

**DRAFT**

RECORD AT THE REQUEST OF BNK LLC AND  
WHEN REOCRED, RETURN TO:

RECEIVED  
DEC 04 2007  
BY: \_\_\_\_\_

BNK LLC  
P.O BOX 190  
KENWOOD CA. 95452

**VINEYARD OAKS SUBDIVISON  
PRIVATE ROADWAY EASEMENT, MAINTENANCE AGREEMENT AND  
DESIGN REVIEW COMMITTEE**

THIS PRIVATE ROADWAY EASEMENT AND MAINTENANCE  
AGREEMENT (the "Agreement") dated \_\_\_\_\_ 200\_, is executed by  
BNK LLC, a California limited Corporation (Vineyard Oaks) and \_\_\_\_\_,  
a \_\_\_\_\_ (the Vineyard Oaks Property Owners) with reference to the following  
facts:

Vineyard Oaks is a subdivision containing 15 residential lots on the subdivision map  
entitled Tract No. \_\_\_\_\_ subdivision filed for record on \_\_\_\_\_ in  
Book \_\_\_\_\_ of Maps at page (s) \_\_\_\_\_ in the records of Napa County, California  
(the "Lots").

The primary purpose of this Agreement is to : (i) describe the reciprocal ingress and  
egress easement over the private roadways, (ii) provide for the maintenance and repair of  
the roadway and two center island trees located within the public right-of-way; private  
street lighting, and (iii) establish the covenants, restrictions, benefits, burdens, rights and  
duties set forth in this Agreement as covenants running with the land pursuant to the  
requirements of Civil Code Section 1468 and equitable servitudes under common law  
that benefit and bind each Lot and the Vineyard Oaks Property and each owner and  
successive owners thereto.

**Article 1 – Definitions**

Unless the context indicates otherwise, the following terms shall have the following  
definitions:

Agreement                      This Private Roadway Maintenance Agreement  
DRC                                Design Review Committee of Backen & Gillam Architects and any  
successors of assigns thereto.

Lot or Lots:                    Lots 1 through 15 as shown on the Map and the Vineyard Oaks  
Property.

Maintaining Owner:        The Person responsible for the maintenance and repair of the  
Roadway as described in Section 2.3.

Map:                              The subdivision map entitled "Tract No. \_\_\_\_\_ filed for record  
on \_\_\_\_\_, \_\_\_\_\_, in Book \_\_\_\_\_ of Maps at pages (s) \_\_\_\_\_  
in Napa County, California.

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**Roadway:** The private roadway identified in Exhibit B attached hereto and incorporated herein.

**Roadway Cost:** The cost to maintain, repair, and/or replace the Roadway Improvements, including normal maintenance costs, and repair and replacement costs, reasonable administration expenses directly related to the maintenance and repair and liability insurance costs.

**Roadway Improvements:** The roadbed, street sub-base, asphalt, pavement, curbs, and gutters, storm drainage pipes and intakes, private street trees and private utilities lies situated within the Roadway. Roadway Improvements do not include any public utilities service to the lots. The improvements not included are maintained by the Lot Owner (s) whose lot (s) are served by the improvements.

### **Article 2- Easements and the Maintaining Owner**

**Vineyard Oaks Grant of Easements.** Vineyard Oaks grants to each Owner in favor of the Owner's lot as the dominant tenement a nonexclusive easement over the portion of the Roadway situated on lots 8,9,10,11,12, 13 and 14 shown on Map as the servant tenements for vehicular and pedestrian ingress and egress; for the installation, maintenance, repair and replacement of any utility improvements that provide utility service to the dominant tenement; and for access to the Roadway and any area immediately abutting the Roadway as may be necessary to perform the maintenance described in Section 3.1 below. Utility improvements include, but are not limited to, electrical, water telephone, gas, telecommunication lines, cable, sanitary sewer, or storm drainage improvements. The easement is appurtenant to the dominant tenement; and any conveyance of the dominant tenement, whether voluntary or involuntary, automatically conveys the easement appurtenant thereto regardless of whether the instrument of conveyance describes the easement. The easement shall be in perpetuity unless otherwise terminated by operation of law.

**The Maintaining Owner:** The Maintaining Owner shall be the Lot Owner that is responsible for the maintenance and repair of the Roadway. The Maintaining Owner may retain the services of a property manager to oversee the management and maintenance of the Roadway.

The initial Maintaining Owner shall be the Owner of lot 14 shown on the Map (the "Lot 14 Owner"). With the written consent of the Majority of Lot Owners, the Maintaining Owner may assign the rights and duties of the Maintaining Owner to another person or entity (the "Designated Successor") and, thereafter have no further rights or duties there under.

The Maintaining Owner may resign at any time in which case a new Maintaining Owner shall be selected with the written consent of the Majority of Lot Owners. If a Majority of lot Owners determines that a Maintaining Owner is failing to properly perform its duties as the Maintaining Owner, the Majority of lot Owners may remove the Maintaining Owner and select a new Maintaining Owner. Any dispute in this regard shall be resolved under the procedures described in Article 5.

**Roadway Rules and Towing:** The Roadway shall remain open and available for ingress and egress to and from the lots and to and from EVA access road (road not named). The Roadway shall be kept free and clear for vehicular ingress and egress, including ingress

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and egress by emergency vehicles at all times. Subject to the foregoing, the Maintaining Owner may adopt rules regulating the use for the Roadway including rules that impose speed limits. The rules shall be applied in a uniform and nondiscriminatory manner. Any vehicle wrongfully parked within the Roadway may be towed at the vehicle owner's expense. The Maintaining Owner or any other Lot Owner may authorize the towing. Prior to the towing of a vehicle, a written warning notice shall be placed on the vehicle that the vehicle shall be towed within 24 hours, provided that no notice shall be required if the vehicle blocks access to any Lot, prevents ingress or egress by emergency vehicles, or otherwise constitutes a safety hazard, in which case the vehicle may be towed immediately. Under no circumstances shall the Owner be liable in any manner for the towing of a vehicle as long as the Owner acted in good faith based on a reasonable belief that the vehicle was wrongfully parked within the Roadway.

### **Article 3- Roadway Maintenance and Insurance Requirements**

**3.1 Roadway Maintenance and repair:** The Roadway Improvements shall be maintained in good condition and repair at all times, reasonable wear and tear expected. Maintenance, repairs and/or replacement shall be performed when the Maintaining Owner determines that maintenance, repairs and/or replacement are necessary. On such determination, the Maintaining Owner shall provide written notice to the other Owners describing the needed work, the party that will perform the work, the estimated cost of the work, and the allocation of the costs among the Lots (the "Repair Notice"). If the Owner of five or more Lots objects to any matter contained in the Repair Notice, the objecting Owners shall notify the Maintaining Owner and the other Owners in writing, setting forth the reasons for the objection. If no written objection is received within the 30-day period following receipt of the Repair Notice (or such lesser period as may be necessary in the event of emergency repairs), each Owner shall be considered conclusively to have agreed to have the work performed and to pay the Owner's allocable share of the costs and to have waived the dispute resolution procedures in Article 5 with respect to any payments due for the work. If a timely objection is received, the objecting Owners and the Maintaining Owner shall meet and attempt to resolve the dispute in good faith. If the dispute cannot be resolved within 15 days after the timely objection is received, and Owner may initiate the dispute resolution procedures described in Article 5 below.

**3.2 Emergency Repairs:** Notwithstanding anything herein to the contrary, any Owner, including the Maintaining Owner, may make such emergency repairs as that party, in the exercise of its reasonable prudent judgment, considers necessary in order to render the Roadway safe for its intended use (the "Repairing Party"). The Repairing Party as soon as is reasonably practical shall notify the Maintaining Owner in writing of the reason for the repairs and the cost of the repairs, together with appropriate supporting documentation (such as invoices) evidencing the costs spent on the repairs (the "Repair Notice"). The Maintaining Owner on receipt of the Repair Notice shall reimburse the Repairing Party for each party's share of the cost. The Maintaining Owner shall include the reimbursement as a part of the Roadway Costs. If the Maintaining Owner disputes any information in the Repair Notice or the Repairing Party's right to make the emergency repairs, the dispute shall be resolved in accordance with the provisions of Article 5. If, within 30 days after the receipt of the written

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demand, the Maintaining Owner fails either to: (i) notify the Repairing Party in writing that the matter is to be referred to the dispute resolution procedures set forth in Article 5 for resolution; or (ii) tender payment, the Repairing Party shall be entitled to recover the reasonable costs of collection, including reasonable attorneys' fees, a late charge not exceeding 10% of the delinquent payment and interest on the delinquent payment at 10% per annum or the maximum rate authorized by law, whichever is greater, commencing 30 days after the payment due date. The Repairing Party may bring an action in any court of competent jurisdiction to collect the amount due. The action shall not be subject to the dispute resolution procedures set forth in Article 5.

**3.3 Roadway Utility Maintenance or Repair Requirements:** Any utility improvements or lines located in the Roadway (including laterals off main lines) that provide service to one or more Lots shall be maintained by the Owner(s) of the Lot(s) served by the utility at that Owner's sole cost and shall not be part of the Roadway Costs. If any Owner(s) must excavate or otherwise disturb the Roadway in order to repair or replace any utilities, the Owner(s) shall give the Maintaining Owner such advance notice as is reasonable under the circumstances and no less than ten days except in the case of an emergency. The work shall be performed by contractors duly licensed by the State of California. No work shall commence until all appropriate governmental permits and approvals have been obtained, appropriate proof of which shall be provided the Maintaining Owner. In addition, prior to the commencement of any work, the Maintaining Owner may require: proof of liability insurance in such reasonable amounts as the Maintaining Owner may designate, which insurance shall name the Maintaining Owner and the other Lot Owner as additional insured's there under; and/or the posting of appropriate collateral to insure the work is completed and all labor and materials paid in a timely and proper manner. The Owner(s) shall use all reasonable efforts to diligently complete the repairs, to minimize any interference with the use of the Roadway, and to restore the Roadway to the condition it was in prior to the commencement of the repairs immediately after completion of the repair work. The Owner(s) shall defend, indemnify and hold each other Owner harmless against any cost, claim, liability, and damage, and lien, cause of action or judgment arising out of any such repair work.

**3.4 Failure to Maintain:** If the Maintaining Owner fails to properly maintain the Roadway as required in Section 3.1, either a Majority of the Lot Owners or a Majority of the Residential Lot Owners may notify the Maintaining Owner of the need for repair and/or maintenance, which notice shall contain an itemized description of the required repair and/or maintenance (the "Repair Demand"). If the Maintaining Owner disputes any information in the Repair Demand, the dispute shall be resolved in accordance with the procedures describe in Article 5. If the Maintaining Owner fails to take appropriate action to commence the repair and/or maintenance described in the Repair Demand or fails to notify the other Owners in writing that it disputes the need for repair and/or maintenance within 30 days of receipt of the Repair Demand, the Owners may have the appropriate repair and/or maintenance performed and the Maintaining Owner shall be presumed to have consented to the work. The cost shall be allocated pursuant to Section 4.1 and the Owners paying for the work shall have the same rights and remedies of the Maintaining Owner to collect payment from the other Owners as described in Article 4 as if the work had been performed by the Maintaining Owner.

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**3.5 Liability Insurance.** The Maintaining Owner shall, at all times during the duration of this Agreement, maintain a commercial general liability insurance policy insuring the Maintaining Owner and each other Owner as additional insured's there under against any liability incident to any personal injury or death or property damage from any accident or occurrence within or about the Roadway. The limits of such insurance (including the commercial general liability and any umbrella liability coverage) shall not be less than \$2,000,000 covering any claims for death, personal injury or property damage arising out of a single occurrence. The policy shall be primary and non-contributing with any other liability policy covering the same liability.

The Maintaining Owner may maintain the liability policy required under this Section 3.5 as part of a larger policy maintained by the Maintaining Owner, provided an independent qualified insurance consultant has certified that the total policy amounts are commercially reasonable taking into account all the risks covered by the policy. The policy premium shall be appropriately allocated between the risk coverage required under this Section 3.5 and the other risks covered under the policy and only the portion allocated to the coverage required under this Section 3.5 shall be included in the Roadway Costs. The Maintaining Owner shall consult with an independent qualified insurance consultant in making the premium allocation and upon receipt of a written request from a Majority of the Residential Lot Owners, the Maintaining Owner shall provide the other Lot Owners with true and complete copies of the policy and a written description in reasonable detail describing the methodology used to allocate the premium. Any dispute between the Maintaining Owner and a Majority of the Residential Lot Owners shall be resolved as described in Article 5.

### **Article 4 - Payment Procedures**

**4.1 Payment Obligations.** The Owner of each Lot covenants to pay the Lot's share of the Roadway Costs as described in this Article 4. The covenant to pay an Owner's proportionate share of the Roadway Costs is a personal obligation of the record Owner or Owners of each Lot as of the date of the mailing of the Payment Statement described in Section 4.3. If there is more than one Owner of a Lot, the obligation is joint and several.

Roadway Costs shall be allocated among the Lots in accordance with the percentages set forth in Exhibit C unless the facts and circumstances warrant a different allocation in order to reflect a fair and equitable sharing of costs. Notwithstanding anything herein to the contrary, if any maintenance or repair is necessary because of the willful or negligent act or omission of any Owner, tenant or occupant of any Lot, or their family members, invitees, or agents, the Owner of that Lot shall pay the cost of such maintenance or repair.

The purpose of this Section 4.1 is to allocate the Roadway Costs in an equitable manner among the Owners based on the benefits received from and burdens imposed on the Roadway by allocation should be readjusted to reflect an equitable cost-sharing arrangement, the Owners shall notify the Maintaining Owner in writing (the "Readjustment Request"). The Lot Owners shall meet and negotiate in good faith regarding a readjustment within 30

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days of receipt of the Readjustment Request. If the Lot Owners fail to reach an agreement within 30 days of the initial meeting or if the Maintaining Owner refuses to meet, the matter shall be resolved in accordance with the procedures described in Sections 5.3 and 5.4 in that order. Pending the effective date of any readjustment, the Roadway Costs shall be allocated based on the current allocation formula. The effective date of a readjustment shall be the date agreed upon by the Lot Owners or as determined by the arbitrator, provided that the effective date may not be a date that is earlier than the date the Maintaining Owner received the Readjustment Request. If the allocations are readjusted, an amendment to this Agreement shall be recorded in the records of Napa County, California signed by the Owners of at least two Lots certifying that the readjustment was duly approved by the Lot Owner under the provisions of this Section 4.1.

No party may make a Readjustment Request more than one time in a 36-consecutive month period and no readjustment may be made within 24 months following the issuance of an arbitrator's award.

**4.2 Payment Due Dates.** The Maintaining Owner shall prepare and submit a statement to the other Lot Owners that describes each Lot's allocable share of the Roadway Costs (the "Payment Statement"). The Payment Statement may be sent prior to the commencement of any work and may be part of the Repair Notice described in Section 3.1; and payment in full may be required prior to the commencement of the work, provided that any funds received before any payments for the work are due and owing shall be deposited in a separate account, shall be considered held in trust by the Maintaining Owner for the benefit of all the Lot Owners, and shall be used only for maintenance and repair of the Roadway and any costs directly related thereto. Any unused funds shall be refunded to the Lot Owners in the same proportion as the funds were paid no later than 90 days after completion of the work. If the prepaid funds are not sufficient to pay for the work, each Lot Owner shall pay the Owner's proportionate share of the deficiency not later than 15 days after receipt of notice of the amount of the deficiency (the "Deficit Notice").

Payment shall be due within 30 days after receipt of the Payment Statement or Deficit Notice and shall be in default if not paid in full within the required time. If payment is not made on or before the due date, a late charge in the amount of 10% of the amount due shall be charged to the delinquent Owner. In addition, interest shall accrue on the unpaid balance at the rate of 12% per annum (but not to exceed the maximum rate permitted by law) until paid in full.

**4.3 Payment Default and Remedies.** If a Lot Owner fails to pay the amount due on the Payment Statement or Deficit Notice within 30 days of the receipt thereof (the "Defaulting Owner"), the Maintaining Owner may bring an action in any court of appropriate jurisdiction for breach of the personal obligation to pay a proportionate share of the maintenance costs and in such action shall be entitled to recover the amount due, the late charge, any interest accrued thereon as provided in Section 4.3, and all costs of such action, including reasonable attorneys' fees. The dispute resolution procedure set forth in Article 5 shall not apply in any action to collect payment from the Defaulting Owner, and the Defaulting Owner may not raise the procedure as a defense in any such action. The Maintaining Owner has no power or right to impose a lien against the Defaulting Owner's Lot,

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provided that this prohibition shall not apply to judgment liens based on a judgment issued by a court of appropriate jurisdiction.

### **Article 5 - Dispute Resolution Procedures**

**5.1 Dispute Resolution Requirements.** Except as provided otherwise in Sections 3.1, 3.2 and 4.4, any disputes between or among the Commercial Lot Owners, the Maintaining Owner and/or a Majority of the Residential Lot Owners regarding the rights and duties hereunder shall be resolved in accordance with the provisions of Sections 5.2, 5.3 and 5.4 in that order.

**5.2 Good Faith Negotiations.** The parties shall meet no later than ten calendar days following receipt of a written request to meet signed by any Owner and delivered to all other Owners that may be parties to the dispute (the "Resolution Notice"). The Owners shall negotiate in good faith in an effort to resolve the dispute.

**5.3 Mediation.** If the parties cannot resolve the claim pursuant to the procedures described in Section 5.2 within 20 calendar days following the date of the Resolution Notice or if any party to the dispute fails to meet as required in Section 5.2, on request of any party to the dispute, the matter shall be submitted to mediation using the mediation services provided by the American Arbitration Association or any successor thereto or any mediation provider acceptable to the parties. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

Within ten days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference, and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten days following the submission of the memoranda and shall be concluded within 15 days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in Napa County, California, or such other place as is mutually acceptable by the parties.

The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

The mediation shall be subject to the provisions of Evidence Code sections 1115 through 1128, or any successor statutes thereto, except as the parties may agree otherwise in writing or orally in accordance with the requirements of Evidence Code section 1118.

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Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

**5.4 Binding Arbitration.** If the parties cannot resolve the claim pursuant to the procedures described in Section 5.3 or if any party to the dispute fails to participate in the mediation process, any party may commence binding arbitration under the commercial rules of the Judicial Arbitration and Mediation Services ("JAMS") or any other arbitration provider that may be mutually acceptable to the parties. The following rules and procedures shall apply in all cases unless the parties agree otherwise in writing:

- (i) the proceedings shall be heard in Napa County, California;

The arbitrator need not be an attorney or retired judge; but, if not, the arbitrator must have at least five years' experience in real estate matters;

Any fee to initiate the arbitration shall be paid by the Owner initiating the procedure, provided that the arbitration costs and fees, including any initiation fee, ultimately shall be borne as determined by the arbitrator.

The arbitrator shall be appointed within 60 days of the arbitrator's receipt of a written request to arbitrate the dispute. In selecting the arbitrator, the provisions of section 1297.121 of the Code of Civil Procedure shall apply. The arbitrator may be challenged for any of the grounds listed therein or in section 1297.124 of the Code of Civil Procedure. The arbitrator may require one or more pre-hearing conferences; the parties shall be entitled to discovery to the extent allowed by California Code of Civil Procedures section 1283.05; the arbitrator shall apply the rules of law, including the rules of evidence, unless expressly waived in writing by both parties; at the request of either party, a stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals (the requesting party shall pay the stenographic fees, which shall be included as court costs); the arbitrator's statement of decision shall contain findings of fact and conclusions of law to the extent applicable, and the arbitrator's decision shall be rendered within 20 days of the conclusion of the hearing; the arbitrator shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the arbitration, provided that the arbitrator shall not have the authority to award punitive



damages; the arbitrator in his or her discretion may award costs and/or attorneys' fees to the party that the arbitrator determines was the prevailing party, taking into account any party's failure to participate in the procedures described in Sections 5.2 and/or 5.3; and the arbitrator's decision shall be final and binding on the parties unless corrected or vacated under the grounds authorized in Code of Civil Procedure section 1286.2 or 1286.6. The arbitrator's decision may be.

**6.1 Covenants Running with the Land, Equitable Servitudes and Enforcement**

**Rights.** The covenants, restrictions, benefits, burdens, rights and duties set forth in this Agreement constitute covenants running with the land pursuant to the requirements of Civil Code Section 1468 and equitable servitudes under common law that benefit and bind each lot and each owner and successive owners thereto and shall be effective on the date that Vineyard Oaks first transfers title to any Lot regardless of whether the instrument of transfer describes these Covenants. Owners shall be liable under this Agreement only for defaults committed during the period the Owner held title to all or any portion of a Lot and shall not be liable for any defaults committed by any predecessor or successor Owner unless assumed in writing. This Agreement may be enforced by any Lot Owner or a Majority of the Residential Lot Owners. Residential Lot Owners representing less than a Majority of Lot Owners have no power, right or authority to enforce any provision of this Agreement.

**6.2 Amendments.** This Agreement may be amended from time to time with the written consent of the Majority of Residential Lot Owners. The consent given by any one Owner of a Lot shall be presumed conclusively to be the consent of all the Owners of that Lot. The amendment shall be certified by such Owners that amendment was duly adopted by the Owners as required herein. The amendment shall be effective when recorded in the records of Napa County, California.

**6.3 Effective Date.** The easements, covenants, restrictions, benefits, burdens, rights and duties set forth in this Agreement shall be effective on the date this Agreement is recorded in the records of Napa County, California.

**ARTICLE VII**

**ARCHITECTURAL REVIEW and USE RESTRICTIONS**

**7.1 Approval of Plans for building and Alterations:** No building, fence, wall, pool, sap, obstruction, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, improvement, or structure of any kind shall be commenced, erected, painted or maintained upon the property, nor shall any alteration or improvement of any kind be made thereto, or to the exterior of any residence ("Alteration"), until the Alteration has been approved in writing by the Design Review Committee (DRC) of Backen and Gillam Architects. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such Alteration or Building shall be submitted to Howard Backen Principal of Backen and Gillam Architects. Building envelopes have been established for all lots to ensure that every Residence is sited to maximize Mountain views, minimize impacts to the site, and maintain privacy within the Home location. Building Envelopes are areas designated on the Home site or Lot diagram within which all site improvements and / or site disturbances on the lot (except utility connections, landscape, drainage work and driveways) must take place. The building Envelope is made up of two areas, the

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Private Area and the Transition Area. The Private Area is the portion of the Building Envelope that includes buildings and outdoor private spaces. All buildings in the Private Area must conform to the maximum Building Height and massing requirements. The Transition Area is that portion of the Lot that blurs the line between the Building Envelope and Property Line from the Natural areas, street views, or neighboring home sites.

**7.2 Failure to Approve/Approval of Plans:** In the event that DRC fail to approve the plans and specifications for proposed Alteration or Landscaping Modification in writing within thirty (30) days after the same have been submitted to the DRC, the application shall be deemed to have been denied. Approval of plans for Alteration or Landscaping Modification shall in no way make the approving committee responsible for or liable for the Alterations or Landscaping Modification built or installed after approval of the plans and the homeowner whose plans are approved shall defend, indemnify and hold the DRC harmless from any and all liability arising out of such' approval.

**7.3 Enforcement:** DRC shall have the right to enforce the provisions of Article seven: In addition to all of the covenants contained herein, the use of the Property and each Lot is subject to the following:

**7.4 Use of Lot:** No Lot shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, except that Declarant, its successors or assigns, may use a Lot for a model home site or sites, and display and sales office during construction until the last Lot is sold, by Declarant. A Lot may be used as a combined residence and executive or professional office by the Owner thereof, so long as such use does not interfere with the quiet enjoyment by other Owners of their Lots and does not include visiting clients. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used on any Lot at any time as a residence, either temporarily or permanently. All uses must comply with City zoning and other applicable ordinances.

**7.5 Nuisances:** No noxious, illegal or seriously offensive activities shall be carried on upon any Lot, nor shall anything be done within a Lot which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the other Owners of their respective Lots.

### **7.6 Parking and Vehicle Restrictions:**

Permitted vehicles shall mean passenger carrying automobiles, station wagons, sports utility vehicles, vans with a seating capacity of no more than eight (8) passengers and trucks with a carrying capacity not exceeding  $\frac{1}{2}$  ton, and any other vehicles that eight (8) of the Owners agree to be permitted vehicles. Except for permitted vehicles, no trailer, camper, . mobile home, commercial vehicle, recreational vehicle, truck having carrying capacity of greater than  $\frac{1}{2}$  ton, van having seating capacity in excess of eight (8) persons, boat, inoperable automobile, or similar vehicle or equipment shall be permitted to be parked or remain upon any area within the Project. Permitted vehicles which are used both for business and personal use are not prohibited.

Each Owner shall maintain his garage such that it is readily available for parking the number of vehicles for which the garage was originally designed. Garages shall not be

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converted to uses other than parking of permitted motor vehicles and for limited storage that does not interfere with the parking of two (2) vehicles in the garage. All garage doors shall remain closed at all times, except as reasonably required for entry, to and exit from the garage. No Owner shall conduct major repairs, painting or major restorations of any motor vehicle of any kind whatsoever within his garage, upon his Lot, or elsewhere within the Project, except for emergency repairs thereto and then only to the extent necessary to enable movement thereof to a proper repair facility. In any event, all vehicles shall be parked in compliance with applicable governmental ordinances.

C. There shall be no parking of motor vehicles within the Private Drive.

**7.7 Commercial Activity:** No business, professional, or commercial activity of any kind shall be conducted on any Lot, except as provided in section 4.1.

**7.8 Signs:** Except as otherwise provided herein, no signs shall be displayed to the public view on any Lot except such signs that are approved by eight (8) of the Owners. "For Sale" or "For Rent" signs shall be allowed, provided they do not exceed five (5) square feet in size. Only one (1) such sign shall be permitted on any Lot. All signs permitted under this section shall conform with the City's sign ordinance, if any, and with all applicable governmental regulations and ordinances.

**7.9 Flags: Pennants, Banners, Etc.:** Except for flags as expressly permitted under applicable laws, there shall be no exhibiting, flying or hanging of any flags, pennants, banners, kites, towels, etc., from any area of the project that would be visible from the Private Drive, another Lot, or from the adjacent public streets.

**7.10 Garbage and Refuse Disposal:** All rubbish, trash and garbage shall be regularly removed from the Lots, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall only be kept in sanitary containers as approved for such use by the appropriate responsible governmental agency or private company. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and shall be kept in garages or in areas screened from view of neighboring Lots, the Private Drive and the adjacent public streets, except that containers maybe placed outside of garages or such screened areas during garbage pick-up times. No toxic or hazardous materials shall be disposed of within the project by dumping in the garbage containers or down the drains, or otherwise.

**7.11 Animals:** No animals, insects, fish or birds of any kind shall be raised, bred, or kept on any Lot, except that not more than two (2) dogs, or two(2) cats, or one (1) dog and (1) one cat, and a reasonable number of fish or caged birds, or other types of pets agreed upon by eight(8) of the Owners, may be kept, provided further that they are not kept, bred, or maintained for any commercial purposes, and they are kept under reasonable control at all times. Any pets maintained within a Lot shall be kept in a manner that does not unreasonably disturb the Owner or other occupants of the other Lots.

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**7.12 Exterior Clothes Lines:** No exterior clothes lines shall be erected and maintained and there shall be no outside laundering or drying of clothes upon any Lot, unless obscured from view by a fence or other appropriate screen from neighboring Lots, the Private Drive and the adjacent public streets.

**7.13 Drilling or Mining:** No oil drilling, oil development operations, quarrying, or mining operations of any kind shall be permitted upon any Lot.

**7.14 Private Storm Drain and Wetland Easements:** There maybe private storm drain and wetland easements over the Lots, as shown on the Map. No structures or improvements shall be placed or permitted to remain within these easement areas which may damage or interfere with the installation and maintenance of the storm drains or wetlands within these easements, or which may obstruct or retard the flow of storm water through these easements. The storm drain easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

**7.15 Radio and Television Antennas:** Subject to applicable law, no Owner may be permitted to construct and/or use and operate his own external radio and/or television antenna or satellite dish that is visible from another Lot or from the Private Drive without the prior written consent of at least eight (8) of the other Owners.

**7.16 Window Coverings:** Windows shall be covered only by drapes, shades or shutters and shall not be painted or covered by foil, cardboard, sheets, or similar materials.

**7.17 Maintenance of Fences:** Each Owner whose Lot or portion thereof, is improved with a fence shall be responsible for maintaining, repairing and replacing said fence when necessary and keeping the same in a safe and attractive condition as originally provided by the Declarant, reasonable wear and tear permitted. In any case where a fence straddles a boundary between two contiguous Lots, both of the Owners contiguous Lots shall be equally responsible for the maintenance, repair and replacement of that fence and shall cooperate to affect such maintenance, repair and replacement.

**7.18 Basketball Standards and Sports Apparatus:** No basketball standard or fixed sports apparatus shall be attached to the front or street-facing exterior surface of any residence or garage, nor shall any portable apparatus for basketball be permitted on any Lot, in the driveways or front yard. The purpose of this restriction is to maintain uniformly high aesthetic standards, and to preserve the quiet enjoyment of the respective Lots by the Owners thereof.

**7.19 Power Equipment and Car Maintenance:** No hobby shops, on-going car maintenance (other than emergency work), nor boat maintenance shall be permitted within the Project. Power equipment shall be used in a manner that does not unreasonably disturb the Owners or occupants of other Lots with noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. All hazardous waste shall be disposed of properly by each Owner.

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**7.20 Leasing of Lots:** No Owner shall be permitted to lease his Lot for any period less than thirty (30) days. Any lease shall be in writing and shall be subject in all respects to the provisions of the Declaration, and any failure of the tenant to comply with the foregoing shall be a default under the lease, regardless of whether the lease so provides. In the event of such a default, the Owner immediately shall take all action to cure the default including, if necessary, eviction of the tenant.

**7.21 Owners' Obligation to Maintain and Repair:** Each Owner shall, at his sole cost and expense, maintain and repair the Residence located on his Lot and all other improvements on the Lot, excluding the Private Drive improvements, including the residence, all landscaping, fencing, and retaining walls thereon, keeping the same in good condition. Each Owner agrees to reasonably cooperate with the Owner or Owners of adjoining Lots to facilitate and coordinate the maintenance and repair of the improvements on such adjoining Lots.

**7.22 Obligation to Rebuild:** Damage and Destruction Affecting Residences-Duty to Rebuild: If all or any portion of any residence on a Lot is damaged or destroyed by fire or other casualty it shall be the duty of the Owner of said Lot to rebuild, repair or reconstruct said residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

**Variance in Exterior Appearance and Design:** Any Owner whose residence has suffered damage may apply to the DRC under Article III for approval of reconstruction, rebuilding, or repair of his residence in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete plans, specifications, working drawings and elevations showing the proposed reconstruction and the end result thereof. The DRC may grant such approval only if the design proposed by the Owner would result in a finished residence in harmony of exterior design with the other residences on the other Lots. Failure of the other Owners to act within ninety (90) days after receipt of such a request in writing coupled with drawings and plot plans showing the full and complete nature of the proposed change shall constitute denial thereof.

**Time Limitation:** The Owner of any damaged residence and the other Owners if requested to review proposed Alterations to a residence, shall be obligated to proceed with all due diligence hereunder, and the Owner shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within twelve (12) months after the damage occurs, unless the Owner is prevented from such commencement or completion by causes beyond his reasonable control.

**Compliance with Local Rules:** All rebuilding must be in compliance with applicable local ordinances.

**Cooperation:** Each Owner agrees to reasonably cooperate with the Owners of adjoining Lots to facilitate and coordinate the repair and replacement of damaged improvements on the adjoining Lots.

## GENERAL PROVISIONS

**8.1 Enforcement:** Any Owner, including Declarant, shall have the right to enforce, by any proceeding at law or in equity, all the restrictions, conditions, and covenants now or hereafter imposed by the provisions of this Declaration, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by court. Failure of any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Each Owner, tenant or occupant of a Lot or dwelling shall comply with the provisions of this Declaration, and failure to comply with such provisions shall be grounds for an action by any Owner to recover sums due, for damages, or for injunctive relief, and attorney's fees.

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

**8.3 Term:** The covenants and restrictions of this Declaration shall run with and bind the property, and shall inure to the benefit of and shall be enforceable by the each Owner, and his respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a no less than eight (8) of the then Owners has been recorded, within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

**8.4 Amendments:** This Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent not less than eight (8) of the then Owners. Any amendment must be recorded and shall become effective upon being recorded in the Recorder's Office of Napa County.

**8.5 Mortgage Protection Clause:** No breach of any of the covenants, conditions and restrictions contained herein, shall render invalid the lien of any first Mortgage (meaning a Mortgage with first priority over any other Mortgage) on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in this Declaration to the contrary, institutional lenders shall have the following rights:

Unless the holder(s) of at least three-fourths (3/4) of the first Mortgages (based upon one (1) vote for each Mortgage or deed of trust owned) or three-fourths (3/4) of the Owners (other than Declarant) of the Lots have given their prior written approval, the Owners shall not be entitled to by act or omission, change, waive or abandon any scheme of

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regulations, or enforcement thereof, or pertaining to the architectural design or the exterior appearance of dwellings.

No Lot in the project maybe partitioned or subdivided without prior written approval of at least the holder of any first Mortgage lien on such Lot.

**8.6 Limitation of Restrictions on Declarant:** Declarant is undertaking the work of construction of a subdivision and incidental improvements upon the Property. The completion of that work and the sale, rental, and other disposal of Lots is essential to the establishment and welfare of the Property as a residential community. The provisions of Section 3.1 requiring approval of plans and specifications shall not apply to the original structures built or designed by Declarant for each Lot. In order that said work may be completed and said property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to prevent Declarant, its contractors, or subcontractors from doing on the Property or on any Lot, whatever is reasonably necessary or advisable in connection with the completion of said work; or prevent Declarant or its representatives from erecting, constructing and maintaining on any part of the Property, such structures as maybe reasonable and necessary for the conduct of its business of completing said work and establishing said property as a residential community and disposing of the same in parcels by sale, lease, or otherwise; or prevent Declarant from conducting on any part of the Property its business of completing said work and of establishing a residential community and disposing of the Property in Lots by sale, lease or otherwise, including, without limitation, the conversion and use of garage(s) as sales office(s) during the sales program; or prevent Declarant from maintaining such sign or signs on the Property as may be necessary for the sale, lease or disposition thereof.

**8.7 Termination of Any Responsibility of Declarant:** In the event Declarant shall convey all of its rights, title and interest in and to the property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Vineyard Oaks:

BNK LLC  
A California limited Corporation

By: \_\_\_\_\_  
Its \_\_\_\_\_

Vineyard Oaks Property Owner:

\_\_\_\_\_

By: \_\_\_\_\_