbage, rubbish and other waste shall be kept only in sanitary containers. Trash for pick up shall be placed in covered, sanitary containers of good condition and such container shall be placed in view from any driveway, street, Home Site or public view no earlier than the evening before pick up and shall be removed from view from any driveway, street, Home Site or public view on the day of pick up. No lumber, grass, shrub or tree clipping or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Home Site, except within an enclosed structure or otherwise appropriately screened from view from any driveway, street, Home Site or public view.

Section 7.17 No Temporary Structures. No tent, shack or other temporary building, improvement or structure shall be placed upon any portion of Monterey Downs for more than seventy-two (72) hours except with prior written approval of the Architectural Committee. This section shall not apply to temporary structures which are reasonable and customary to facilitate construction activities on any Home Site. Notwithstanding the foregoing, a permit from the City Fire Department is required for any tent shack or other temporary building, improvement or structure regardless of whether it is for a period shorter than seventy-two (72) hours.

Section 7.18 Parking and Vehicular Restrictions.

(a) No "Prohibited Vehicles" (as defined in this Section) shall be parked, stored or kept on any Home Site except wholly within an enclosed garage, and then only if the garage door

is capable of being fully closed. A Prohibited Vehicle is defined as any commercial type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck); any inoperable vehicle or any other similar vehicle; or any vehicle or vehicular equipment, mobile or otherwise, constituting a nuisance. Prohibited Vehicles shall not be allowed in any driveway or other exposed parking areas, except for the purposes of loading, unloading, making deliveries or emergency repairs ("**Transitory Use**"), provided that no Transitory Use shall extend over more than twenty-four (24) hours during any seven (7) consecutive days.

(b) No "**Recreational Vehicles**" (as defined in this Section) shall be parked, stored or kept on any Home Site except (i) wholly within an enclosed garage, and then only if the garage door is capable of being fully closed or (ii) within a fenced side yard or rear yard. All parking and storage areas for Recreational Vehicles shall be effectively screened and landscaped so as not to be visible from any driveway, street, Home Site or public area and are subject to the review and approval of the Architectural Committee. It is possible that the Architectural Committee will not allow the storage of a Recreational Vehicle on certain Home Sites. A Recreational Vehicle is defined as any truck or van which (a) is larger than a Class 2 rating by the US Department of Energy, or (b) has a mounted camper component which protrudes from the truck from either side or from beyond the rear gate or above the cab ceiling, or any camper shell which is detached from a vehicle, bus, dune buggy, boat, trailer, mobile home or motor home. Recreational Vehicles shall not be allowed in any driveway or other exposed parking areas, except for the purposes of Transitory Use, provided that no Transitory Use shall extend over more than twenty-four (24) hours during any seven (7) consecutive days.

(c) Garages or other parking areas shall be used only for parking vehicles (including Recreational Vehicles and Prohibited Vehicles). However, if and when an Owner has fewer vehicles than the garage will accommodate, the extra space in the garage may be used for temporary uses that would not prevent the garage space from later being used for parking of a vehicle. There shall be no parking in the driveways if the Owner's garage is not being utilized to the maximum designed capacity for the parking of authorized vehicles, or if to do so obstructs free traffic flow, constitutes a nuisance or otherwise creates a safety hazard. Garage doors shall be kept closed at all times, except as reasonably required for ingress to and egress from the interiors of the garages. Subject to any applicable City or other governmental regulations, street parking shall be permitted for guest parking or for the Owner or resident of a Home Site for no more than one (1) vehicle which is neither a Prohibited Vehicle nor a Recreational Vehicle; provided, all other vehicles of the guest, Owner or resident of a Home Site are first parked or stored in the garage and then the driveway. Each Owner shall be issued one hanging placard to be placed in any vehicle that is to be parked on the street. Owners may request additional placards on a temporary basis as needed. Any vehicle parked on the street without a placard is subject to towing.

(d) Notwithstanding the previous Section, an Owner of a residence with a garage which provides for parking of at least four (4) vehicles may convert his or her additional parking space(s) in the garage into permanent uses that prevent parking of a vehicle subject to: (i) the prior written approval of the Architectural Committee; (ii) compliance with all applicable City Code and zoning requirements and the prior approval of the City, if required; and (iii) at least three (3) parking spaces remain within the garage.

(e) No repairs or restorations of any vehicle or equipment shall be conducted upon any Home Site or elsewhere within Monterey Downs except (i) wholly within an enclosed garage or (ii) within a fenced yard where activities are not visible from any street, driveway, Home Site or public area; provided, however, such activity shall not be undertaken as a business, and provided further that such activity may be prohibited entirely if it constitutes a nuisance. Additionally, the only repairs allowed under this section are those repairs specifically permitted in the City Municipal Code.

(f) The Board may adopt rules and regulations regulating parking within Monterey Downs. Such rules will be enforced first by the property management company employed by the Association and if appropriate, escalated to the City.

These restrictions shall not be interpreted in a manner which would permit any activity which would be contrary to any ordinance of the City or other governmental agency having jurisdiction over Monterey Downs.

Section 7.19 Plants. No plants or seeds infected with noxious insects or plant disease shall be brought upon, grown or maintained upon any Home Site.

Section 7.20 Landscaping. Every Owner shall install and thereafter maintain in an attractive condition, yard landscaping in accordance with the provisions of this Declaration, the Association rules and regulations and the residential lot layout and landscaping plan adopted by the BAR for their specific lot type. All landscaping plans must be reviewed and approved by the Architectural Committee in accordance with this Declaration and the Association rules and regulations. All landscaping of every kind and character, including shrubs, trees, grass and other plantings, within any Home Site shall be neatly trimmed, properly cultivated and continuously maintained by the Owner thereof in a neat and orderly condition and in a manner to enhance its appearance. No Owner shall remove, damage, trim or otherwise change any landscaping within the Association Maintenance Area without the Board's permission. All vegetation shall be maintained in a flourishing manner, and kept free from all foreign matter, weeds and plant materials not approved as part of the Association rules and regulations or any other City (or other governmental agency) landscaping plan, if any. All irrigation shall be maintained in a fully operational condition and comply with current State Model Irrigation Ordinances City regulations and applicable water district regulations.

Section 7.21 Grading. No Home Site shall be re-graded by any Owner in any manner which increases water runoff on any other Home Site, and no such grading shall be permitted without approval by the City or other governmental authority, as applicable, and the Architectural Committee.

Section 7.22 Owners Responsible for Damage. Should any Owner or such Owner's employees, agents or contractors cause any damage to sidewalks, curbs or other Common Area Improvements or Association Maintenance Area improvements, such Owner shall immediately and fully repair such damage at the Owner's expense. In the event such damage is repaired by the Association or Declarant, the Owner shall immediately reimburse such party for the full costs of repair.

Section 7.23 Construction and Sales Activities. Any development, construction, marketing and sales activities of Declarant are exempt from the covenants, restrictions and limitations set forth in this Article. None of the covenants, restrictions and limitations set forth in this Article or elsewhere in this Declaration shall be applied to the development, construction, marketing or sales activities of Declarant or construed in such a manner as to prevent or limit development, construction, marketing or sales activities by Declarant.

Section 7.24 Owners May Not Change Common Area or Association Maintenance Area. Notwithstanding each Owner's obligation to maintain any unimproved portion of the Common Area located on his or her Home Site (*i.e.*, the Common Area after excepting the Common Area Improvements), no Owner shall have any right whatsoever to make any change or improvement to the Common Area or Association Maintenance Area and no Owner shall cause any damage to the Common Area or Association Maintenance Area. Each Owner shall be liable to the Association and the other Owners for any damage to any of the Common Area (including Common Area Improvements) or Association Maintenance Area that may be sustained by reason of negligence of that Owner, that Owner's family members, contract purchasers, tenants, guests, or invitees.

Section 7.25 Possible Adjustment To Association Maintenance Area. The Board shall have the right to reduce an Association Maintenance Area covering a Home Site should the Owner of the Home Site make such request of the Board. The Board shall not be obligated to reduce any Association Maintenance Area and any decision by the Board to do so may be subject to such conditions as the Board may impose including approval of the Architectural Committee of improvements to be placed in such area. The Board shall not have the right to reduce any Association Maintenance Area within a public right of way without the express written consent of the City.

Section 7.26 Water and Sewer Systems. No individual water supply system, water softener system or sewage disposal system shall be permitted on any Home Site unless the system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any applicable water district, the City and any applicable governmental health authority having jurisdiction.

Section 7.27 Open Space Easements. Each Owner shall at all times comply with any open space easements which restrict development or use of the areas covered by any such easement or restriction. Restrictions and requirements of an open space easement may include but are not limited to, restrictions against installing various improvements within an open space easement area.

Section 7.28 Water Quality Protection.

(a) To protect the quality of our Nation's waters, a number of federal, state and local laws, ordinances, rules, regulations and orders prohibit the discharge of anything other than natural rain water into storm drain systems, including gutters and streets that drain into storm drains. These governmental requirements include the Clean Water Act, the National Pollution Discharge Elimination System, orders and permits of the State Water Resources Control Board and the Regional Water Quality Control Board, the ordinances and regulations of the City, and any applicable Storm Water Pollution Prevention Plan. Each Owner shall comply with all such governmental requirements.

(b) Most discharges of anything other than natural rain water into storm drain systems are unlawful and may result in significant penalties and fines. No Owner shall discharge or permit to be discharged (for example, by a contractor working for the Owner) any of the following into any street, gutter, storm drain or storm water conveyance system: toxic or hazardous chemicals, hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinner, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, or other similar materials or pollutants.

(c) Each Owner shall comply with and cause its contractors to comply with all federal, state and City requirements, and the requirements of any other applicable governmental agency regarding the use, storage and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemicals. Owners should consult with the City, other governmental authorities, and their refuse hauler regarding the proper disposal of any toxic or hazardous materials.

(d) Each Owner shall ensure that any landscaping and construction materials brought into Monterey Downs by the Owner or the Owner's contractors shall be properly contained to prevent spillage into any street, gutter or storm drain system. Should a spillage occur, the Owner shall (or cause the contractor responsible for the spill to) sweep the spilled material and place it in a container; it shall not be washed into any storm water curb drain inlet. Each Owner shall prevent erosion and the runoff of soil and other sediment from the Owner's Home Site into any street, gutter or storm drain system.

(e) No Owner shall wash his or her driveway or walkways if doing so would result in water entering into the storm drain system or curb.

(f) No Owner shall empty water from a swimming pool, hot tub or other amenity into any street, gutter or storm drain system.

(g) An Owner shall only wash his or her vehicle in his or her own driveway with biodegradable soap and minimal use of water. The washing of vehicles on streets, whether public or private, is prohibited.

(h) Neither the Association nor any Owner shall remove any temporary devices installed by Declarant during construction of Monterey Downs for water quality protection

purposes in compliance with governmental requirements or approvals for Monterey Downs.

(i) Each Owner shall indemnify, protect, defend and hold Declarant harmless from any and all claims, liability, actions, penalties or damages (including attorneys' fees, experts' fees and costs of suit) arising from or attributable to the Owner's failure to comply with the requirements of this Section.

Section 7.29 Ganged Mail Boxes. Pursuant to U.S. Postal Department requirements that it do so, ganged mail boxes shall be installed to serve Monterey Downs. The Association shall have the obligation to maintain the ganged mail box improvements and each Owner whose mail box is part of a ganged mail box shall have the right to retrieve his or her mail from the box assigned to his or her Home Site.

Section 7.30 Compliance With Fuel Modification Requirements. The Association and each Owner shall comply with any applicable fuel modification or fire prevention requirements imposed by the City or other governmental authority.

Section 7.31 Outdoor Lighting. Outdoor lighting on a Home Site shall be shaded and adjusted so the light falls only on the Home Site on which the lighting is located and does not fall or reflect on other Home Sites or Common Area; provided, however, the Board may grant, subject to the City's approval, variances from this restriction for lighting installed and maintained for safety purposes. Outdoor lighting shall conform to any applicable City requirements as well as the California Building Code.

Section 7.32 Flags. An Owner may display the flag of the United States, as defined by subdivision (b) of §434.5 of the GOVERNMENT CODE within such Owner's Home Site, in a location reasonably approved by the Architectural Committee. For purposes of this paragraph, "displaying the flag of the United States" means a flag of the United States made of fabric, cloth or paper displayed from a staff or pole or in a window, and does not mean a depiction or emblem of the flag of the United States made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any similar building, landscaping, or decorative component. The Architectural Committee may impose conditions to the approval of the location of the flag. However, in considering whether to approve a location or to impose requirements on such approval, the Architectural Committee shall comply with CIVIL CODE §1353.5.

ARTICLE VIII **INSURANCE AND CONDEMNATION**

Section 8.1 Insurance.

(a) The Association shall procure and keep in force general liability insurance in the name of the Association insuring against any liability for personal injury or property damage resulting from any occurrence in or about the Common Area or Association Maintenance Area in an amount not less than \$1,000,000 per occurrence. The general liability policy shall include an endorsement to cover the Owners as additional insured parties and shall include an endorsement allowing an Owner. The policy shall not contain a cross-suit exclusion clause which would abrogate coverage should litigation ensue between insured parties.

(b) The Association shall procure and keep in insurance, in an amount not less than \$500,000 per occurrence, covering the individual liability of officers and directors of the Association for negligent acts or omissions of those persons acting in their capacity as officers and directors.

(c) The Association shall maintain a fidelity bond in an amount equal to the amount of funds held by the Association during the term of the bond but not less than one-fourth (1/4) of the regular assessments, plus reserves, naming the Association as obligee and insuring against loss by reason of the acts of the Board, officers and employees of the Association, and any management agent and its employees, whether or not such persons are compensated for their services.

(d) Copies of all insurance policies (or certificates) showing the premiums to have been paid shall be retained by the Association and open for inspection by Owners at any reasonable time(s). All insurance policies shall (i) provide that they shall not be cancelable by the insurer without first giving at least thirty (30) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association, Board and Owners.

(e) Anything contained herein to the contrary notwithstanding, the Association shall maintain such insurance coverage as may be required by the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") so long as FNMA or FHLMC, respectively, holds a mortgage on or owns any Home Site.

(f) Section 1365.7 of the California CIVIL CODE provides for a partial limitation on the liability of volunteer officers and directors of the Association, provided that certain requirements, as set forth in the Code section, are satisfied. The requirements include that general liability insurance and officers' and directors' liability insurance be carried by the Association in specified amounts. The Association shall maintain general liability insurance and officers' and directors' liability insurance in amounts which satisfy the requirements of the Code to limit the liability of volunteer officers and directors of the Association.

(g) In the event any insurance policy deductible amount relating to an Owner's property loss is charged to the Association, the Owner shall reimburse the Association upon written demand for the amount charged to the Association.

Section 8.2 Condemnation. In the event the Common Area or any portion thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Association.

ARTICLE IX **MAINTENANCE RESPONSIBILITIES**

Section 9.1 Parties Responsible For Maintenance of Common Area. The following parties shall be responsible to maintain the Common Area and Association Maintenance Area:

(a) Initially, Declarant shall be solely responsible to maintain the Common Area Improvements and the Association Maintenance Area (if any). Unless the deed of conveyance which conveys Association Maintenance Area to the Association or a maintenance agreement between Declarant and the Association states otherwise, the Association shall become obligated to maintain the Common Area Improvements and Association Maintenance Area (if any) within a Phase upon the first close of escrow for the sale of a Home Site within the Phase to a First Purchaser. The Common Area Improvements and Association Maintenance Area within a Phase shall refer to those portions of the Common Area and Association Maintenance Area which are identified as being within such Phase by this Declaration, the Declaration of Annexation or deed of conveyance.

(b) Each Owner shall be obligated to maintain the unimproved portion of any Common Area located within his or her Home Site (i.e., all Common Area excepting the Common Area Improvements), which generally consists of the private right of way along the private road providing access to the Home Sites within Monterey Downs.

Declarant and the Association may enter into one or more maintenance agreements in form and content acceptable to the California Department of Real Estate whereby Common Area Improvements or Association Maintenance Area maintenance or the costs of maintenance of the Common Area Improvements are shared between Declarant and the Association for the term set forth in such agreement(s).

Section 9.2 Association Maintenance. The Association shall maintain and provide for the maintenance of all Common Area Improvements and Association Maintenance Area (if any) in good repair and appearance as set forth in the Declaration and in accordance with any applicable requirements. Such maintenance must not be less than a level that satisfies the requirements of the City. The following are examples of the Association's maintenance responsibilities:

(a) The Association's maintenance responsibilities shall include all reasonable and normal road improvement and maintenance work to adequately maintain the private road providing access to the Home Sites in Monterey Downs and related drainage facilities (if any) to permit all weather access. Repairs and maintenance shall include, but are not limited to, filling of chuckholes, repairing cracks, repairing and resurfacing the roadbeds, repairing and maintaining drainage structures (if any), removing debris, maintaining any signs, markers and striping, and other work reasonably necessary or proper to repair and preserve such roads for all weather road purposes.

(b) Maintenance shall include the normal care and irrigation of landscaping (if any) included within the Common Area Improvements or Association Maintenance Area which is intended to be irrigated and the repair and replacement of plant material and irrigation systems as necessary.

(c) The Association shall be obligated to keep in good condition improvements or surface conditions within the Association Maintenance Area or Common Area Improvements which are intended to filter water run off.

(d) Any medians and/or parkways within the public rights of way which the City requires the Association to maintain shall be deemed a part of the Association Maintenance Area.

(e) The Association shall comply with any brush removal or fuel modification requirements that apply to the Common Area Improvements or Association Maintenance Area (if any).

Section 9.3 Owner Maintenance. Each Owner shall keep and maintain in good repair and appearance all portions of his or her Home Site and improvements thereon (except for any portion the maintenance of which is the responsibility of the Association or the City, if any). Such maintenance must not be less than a level that satisfies the requirements of the City and the Board. The improvements to be so maintained by each Owner include, but are not limited to, all portions of the residence, the garage, the garage opener, lights on the residence, the landscaping and any fence or wall which is located on the Home Site.

(a) Each Owner shall be responsible to maintain the unimproved Common Area located within his or her Home Site, which generally consists of the private right of way along the private road within Monterey Downs.

(b) The Owners of Home Sites which are separated by a fence or wall shall share equitably in the costs to maintain, repair or replace such fence or wall. However, (i) each Owner shall be solely responsible to maintain the interior surface of any such solid fence or wall and (ii) an Owner shall not be responsible for the costs to repair or replace a fence or wall which is damaged by the other Owner.

(c) Each Owner shall be responsible to maintain the interior surface of any solid fence or wall which has been designated for Association maintenance and which lies at the boundary of the Owner's Home Site and the Association Maintenance Area unless the instrument which designates the fence or wall as Association Maintenance Area states otherwise.

(d) Each Owner of a Home Site shall water, weed, maintain and care for the landscaping located on his or her Home Site (including any landscaping located within the

unimproved portion of the Common Area located within his or her Home Site but excluding Common Area Improvements and Association Maintenance Area (if any)) so that the same presents a neat and attractive appearance. No Owner shall interfere with or damage the Common Area Improvements or Association Maintenance Area or improve or alter the Common Area Improvements or Association Maintenance Area or interfere with or impede Declarant or the Association with the maintenance of the Common Area Improvements or Association Maintenance Area.

(e) Each Owner shall be obligated to keep in good condition improvements or surface conditions within the Owner's Home Site which are intended to filter water run off unless the improvement or surface condition are designated as being Association Maintenance Area.

(f) Each Owner shall be obligated to maintain all sewer laterals located within his or her Home Site.

Section 9.4 Association's Right to Repair Neglected Home Sites. In the event that any Owner shall in the Board's opinion permit any property which is the responsibility of such Owner to fall into a dangerous, unsafe, unsightly or unattractive condition as determined by the Board in its sole and absolute discretion, then the Board shall have the right to demand that such condition be remedied. Should the condition not be remedied within fifteen (15) days, the Board shall have the right, but not the obligation, to correct the condition, and to enter upon the portion of Monterey Downs which has fallen into such condition for the purpose of doing so. The Owner shall promptly reimburse the Association for the cost of such corrective action, including, but not limited to, the Association's court costs and reasonable attorney's fees should the Board determine it is in its best interests to obtain a court order allowing such entrance by the Board's representatives. No entry inside a residence may be made without the consent of the Owner.

Section 9.5 Owners To Maintain Landscaping Within Rights of Way. Portions of the Home Sites may be subject to City right of way and utility easements. Except for any Association Maintenance Area or any area that may be maintained by the City, the Owner of a Home Site shall maintain any landscaped areas that lie within any portion of his or her Home Site regardless of whether such areas lie within a public right of way easement.

Section 9.6 No Damage To Utilities. In no event shall the Association or any Owner damage any City utility or private utility improvements. In the event the Association or an Owner causes any such damage, the party responsible for the damage shall be responsible to reimburse the City or utility supplier for the costs any repairs.

Section 9.7 Mold. The Association, with respect to the Common Area Improvements, and each Owner, with respect to his or her Home Site, shall take all reasonable and appropriate steps to prevent conditions that may cause mold or mildew to develop, including following any recommendations contained in the Maintenance Manual or in any applicable publications of the California Environmental Protection Agency, Department of Health Services ("DHS") or the United States Environmental Protection Agency ("EPA"). As of the date of this Declaration, the EPA and DHS have Web sites which contain information and publications regarding mold and other biological pollutants. For example, see "Biological Pollutants in Your Home" and "Mold Resources" on the EPA Web site (<http://www.epa.gov>); and "Indoor Air Quality Info Sheet: Mold in My Home: What Do I Do" on the DHS Web site (<http://www.dhs.ca.gov>). An Owner shall promptly report to the Association any evidence the Owner may discover of moisture accumulation or mold in Monterey Downs.

ARTICLE X **ANNEXATION**

Section 10.1 By Association. Additional residential property, Common Area and Association Maintenance Area may be annexed to Monterey Downs and to the Declaration upon the vote or written assent of two-thirds (2/3) of the voting power of Members of the Association, excluding the vote of Declarant. Upon approval by Members of the Association, the owner of the property wishing it to be

annexed may file of record a Declaration of Annexation which shall extend the provisions of this Declaration to the property being annexed.

Section 10.2 By Declarant. Declarant shall have the sole and absolute right to annex additional land within the Annexable Property to this Declaration and to the jurisdiction of the Association as Home Sites, Common Area and Association Maintenance Area. Annexation shall be made by a Declaration of Annexation executed by Declarant and the owner of the land being annexed. The Declaration of Annexation may be revoked or amended at any time before the first close of sale of a Home Site in the annexed property and may contain additional or different restrictions applicable to the annexed property. The obligation of Home Site Owners to pay dues to the Association and the right of such Home Site Owners to exercise voting rights in the Association in such annexed property shall not commence for the Home Sites in each Phase until the first day of the month following close of the first sale of a Home Site by Declarant in that particular Phase of development. Any Phase may be deannexed by Declarant signing and recording with the County Recorder of Monterey County a Declaration of Deannexation which describes the land to be deannexed provided that no Home Site within the Phase has been conveyed to an Owner (other than between Declarant or to a successive Declarant).

ARTICLE XI **RIGHTS OF LENDERS**

Section 11.1 Payments of Taxes or Premiums by First Mortgagees. First Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless the taxes or charges are separately assessed against the Owners, in which case, the rights of first Mortgagees shall be governed by the provisions of their Mortgages. First Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage on the lapse of a policy for the Common Area; first Mortgagees making such payments shall be owed immediate reimbursement from the Association. Entitlement to reimbursement shall be reflected in an agreement in favor of any first Mortgagee who requests the same to be executed by the Association.

Section 11.2 Priority of Lien of Mortgage. No breach of the covenants, conditions or restrictions in the Declaration shall affect, impair, defeat or render invalid the lien or charge of any first Mortgage made in good faith and for value encumbering any Home Site, but all of the covenants, conditions and restrictions, except any assessment lien which is extinguished in accordance with Section 4.9, shall be binding upon and effective against any Owner whose title to a Home Site is derived through foreclosure or trustee's sale, or otherwise.

Section 11.3 Curing Defaults. A first Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on Mortgagees.

Section 11.4 Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Home Sites or Common Area, unless the Mortgagees of first Mortgages encumbering sixty-seven percent (67%) or more of the Home Sites which are subject to a Mortgage or Owners representing sixty-seven percent (67%) of the voting power of the Association (excluding the vote of Declarant) have given their prior written approval, the Association shall not:

- (a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this Subsection.
- (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of residences, the exterior maintenance of residences, the maintenance of Common Area walks or common fences and driveways, or the upkeep of lawns and plantings in Monterey Downs.

(d) Fail to maintain fire and extended coverage insurance on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, based on current replacement cost.

(e) Use hazard insurance proceeds for losses to any portion of the Common Area for other than the repair, replacement or reconstruction of the Common Area.

Section 11.5 Restoration of Common Area. Any restoration or repair of the Common Area after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with the Declaration and original plans and specifications unless other action is approved by First Mortgagees on Home Sites which have at least fifty-one percent (51%) of the votes of Home Sites subject to Mortgages.

Section 11.6 Professional Management. When professional management has been previously required by a first Mortgage holder, a decision to establish self-management by the Association shall require the consent of at least sixty-seven percent (67%) of the voting power of Members of the Association and the approval of first Mortgagees which represent at least fifty-one percent (51%) of the votes of Home Sites encumbered by Mortgages.

Section 11.7 Notice to Mortgagees. Any Mortgagee, insurer or guarantor of a first Mortgage will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of Monterey Downs or any Home Site on which there is Mortgage held, insured or guaranteed by such Mortgagee, insurer or guarantor. Any delinquency in the payment of assessments or charges owed by an Owner subject to a first Mortgage held, insured or guaranteed by such Mortgagee, insurer or guarantor which remains uncured for a period of sixty (60) days.

(b) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(c) Any proposed action which would require the consent of a specified percentage of Mortgagees, insurers or guarantors of a first Mortgage as specified above.

Section 11.8 Written Notification to Mortgagees, Insurers or Guarantors of First Mortgages. Whenever this Declaration requires or permits a written notice of proposal to be given to a Mortgagee, insurer or guarantor of a Mortgage, such written notice of proposal shall be deemed properly given if deposited in the United States mail, postage prepaid, and addressed to the Mortgagee, insurer or guarantor at its address appearing of record in the first Mortgage (or assignment thereof, if applicable) unless such Mortgagee, insurer or guarantor has previously notified the Association in writing of a different address for purposes of notices under this Declaration or the Bylaws.

Section 11.9 Documents to be Available. The Association shall make available to Owners and Mortgagees, and holders, insurers or guarantors of any first Mortgage, current copies of the Declaration, the Articles, the Bylaws, other rules concerning Monterey Downs and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

Section 11.10 Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of the Declaration, the provisions of this Article shall control.

ARTICLE XII

ALTERNATIVE DISPUTE RESOLUTION

Section 12.1 Purpose and Intent. To avoid potentially costly and lengthy traditional court proceedings, the following alternative dispute resolution procedures are established for disputes concerning Monterey Downs. The alternative dispute resolution procedures in this Article shall be interpreted and enforced in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Sections 1-16), which encourages the use of alternative dispute resolution procedures, and federal court decisions which have found that the Federal Arbitration Act: (a) is a congressional declaration of a federal policy favoring arbitration agreements, notwithstanding state policies or substantive or procedural requirements to the contrary; (b) requires that federal and state courts rigorously enforce agreements to arbitrate; (c) requires the scope of alternative dispute resolution agreements to be interpreted broadly to favor alternative dispute resolution; and (d) requires that disputes over whether an issue is arbitrable be resolved in favor of arbitration. References in this Article to California Code sections shall not waive any of the rights created by the Federal Arbitration Act.

Section 12.2 Arbitration of Disputes.

(a) **Agreement to Arbitrate.** Declarant, by executing this Declaration, and each Owner and the Association, by accepting a deed to any portion of the Project, agree to resolve all such Disputes exclusively through binding arbitration in the City and waive their rights to resolve such disputes in any other manner; provided, however, the parties to the dispute may elect to resolve such dispute through a small claims court proceeding. For purposes of this Article, "**Dispute**" refers to any dispute and disagreement concerning Monterey Downs that may arise between an Owner or the Association, on the one hand, and Declarant, on the other hand, and includes Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought.

(b) **Waiver of Trial by Judge or Jury.** By agreeing to resolve all disputes through binding arbitration, the parties each give up the right to have their respective claims and defenses decided by a judge or a jury. Instead all claims and disputes will be decided by the arbitrator.

(c) **Rules Applicable to All Cases.** The arbitration will be conducted in accordance with the commercial arbitration rules of the American Arbitration Association ("**AAA Rules**") then applicable to the claims presented, as supplemented by this Article. The following supplemental rules shall apply to all arbitration proceedings respecting Disputes and shall govern in the event of a conflict between the rules set forth below and the AAA Rules.

(i) **Qualifications of Arbitrators.** The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least 15 years experience as a practicing lawyer.

(ii) **Appointment of Arbitrator.** The arbitrator to preside over the Dispute shall be selected in accordance with the AAA Rules, but no later than sixty (60) days after a notice of claim is filed.

(iii) **Expenses.** All fees charged by the arbitrator shall be advanced by the Declarant. If Declarant is the prevailing party in the arbitration, the arbitrator shall, to the extent permitted by law, direct the Owner and/or Association to reimburse Declarant all or part of the arbitrator's fee advanced by Declarant.

(iv) **Preliminary Procedures.** If state or federal law requires the parties to take steps or procedures before commencing arbitration, then the parties must take such

steps or follow such procedures, as the case may be, before commencing the arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California CIVIL CODE §§1368.4, 1375, 1375.05 or 1375.1.

(v) *Participation by Other Parties.* An Owner, Declarant and the Association, to the 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.

(vi) *Rules of Law.* The arbitrator must follow California substantive law (including statutes of limitations) but strict conformity with the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privilege and work product. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(vii) *Written Decision.* Within thirty (30) days after the hearing is closed, the arbitrator must issue a written decision. If a party requests it, the arbitrator must issue a reasoned award.

(viii) *Attorneys' Fees and Costs.* The prevailing party in any such arbitration proceeding shall be entitled to have all of its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing party.

(d) Additional Rules Applicable to Certain Cases. In any arbitration in which a claim of an Owner, Declarant or the Association exceeds \$250,000 in value, the following additional rules will supplement the AAA Rules and govern in the event of a conflict between the following rules and the rules set forth above, the AAA Rules, or both.

(i) *Qualifications of Arbitrator.* In addition to the requirements of Section 12.2(c) above, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court. *Rules of Law.* The California EVIDENCE CODE shall apply.

Section 12.3 AGREEMENT TO ARBITRATE AND WAIVER OF JURY TRIAL. DECLARANT, BY EXECUTING THIS DECLARATION, AND EACH OWNER AND THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROJECT, AGREE TO HAVE ANY DISPUTES DECIDED BY NEUTRAL 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 DECLARANT, EACH OWNER AND THE ASSOCIATION ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. FURTHERMORE, DECLARANT, EACH OWNER AND THE ASSOCIATION ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARTICLE. IF DECLARANT, AN OWNER OR THE ASSOCIATION REFUSES TO SUBMIT TO ARBITRATION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

Section 12.4 Final and Binding Award. The decision of the arbitrator shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in Monterey County, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

Section 12.5 Severability. If the arbitrator or any court determines that any provision of this Article is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Article shall be conducted under the remaining enforceable terms of this Article.

Section 12.6 Member Approval Required to Initiate Binding Arbitration or Litigation. Neither

the Board nor any committee of the Board shall initiate binding arbitration or litigation with respect to portions of Monterey Downs owned or maintained by the Association in connection with a construction-related Dispute without first obtaining the approval of a majority of the voting power of Members of the Association, excluding the vote of Declarant. The Board and any committee so authorized by the Board shall have the right and authority, without Member approval, to engage in nonadversarial proceedings or mediation with respect to a construction-related Dispute (e.g., pursuant to California CIVIL CODE §1375).

Section 12.7 No Amendment Without Declarant Consent. This Article may not be amended without Declarant's prior written consent.

ARTICLE XIII **DEVELOPMENT BY DECLARANT**

Section 13.1 Planned Development. Declarant intends, but is not obligated, to complete Monterey Downs and Declarant shall have the right to construct and market the residences and to complete improvements allowed by the City (or other governmental authority) to be completed.

Section 13.2 Access Over Common Area. Declarant shall have a non-exclusive right of access, ingress and egress across Monterey Downs as may be reasonably necessary or convenient for purposes of completing the construction and sale of Phase 1 and the Annexable Property.

Section 13.3 Right of Declarant to Redesign Monterey Downs. Declarant reserves the right in its sole discretion, but subject to any necessary City approvals, to redesign any portion of Monterey Downs other than Home Sites, or Common Area (if any) which have been conveyed in fee by Declarant to others. The redesign may alter the boundaries of any improvement, adjust the location of the buildings, Phases and Common Area, change the elevation and appearance of improvements, and change the location of the amenities.

Section 13.4 Limitation on Amendment. This Article may not be amended without the written approval of Declarant attached to the instrument of amendment.

ARTICLE XIV **RIGHTS AND OBLIGATIONS OF OWNERS OF UNDEVELOPED HOME SITES**

Section 14.1 Right of Owners of Undeveloped Home Sites. The owner and successive owners of a Home Site that have not been improved with a residence (an "Undeveloped Home Site") shall have the right to construct a residence on the Home Site and to utilize the private road within Monterey Downs and to hook up to private drainage facilities or utilities (if any) which were intended to serve the Home Site. It is expressly intended that this Section be interpreted in such a manner as to include any common utility systems, access facilities and other systems which were intended to benefit the Undeveloped Home Site. Notwithstanding the foregoing, all new development on vacant land shall receive approval from the City in accordance with the adopted Specific Plan.

Section 14.2 Financial Obligation of Undeveloped Home Site Owner Regarding Costs. Should any damage be caused to any portion of the Common Area Improvements by reason of such construction or marketing activities, then the owner of the Undeveloped Home Site shall be obligated to reasonably repair such damage or reimburse the Association's reasonably incurred costs of repair.

Section 14.3 Special Membership of Undeveloped Phase Owner. Prior to the commencement of the Association's regular assessments against a Phase, the owner of the Phase shall be a Special Member of the Association. The Special Member shall have the same right to notice of all annual and special meetings of Members of the Association as regular Members and the Special Member shall have the right to attend such meetings. The rights of the Special Member shall be limited to receiving such notices of meetings of Members and attending such meetings of Members; a Special Membership shall not include voting rights.

Section 14.4 No Amendment Without Consent. This Article may not be amended without the written approval of Declarant attached to the instrument of amendment.

ARTICLE XV **GENERAL PROVISIONS**

Section 15.1 Enforcement. The Association, Declarant and any Owner shall have the right to enforce by any proceedings at law or in equity, all covenants, conditions, restrictions and reservations imposed by the provisions of the Declaration and rules and regulations adopted pursuant to this Declaration. Each Owner shall have a right of action against the Association for any failure of the Association to comply with the provisions of the Declaration or of the Bylaws or Articles. Failure by the Association, Declarant or any Owner to enforce any covenant, condition, restriction or reservation in the Declaration shall not be deemed a waiver of the right to do so thereafter. The City shall have the right, but not the obligation, to enforce the provisions of the Declaration and for such purposes shall be deemed a party hereto.

Section 15.2 Severability. Should any provision in the Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions shall be and remain in full force and effect.

Section 15.3 Amendments. Except as may otherwise be stated in the Declaration, during the period of time prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written consent of sixty-seven percent (67%) of the voting power of each Class of Members of the Association, any which amendment shall become effective upon recording with the Office of the County Recorder of Monterey, California. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended at any time and from time to time by the vote or written consent of (a) sixty-seven percent (67%) of the total voting power of the Association, and (b) at least sixty-seven percent (67%) of the voting power of Members of the Association other than Declarant. Anything herein stated to the contrary notwithstanding, no amendment that is of a material adverse nature to Mortgagees may be made to this Declaration without the prior written consent of first Mortgagees encumbering fifty-one percent (51%) or more of the Home Sites within Monterey Downs which are subject to a Mortgage. Amendments that are of a material adverse nature shall mean, for purposes of this Section, any amendments to provisions of this Declaration which would be likely to diminish the value of a Home Site or reduce or eliminate any lender's right set forth in this Declaration.

An amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification or for making a change which is of no practical significance. A Mortgagee who receives a written request delivered by certified or registered mail, return receipt requested, to approve amendments who does not deliver or mail to the requesting party a negative response within sixty (60) days, shall be deemed to have approved such request.

Notwithstanding the above provisions, (i) the percentage of the voting power necessary to amend a specific clause or provision in the Declaration shall not be less than the percentage of affirmative votes necessary for action to be taken under that clause or provision; and (ii) any amendment to this Declaration shall require the consent of the City Attorney of the City if such amendment would [reduce or eliminate the standards of maintenance and repair of Home Sites, Common Area or Association Maintenance Area or] reduce or eliminate any right of the City set forth in this Declaration.

The percentage of membership votes or written consents required to amend the Declaration may be reduced under certain circumstances by Court Order obtained pursuant to California CIVIL CODE §1356.

ANY ELECTION OR PROCEEDING TO AMEND THIS DECLARATION SHALL BE SUBJECT TO AND COMPLY WITH THE PROVISIONS OF THE COMMON INTEREST DEVELOPMENT OPEN MEETING ACT, AS SET FORTH IN CALIFORNIA CIVIL CODE §§ 1363.03 - 1363.09, AND ANY ELECTION RULES ADOPTED BY THE BOARD IN CONFORMANCE THEREWITH.

Section 15.4 Extension of Declaration. Each and all of the covenants, conditions and restrictions shall run with and bind Monterey Downs for a term of thirty (30) years from the date the Declaration is recorded, after which date they shall automatically be extended for successive periods of ten (10) years, unless the Owners of two-thirds (2/3) of the Home Sites subject to the Declaration have executed and recorded at any time within six (6) months prior to the end of the thirty (30) year period, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a written instrument in which it is agreed that the restrictions shall terminate at the end of the thirty (30) year period or at the end of any ten (10) year period.

Section 15.5 Encroachment Easements. The following easements are hereby reserved by Declarant, subject to all items of record, including, but not limited to, the general utility easements of record:

(a) It is intended that, unless Declarant decides to relocate the same, each fence or wall installed by Declarant (if any) with the intention of separating Home Sites from one another, or separating a Home Site from Common Area, or separating a Home Site from Association Maintenance Area shall establish the usable boundaries between the affected Home Sites, the Home Sites and Common Area and the Home Sites and Association Maintenance Area, respectively, regardless of whether the fence or wall lies exactly on the boundary line. An easement is hereby reserved for each such fence or wall to be repaired and replaced by the party(ies) obligated to maintain the same, in the location where such fence or wall was so installed by Declarant. Declarant shall have the right, but not the obligation, to relocate any such fence or wall to the applicable boundary line during the period of time that Declarant has the right to annex Home Sites to this Declaration.

(b) In the event any improvement to a Home Site encroaches upon the Common Area or Association Maintenance Area or any Common Area or Association Maintenance Area improvement encroaches upon any Home Site as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion thereof, an easement for the encroachment and for its maintenance is hereby reserved for so long as the encroachment exists; provided, however, in no event shall an easement for encroachment be created in favor of an Owner or the Association if the encroachment occurred due to the negligence of the Owner or the Association. In the event a structure on a Home Site is partially or totally destroyed and then rebuilt or repaired, the minor encroachments over adjoining Common Area and Association Maintenance Area shall be permitted and there shall be easements for maintenance of the encroachments so long as they shall exist. "Improvement" as used in this subsection does not include a fence or wall (fences and walls are the subject of **Subsection (a)** above).

Section 15.6 Special Responsibilities of Association. In the event improvements to be installed by Declarant to the Common Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering a Phase of Monterey Downs, and in the further event the Association is the obligee under a bond to secure the obligation of Declarant to complete the improvements, then if the improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any improvement, then the Board shall consider and vote on the question if the improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either event, upon petition signed by Members representing five percent (5%) or more of the voting power of the Association (excluding the voting power of Declarant), the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. The meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At the meeting, a vote of a majority of the voting power of Members of the

Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

Section 15.7 Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of residential lots and dwellings and incidental improvements upon Phase 1 and the Annexable Property. The completion of that work, and the sale, rental and other disposal of lots and dwellings is essential to the establishment and welfare of Phase 1 and the Annexable Property as a residential community. In order that work be completed and Phase 1 and the Annexable Property 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 Common Area, Association Maintenance Area or any Home Site whatever is reasonably necessary or advisable in connection with the completion of the work, including access over Phase 1 or the Annexable Property; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of Phase 1 or the Annexable Property such structures as may be reasonable and necessary for the conduct of its business of completing the work and establishing Phase 1 and the Annexable Property as a residential community and transferring Phase 1 and the Annexable Property in parcels by sale, lease or otherwise; or prevent Declarant from conducting on any part of Phase 1 or the Annexable Property its business of completing the work and of establishing a plan of ownership and of transferring Phase 1 or the Annexable Property by sale, lease or otherwise; or

(c) Prevent Declarant from maintaining such signs, poles or flags on any of Phase 1 or the Annexable Property as may be necessary for the sale, lease or disposition thereof; provided, however, that the maintenance of any sign, pole or flag shall not unreasonably interfere with the use by any Owner of his or her Home Site or the Common Area.

The rights of Declarant provided in **Subsections (a) through (d)** above may be exercised during the period of time commencing when the Home Sites in each Phase are first sold or offered for sale to the public and ending when all the Home Sites within such Phase are sold and conveyed by Declarant to separate Owners, or seven (7) years following the date of conveyance of the first Home Site within such Phase from Declarant to a First Purchaser, whichever shall first occur. So long as Declarant, its successors and assigns, owns one or more of the Home Sites described herein, Declarant, its successors and assigns, shall be subject to the provisions of this Declaration. Declarant, in exercising its rights under this Section shall not unreasonably interfere with the use of the Common Area by any Owner.

Section 15.8 Easement to Inspect and Test. Declarant reserves easements to enter any Home Site, including the interior of the residence and the yard, to inspect those areas and to conduct destructive testing referred to in California CIVIL CODE §1375(d). However, Declarant shall notify the Owner of the Home Site of at least three alternative dates and times when such inspection can take place (the earliest of which shall not be less than ten (10) days after the notification is given) and Declarant shall give the Owner the opportunity to specify which date and time is acceptable to the Owner. Should the Owner not respond affirmatively with respect to one of the dates and times within five (5) days, then Declarant may decide which of the dates and times the inspection and testing shall take place and so notify the Owner. Alternatively, Declarant may seek a judicial order allowing such inspection and testing to take place. Declarant shall be entitled to its reasonably incurred attorneys' fees and be deemed the "prevailing party" should such a court order be sought and obtained. Declarant shall be obligated to fully repair any damage caused by any such destructive testing.

Section 15.9 Documents Provided To Prospective Purchasers.

(a) By Owners. Each Owner, other than Declarant, shall, as soon as practicable

before transfer of title to a Home Site, provide to the prospective purchaser the disclosures, information and documents required by law, including the following items and any others required by California CIVIL CODE §1368:

(i) A copy of the Articles, Bylaws and Declaration.

(ii) A copy of the most recent financial statements of the Association distributed pursuant to CIVIL CODE §1365.

(iii) A true statement in writing from an authorized representative of the Association as to the amount of the Association's current annual and special assessments and fees as well as any assessments levied upon the Home Site which are unpaid as of the date of the statement. The statement shall also include true information on late charges, fines, penalties, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Home Site pursuant to CIVIL CODE §1367.

(iv) A copy or a summary of any notice previously sent to the Owner pursuant to subdivision (h) of CIVIL CODE §1363 that sets forth any alleged violation of the Association's governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the Association's right to enforce the governing documents against the Owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require the Association to inspect an Owner's Home Site.

(v) Should the Association give Declarant notice of a claim pursuant to CIVIL CODE §1375, a copy of the preliminary list of defects provided to each member of the Association, unless the Association and the Declarant subsequently enter into a settlement agreement or otherwise resolve the matter and the Association complies with CIVIL CODE §1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph shall not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(vi) A copy of the latest information provided for in CIVIL CODE §1375.1 (entitled "**Settlement agreements regarding alleged defects; notice of resolution to members on records; disclosures**").

(vii) Any change in the Association's current annual and special assessments and fees which have been approved by the Board, but have not become due and payable as of the date disclosure is provided pursuant to this Section.

(b) By the Association. Upon written request to the Association it shall, within ten (10) days of mailing or delivery of the request, provide an Owner with a copy of the requested Association items specified in (i) through (vii) above. The Association may charge a fee for this service which may not exceed the cost to prepare and reproduce the requested items.

Section 15.10 Personal Liability. No member of the Board or any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent of Declarant, shall be personally liable to any Owner, the Association or any other party, for any error or omission of the Association, its Board, its authorized agents or employees, the Architectural Committee or any other committee of the Association, if such person or entity has, on the basis of such information as may be possessed by him or her, acted in good faith without willful or intentional misconduct. The foregoing limitation on personal liability is in addition to the partial limitation of liability provided by CIVIL CODE §1365.7 to volunteer officers and directors of the Association.

Section 15.11 Notification of Sale of Home Site. Upon close of escrow for the sale of a Home

Site, or within five (5) business days thereafter, the new Owner of the Home Site shall provide written notice to the Association setting forth such Owner's name and mailing address, the common address of the Owner's Home Site, and the date the Owner acquired title to the Home Site. Until the Association receives such notice, any and all communications or notices required or permitted to be given by the Association or the Board shall be deemed to be duly made and given to the Owner if sent to the person who conveyed the Home Site to the new Owner or, if no address for notice has been provided to the Association, then to the street address of the Owner's Home Site. An Owner may change his or her address for notice at any time by written notice to the Association. Any notice deposited in the mail within Los Angeles City, California, shall be deemed delivered forty-eight (48) hours after such deposit.

Section 15.12 Third Party Proceeds for Claimed Defects. The Association shall not be entitled to use proceeds from third parties for claimed defects in any portion of the Common Area or Association Maintenance Area for other than the repair, replacement or reconstruction of such Common Area or Association Maintenance Area unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each Home Site encumbered by the first Mortgage) have given their prior written approval and at least sixty-seven percent (67%) of Owners other than Declarant have given their prior written approval.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument as of the date first hereinabove written.

MONTEREY DOWNS, LLC
a California limited liability company

By: MONTEREY BAY VENTURES, LLC,
its General Partner

By: _____
Brian Boudreau, Managing Member

EXHIBIT "A"

Phase 1 Property

[to be attached]

EXHIBIT "B"

Annexable Property

[to be attached]

Exhibit "C"

Depiction of Annexable Property

[to be attached]

Exhibit "D"

Legal Description of Common Area

[to be attached]

Exhibit "E"

**Depiction of Common Area, Common Area
Improvements and Association Maintenance Area (if
any)**

[to be attached]

ATTACHMENT 2

PUBLIC COMMENTS RECEIVED AT THE BOARD OF ARCHITECTURAL REVIEW ON JULY 1, 2015 THAT ARE NOT ABOUT THE ITEMS WITHIN THE BOARD'S PURVIEW

Roelof Wijbrandus – Property Owner of 1495 Mescal Street

- Two thirds or three quarters of the project does not belong to Seaside yet. So, as a Seaside resident, why not tell the applicant “work it out with Monterey County and then come back to us and we’ll take a look at the plan – because that’s an unknown.”
- As a Seaside resident, I’m really living with a drought situation and I don’t see two hotels, all these residences and a horse park using water that I don’t have myself right now, so I think the water issue is really an important component to review.

Nina Beatty – No address given

- I understand that the tree destruction has already started at the cemetery since there have been no permits (as I understand) issued and nothings been ok’d why has that begun?
- As I look at these plans, too bad this isn’t for a blighted area in Fort Ord instead of going over habitat. There’s lots of new green areas in this plan that are predicated on water, anybody who gardens knows that maintenance of established planting has less water needs than getting new planting established; and much more so in a drought – we don’t get the usual winter rains when plants typically get a burst of growth, without water this will be a desert. International reports say that California has less than 1 year left in water.
- Shrinking habitats are already shrinking, this is destroying more. I was thoroughly on board with the cemetery until I saw where it was going. And I just think there’s a lot of issues with it that I think need to be dealt with.

Kathy Anderson – No address given

- I wasn’t really going to come up with this project, but because I lived here all my life and I’m a homeowner in Seaside; nothing gets done unless the positive part comes through. And I have confidence in the City of Seaside, that they’ve been working closely with this developer and I don’t believe that they would do something, the City of Seaside and their team that would be in any partnership or anything that would create nothing but positive development for the City of Seaside.
- The water conservation, we certainly need that and I’m sure the City of Seaside and their team has well thought this out. We’re in a drought, this is nothing new to them and I’m sure that they’ve talked to the developer. I think we need to have some confidence in the City of Seaside and the developer. I think they want to work together and pull together a positive project. I’ve lived in Seaside for 15 years; and I still have my home after 35 years. So Seaside I do have a passion for, and I’m looking forward to this development. Because it’s not only about horses, it’s other entertainment, and other things that could come here that we

could enjoy here in the City of Seaside.; which their lacking within our community. I encourage you to give that recommendation to the Planning Department to go forward, and go to the next step; and see how we could agree on this wonderful project for the city of Seaside. Thank you.

Steve Ecklin (Salinas)

- I hope you say no to this project. Marina has an equestrian center so horses have somewhere that's around, Salinas has rodeo grounds. Horse parks are going out of business all over the country. So there's absolutely no need to have a horse park around here. There's a couple of things that came up, not too long ago, we have some of the cleanest air in the country, according to this article; this county is healthier than most, and in this region we have some of the best air quality in the country. One of the reasons we have this wonderful air quality is [because] we have trees and trees and trees that absorb carbon dioxide and produce oxygen. At least what I heard is that trees are being removed because of Monterey Downs, at least 50,000 trees – it's because of all the trees that we have this clean air. So, what's that going to do to our air quality. Salinas has the cleanest air out of the cities in the State. There's not enough water for the downs, and we certainly do need water now. Thousands of homes have already been approved for construction in Monterey County, so if there's a need for housing, I don't think there is right now but if there is then use the barracks in Fort Ord, tear down all those barracks, and put the houses in there so you don't have to destroy the environment and its already infrastructure there, it'll have to be fixed but it's there; so use that instead of destroying the environment to putting stuff there that we don't really need. There's a dangerous milestone of carbon dioxide in the atmosphere and trees absorb the carbon dioxide. And, I believe, I'm not quite certain that most of people who walk into Monterey Downs, they don't live around here so they don't really care about our environment. There's no need for any of this stuff now, now you want to put the cemetery in, and I can understand that but when I lived at Fort Ord, I hated the place but that's... To tear down 50,000 trees to put in stuff that we don't need is not good. Thank you.

Cameron Binkley (Seaside - lives in the area next to where the project is proposed) –

- I'd like to put in a good word of support for FORA and their Regional Urban Design Guidelines that were mentioned previously. I'm a big supporter of that, you've heard of this in concept so more power there. I kind of wish the development would be focused more towards the center of town rather than on the very extreme edges but as it is I am a supporter of those guidelines so that's a good thing.

Peter Kaiser, Seaside resident

- Looking at the big picture, I think we need to consider looking at the name. If it's "Monterey Downs" another words the center of the city of Monterey is maybe 9 miles from the project, and if you're going to have advertisements to go to the Monterey Downs from the freeway,

then people are thinking Monterey, and well, then they go down to dinner in Monterey and where's Seaside? How about requesting the project developers to change it to "Seaside Resort"? The second part of the name is also inappropriate, it's "Downs", that usually refers to a racing facility and if you look at the FORA general plan, it outlaws certain types of gambling; specifically casino gambling is outlawed. And I went out there and read it one of the planners, and he says that each city, like Seaside and Marina are required to put that in their general plan so that you can't have casinos, etc on Fort Ord. So, in the spirit of that it shouldn't say "Downs" and if we look more closely at that horse race gambling is the most addictive form of gambling; about one-third (1/3) of people who participate in horse race gambling are either addicted or problem gamblers. They spend more money than other gamblers, and if that's the purpose of having the facility is to prey upon these people, that's going against the...like if you're running a bar and you encourage alcoholics to come in there and drink excessively, that's abusing your neighbor. So we are abusing our neighbors who are prone to gamble too much. Also, if we look at the money part of this, a State commission is studying gambling and said that every \$1 of gambling revenue from horse tracks, cost the city \$3 in policing cost and other cost, so they estimate 6 million dollar in gambling revenue times 3 is 18 million dollars in negative cost to the city. I've been here long enough, we have a Measure D in Seaside, they were going to have a large card room, on Laguna Grande land, we voted against Measure D, and it was defeated. That's the sense of Seaside against gambling. Also, I think we should be using the already used land in Fort Ord that haven't been developed and put the project on there first and foremost. So change the name away from Monterey Downs to Seaside Resort and in the spirit of the FORA general plan drop the gambling part. Thank you.

Bill Weigle, Seaside resident

- It was pointed out by one of the earlier speakers here that there are just 10 very small structures on that land right now. There's some old 8 holer outhouses out there that we used for training and some of them are falling down. And there are two roads that go through there. So basically we have over 600 acres of totally permeable soil and the national weather services, we get 21 inches of rain per year. So you figure that out, that means that we have close to 900 acre feet of water that falls in that particular permeable soil and soaked into our ground table. So my question is then, how many acres of non-permeable surface will we have when this is done? That would include the parking that would include streets, it'd be side road, houses...all of that, because that is something that will not be soaking into the water table. Now, I realize, some of it will be preserved in other ways but we need if it comes up as questions, we need to have some answers. How much non-permeable surface will we have? Thank you.

Kay Kline, Seaside Resident

- I too am concerned about the amount of pavement, it seems like today there is a lot of permeable pavement that could be put in and I would hope this project would use some of that, so that we can retain the water that we are now retaining through the trees and everything and at least some of the water could be retained that way. I'm also concerned about the three (3) ponds that are on that property and how are we going to have ponds in this drought? And, that soil is very, everything goes right through it so...I don't understand that at all and I'll hope you look at that as part of the landscaping of the area.
- And the other thing I was wondering about, were the trees along the road, because I look at General Jim Moore and the medium, those trees are doing very, very poorly; and some of them are Oaks and don't grow in a row, they grow in a community which is why the forest is so healthy up there. Also, that soil has been, and those trees have been there for so long that they've embellished the soil. I think that once you grade everything and disturb everything, how do we know that those trees are going to remain? And who will maintain them? That is something that concerns me.
- And I didn't hear any accommodation for camping or people to come to the...right now Gigling and 8th is the way people enter for the National Monument. I don't know how we can walk through country walk, but it doesn't seem like there's going to be much access for the public to go to the National Monument from Seaside. And I think as people are talking more and more about walkability and walking in nature, the health factor, Seaside may not have much access to that; and that's my concern, Thank you.

Bill Light, Resident of Monterey County

- I know that the initial design of the project has changed multiple times, the developer has gone to the community and asked for feedback, cyclist have been talked to, I know horse people have been talked to, I know the City, Seaside, has been talked to and asked to make some changes and modifications and I think the developer, in this case has done a lot of hard work to make sure to incorporate a lot of the people's feedback, the people of Seaside's feedback and the people of Monterey County to build a world class facility right here in our backyard. One that meshes very well with the National Monument, I ride my bicycle for the last year and a half back in that area; the National Monument is huge and there's a lot of space out there.
- I think that this kind of project is a big project obviously; I think it's beneficial to the City. I appreciate your time tonight. Thank you very much.