

ARTICLE 2.
BUILDING AND LANDSCAPING RESTRICTIONS

2.1 Design Control. No Improvement, including but not limited to a Dwelling or landscaping, shall be commenced, erected or maintained on the Covered Property by an Owner unless the same has been approved by the Design Review Committee and is in compliance with the Design Guidelines, the Master Declaration and this Custom Lot Declaration.

2.2 Architectural Character. The architectural character for the Covered Property shall be European Farmhouse or Spanish Colonial. All Dwellings on the Covered Property shall be of such character. Within the European Farmhouse the permitted styles are Tuscany and Provence. The Spanish Colonial permitted styles are Andalusian, Santa Barbara and Adobe Ranch. More detailed treatment of the materials, colors and forms which generally constitute the European Farmhouse and Spanish Colonial character are set forth in the Design Guidelines.

2.3 Landscape Palettes.

2.3.1 General. The landscape palettes set forth in the Design Guidelines shall be administered through the Design Review Committee for the purpose of controlling the type, species and placement of any tree, plant, shrub, ground cover or other growing thing placed or planted on any portion of the Covered Property.

2.3.2 No Exotic Plants. To accord with requirements of the CDFG, no Invasive Exotic Plants shall at any time be planted, seeded or introduced into any portion of any Custom Lot shown as included in the Invasive Plant Areas on Exhibit IPA which is attached hereto or which will be attached to a Supplementary Custom Lot Declaration. In addition, the Owner of each such Custom Lot included or partially included in the Invasive Plant Areas shall eliminate and eradicate any and all Invasive Exotic Plants which migrate into or are otherwise found on any portion of his Custom Lot included in the Invasive Plant Areas.

2.4 Building Envelope and Buildable Pad.

2.4.1 Residential Dwelling. Subject to Sections 2.4.2 and 2.5.1(b) below, the Residential Dwelling constructed and maintained by an Owner on his Custom Lot shall at all times be located solely within the Building Envelope for said Custom Lot. The three-dimensional Building Envelope establishes the boundaries within which the Residential Dwelling must be constructed, but does not represent the ultimate shape or architectural appearance of the Residential Dwelling or the Dwelling.

2.4.2 Special Garages. The Garage, or a portion of the Garage, on a Custom Lot in the Covered Property may be constructed and maintained outside the Building Envelope provided (a) the Exhibit A for such Custom Lot which is attached hereto or which will be attached to a Supplementary Custom Lot Declaration indicates a permitted Garage area outside the Building Envelope (not all Custom Lots will have a permitted Garage area outside the Building Envelope), (b) all portions of the Garage outside the Building Envelope are constructed

and maintained within the maximum permitted Garage area for such Custom Lot indicated on Exhibit A, (c) all portions of the Garage outside the Building Envelope are within a single protrusion extending outside the Building Envelope only on the side permitted as indicated on Exhibit A, (d) all portions of the Garage outside the Building Envelope are within the permitted Height Limit for the Single Story and the Buildable Pad for such Custom Lot, (e) the Garage is approved by the Design Review Committee, and (f) the Garage otherwise complies with all other provisions of this Custom Lot Declaration and the Design Guidelines. A permitted Garage area outside a Building Envelope may be adjusted in connection with an adjustment to such Building Envelope pursuant to Section 2.4.5 of this Custom Lot Declaration.

2.4.3 Other Elements of Dwelling. An Improvement other than the Residential Dwelling which is a part of the Dwelling (such as roof overhangs, chimneys, exterior stairways, decks, balconies, bay windows, architectural enhancements, mechanical equipment or other elements described in the Design Guidelines) may be permitted to encroach into the Setback Area, or in excess of the Height Limit, provided the same (a) is allowed by all applicable governmental restrictions, (b) is approved by the Design Review Committee and (c) otherwise complies with all other provisions of this Custom Lot Declaration and the Design Guidelines.

2.4.4 Auxiliary Improvements and Buildable Pad. Improvements consisting of fences, walls, pools, patios, gazebos and other structures auxiliary to the Dwelling shall be permitted outside the Building Envelope provided the same, in each case, (a) is allowed by all applicable governmental restrictions, (b) is approved by the Design Review Committee and (c) otherwise complies with all other provisions of this Custom Lot Declaration and the Design Guidelines; and provided further that no Improvement except landscaping, irrigation facilities, fences and walls shall be permitted outside the Buildable Pad.

2.4.5 One Dwelling on Two or More Lots. Notwithstanding anything to the contrary in this Custom Lot Declaration, if the same Owner owns two (2) or more adjacent Custom Lots and intends to construct a single Dwelling which crosses one or more of the lot lines separating such Custom Lots, then the multiple Building Envelopes and Buildable Pads for such individual Custom Lots may be reconfigured to establish a single contiguous Building Envelope and Buildable Pad for the combined Custom Lots, and the Maximum Allowable Square Footages for the Residential Dwelling within such newly configured Building Envelope may be established, all in accordance with and subject to the following conditions:

(a) The Setback Areas for such combined Custom Lots shall be reconfigured (both for the Single Story Building Envelope and, if applicable, Second Story Building Envelope). The interior Setback Areas for the Single Story Building Envelopes between the adjoining Custom Lots shall be eliminated and must be added to the new perimeter for the reconfigured Single Story Setback Area. The Setback Areas for the Second Story Building Envelopes may be reconfigured to reduce or eliminate their applicable interior Setback Areas as well; or one or more of the Second Story Building Envelopes on the individual Custom Lots may be reconfigured and/or relocated on the reconfigured First Story Building Envelope, with or without establishing a single continuous Second Story Building Envelope for the combined Lots. If any of the combined Custom Lots had a permitted maximum Garage area

outside the Building Envelope, then such maximum Garage area may be adjusted in connection with the reconfiguration of the Building Envelope for the Combined Lots.

(b) In no event shall the square footage of the new reconfigured First Story Building Envelope or the new Second Story Building Envelope for the combined Custom Lots be greater than the combined square footage of the First Story Building Envelope or Second Story Building Envelope, respectively, of each of the combined Custom Lots. In no event shall the square footage of any maximum permitted Garage area outside the Building Envelope exceed the square footage of the original maximum permitted Garage area(s).

(c) In no event shall the Height Limit for the Building Envelope for the combined Custom Lots be modified.

(d) In no event shall the Maximum Allowable Square Footage for the First Story, Second Story or Residential Dwelling on the combined Custom Lots be greater than the combined Maximum Allowable Square Footage for the First Story, Second Story or Residential Dwelling, respectively, of each of the combined Custom Lots.

(e) The Buildable Pads for the combined Custom Lots shall also be reconfigured to establish one contiguous Buildable Pad for the adjoining Custom Lots. The perimeter portion of the combined Custom Lots (i.e., that portion of the Custom Lots outside the reconfigured single Buildable Pad) may or may not be increased to account for the loss of such perimeter portion from the interior between the adjoining Custom Lots.

(f) The reconfigured Building Envelope, modified Garage area (if any), modified Maximum Allowable Square Footages and reconfigured Buildable Pad must be approved by the Owner of the combined Custom Lots, the Design Review Committee and, for so long as Declarant owns any Custom Lot in the Covered Property, Declarant.

(g) The reconfigured Building Envelope, modified Garage area (if any), modified Maximum Allowable Square Footages and reconfigured Buildable Pad for the combined Custom Lots must be reflected in either (i) the grant deed by which Declarant transfers one or more of the combined Custom Lots to the Owner or (ii) a separate instrument acceptable in form to the Owner of the combined Custom Lots, the Design Review Committee and, for so long as Declarant owns any Custom Lot in the Covered Property, Declarant. The grant deed must be executed by the Owner of the combined Custom Lots and Declarant. The separate instrument must be executed by the Owner of the combined Custom Lots and Declarant's Representative (as such term is defined in the Master Declaration) or after Declarant's Representative no longer serves on the Design Review Committee, two (2) members of the Board.

(h) Declarant and/or the Design Review Committee shall have the right to require that such grant deed or separate instrument include a covenant prohibiting the partition and sale of any of the individual Custom Lots within the combined Lots or prohibiting such partition and sale until certain conditions have been met. By way of example, such conditions may include re-establishing the original Custom Lots and all original Building

Envelopes, Garage areas and Buildable Pads and removing improvements which encroach into the original Setback Areas or are otherwise outside the original Building Envelopes or Buildable Pads.

(i) The approval of construction of a Dwelling on more than one Custom Lot shall not relieve the Owner from any obligations attributable to the ownership of more than one Lot, including, but not limited to, the obligation to pay Assessments for each Lot as provided for in the Master Declaration.

2.5 Height Limits.

2.5.1 Residential Dwelling.

(a) Building Envelopes. Subject to Section 2.5.1(b) below, as to all Building Envelopes for the Custom Lots in the initial Covered Property, within which the Residential Dwelling must be constructed, the following Height Limits apply:

Single Story Building Envelope: Twenty (20) Feet
Second Story Building Envelope: Thirty (30) Feet

(b) Towers. Each Custom Lot in the initial Covered Property shall be permitted only one (1) Tower, and such Tower must comply with all of the following requirements: (i) the Tower may not exceed a Height Limit of thirty five (35) feet, (ii) the Tower may not exceed fifteen (15) feet in length or fifteen (15) feet in width, (iii) the Tower must be attached to the Residential Dwelling, (iv) the Tower must be located at or near the perimeter of the Residential Dwelling, (v) the Tower must be allowed by all applicable governmental restrictions, (vi) the Tower must be approved by the Design Review Committee, and (vii) the Tower must otherwise comply with all other provisions of this Custom Lot Declaration and the Design Guidelines.

(c) Supplemental Property. The foregoing Height Limits and requirements for Towers (if permitted) for Custom Lots hereafter annexed into the Covered Property shall be as established by Declarant and set forth on the Supplementary Custom Lot Declaration by which such Custom Lots are annexed to the Covered Property.

2.5.2 Landscaping. No height limits are established by this Custom Lot Declaration for landscaping Improvements installed, maintained or permitted to grow within any portion of the initial Covered Property. The maximum height limits for landscaping in any property hereafter annexed into the Covered Property shall be as established by Declarant and set forth on the Supplementary Custom Lot Declaration by which such property is annexed to the Covered Property. Nothing herein is intended, or shall be deemed, to prohibit height limits on landscaping as imposed by the Design Guidelines or the Design Review Committee. The Master Association may require the Owner of a Lot to remove any landscaping, the installation of which was previously approved by the Design Review Committee, at the Owner's expense if the height thereof exceeds the maximum height limits set forth in the Design Guidelines or imposed by the Design Review Committee.

2.5.3 More Restrictive Height Limits. No Improvement shall exceed any applicable height limit imposed by the Design Guidelines, provided that in no event may the Design Guidelines impose a height limit for Residential Dwellings or Towers which is shorter than the limits established by Section 2.5.1 above. No Improvement shall exceed any applicable height limit imposed by applicable governmental restrictions.

2.6 Maximum Square Footage. Neither the First Story, Second Story, or Residential Dwelling constructed and maintained by an Owner on his Custom Lot shall at any time exceed the Maximum Allowable Square Footage for such element on such Custom Lot.

2.7 On-Site Parking. A minimum of two (2) guest car parking spaces must be provided on each Custom Lot.

2.8 Roofs. All sloping roofs on any Dwelling shall have a pitch in the range of three and one-half (3½) feet of vertical distance for each twelve (12) feet of horizontal distance to six (6) feet of vertical distance for each twelve (12) feet of horizontal distance. Roof coverings shall consist of clay tile; all other roof covering materials are prohibited, except as approved by the Design Review Committee. Roofs shall be simple geometric forms based on the shape of the Dwelling without the use of flat areas for the purpose of compliance with the Building Envelope.

2.9 Environmental Compliance

2.9.1 Restriction Zones. Certain open space areas in the Shady Canyon project adjacent, near and within the Covered Property have been permanently restricted and/or preserved by applicable governmental authorities to protect fish, wildlife and native plants and habitat in perpetuity. Certain large open space areas have been set aside as in the NCCP Reserve, while other portions have been or will be set aside in conservation easements as either protected wetland areas or special wildlife movement linkage areas. These areas are home to a number of species of plants, animals and birds that are either listed as "endangered" or "threatened" under various federal and state laws or which may be listed under those laws in the future, and they have been set aside to protect native species and preserve environmentally sensitive areas. As a result, various restrictions on development, construction and landscaping within the Covered Property apply to each Owner, the Master Association and any Sub-Association. For general illustrative purposes only, refer to the map attached as Exhibit C hereto or which will be attached to a Supplementary Custom Lot Declaration. This general map is current only as of the date of recordation of this Custom Lot Declaration (and any such map attached to a Supplementary Custom Lot Declaration shall be current only as of the date of recordation of such Supplementary Declaration) and current copies of such map may be obtained at any time from the property manager for the Community.

2.9.2 Coastal Sage Scrub. Without limiting the generality of Section 2.8.1 above, coastal sage scrub, which is the habitat for one threatened species, the California gnatcatcher, is located in the NCCP Reserve and the other protected habitat areas, in or around

the Covered Property, and there are restrictions on construction in the Covered Property within or near the vicinity of coastal sage scrub. For example, if grading activities will cause disturbance of coastal sage scrub, the USFWS and CDFG must be notified in advance of such activity and a monitoring biologist must be present during grading. In addition, there are restrictions on grading during the breeding season of the California gnatcatcher (February 15 through July 15).

2.9.3 Requirements. Without limiting the generality of Section 2.11 below, in connection with the planning and construction of each Residence and each Improvement on the Covered Property (as well as ongoing maintenance activities on the Covered Property), each Owner, the Master Association and any Sub-Association must comply with, and have their contractors comply with, the following to the extent applicable to work on their property:

(a) Shady Canyon Army Corps of Engineers Nationwide Permit No. 9800-60000-RLK, as the same may be amended from time to time;

(b) Shady Canyon Section 1603 Streambed Alteration Agreement 5-247-98, as the same may be amended from time to time;

(c) Mitigation and Monitoring Plan for Shady Canyon Golf Course and Residential Development Project prepared by Jones & Stokes pursuant to certain provisions of the above-referenced Permit and Streambed Alteration Agreement, as the same may be amended from time to time; and

(d) NCCP Minimization Measures imposed by the USFWS and CDFG, which apply to all work that may impact coastal sage scrub, as the same may be amended from time to time.

The requirements set forth in these documents apply to pre-construction work (such as geotechnical investigations) as well as construction and landscaping on the Covered Property. Failure to comply with the requirements of these documents may result in delays in issuance of governmental permits and other penalties imposed by applicable governmental agencies with jurisdiction.

2.9.4 Confine Work to Lot Boundaries. In performing any work whatsoever in connection with the construction and maintenance of Improvements on his Custom Lot, each Owner shall, and shall have his contractors, stay within the boundaries of his Custom Lot, and in no event shall any Owner or his contractors perform any work or otherwise disturb any area outside his Custom Lot (other than as specifically permitted on other property pursuant to written permission from the owner of such property).

2.9.5 Light Spillage. No Owner shall direct any exterior lights into any adjacent open space areas, including the Golf Course Property. All direct rays shall be confined to the respective site upon which the exterior lights are installed so that adjacent Lots, the Golf Course Property and adjacent open space are protected from substantial light spillage and glare.

2.10 Grading, Excavation, Fill and Drainage.

2.10.1 Grading. Each Owner shall obtain all permits for grading cuts and fills, as are required by any and all governmental requirements, prior to commencement of any grading or filling, and shall thereafter abide by such permits and requirements. Prior to making submittal to any governmental agency, the Owner shall submit the grading plans showing such work to the Design Review Committee for its review and approval.

2.10.2 Excavation and Fill. Fill or top soil material used upon the Custom Lot by the Owner shall be free of adobe, termites, weeds, Hazardous Material and deleterious matter.

All areas to be filled should be scarified and/or over-excavated, moisture-conditioned and recompacted to at least ninety percent (90%) relative compaction prior to fill placement or to such stricter standard as may be imposed by the applicable governmental restrictions. New Fill should be placed in thin lifts, and benching into existing fill or bedrock material should be performed where the Fill material is placed against an existing slope. All work shall be inspected and performed in accordance with the recommendations of a registered soil engineer.

All Excavation and Fill areas shall be shaped by varying slope grades, both vertically and horizontally, so as to blend into the adjacent land forms and shall be done so as not to adversely affect adjacent Lots, Master Association Property or Common Area.

Whenever Excavation or Fill creates an unstable slope condition, or potentially unstable slope condition, the Owner shall take appropriate action to control and retain the embankment. Excavation or Fill which in the judgment of the Design Review Committee creates a high and unsightly retaining wall, may be disapproved.

Whenever Excavation or Fill requires the construction of a retaining wall, it shall be the Owner's responsibility to install and maintain the wall. All retaining walls placed upon embankments or Fill areas of more than three (3) feet in height or depth shall be designed by a registered civil or structural engineer.

Whenever Excavation or Fill causes destruction of existing drainage swales or natural drainage patterns, it shall be the Owner's responsibility to restore such swales and drainage patterns, or to otherwise provide for adequate drainage, all in a manner approved by the Design Review Committee.

2.10.3 Drainage. All existing drainage systems shall be maintained as originally installed by Declarant, except to the extent that plans and specifications covering a modification thereof are approved by the Design Review Committee. Any installations resulting in an addition to or modification of the drainage systems shall be prepared by a registered engineer and approved by the Design Review Committee. Drainage over the top of the slope located within the rear yard portion of the Setback Area of a Lot is prohibited unless specifically authorized in writing by the Design Review Committee. The flow of surface or subsurface

drainage onto, across or from each Lot must not be obstructed. Such runoff shall be dispersed or channeled by surface swales or other facilities, in such a manner as to prevent erosion and damage to property including, but not limited to, the use of energy dissipaters. The Owner shall submit drainage plans to the Design Review Committee, and the Design Review Committee will closely scrutinize the proposed location of Lot drainage facilities and may suggest revisions to provide for acceptance or discharge at certain points or locations along Lot boundaries. The Owner, however, will be responsible for the actual design of these facilities and be liable for all claims or damages resulting therefrom. The Design Review Committee may disapprove drainage facility designs which, in its opinion, are impractical or do not adequately consider the possible adverse effects on other Lots, Master Association Property, Common Area, the Golf Course Property or other adjacent property.

In the event of any violation by an Owner of any provision of this Section 2.10, the Owner shall restore the Lot to its state existing immediately prior to such violation, including the filling of any Excavation or removal of any Fill. If the Owner fails or refuses to so restore the Lot, then the Master Association may perform such restoration work, and the Owner shall reimburse the Master Association for all expenses so incurred by it in performing its obligations under this Section 2.10.

2.11 Governmental Regulations. All of the provisions of this Custom Lot Declaration regulating the construction of Dwellings and other Improvements on the Covered Property are in addition to and shall not limit the effect of any applicable law or governmental or public utility requirement. Neither Declarant, any Merchant Builder, the Master Association, the Design Review Committee, the Owners, or the agents, employees, attorneys or consultants of any of the foregoing, shall be deemed to have represented hereby that said statutes, ordinances, or regulations or requirements permit construction and/or landscaping to the same degree as permitted by this Custom Lot Declaration, the Master Declaration or the Design Guidelines. It shall be the responsibility of each Owner to ascertain the applicability of laws and governmental and public utility requirements to the improvement and landscaping of his Custom Lot. And, notwithstanding anything to the contrary herein, all Improvements on the Covered Property must be designed, constructed, installed and maintained in accordance with all applicable laws and governmental and public utility requirements. However, if such laws and requirements are less restrictive than the provisions of this Custom Lot Declaration, the Master Declaration or the Design Guidelines, the provisions of this Custom Lot Declaration, Master Declaration and the Design Guidelines shall nonetheless apply.

2.12 Enforcement of Restrictions. The Master Association shall have the right to require, through the Design Review Committee, compliance with the provisions and restrictions set forth in this Article 2. As a condition to the approval of any plans and specifications for any Improvements, the Design Review Committee may require a declaration as to height and placement of the Improvements, certified as correct by a person licensed as a civil engineer or architect in the State of California or, in the case of landscaping, by a person licensed as a landscape architect in the State of California.

2.13 View Disclaimer. By promulgation and/or enforcement of the covenants, conditions, restrictions and provisions set forth herein or in the Master Declaration, Design

Guidelines or otherwise, neither Declarant, the Board, the Design Review Committee, nor the directors, officers, members, agents, employees, representatives or consultants of the foregoing, have made any representation whatsoever concerning the view, if any, that the Owner of a particular Custom Lot and the Dwelling thereon, or the Master Association and its Members as the owner of the Master Association Property, or a Sub-Association and its members as owner of the Common Area, will enjoy. Each Owner, by acceptance of a deed or other conveyance of his Custom Lot, acknowledges that any view that such Owner may have enjoyed at the time of the purchase of his Custom Lot may be impaired or totally obstructed by the installation of landscaping, growth of landscaping, or the construction or installation of homes and other Improvements by other Owners, Declarant, the Master Association, a Sub-Association, the Golf Course Property Owner, or any owner of any other property. Each Owner hereby acknowledges that any rights acquired in his Custom Lot do not include the right to any view or the preservation of any view and such Owner further consents to such impairment and/or obstruction. Each Owner further understands that the provisions of this Custom Lot Declaration establish certain architectural and landscaping controls applicable to the Covered Property, and that each Owner is the benefited party hereunder with the right to enforce such controls. Except as expressly set forth herein or in the Master Declaration, there are no rights concerning preservation of view.

2.14 Right of Entry. The Design Review Committee and Board or its representatives shall have the right to enter upon a Custom Lot for the purposes of verifying that the construction of a Dwelling and any other Improvement, including, without limitation, landscaping, or the growth of landscaping after installation, complies with the restrictions set forth herein. Such entry may only be made after giving twenty-four (24) hours prior written notice to the Owner and during reasonable daytime hours, excluding legal holidays, and shall not unreasonably interfere with the construction of any Improvement, the installation of any landscaping Improvement, or the use by an Owner of his Custom Lot except in the event of an emergency, in which event entry may be immediate.

ARTICLE 3. **ANNEXATION AND DEANNEXATION**

Additional property may be annexed to and become subject to this Custom Lot Declaration as set forth in this Article 3. Any or all of the Covered Property subject to this Custom Lot Declaration may also be deannexed from this Custom Lot Declaration as set forth in this Article 3.

3.1 Plan of Development. As of the date of this Custom Lot Declaration, Declarant intends to develop the initial Covered Property and the Annexation Property with custom homes and common area. However, Declarant may elect to (a) develop all or a portion of the initial Covered Property and/or Annexation Property with semi-custom homes or production homes, (b) not develop all or any part of the initial Covered Property and/or Annexation Property and/or (c) permit a Merchant Builder or any other contractor to develop all or any portion of the initial Covered Property and/or Annexation Property with semi-custom homes or production homes. Declarant shall have the right, but not the obligation, to annex all or any portion of the Annexation Property to this Custom Lot Declaration in increments of any size whatsoever and/or develop one or more such increments at any given time and in any given order. Declarant shall