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c/o ANGIUS & TERRY LLP
1451 River Park Dr., Suite 285
Sacramento, CA 95815
Telephone: 916/457-1400

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FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS MCKINNEY SHORES PROPERTY OWNERS ASSOCIATION

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FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS OF MCKINNEY SHORES PROPERTY OWNERS ASSOCIATION

RECITALS

R1. Whereas, McKinney Shores Property Owners Association is the successor to Sutton Investment Co., a corporation, Lira Motors, a corporation, and Frederick A. Kilner and Florence A. Kilner, husband and wife, hereinafter referred to as Declarant, executed a Declaration of Tract Restrictions, filed for record on July 13, 1961, in the Official Records of the County of Placer, State of California ("Original Declaration"); and

R2. Whereas, the above-referenced Declaration of Tract Restrictions established a plan of common interest ownership with certain limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in that certain parcel of real property consisting of ninety-three (93) Lots and various common areas located in the County of Placer, State of California, and more particularly described as follows:

> All of that certain real property shown, designated, and delineated upon the Official Map of McKinney Shores, filed for record in the office of the Recorder of Placer County, on the 26th day of June 1961, in Book G of Maps, at Page 25.

R3. Whereas, the Members of McKinney Shores Property Owners Association, constituting at least greater than fifty percent (50%) of the total voting power of McKinney Shores Property Owners Association, desire to amend, modify and change and otherwise restate the limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in that certain parcel of real property;

R4. Therefore, the Members of McKinney Shores Property Owners Association, constituting at least greater than fifty percent (50%) of the total voting power of McKinney Shores Property Owners Association, do hereby declare that the above-referenced limitations, easements, covenants, restrictions, conditions, liens and charges set forth in the Original Declaration and the Amendment to the Original Declaration are hereby RESTATED in their entirety. In the place and stead of the limitations, easements, covenants, restrictions, conditions, liens and charges set forth in the Original Declaration and Amendment to the Original Declaration, the Members hereby adopt and substitute this First Restated Declaration of Covenants, Conditions and Restrictions of McKinney Shores Property Owners Association; and

R5. It is further hereby declared that all of the real property described herein constitutes a "Planned Development" within the meaning of Section 1351(k) of the California Civil Code; and

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R6. It is further hereby declared that all of the real property described herein is held and owned and will be held, owned, operated, managed, conveyed, assigned, rented, hypothecated, encumbered, leased, used, occupied and improved subject to the following First Restated Declaration of Covenants, Conditions and Restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving and enhancing the value, desirability and attractiveness of the said real property and every part thereof and of fostering the development, management, improvement, enjoyment, use and sale of the said real property and any part thereof; and

R7. It is further hereby declared that all of the Covenants, Conditions and Restrictions herein set forth will constitute enforceable equitable servitudes as provided in California Civil Code Section 1354 and will constitute covenants that will run with the real property and will be binding upon and inure to the benefit of each Owner of any portion of the real property or of any interest therein, each party having or acquiring any right, title or interest in and to the real property or any part thereof and their heirs, successors and assigns.

R8. It is further hereby declared that each Owner, by acceptance of a deed to a Lot, will be deemed to have agreed, for any and all purposes, for Owner and Owner's family, contract purchasers, lessees, guests, invitees and/or licensees to abide by, and to be bound by, each and every provision of this First Restated Declaration of Covenants, Conditions and Restrictions which subjects such Owner or other person to a contractual, fiduciary or other duty, obligation or agreement for the benefit of other Owners or occupants of McKinney Shores, either individually or as a class, McKinney Shores Property Owners Association or the public generally, regardless of whether the deed refers specifically to this First Restated Declaration of Covenants, Conditions and Restrictions or to any such duty, obligation or agreement.

ARTICLE I: DEFINITIONS.

Section 1.1. "Articles" means the Articles of Incorporation of McKinney Shores Property Owners Association, which are filed in the Office of the Secretary of State of the State of California, as such Articles may be restated from time to time.

Section 1.2. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and their Lot in accordance with the provisions of Article V of this Declaration.

Section 1.3. "Association" means McKinney Shores Property Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns. McKinney Shores Property Owners Association is an "Association" as defined in California Civil Code Section 1351(a).

Section 1.4. "Association Rules"or Rules means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to Section 4.5(a)(ii)(E) of this Declaration, as the same may be in effect from time to time.

Section 1.5. "Board of Directors" or **"Board"** means the Board of Directors or the governing body of the Association.

Section 1.6. "Bylaws" means the Bylaws of the Association, as such Bylaws may be restated from time to time.

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Section 1.7. "Common Area" means the entire Development, except the Lots, comprising McKinney Shores as defined herein. Without limiting the generality of the foregoing, Common Area includes:

(a) Piers;

(b) Beach area; and

(c) Meadow area.

Section 1.8. "Common Expense" means any use of funds authorized by Article V hereof and Section 6.1 of the Bylaws and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities, or any portion of any Lot that the Association is obligated to maintain or repair, (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board, (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities or any portion of any Lot that the Association is obligated to maintain or replace, and for nonpayment of any Assessments, and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

Section 1.9. "Common Facilities" includes but is not limited to the following: piers, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

Section 1.10. "Development" means all real property and the improvements located thereon which comprises McKinney Shores Development and are intended to create a Planned Development as described in California Civil Code Section 1351(k).

Section 1.11. "Declaration" means this First Restated Declaration of Covenants, Conditions and Restrictions of McKinney Shores Property Owners Association, recorded in the Office of the County Recorder of Placer County, California as it may be restated from time to time.

Section 1.12. "Director" means a member of the Association's Board.

Section 1.13. "Exclusive Use Common Area" means any portion of the Common Area that is set aside, allocated, assigned and restricted for the exclusive use of the Residents/Owners of a particular Lot. Exclusive Use Common Area includes, but is not limited to, concrete buoy anchors and attached buoy chains.

Section 1.14. "Family" means one or more persons each related to the other by blood, marriage or legal adoption or a group of persons not so related who maintain a common household.

Section 1.15. "Governing Documents" is a collective term that means and refers to this Declaration and to the Association's Articles, Bylaws, Association Rules.

Section 1.16. "Improvement" means an addition to or alteration of the real property comprising the Development or any portion thereof and includes, but is not restricted to, any building, outbuilding, structure, shed, driveway, parking area, paving, walk, fence, wall, stair, arbor, deck, balcony, patio, pole, sign, tank, ditch, swimming pool and apron areas, pool storage and pump house, landscaping (including trees, hedges, plantings, lawns, shrubs), landscape structures, berms, fencing, pond, solar heating equipment, antennas, utilities, utility lines, gates, markers, pipes, lighting fixtures, and anything deemed to be a "work of improvement" as defined in Section 3106 of California Civil Code or any structure of any kind. In no event

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may the term "Improvement" be interpreted to include projects which are restricted to the interior of a Residence and which do not involve the roof or any load-bearing wall thereof.

Section 1.17. "Lien" means any lien, whether voluntary or involuntary.

Section 1.18. "Lot" means any parcel of real property designated by a number on the Map of the Development, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" will also include the Residence and other improvements constructed or to be constructed on a Lot.

Section 1.19. "Maintenance" means the exercise of reasonable care to keep buildings, landscaping, lighting and other Common Area(s), Common Facilities, Improvements and/or real or personal property in which the Association or an Owner holds an interest in a state similar to their original condition, normal wear and tear excepted.

Section 1.20. "Map" means the certain Plat Map of "McKinney Shores " recorded in the Office of the Recorder of the County of Placer, State of California, on the 26th day of June 1961, in Book G of Maps, at Page 25.

Section 1.21. "Member" means each person (or entity) who is named as an Owner on the recorded grant deed (or other valid title document) for any Lot within the Development. However persons (or entities) holding an interest in a Lot merely as security for the performance of an obligation are not Owners or Members.

When more than one person is an Owner of a Lot, all such persons will be Members. Although in no event will more than one vote be cast with respect to any Lot. Member rights may be temporarily suspended under those circumstances described in Section 14.6, below and Section 4.3 of the Bylaws.

Section 1.22. "Member in Good Standing" means a Member of the Association who is current in the payment of all assessments imposed in accordance with the Governing Documents and who is not subject to any suspension of voting privileges as a result of any disciplinary proceeding conducted in accordance with the Declaration. A "Member in Good Standing" is a "Member eligible to vote."

Section 1.23. "Mortgage" means any security device encumbering all or any portion of the Development, including any deed of trust. The terms mortgage and deed of trust may be used interchangeably. **"First Mortgage"** means a mortgage having priority over all other Mortgages. **"Mortgage Lien"** means the lien or charge or equivalent security interest of any mortgage or deed of trust. **"Mortgagor"** will refer to the trustor under a deed of trust, as well as a mortgage.

"Mortgagee" will refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense. **"First Mortgagee"** means any person or entity, including, but not limited to, banks, savings and loan associations, insurance companies and other financial institutions, holding a recorded mortgage which constitutes an encumbrance upon one or more Lots first in priority of lien over all other encumbrances upon said Lot(s) securing payment of money other than this Declaration and liens for real estate taxes and assessments.

Section 1.24. "Owner" means the person(s) and/or entity(s) owning (*i.e.*, holding fee simple title to) any Lot which is a part of the Development. The term "Owner" includes, except where the context otherwise requires, the Owner's family, contract purchasers, lessees, servants, employees, guests, invitees and/or licensees.

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"Owner of Record" and/or **"Member of the Association"** includes an Owner and means any person, firm, corporation or other entity in which title to a Lot is vested according to Association records.

Section 1.25. "Parking Areas" means those portions of the Common Area for parking vehicles and boat trailers. The use of these Parking Areas shall be in accordance with the Association Rules.

Section 1.26. "Party Fence" means any fence located on a property line dividing any Lots, which is commonly used by any such adjoining Lots. The rights and responsibilities of Owners with respect to Party Fences will be governed by Sections 2.4 and 6.2 of this Declaration.

Section 1.27. "Person" The term "Person" means and includes any individual, corporation, partnership, association or other entity recognized by the laws of the State of California.

Section 1.28. "Regular Assessment" means an Assessment levied on an Owner and their Lot in accordance with Section 5.2 hereof.

Section 1.29. "Residence" means a private, residential dwelling constructed on any Lot in the Development.

Section 1.30. "Resident" means any Person who resides in a Residence on a Lot within the Development.

Section 1.31. "Residential Use" means occupation and use of a Lot for residential dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy Residential dwellings.

Section 1.32. "Special Assessment" means an Assessment levied on an Owner and their Lot in accordance with Section 5.3 hereof.

Section 1.33. "Special Individual Assessment" means an Assessment levied on an Owner and/or their Lot in accordance with Section 5.4 hereof.

ARTICLE II: OWNERS' PROPERTY RIGHTS & OBLIGATIONS.

Section 2.1. Elements of Separate Interest. Ownership of each Separate Interest within the Development includes:

(a) Lot. A separate Lot as defined, depicted and described herein and identified by number on the Map.

(b) Nonexclusive Easements. Nonexclusive easements appurtenant to the Lot for the use and enjoyment of the Common Area and as more particularly described in Section 2.2.

(c) Exclusive Easements. Exclusive easements appurtenant to the Lot for the use and enjoyment of Exclusive Use Common Area as more particularly described in Section 2.3.

All of the above interests in real property will be subject to all of the covenants, conditions, restrictions, easements, limitations, reservations, liens, and charges contained elsewhere in the governing documents.

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Section 2.2. Owners' Nonexclusive Easements of Enjoyment to Common Area. Subject to the provisions of this Declaration, the Common Area will be held, maintained and used to meet the common interests of the Owners. There will be no use of the Common Area except by Owners. (*See* Section 2.6, below, regarding use by non-Owners).

(a) Limitations on Nonexclusive Easements. Every Owner will have a nonexclusive right and easement of enjoyment in and to the Common Areas, including ingress and egress to and from the Owner's Lot, which will be appurtenant to and will pass with the title to every Lot, subject to the following rights and restrictions:

(i) The right of the Association to adopt Association Rules as provided in Section 4.5(a)(ii)(E) hereof, regulating the use and enjoyment of the Development for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner, to temporarily suspend the voting rights and/or right to use the Common Facilities, by any Owner and/or the Owner's lessees and guests, subject to compliance with the due process requirements of Section 14.6 hereof.

(ii) The right of the Association, in accordance with this Declaration, and/or the Association's Articles and Bylaws, to borrow money for the purpose of improving, restoring or maintaining the Common Area and Common Facilities and/or the interests of the Owners and/or for the benefit of the Association, and in aid thereof, to mortgage said property; provided, however, that the rights of any such Mortgagee in said property will be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness will be considered an expense of the Association for purposes of the Assessment provisions of Article V hereof.

(iii) The right of the Association to dedicate or transfer all or any part of the Common Area for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer will be effective unless an instrument, approved by at least two-thirds (2/3) of the voting power of the Members, consenting to such dedication or transfer has been recorded. Furthermore, no dedication will be permitted that impairs the ingress and egress to any Lot. Said instrument may be executed in counterparts so long as each counterpart is in recordable form.

(iv) The non-exclusive easements granted herein will be subordinate to and will not interfere with exclusive easements, if any.

(v) The right of any Owner to the full use and enjoyment of any mechanical or electrical service connections as may serve the Owner's Lot in conjunction with other Lots within the Development. The Owner of each Lot served by a sanitary sewer, water, gas, electric, telephone, television line or connection, heating or air conditioning conduit, duct, flue, or system, or similar utility/service connection will be entitled to the full use and enjoyment of the portions of the connections that service Owner's Lot.

(vi) The right of the Association to charge reasonable admission and/or other fees for the use of the Common Area or any portion thereof.

(b) Waiver of Right to Sever. No Owner, or other person, by conveyance, transfer or any other action, including an action at law for partition, may sever any Lot or Lots from the Common Area or from the Association. Each Owner, by acceptance of a deed to a Lot hereby expressly waives all rights to do so.

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Section 2.3. Exclusive Use Common Area. Exclusive Use Common Area, as defined in California Civil Code Section 1351(i), will include portions of the Common Area specifically identified on the Map

(and original deeds) and conveyed as exclusive easements appurtenant to particular Lots. These portions of the Common Area, referred to as "Exclusive Use Common Area," are subject, as servient tenements, to exclusive easements in favor of the Lot to which they are attached and/or assigned. The exclusive easements will be appurtenant to those designated Lots and may be used and enjoyed exclusively by the Owner of such Lot and not by others except by the Owner's invitation.

The exclusive easements appurtenant to a Lot may not unreasonably interfere with exclusive easements appurtenant to another Lot. Except as provided in Sections 2.2 and 4.4(b), no one may prevent access by an Owner to an Exclusive Use Common Area appurtenant to that Owner's Lot.

The Association, for the benefit of the Owners of such Lots, may promulgate rules and regulations limiting and defining the rights of Owners to use Exclusive Use Common Areas. The Association will have and enjoy rights of entry on, over, under, across and through the Exclusive Use Common Areas, and every part thereof, for the repair, maintenance and landscaping of the Exclusive Use Common Areas.

Section 2.4. Party Fences - General Rules of Law. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding Party Fences and liability for property damage of same due to negligence or willful acts or omissions will apply thereto. In particular, the right of any Owner to contribution from any other Owner for costs associated with a mutual Party Fence under this Declaration will be appurtenant to the land and will pass to such Owner's successors in title.

In the event of any dispute between Owners concerning a Party Fence, each party to the dispute will choose one arbitrator, and such arbitrators will choose one additional arbitrator. The resolution of the dispute will be decided by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board will have the authority and power to select an arbitrator for the refusing party. Said arbitrators will render a decision within thirty (30) days after appointment. The decision will be final and binding on all parties.

Section 2.5. Persons Subject to Governing Documents. All present and future Owners will be subject to, and will comply with, each and every provision of the Governing Documents, as the same or any of them will be restated from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, lessees, invitees, etc.).

The mere accepting of a deed to any Lot; the entering into a lease, sublease or contract of sale with respect to any Lot; the occupancy of any Residence; and/or the acceptance of any guest pass will constitute the consent and agreement of such Owner that each and all of the provisions of this Declaration, as the same or any of them may be restated from time to time, will be binding upon said person and that said person will observe and comply with the Governing Documents.

The liability and obligation of any Owner for performance of any one and all provisions of the Governing Documents with respect to any Lot will terminate upon the sale, transfer, or other divestiture of such Owner's entire interest in that Lot with respect to obligations arising hereunder from and after the date of such divestiture.

Section 2.6. Delegation of Use.

(a) Delegation of Use and Membership Rights and the Leasing or Sale of Lots.

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(i) Assignment of Rights to Family Members. Any Owner may delegate the Owner's rights to use and enjoy the Common Area and Common Facilities to members of the Owner's family residing at the Development.

(ii) Use by Invitees and Guests. The invitees and guests of a Member will have the right to use and enjoy the Common Areas and Common Facilities within the Development. Any such guest or invitee will be subject to the same obligations imposed on the Member to observe the restrictions and regulations of the Association as set forth in the Governing Documents.

(iii) Assignment of Rights to Tenants/Lessees. Any Member who has leased the Member's Lot to another person or persons will in all events be deemed to have delegated to their lessees all rights of use and enjoyment of the Common Area. (*See also* Sections 2.7 and 3.2, below, for additional restrictions, limitations and/or requirements relevant to leasing of Lots). It is the express purpose and intent of the provisions of this Section 2.6(a) to limit the right of use and enjoyment of the Common Area to Residents and members of their household and their guests. The term "lease" will include "rental," the term "lessee" will include "tenant," and the term "lessor" will include "landlord," and vise-versa.

(iv) Assignment of Rights to Contract Purchasers. Further, any Member who has sold that Member's Lot to a contract purchaser will be entitled to delegate to such contract purchaser Member's rights and privileges of membership in the Association, except the right to be a Director. Such Member will be deemed to have delegated all rights to use and enjoyment of the Common Area to a contract purchaser who has assumed occupancy of said Lot. No delegation of any membership rights or privileges to a non-resident contract purchaser will be binding, however, until the Board has been notified in writing pursuant to Section 2.7, below.

Notwithstanding any delegation, until fee title to the Lot has been transferred of record, a contract seller will remain liable for all assessments, fines and other charges imposed by the Board and for compliance with the Governing Documents by all Residents of Member's Lot.

(b) Discipline of Lessees. An Owner who leases their Lot to any person or entity will be responsible for assuring compliance by the lessee and any other occupants with the provisions of the Governing Documents.

Subject to subsection (d), below, in the event that any lessee or lessee fails to honor the provisions of any Governing Document, the Association will be entitled to take such corrective action as it deems necessary or appropriate under the circumstances, which may include suspension of the lessee's privileges to use any recreational Common Facilities, or the imposition of fines and penalties against the Owner.

Any fine or penalty levied pursuant to this section will be considered a Special Individual Assessment as defined in Section 5.4, below.

(c) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Development, or any part thereof, or to preserve the rights of quiet enjoyment of other Owners, the Association will have no right to initiate disciplinary action against an Owner-lessor on account of the misconduct of the Owner's lessee unless and until the following conditions have been satisfied:

(i) The Owner has received written notice from the Board or the Association's general manager detailing the nature of the lessee's alleged infraction or misconduct and advising the Owner of their

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right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary;

(ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner; and

(iii) the Owner has failed to prevent or correct the lessee's objectionable actions or misconduct. Any hearing requested hereunder will be conducted in accordance with Section 14.6 hereof.

(d) Discipline of Lessees. An Owner who leases Owner's Lot to any person or entity will be responsible for assuring compliance by the lessee with the provisions of the Governing Documents, including but not limited to, all easements, reservations, assessments, liens and charges created in accordance with this Declaration, all as restated and supplemented from time to time.

Subject to subsection (b), above, in the event that any lessee fails to honor the provisions of any Governing Document, the Association will be entitled to take such corrective action as it deems necessary or appropriate under the circumstances which may include suspension of the lessee's privileges to use any recreational Common Facilities or the imposition of fines and penalties against the Owner.

Any fine or penalty levied pursuant to this Section 2.6 will be considered a Special Individual Assessment as defined in Section 5.4, below. If a Special Individual Assessment is imposed as a result of the conduct of a renter or lessee, any lessee charged with a violation of the Governing Documents is entitled to the same notice and hearing rights to which the Owner is entitled as provided in subparagraph (c) above.

Section 2.7. Obligations of Owners. Owners of Lots within the Development will be subject to the following:

(a) Owner's Duty to Notify Association of Lessees & Contract Purchasers.

(i) Sale. At least ten (10) days prior to the consummation of any sale or other transaction which will result in a change in the record ownership of the fee interest in a Lot, the transferring Owner or Owners will provide the following information to the Association, in writing:

(A) The name of each transferor and transferee;

(B) The Lot number and street address of the Lot to be transferred;

(C) The mailing address of each transferee;

(D) The name and address of the escrow holder, if any, for such transfer and the escrow number; and

(E) The proposed date for consummation of the transfer.

(ii) Lease. No later than five (5) days after the execution of a lease on a Lot (or any portion of a Lot) and in all circumstances at least three (3) days prior to providing a lessee with possession of a Lot (or any portion thereof), the lessor (whether an Owner or prior lessee) will provide the Association with an executed copy of the lease and the following information in writing:

(A) The name of each lessor and each lessee;

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(B) The Lot number and street address of the Lot to be leased;

(C) The mailing address of each lessor (whether an Owner or prior lessee);

(D) The commencement and termination dates of the lease; and

(E) The names of all persons who will occupy the Lot under the lease.

(iii) Effect of Failure to Notify. Until such time as the Association receives the notification required in subsections (i) and (ii), above, a transferee or lessee will be deemed to have received any and all notices or other communications required or permitted to be given by the Association hereunder which are duly provided to the transferor or lessor.

Pursuant to Section 4.5(a)(ii)(E), the Board has the power to adopt Association Rules consistent with this Declaration relating to enforcement of these notice requirements and/or to impose penalties, including fines, for failures to give timely notice.

(b) Contract Purchasers. A contract seller may delegate the seller's member rights, including voting rights, pursuant to Section 2.6(a)(iv), above. Notwithstanding any delegation of rights to the contract purchaser, the contract seller will remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(c) Notification Regarding Governing Documents.

(i) As more particularly provided in the California Civil Code Section 1368, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser (A) a current copy of the Governing Documents; (B) the Association's most current financial statement; (C) a true statement in writing from the Association ("delinquency statement") as to the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold; (D) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Regular and Special Assessments (if any) and fees; and (E) a notice of any change in the Association's current Regular or Special Assessments and fees that have been approved by the Board but that have not become due and payable as of the date that the information is provided.

(ii) The Association will, within ten (10) days of the mailing or delivery of a request for the information described in Section (c)(i), above, provide the Owner with copies of said documents. The Association (or its managing agent) will be entitled to impose a fee for providing copies of those documents equal to (but not more than) the reasonable cost of preparing and reproducing the requested materials. In addition, the Association may impose a reasonable fee to cover its actual costs incurred to change its records in connection with a change of ownership of Lot.

(d) Responsibility for Conduct of Others. Each Owner will be fully responsible for informing members of Owner's family, contract purchasers, lessees, servants, employees, guests, invitees and/or licensees of the provisions of the Governing Documents and will be fully responsible for any violation of the provisions of the Governing Documents by members of Owner's family, contract purchasers, lessees, servants, employees, guests, invitees and/or licensees. Each Owner will further be fully responsible for the conduct and activities of Owner's pets and the pets of Owner's family, contract purchasers, lessees, servants, employees, guests, invitees and/or licensees.

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(e) Indemnification for Damage & Injury. Each Owner will be liable to the remaining Owners and the Association for any damage to the Common Area that may be sustained by reason of the willful misconduct, negligent act or omission of the Owner (to the extent any such damage is not covered by insurance). Each Owner must indemnify each and every other Owner and/or the Association against, and hold them harmless from, and defend them against, any claim of any person for personal injury or property damage occurring within the Development due to the willful misconduct, negligent act or omission of the Owner unless the injury or damage incurred is fully covered by insurance.

Each Owner, by acceptance of their deed, agrees personally and for family members, contract purchasers, guests, and invitees, to indemnify each and every other Owner, and to hold such Owner(s) harmless from, and to defend them against, any claim of any person for personal injury or property damage occurring within the Lot of that particular Owner, including Exclusive Use Common Area, if any, except to the extent (i) that such injury or damage is covered by liability insurance in favor of the Association or other Owner or (ii) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or another Owner or other person temporarily visiting said Owner's Lot or the Development.

No decision resulting in the liability of an Owner pursuant to this subsection will be reached without providing such Owner with notice and hearing pursuant to Sections 14.6(e) and (f).

(f) Joint Ownership of Lots. In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents will be joint and several. Without limiting the foregoing, this subsection will apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(g) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, renunciation or abandonment of the Owner's Lot, any other act of renunciation or abandonment or otherwise, may avoid the burdens and obligations imposed on such Owner (by virtue of being an Owner or Association Member) by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and their Lot pursuant to this Declaration. Nor may any Owner divest itself of any such burden or obligation by attempting to assign responsibility therefore to a lessee, manager or any third person.

(h) Obligation to Permit Entry by Association and/or Adjacent Owners. Each Owner will be obligated to permit the Owners of adjacent Lots or the representatives of such adjacent Owners to enter the Owner's Lot for purposes of performing installations, alterations or repairs which are reasonably necessary for the use and enjoyment of their Lot, provided that the adjacent Owner furnishes the Owner whose Lot is being entered upon with at least twenty-four (24) hours written notice of their intent to enter the Lot, specifying the purpose and scheduled time of such entry and will make every reasonable effort to perform their use and schedule their entry in a manner that respects the privacy of the persons residing within the Lot and the convenience of the Owner of the Lot. Each Owner will also honor the right of the Association and its agents to enter Lots as provided in Section 4.4(b) of this Declaration.

Section 2.8. Transfer or Conveyance of Lot Terminates Obligations. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner will not be liable for any Assessments levied with respect to such Lot after the date of recording of the deed evidencing said transfer. No person, after the termination of said person's status as an Owner and prior to said person again becoming an Owner, will incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration.

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The voluntary conveyance of a Lot to a new Owner, however, will not extinguish any obligations of the transferring Owner for unpaid Assessments that were levied against said Lot prior to the subject transfer.

ARTICLE III: RESTRICTIONS & USE OF PROPERTY.

In addition to the restrictions established by law or set forth in the Association Rules promulgated by the Board, the following restrictions are hereby imposed upon the use of Lots and/or Common Areas within the Development.

Section 3.1. Residential Use. Each Lot will be used exclusively for Residential purposes except as provided in Section 3.3, below.

Section 3.2. Leasing of Lots. No Owner, contract purchaser, lessee will be permitted to lease or sublease a Lot for transient or hotel purposes (*i.e.*, a lease which includes providing the occupants with customary hotel service such as room service for food and beverage, maid service, laundry and linen service, or bell service).

All leases for a Lot within the Development must be in writing.

Any lease of a Lot within the Development will be subject to all provisions of the Governing Documents, all of which will be deemed incorporated by reference in the lease or lease agreement. Each Owner-lessor will provide any lessee with a current copy of all Governing Documents and all subsequent Amendments. Each Owner will be responsible for compliance by such Owner's lessee(s) with all of the provisions of the Governing Documents during the lessee's occupancy and use of the Lot. The failure of any lessee to comply with the terms of the Governing Documents will be a default under the lease agreement and a failure to perform a condition and covenant of the lease agreement.

Section 3.3. Restriction on Businesses. No business of any kind will be established, maintained, operated, permitted or conducted within the Development except home offices that result in no external evidence of the home office and/or such professional or administrative businesses as may be permitted by applicable statutes and/or ordinances, provided that there is no external evidence of the business. Such external evidence includes, but is not limited to, increased pedestrian and/or vehicular traffic.

Section 3.4. Offensive Conduct, Nuisance, Obstructions, Hazards or Drilling. The following activities are prohibited and will not be performed on, upon or within the Development:

(a) Activities which are determined by the Board to be noxious, harmful or offensive;

(b) Activities which are nuisances, harassment, annoy or cause unreasonable embarrassment, disturbance or annoyance to any residents of the Development, Owners, Board Members and/or Association agents, service providers and/or employees or which will, in any way, interfere with Residents' use and enjoyment of their Lots and/or the Common Area and facilities thereon;

(c) Activities that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association;

(d) Activities which are in violation of any governmental statute, ordinance, rule and/or regulation;

(e) Drilling, refining, quarrying or mining operations of any kind;

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(f) Use of machinery or equipment of any kind, except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence or appurtenant structures within the Development.

(g) Activities which will obstruct the common walkways or streets located in or upon the Development or interfere with the free use thereof, except such obstruction as may reasonably be required in connection with repairs or for purposes of loading and unloading;

(h) Activities that impede, alter or otherwise interfere with the drainage patterns or facilities in, over, under, across and through the Development, including the drainage patterns and facilities from or through any Exclusive Use Common Area, without the prior written consent of the Board and all public authorities with jurisdiction;

(i) Activities or conditions which would induce, breed, or harbor infectious plant diseases, noxious insects, rodents and/or vermin;

(j) Any excavation, improvement or work which in any way alters any Common Area from its existing state on the date such Common Area was originally constructed will not be made or done except by the Association; and

(k) Emission of unreasonable levels of exhaust fumes and/or noise and/or the parking, keeping and/or storage of dilapidated, non-operational and/or disabled vehicles, including boat trailers.

Without limiting any of the foregoing, no Owner or other resident will cause and/or permit noise or sights which would unreasonably disturb another's enjoyment of their Lot and/or the Common Area.

Section 3.5. Regulation of Owner Activity. In order to promote the Owners' use and enjoyment of the Development and the esthetic and recreational purposes thereof, the Association, in its Governing Documents and/or Association Rules, will be entitled to set forth provisions that regulate, limit or prohibit altogether, subject to legal limitations, any of the following:

(a) The rights of Owners to use portions of the Common Area;

(b) The number of guests each Owner may allow to use the Common Areas;

(c) The type of roofing material on Residences and other Improvements;

(d) The maintenance and assignment of the buoy field which is leased to the Association;

(e) The placement or display of signs of any kind on or from any Lot or the Common Area. The Association will not prohibit such signs as are required for legal proceeding and/or allowed by law, including specifically Civil Code Section 712;

(f) The erection, construction, maintenance or placement of any radio service, including antennas, wiring or other means and/or any electrical, telephone or other wiring or similar items on the exterior of any Building or any part thereof, except as permitted by law. The erection, construction, maintenance or placement of any television service, including multipoint video distribution service, antennas, masts, towers, poles, satellite dishes and/or wiring in the Common Area.

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(g) The erection, construction, maintenance, placement or use of any air conditioning units and/or clotheslines (the prohibition against clotheslines includes drying and/or laundering of clothes) on any portion of any Lot in a manner which is visible from any neighboring Lot or the Common Area;

(h) The keeping, maintaining or breeding of animals, including, but not limited to, livestock, reptiles, domestic dogs and cats, rodents or birds. However, each Owner will be allowed to keep a reasonable number of domestic dogs, cats and other customary household pets. Service dogs are allowed in compliance with State and Federal laws.

While in the Common Area, all dogs and cats will be on a leash and under the control of an individual capable of controlling them. Pet owners are responsible for the timely removal and/or proper disposal of their pets' bodily wastes.

The Association has the right to prohibit the maintenance or presence of any animal within the Development which, after notice and hearing in compliance with Article XIV, is found to be a nuisance to and/or threat to the safety of other Owners. In particular, no aggressive and/or attack trained dogs are permitted in the Development;

Any breach of the Association Rules or of any other Governing Document provision will give rise to the rights and remedies set forth in Article XIV hereof.

Section 3.6. Parking Enforcement & Vehicle Maintenance. As long as applicable ordinances and laws are complied with, including but not limited to California Vehicle Code Section 22658.2 or comparable superseding statute, the Association may cause the removal of any vehicle which is in violation of the Association's vehicle and parking restrictions set forth in this Declaration and/or the Association Rules.

Section 3.7. Owner Improvements. Under no circumstances will any Owner undertake any activity or work with respect to the Owner's Lot that will impair the noise-carrying capacity, structural soundness or integrity of the Common Area and/or another Lot.

Section 3.8. Termination of Mechanics' Lien Rights and Indemnification. No labor performed or materials furnished to and incorporated in a Lot with the consent or at the request of the Owner thereof, Owner's family, lessees, or contract purchasers, or any of their agents, contractors, or subcontractors, will be the basis for filing a lien against the Lot of any other Owner if said Owner has not expressly consented to or requested the same, or against the Common Area.

Each Owner will indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Lot of any other Owner or against the Common Area for construction performed, or for labor, materials, services, equipment, or other products incorporated into the Owner's Lot, at such Owner's request or with its consent.

At the written request of any Owner, the Association will enforce such indemnity by collecting from the Owner of the Lot on which the labor was performed or to which materials were furnished, through Special Individual Assessments against said Lot, the amount necessary to discharge any such lien, including all costs incident thereto.

The provisions of this section will not apply to any labor performed or materials furnished at the request of the management agent or the Board.

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Section 3.9. Trash Disposal. All trash, garbage, accumulated plant waste material, refuse, rubbish and debris will be kept only in covered sanitary containers and/or the appropriate recycling receptacle. No Owner or resident will permit or cause garbage, trash or other waste to be kept upon any portion of the Development, except in said containers.

Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) will be removed from the Development to a public dump or trash collection area by the Owner or lessee at their expense. The Association will be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this section.

Section 3.10. Variances. Upon application by any Owner, the Board will be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article III, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Board will follow the procedures set forth in Section 8.10 for the granting of architectural variances.

ARTICLE IV: HOMEOWNERS ASSOCIATION.

Section 4.1. Association Membership. Every record Owner of a Lot will be a Member of the Association. The Owner(s) of a Lot will hold jointly one membership in the Association for each Lot owned. The membership will be appurtenant to each Lot and may not be separated from ownership of the Lot to which it relates. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed. Lessees who are delegated rights of use pursuant to Section 2.6 hereof do not thereby become Members, although the lessee and members of the lessee's family will, at all times, be subject to the provisions of all Governing Documents.

Each Owner will remain a Member of the Association until their ownership in every Lot in the Development ceases, at which time their membership in the Association will automatically cease. Membership in the Association will not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Lot.

Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of their Lot, the Association will have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller will be null and void.

Section 4.2. Voting. Only Members in Good Standing will be entitled to vote, and only one vote may be cast for each Lot owned by said Member, as more particularly set forth in the Bylaws. When more than one person holds an interest in any Lot, all such persons will be Members, although in no event may more than one vote be cast with respect to any Lot. Voting rights may be temporarily suspended under those circumstances described in Section 14.6, below.

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Section 4.3. One Class of Membership. The Association will have one class of membership and the rights, duties, obligations and privileges of the Members will be as set forth in the Governing Documents.

Section 4.4. Powers and Authority of the Association.

(a) Powers Generally. The Association will have the responsibility of managing and maintaining the Common Areas and Common Facilities and will discharge all duties and responsibilities imposed on the Association by the Governing Documents and applicable California law. In the discharge of such responsibilities and duties, the Association and its Board will have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

The Association and its Board will have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon will be as set forth in this Declaration and Section 6.1 of the Bylaws.

(b) Association's Limited Right of Entry. The Association will have the right, when necessary, to enter any Lot, and Exclusive Use Common Area(s), to perform the Association's obligations under this Declaration, including (i) exterior maintenance or repair obligations; (ii) obligations to enforce the architectural and land use restrictions of Article III and Article VIII hereof; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Areas, Common Facilities, utilities and/or other services; or (iv) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

The Association's rights of entry under this subsection (b) will be immediate in case of an emergency originating in or threatening the Lot where entry is required, or any adjoining Lots or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or Owner's lessee is present. In all non-emergency situations, the Association or its agents will furnish the Owner or Owner's lessee with at least twenty-four (24) hours written notice of the Association's intent to enter the Lot, specifying the purpose and scheduled time of such entry and will make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Lot.

The Association's rights of entry under this subsection (b) will expressly include the right to transfer said rights of entry to others (including, but not limited to employees, contractors and/or service providers retained by the Association) by permit, license, easement, or otherwise, for the benefit of the Planned Development and the Owners of Lots therein.

(c) Association as Attorney-in-Fact for Owners. Without limiting the generality of the foregoing, the Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Lot to (i) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) deal with the Development upon its destruction or obsolescence as hereinafter provided; and (iii) deal with and handle insurance and insurance proceeds, as provided in Articles IX and X hereof, and condemnation and condemnation awards, as provided in Article XI hereof. The acceptance by any person or entity of any interest in any Lot will constitute an appointment of the Association as the Owner's attorney-in-fact as provided above.

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Section 4.5. Board of Directors. The affairs of the Association will be managed by or under the direction of the Board. The number and qualifications of the Directors will be as established in the Bylaws.

(a) Powers of the Board. The Board will have all of the powers and duties set forth in the Governing Documents:

(i) Exclusive Power. Except as expressly otherwise provided herein, the powers and duties of the Association which the Governing Documents do not reserve to the Members will be exclusively exercised and performed by the Board (or such Committees or officers as the Board may establish, elect or appoint pursuant to the provisions of the Bylaws). Any power to be exercised or duty to be performed by the Association may not be exercised or performed by any Owner without the written consent of the Board.

(ii) General Powers of the Board. Without limiting any powers of the Board conferred elsewhere in the Governing Documents, the Board will have the following powers:

(A) To call meetings of the Members.

(B) To appoint and remove at pleasure all officers, committees (including the Nominating and Design Review committees), agents and employees of the Association, prescribe their duties, fix their compensation (subject to Section 4.6(c)), and require of them such security or fidelity bonds as it may deem expedient. Nothing contained in this Declaration may be construed to prohibit the employment by the Association of any Member, Director or officer of the Association in any capacity whatsoever.

(C) To establish, fix, levy, assess and collect assessments against the Owners of Lots within the Development and to enforce payment of such Assessments in accordance with Article V of this Declaration. Any Assessments levied by the Association on its Members will be levied in accordance with and pursuant to the provisions of the Governing Documents.

(D) To authorize and cause the Association, subject to Section 4.6, to: (1) enter into management contracts and contracts for the day-to-day operation of the Association and the discharge of its responsibilities and obligations; or (2) enter into lease, license or other agreements for the use of property or facilities not a part of the Common Area. No contract for professional management may have a term of more than three (3) years and each such contract will be subject to all the other provisions hereof and may be terminable by either party without cause or payment of a termination fee on sixty (60) days written notice.

Any reference to the "term" of a contract as used in this Section 4.5(a)(ii)(D) will not include any option or automatic renewal or extension period so long as the term of the contract may not be renewed or extended if notice is given by the Association pursuant to provisions contained within the contract.

(E) To adopt, amend, and repeal Association Rules consistent with this Declaration relating to (1) the maintenance, repair, management and use of the Common Area and all facilities thereon by Owners, their lessees, guests and invitees or any other persons who have rights of use and enjoyment of such Common Area and Common Facilities, including the right to restrict the use of certain land, facilities, air space, or structures to the Association or its officers, agents or employees; (2) minimum standards for the maintenance of landscaping or other improvements on Lots or any Exclusive Use Common Areas; (3) architectural control and the rules governing the Architectural Review Committee under Article VIII; (4) regulation of parking, pet ownership and other matters subject to regulation and restriction under Article III hereof; (5) the conduct of an Owner and its family, contract purchasers, lessees, and their guests, invitees or licensees, with respect to the Development and the other Owners or occupants of the Development; (6) the conduct of disciplinary proceedings in accordance with Section 14.6 hereof; (7) reasonable charges for labor, services, or expenditures incurred at the request of an Owner or as a result of the actions of an Owner; (8) collection and disposal of refuse; (9) the interpretation of provisions of, and terms used in, this Declaration (said interpretation will be conclusively presumed to be correct so long as it is not inconsistent

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with this Declaration.); and (10) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules may not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of Members thereunder. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents will be deemed to prevail over those in the Association's Rules.

(F) To delegate its powers to committees, officers, or employees of the Association.

(G) To incur debt for the purpose of maintaining and improving the Common Area, and to encumber the Development, including specifically member assessments, of the Association as security for the repayment of such debt.

(H) To grant easements on, over, under, across, and through the Development for public utility and other purposes consistent with the provisions of this Declaration and the intended use of the Development as a Planned Development.

(I) Except as expressly otherwise provided herein, the Board will have the exclusive right and obligation to manage and administer the Common Area and to contract for all goods, services, and insurance, payment for which is to be made from the assessments hereinafter provided.

(J) Open bank accounts on behalf of the Association and designate the signatories to such bank accounts.

(K) Bring and defend actions on behalf of two or more Members or the Association to protect the interests of the Members or the Association, as such, as long as the action is pertinent to the operations of the Association, and to assess the Members for the cost of such litigation. However, the Board will have the discretion to decide whether or not it is in the Association's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Association (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs.

Prior to filling litigation regarding any disciplinary action against a Member, the Board will comply with the requirements set forth in Section 14.6.

(iii) No Active Business. Nothing contained in this Declaration, however, may be construed to give the Board authority to conduct an active business for profit on behalf of the Association, all of the Owners, or any of them. The Board will have no such power. However, this subsection (iii) will not prohibit the Association and/or its Board from acquiring, owning, leasing and/or sell any Lot within the Development.

(b) Duties of the Board. The Board will:

(i) Association Duties. Cause all duties imposed on the Association by Governing Documents to be properly performed.

(ii) Records. Cause a complete record of all its acts and corporate affairs to be kept, and to prepare budgets and financial statements for the Association.

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(iii) Supervise. Supervise all officers, agents and employees of the Association and to see that their duties are properly performed.

(iv) Assessments. With reference to assessments of the Association:

(A) Fix, levy and collect assessments pursuant to the provisions of Article V of this Declaration.

(B) Approve the annual budget and fix the amount of the assessment against each Member for each assessment period in compliance with the provisions of Civil Code Section 1365, *et seq.*, or comparable superseding statute;

(C) Prepare a roster of the Members and assessments applicable thereto that will be available for inspection by any Member, pursuant to Section 12.1 of the Bylaws regarding Member's inspection rights;

(D) Send written notice of each assessment to every Member subject thereto; and

(E) Issue certificates as required by Sections 5.13 and 8.15.

(v) Insurance. Contract for casualty, liability and other insurance, sureties and/or bonds (including indemnity bonds) on behalf of the Association with such coverages and in such amounts as required by this Declaration and as deemed necessary by the Board.

(vi) Vacancies. Fill a vacancy or vacancies on the Board except for a vacancy created by the removal of a Board Member by a Member recall (*See* Section 6.6 of the Bylaws).

(vii) Discharge of Liens. Pay any amount necessary to Bond or discharge any claim which may be or become a lien or encumbrance levied against the Development as a whole or any part thereof which constitutes a lien against the Common Area, rather than merely against the interest therein of particular Owners; provided, however, that where one or more Owners are responsible for the existence of such lien, they will jointly and severally be liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens will be assessed against each such Owner and its Lot as provided in Section 5.4. No decision resulting in such liability or assessment may be reached before providing the Owner or Owners with notice and hearing satisfying the requirements of Section 14.6 of this Declaration.

(viii) Enforcement. Commence and maintain, in the name of the Association and on its behalf, or in the name and on behalf of any Owner who consents thereto, actions for damages arising from, or to restrain and enjoin, or to take any reasonable action necessary to prevent, any actual or threatened violation of the provisions of the Governing Documents, the orders and awards of arbitration, or resolutions of the Board, or to enforce, by mandatory injunction or otherwise, the provisions of the foregoing.

The Board will have the discretion to decide whether or not it is in the Association's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Association (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs.

The Board may suspend the voting rights of an Owner or suspend the privileges of an Owner to use the recreational facilities located on the Development, or assess monetary penalties against any Owner or other person entitled to exercise such privileges for any violations of the provisions of the foregoing;

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provided that the accused Owner or other person is given fair notice and the opportunity to be heard (in satisfaction of the minimum requirements of Section 14.6 of this Declaration) with respect to the alleged violation before a decision to impose discipline is made. The Board may delegate some or all of its enforcement rights to a Disciplinary Committee.

Notwithstanding anything to the contrary herein contained, neither the Board nor the Association will have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of its Lot, including access thereto over and across the Common Area, except when such loss or forfeiture is the result of (A) a judgment of a court, (B) a decision arising out of arbitration, (C) on account of a foreclosure (judicial or under the power of sale herein granted) for failure of the Owner to pay the assessments levied pursuant to the provisions hereof.

In the event legal action is instituted by the Board pursuant to this section, any judgment rendered in any such action will include all costs of collection, court costs and reasonable attorneys' fees.

(ix) Operating Requirements. Obtain any other material, supplies, furniture, property, labor, services, maintenance, repairs, construction, reconstruction, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay by law, local requirement, or pursuant to the terms of this Declaration, or as is necessary for the operation of the Development, or for the enforcement of this Declaration; provided, however, that if any such materials, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for particular Lots, the costs thereof will, as is reasonable, be assessed to such Lots and the Owners thereof as provided in Section 6.3 or as provided in the Bylaws.

Section 4.6. Limitations on Powers of the Association. Neither the Board nor the Association will have the power to take, and both are hereby expressly prohibited from taking, any of the following actions without the vote or written assent of a majority of the voting power of the Association's Members:

(a) Entering into a contract with a third person to furnish goods or services for the Common Area, the Lots or the Association for a term longer than one (1) year with the following exceptions:

(i) A management contract as long as such contract contains provisions that allow the Association to terminate the management services under the contract upon a notice period that does not exceed sixty (60) days.

(ii) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission (and contracts with utility districts, sanitary services providers, energy providers, telephone service providers and/or cable or satellite dish or comparable service provider); provided, however, that the term of the contract will not exceed the shortest term for which the supplier will contract at the regulated rate.

(iii) Prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the policy permits for short-rate cancellation by the insured.

(iv) Lease agreements for equipment not to exceed five (5) years' duration.

(v) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not to exceed five (5) years' duration.

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For purposes of this subsection, the one (1) year maximum "term" of a contract does not include any option period(s), renewal period(s) and/or extension(s) of time to the contract term so long as the

contract contains provisions allowing the Association to non-renew and/or cancel the contract upon the expiration of the term.

(b) Selling, during any fiscal year, property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

The Board of Directors shall not convey, exchange, lease, mortgage, encumber, transfer upon trust or otherwise dispose of any of the real property of the Association without the affirmative vote or written consent of three/fourths (3/4) of the Members. No proxy vote shall be counted upon such issue at either an annual or special meeting unless the meeting notice shall have stated specifically that such a transaction would be considered and shall set forth the details thereof.

(c) Paying compensation to Directors or officers of the Association for services performed, except that the Board may authorize reimbursement to a Director or officer for expenses incurred in carrying on the business of the Association.

(d) Filling a vacancy on the Board caused by the removal of a Director by the Members.

Section 4.7. Nonliability of Officials. To the fullest extent permitted by law, neither a Director, officer, Committee of the Association or Member of a Committee of the Association, nor the Board (collectively and individually referred to as the "Released Party"), may be liable to any Member, Owner, the Association or any other party for any damage, loss, claim, liability or prejudice suffered or claimed on account of any decision, approval, disapproval, course of action, act, inaction, omission, error, negligence or the like made in good faith and within which such person or entity reasonably believed to be within the scope of its duties.

(a) Claims Regarding Breach of Duty. No Released Party will be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability will extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer Member of the Board or volunteer officer of the Association may recover damages from such Board Member or officer if all of the following conditions are satisfied:

(i) The Board Member or officer is an Owner of no more than two Lots;

(ii) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;

(iii) The act or omission was performed in good faith;

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(iv) The act or omission was not willful, wanton, or grossly negligent;

(v) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one or more policies of insurance that include coverage for general liability of the Association and individual liability of the officers and directors of the Association for negligent acts or omissions in their official capacities, with minimum coverage for both types of insurance equal to the amounts specified in Civil Code Section 1365.7(a)(4)(B) or comparable superseding statute (current limits are $500,000.00).

The payment of actual expenses incurred by a Board Member or officer in the execution of that person's Association duties will not affect that person's status as a volunteer Board Member or officer for the purposes of this section. However, any director or officer who receives direct or indirect compensation from the Declarant or from a financial institution that acquired a Lot within the Properties as the result of a judicial or nonjudicial foreclosure proceeding is not a volunteer.

The provisions of this subsection (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations under Civil Code Section 1365.7. In the event that Civil Code section is amended or superseded by another, similar provision of the California statutes, this subsection (b) will be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor code provision.

(c) Indemnification of Directors, Officers, Employees and/or Agents. The indemnification rights (including the right to advancement of expenses) of Directors, Officers, employees and/or agents will be governed by the provisions of Corporation Code Section 7237 or comparable superseding statute.

As set forth in Article IX, the Association has the right to purchase and maintain insurance on behalf of its Directors, Officers, employees and/or agents against liability asserted against or incurred by any Director, Officer, employee and/or agent in its capacity or status as such.

ARTICLE V: ASSESSMENTS.

Section 5.1. Assessments Generally.

(a) Covenant to Pay Assessments. Each Owner of one (1) or more Lots, by acceptance of a deed or other conveyance therefor (whether or not it will be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments levied by the Association as hereinafter provided, together with all additional charges. Such deed or conveyance will be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board may deem necessary or appropriate for the collection of such assessments and charges and for the enforcement of the liens hereinafter provided for.

Each such Assessment will be established and collected as hereinafter provided. No Owner may waive or otherwise escape liability for any assessment provided for herein by nonuse of the Common Area or by abandonment.

(b) Extent of Owner's Personal Obligation for Assessments. The obligation to pay Assessments and charges and the right and power of the Association to initiate all actions and procedures for collection will run with the land, so that each successive Owner or Owners of record of any Lot within the Development will, in turn, become liable to pay all Assessments and charges assessed during the time

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they are record Owner of such Lot. All Assessments permitted or required herein, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, will be a separate, distinct and personal debt and a personal obligation of the Person who was the Owner of the Lot at the time the Assessment was levied.

Any Grantee and/or Owner who acquires title to a Lot (whether at judicial sale, trustee's sale or otherwise) will be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of such sale, and will not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability.

After a record Owner transfers, of record, any Lot they own, they will not be liable for any Assessments levied after the transfer with respect to that Lot. Any unpaid Assessment of a previous Owner will remain the debt of such previous Owner against whom assessed and the previous Owner will remain personally liable. A contract seller of any Lot will continue to be liable for all Assessments and charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder of Placer County.

(c) Authority of Board. The Board will have the power, duty and authority to levy Regular and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law. The Board may not levy or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied. The Board will also have the power and authority to levy Special Individual Assessments against Owners.

(d) Creation of Assessment Lien. All delinquent Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, will be a charge on the Lot and will be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this Article V may be subject to foreclosure as provided in Section 5.9(b) hereof.

The Association will have a separate lien and a separate lien is hereby created upon each Lot against which an Assessment is made to secure the payment of any such Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, made under this Article V. The lien provided for herein will continue to secure all Regular, Special and Special Individual Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, made on any Lot notwithstanding the transfer of record title to such Lot, and any such transfer will be subject to the Association's lien, as long as said transfer occurred after recordation of this Declaration.

The priority of all such liens on each Lot will be in inverse order so that upon the foreclosure of the lien for any particular Assessment, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, on any Lot, any sale of such Lot, pursuant to foreclosure of the lien, will be made subject to all liens securing the respective Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, on such Lot for succeeding periods of time.

(e) No Avoidance of Assessment Obligations. No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by them from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of their Lot or any other portion of the Development.

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(f) Offsets. All Assessments levied by the Association will be payable in the full amount specified, including any additional charges imposed as provided for by the Governing Documents. No offsets against any such Assessment will be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents.

Section 5.2. Regular Assessments.

(a) Purpose of Regular Assessments. All Regular Assessments levied by the Association will be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Development and, in particular, for the maintenance, operation and improvement of the Lots, Common Area, and any real or personal property in which the Association holds an interest.

(b) Annual Budget; Regular Assessments & Board Authority. In accord with the timing provisions of Civil Code Section 1365 (or comparable superseding statute), if any, the Board will estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities), prepare and then distribute to all Association Members a budget satisfying the requirements of Section 11.2 of the Bylaws.

If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board may not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners (*See* Sections 4.7 and 5.5(a)(i) of the Bylaws for quorum and vote requirements).

(c) Board or Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) will become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in subsections (d) and (f) below, the Board may not impose a total aggregate Regular Assessment that is more than twenty percent (20%) greater than the total aggregate Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members casting a majority of the votes at a duly called meeting or election of the Association (*See* Section 5.7, below).

For purposes of this subsection (c), the phrase "total aggregate Regular Assessment" means the amount of Regular Assessment assessed to and due from all Lots for that particular year.

(d) Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment will not apply to Assessment increases necessary to address emergency situations. For purposes of this subsection (d), an emergency situation is any of the following:

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

(ii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to subsection (a), above, provided that, prior to the imposition or collection of an assessment under this

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subsection (d)(iii), the Board will 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. The Board's resolution will be distributed to the Members together with the notice of assessment.

(e) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subsection (a), above, will be equally divided and then allocated among, assessed against, and charged to each Owner/Lot.

(f) Failure to Make Estimate. If, for any reason, the Board fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year will be automatically assessed against each Owner and their Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment will be payable on the regular payment dates established by the Association.

The failure of the Board to fix Regular Assessments hereunder before the expiration of any year, for that or the next year, may not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year. Failure to provide a copy of the budget to any Owner will not affect the validity of assessments based thereon so long as that Owner receives reasonable notice before the Association commences any action or proceeding to enforce collection thereof.

(g) Assessment Due Date, Installment Payments & Delinquency. The Regular Assessment levied against each Owner and their Lot for the current fiscal year may be divided into twelve (12) equal monthly installments so long as the respective Owner is not in default (*i.e.*, current on all assessments). Each monthly installment is due and payable on the first day of each month or in such other manner and/or on such other date or dates as may be established from time to time by the Association's Board.

Installments of Regular Assessments will be delinquent if not actually received by the Association or its designated agent by the fifteenth (15th) day of the month in which the Assessment is due (or the next business day thereafter). In the event of a default in the payment of any installment, the Association may pursue the remedies set forth in Section 5.9, below, as to said delinquency.

(h) Mailing Notice of Assessment. The Board will mail to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than forty-five (45) days prior to the beginning of the next fiscal year.

Section 5.3. Special Assessments.

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in subsection (b), below, the Board will have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by Section 5.2(b), the Board will levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its

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obligations hereunder. The Board's assessment authority pursuant to this Section 5.3(a)(i) will be subject to membership approval requirements under the circumstances described in Section 5.2(b).

(ii) Capital Improvements. Pursuant to Section 6.5, the Board may also levy Special Assessments for additional capital improvements within the Common Area (*i.e.*, improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, replacement, and repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article IX hereof.

(b) Special Assessments Requiring Membership Approval. No Special Assessments described in Section 5.3(a)(i) hereof, which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied; or (ii) in the last sentence of Section 5.2(b), may be made without the vote or written approval of the Owners. (*See* Sections 4.7 and 5.5(a)(i) of the Bylaws for quorum and vote requirements).

This Owner approval requirement will not apply to any Special Assessment levied to address "emergency situations" as defined in Section 5.2(d).

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment will be divided among, assessed against and charged to each Owner and their Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 5.2(e), above. Notice of the Special Assessment so levied will be mailed to each Owner.

Special Assessments for purposes described in Section 5.3(a)(i) will be a separate debt of the Owner and a lien against their Lot. Unless the time for payment is extended by the Board, payment of all Special Assessments will be due no sooner than ten (10) days after the Association gives the Owners written notice thereof.

The Board may, in its discretion, prorate the amount of any Special Assessment over a period of months. If prorated, the monthly prorated amount of any Special Assessment will be due and payable at the same time as the Regular Assessment monthly installments.

Installments of Special Assessments will be delinquent if not actually received by the Association or its designated agent by the fifteenth (15th) day of the month in which the Special Assessment is due. In the event of a default in the payment of any Special Assessment, the Association may pursue the remedies set forth in Section 5.9, below, as to said delinquency.

Section 5.4. Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 5.3, above, the Board may impose Special Individual Assessments against an Owner in any of the circumstances described in subsections (i) through (vi), below or as otherwise provided in this Declaration or the Governing Documents, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this Section 5.4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 14.6 hereof, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the

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Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of a Lot which the Association is obligated to repair and maintain is caused by the willful misconduct and/or negligent act or omission of any Owner, the Board will cause the same to be repaired or replaced, and all costs and expenses, including but not limited to any costs or expenses incurred in deterring, apprehending and/or identifying those persons causing damage, incurred in connection therewith (to the extent not compensated by insurance proceeds) will be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Development that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or their Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) will be assessed and charged solely to and against such Owner as a Special Individual Assessment.

As long as Civil Code Section 1367(c) (or comparable superseding statutes) places restrictions upon the Association's foreclosure powers, any lien that is based upon one or more Special Individual Assessment imposed by the Board as a disciplinary measure (*i.e.,* fines or penalties imposed under Article XIV) can only be enforceable by the sale of said Lot pursuant to judicial foreclosure. All other liens under subsection (ii) may be enforceable by the sale of said Lot under nonjudicial foreclosure by power of sale pursuant to Civil Code Sections 2924, 2924b and/or 2924c or comparable superseding statute(s).

(iii) Required Maintenance on Lots. As more particularly provided in Section 4.4(b) and 6.3(b) (and without limiting the generality of those sections), if the Board, in its discretion, determines that any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk, or improper weed or vegetation control, the Association will have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

(iv) Maintenance to Utilities. As more particularly provided in Section 6.1(b)(v), if the Board, in its discretion, determines that the maintenance and repair of utility lines maintained in the Common Area service only one Lot, then the Board may impose an assessment against the Owner of that Lot for the cost of such maintenance and/or repair.

(v) Diminution in Insurance Proceeds. As more particularly provided in Section 9.5, the Association will levy a Special Individual Assessment for the amount of the loss in insurance proceeds against any Owner who, in violation of Sections 3.4(c) and 9.5, caused any diminution in the insurance proceeds otherwise payable to the Association due to the Owner's individual casualty insurance.

(vi) Increase in Insurance Burden. The Association will have the authority to levy a Special Individual Assessment for the amount of the increased insurance premium against any Owner who, in violation of Sections 3.4(c) and/or 6.2(d), caused any increase in the rate of insurance paid by the Association to reimburse the Association for any such increase in the rate of insurance.

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(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in Section 5.4(a), notice thereof will be mailed to the affected Owner and the Special Individual Assessment will thereafter be due as a separate debt of the Owner payable in full to the Association within fifteen (15) days after the mailing of notice of the Assessment.

Installments of Special Individual Assessments will be delinquent if not received by the Association or its designated agent within fifteen (15) days from the due date. In the event of a default in the payment of any Special Individual Assessment, the Association may declare that Owner's Special Individual Assessment to be in default and pursue the remedies set forth in Section 5.9, below, as to said delinquency.

Section 5.5. Reasonableness of Assessments. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that will be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments will not pass to the Owner's successors in title unless expressly assumed by them.

Section 5.6. Exemption of Certain Parts of the Development From Assessments. The following real property subject to this Declaration will, unless used as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

(a) Any portion of the Development dedicated and accepted by a local public authority;

(b) The Common Area and Common Facilities; and

(c) Any Lot owned by the Association.

Section 5.7. Notice and Procedure for Member Approval. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 5.2 and/or 5.3, approval of the requisite percentage of the Members will be solicited either by written ballot conducted in accordance with Corporations Code Section 7513 and Section 4.6 of the Bylaws or at a meeting of the Members called for that purpose, duly noticed in accordance with Section 5.4 of the Bylaws. The quorum required for such membership action will be the percentage required by Section 5.5(a)(ii) of the Bylaws.

Section 5.8. Maintenance of Assessment Funds.

(a) Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or other charges thereon, will be promptly deposited in two (2) or more insured checking, savings or money market accounts in a bank, savings and loan association or other financial institution selected by the Board which has offices located within the United States of America, which accounts will be clearly designated as either an "operating" or "reserve" account.

The Association will establish and maintain cash deposit accounts into which will be deposited all assessments. Disbursements from such account will be for the general operation of the Association including, but not limited to, wages, repairs, betterments, maintenance, and other operating expenses of the Development. The Association will maintain other accounts necessary to carry out its purposes, including (at minimum) a reserve account for replacement of capital improvements as set forth in this Article V.

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In addition, the Board will be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees.

The Board, and such officers or agents of the Association as the Board may designate, will have exclusive control of said account(s) and investments and will be responsible to the Owners for the maintenance at all times of accurate records thereof.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits will be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subsection (b), below.

(b) Separate Accounts & Commingling of Funds. Except as provided below, the proceeds of each Assessment will be used only for the purpose for which such Assessment was made, and such funds will be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association must maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to Section 5.3 will be accounted for together with the receipts and disbursements of Regular Assessments.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds will be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

(c) Checks. All checks (or other demands for payments of Association money) and/or notes of the Association must be signed by the President or by such other Directors and/or Officers or such other person or persons as the Board may from time to time designate. Notwithstanding the foregoing, any withdrawal of funds from Association reserve accounts will require the minimum signature requirements of Civil Code Section 1365.5 (*i.e.,* two Directors or an Officer (who is not a Director) and a Director).

Section 5.9. Collection of Assessments; Enforcement of Liens.

(a) Delinquent Assessments. If any payment of a Regular or Special Assessment (installment or lump sum) or any payment of a Special Individual Assessment assessed to any Owner is not received by the Association or its designated agent within fifteen (15) days after the same becomes due, such payment will be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate

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allowed by law beginning thirty (30) days after the due date until the same is paid. (The Civil Code currently allows 12% simple interest as the maximum rate.)

In addition to the accrual of interest, the Board is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by California Civil Code Sections 1366(c) and 1366.1 or comparable superseding statutes, if any.

(b) Effect of Nonpayment of Assessments.

(i) Creation and Imposition of Liens for Delinquent Assessments. The amount of any delinquent Regular, Special or Special Individual Assessment together with any late charges, interest, costs and/or reasonable attorneys' fees attributable thereto or incurred in the collection thereof, will become a lien upon the Lot of the Owner so assessed. Each default will constitute a separate basis for a lien.

Lien priorities will be governed by Sections 5.11 and 5.12, below.

Subject to the limitations imposed by Civil Code Section 1367(a) or comparable superseding statute, if any, any partial payments the Association receives will be applied as specified in the Association's Collection Policy and/or Association Rules.

Pursuant to Section 5.11, below, the lien and the Notice of Delinquent Assessment will relate back to the date of recordation of this Declaration and be prior to all other liens (except the lien or charge of any First Mortgage of record) recorded subsequent to this Declaration.

Upon the Association's receipt of payment of the sums specified in the Notice of Delinquent Assessment, the Association will cause to be recorded in the Office of the County Recorder of the County of Placer, State of California, a Notice of Satisfaction and Release of Lien.

(ii) Remedies Available to the Association to Collect Assessments. In the event of default in payment of any assessment, the Association may commence any procedure for collection upon its own decision. In addition to any other remedies herein or by law provided, the Association may enforce each such obligation as follows: The Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the subject Lot or accept a deed in lieu of foreclosure.

Foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure, subject to the applicable law.

(iii) Nonjudicial Foreclosure. Nonjudicial foreclosure will be commenced by the Association in compliance with California law. (*See* Civil Code Section 2924c, or comparable superseding statute).

Each of the Owners does, by mere acceptance of a deed to a Lot, gives the Association the power to appoint a trustee and attorney-in-fact by special power of attorney to enforce and to foreclose such lien by private power of sale as provided in Division Third, Part 4, Title 14, Chapter 1, Article 1, Sections 2920 et seq. of the Civil Code of the State of California and further grants to the Association the authority and power to sell the subject Lot of such defaulting Owner, or any part thereof to satisfy said lien, for lawful money of the United States to the highest bidder. The Association will have the rights conferred by California Civil Code Section 2934a to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of

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said Section 2934a, the Association will be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Association will be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder.

(iv) Judicial Foreclosure. In the event foreclosure is by action in court, reasonable costs, including attorneys' fees, will be allowed.

(v) Actions for Money Judgment. In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

Section 5.10. Transfer of Lot by Sale or Foreclosure. The following will govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Lot.

(a) Except as provided in subsection (b), below, the sale or transfer of any Lot will not affect any Assessment lien duly recorded with respect to that Lot before the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) However, the Association's assessment lien will be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Lot under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed-in-lieu of foreclosure). A "prior encumbrance" means the earlier of either of the following two (2) recordation dates: (1) First Mortgage or other mortgage or lien; or (2) this Declaration.

(c) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, will relieve the new Owner of that Lot (whether it be the former beneficiary of the First Mortgage or other prior encumbrance, or a third party acquiring an interest in the Lot) from liability for any assessments thereafter becoming due or from the lien thereof.

(d) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, will affect the Association's right to maintain an action against the foreclosed previous Owner of the Lot personally to collect the delinquent assessments, late charges, interest, and associated costs of collection incurred by that prior Owner prior to the sale or transfer.

Section 5.11. Creation of Lien. There will be a continuing Lien, arising as of the recordation of this Declaration, on each Lot within the Development to secure the payment obligations of the Lot Owner as to any and all Association Assessments. The priority of any Lien created pursuant to this article will arise at the earliest of the following two (2) dates: (1) date that this Declaration was recorded or (2) the date that the notice of assessment (pursuant to Civil Code Section 1367 or comparable superseding statute) was recorded.

Section 5.12. Priorities. Except as otherwise provided by law, the Lien securing each of the Assessments provided for under this Article V will have priority, as of the date of recording of this Declaration applicable to the Development, over all other liens and encumbrances applicable to the Lots, except (a) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any First Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over all other Mortgages or deeds of trust) made in good faith and for value, provided that such subordination will apply only to the Assessments which have become due and payable prior to the transfer

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of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such First Mortgage or deed of trust, or other prior encumbrance.

Section 5.13. Estoppel Certificate. A certificate executed by the Association setting forth the amount of any due and unpaid assessments with respect to a Lot (or the fact that all assessments due are paid, if such is the case) will be conclusive against the Association, and/or the Owners in favor of any and all persons who rely thereon in good faith. Any Owner will be entitled to such a certificate within ten (10) days after demand therefore and upon payment of a reasonable fee.

Section 5.14. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes may be included in the Regular Assessments imposed pursuant to Section 5.2 and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

Section 5.15. Assignment of Rents. Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable. Upon Owner's default, the Association after providing written notice to the defaulting Owner may, in its discretion, revoke the authority allowing the defaulting Owner to collect and retain rents and other monies.

Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this Section 5.15 will be subordinate to the rights of any First Mortgagee.

Section 5.16. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article V, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Lot.

ARTICLE VI: MAINTENANCE RESPONSIBILITIES.

The Development will be maintained in an attractive, safe, and sanitary condition and in a good state of repair.

Section 6.1. Association Maintenance Responsibility.

(a) Common Area. Except as is provided in this Section 6.1, the Association will be solely responsible for all maintenance, repair, and replacement within the Common Area, including all buildings, facilities, Improvements and landscaping thereon. Without limiting the generality of the foregoing, the Association will have the duty to maintain, repair, and replace utility facilities, excluding those utility facilities maintained by utility companies or agencies; landscaping; the open spaces; piers; beaches; meadows; lighting fixtures; the parking areas; and the Common Area perimeter fences (including but not limited to fences separating the Common Area and individual Lots).

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No person other than the Association or its duly authorized agents will construct, reconstruct, refinish, alter or maintain any Improvement upon, or will create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person will remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area, without express approval of the Association.

(b) Lots/Residences. In addition to maintenance upon the Common Area, the Association will provide maintenance as follows:

(i) The maintenance and repair of utilities, including but not limited to plumbing, electrical, heating, air conditioning, cable television, located within the Common Area. Except that if the repairs are to utilities that service only one Lot, then the Board may impose an assessment against the Owner of the Lot pursuant to Section 5.4.;

(ii) The maintenance and repair of parking area near piers, roads, and driveways;

(iii) The maintenance and repair of fences, except for Party Fences (see 6.2(c)).

The scheduling of all Lot/Residence maintenance by the Association will be determined by the Board and will be based upon such relevant factors including but not limited to previous maintenance records and cost/benefit analysis of maintenance versus replacement costs.

(c) Right of Entry. Pursuant to Sections 4.5(b) and 5.4(a)(iii), above, the Association, and/or its agents/representative will have the right, when necessary, to enter any Lot, including Exclusive Use Common Area(s), to perform the Association's obligations under this Declaration, including making necessary repairs that an Owner has failed to perform under Section 6.2, below, and/or perform work because a Lot or any part thereof has become a nuisance, fire or safety hazard and then recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

Section 6.2. Owner Maintenance Responsibilities.

(a) Common Area. Each Owner will be responsible and liable for the costs incurred in order to repair or replacement of any portion of the Common Area that is required, due to or caused by the willful or negligent act/omission of an Owner, unless such repairs and replacements are covered by insurance carried by the Association. If the repairs and replacement are covered by insurance carried by the Association, then the Association is only responsible to the extent of such insurance coverage.

(b) Exclusive Use Common Area. Each Owner will be responsible for maintaining those portions of the Exclusive Use Common Areas to which the Owner has an exclusive easement as set forth in Section 2.3 in a clean, sanitary, attractive, and safe condition.

(c) Lots/Residences. Except to the extent that maintenance, repair or replacement of any Lot/Residence (or portion thereof) is expressly and clearly made the responsibility of the Association in Section 6.1, above, each Owner will be responsible for any and all maintenance, repair and replacement of the Owner's Lot and Residence, including but not limited to all buildings, Improvements, and Party Fences located on either the Lot or the Residence.

If the maintenance, repair, or replacement includes or involves any structural repair or replacement that is visible from the Common Area and/or public streets, the structural repair or replacement will be in conformance with the architectural design of the Development.

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This subsection (c) of Section 6.2 will not entitle any Owner to interfere with the use and enjoyment of the Common Area or of the other Lots/Residences; and/or violate any other provision of the Governing Documents.

Pursuant to Civil Code Section 1364, or superceding statute, each Owner is responsible for the repair and maintenance of their Lot and Residence as may be occasioned by the presence of wood-destroying pests or organisms.

Each Owner will also be responsible for the maintenance, repair or replacement of Residence interiors; Residence furnishings; and utility installations, appliances and/or fixtures which service that Lot only and are located within such Lot.

(d) Party Fences. Except as the extent that maintenance, repair or replacement of any Party Fence (or portion thereof) is expressly and clearly made the responsibility of the Association in Section 6.1, above, the cost of reasonable repair and maintenance of a Party Fence will be shared by the Owners who make use of the wall in equal proportion to such use. All such Owners will be responsible for the maintenance, repair, reconstruction and replacement of the Party Fence. However, if an Owner who by their negligent or willful act causes a Party Fence to be exposed to the elements and/or damaged, said Owner will bear the whole cost of furnishing the necessary protection against such elements and/or repairs.

No Owner may alter the shape, size, or construction or use any materials different from those used in the initial construction of any such Party Fence without the written consent of the Association.

If a Party Fence is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they will contribute to the cost of restoration thereof in equal proportion without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(e) Personal Property. The duty to repair, replace or restore personal property in the Development, including personal property of any occupant or Owner of any Lot, that is due to and/or results from water infiltration and/or water leaks from any pipes, drains, conduits, appliances and/or equipment; and/or from outside any Lot or any part of a building; and/or any other place or cause, unless caused by the gross negligence of the Association, its Board, Officers, manager and/or employee will be borne by the owner of said personal property. Persons bound by this Declaration agree to bear the risk of any such loss and that the Association will not be liable to reimburse them for property damage that is not covered by the Association's insurance.

Section 6.3. Recovery of Costs of Certain Repairs and Maintenance.

(a) In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs will be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 5.4 and the procedural requirements of Section 12.6.

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(b) In the event that an Owner fails to perform maintenance functions for which Owner is responsible, the Association may give written notice to the offending Owner with a request to correct the

failure within thirty (30) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance within the allotted time, the Association may exercise its rights under Sections 4.5(b) and 5.4(a)(iii) to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 12.6, hereof.

Section 6.4. Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the maintenance obligations hereunder, individual Owners and the Association will cooperate in the performance of maintenance work.

Section 6.5. Capital Improvements.

(a) Petition; Association Approval; Owner Approval. One-third (1/3) of the Owners may from time to time, in writing, petition the Association for the construction, installation or acquisition of capital improvements on or to the Common Area. Such petition will be in such form and will contain such information as the Association may require, including, without limitation, preliminary plans and cost estimates. The Association, through the Board, may from time to time and on its own motion move for the construction, installation or acquisition of a capital improvement, in which case such motion will be treated as if it were a petition duly submitted by the Owners.

(b) Approval of Petition. The Association may approve the petition if it determines that the proposed capital improvement is desirable for the beneficial use and enjoyment of the Common Area and/or the Lots, is economically feasible, is in conformance with applicable zoning, and has received all governmental required approvals.

(c) Bids. Upon the approval of such petition by the Association, the Association will obtain firm bids on the total cost of constructing, installing, or acquiring the proposed capital improvement, and the lowest acceptable bid or bids will be deemed the estimated total cost of such capital improvement.

(d) Approval by Owners. If during the fiscal year aggregate expenditures for capital improvements exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the Association will present the proposed capital improvements and the estimated total cost thereof to all Owners for approval and obtain the Owners approval. (*See* Sections 4.7 and 5.5(a)(i) of the Bylaws for quorum and vote requirements). Upon approval by the Owners, a Special Assessment for Capital Improvement will be levied as provided in Section 5.3.

(e) Construction. After the levy of the Capital Improvement Assessment, and at such time and upon such terms and conditions as the Association may deem appropriate, but not at a cost exceeding the estimated total cost of such capital improvement as determined above, the Association will construct, install, or acquire, or contract for the construction, installation or acquisition of the proposed capital improvement.

(f) Expenses for Development Not Approved. If for any reason the construction or acquisition of the proposed capital improvement is not approved by the Association, or the Owners, if required, all expenses incurred by the Association with respect to the proposed capital improvement will be paid proportionately by the petitioning Owners. The Association may levy a Special Individual Assessment pursuant to Section 5.4 against said Owners for the purpose of paying such expenses. If the proposed project was initiated by the Board, such expenses will be paid by the Association.

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ARTICLE VII: EASEMENTS & RESERVATIONS.

Section 7.1. Encroachment Easements. If any portion of the Common Area encroaches on any Lot or if any portion of a Lot encroaches on the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Lots and the Common Area are made subject to such easements. If the dimensions or location of a Lot, Balcony, Deck, Parking Space, Patio, Storage Unit, Yard or other Improvement differs from that shown and depicted on the Plan, the actual dimensions and location will prevail over that shown and depicted on the Map for any and all purposes.

If any structure containing a Lot is partially or totally destroyed and then rebuilt and any encroachment on the Common Area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Lots and the Common Area are made subject to such easements.

In no event will a valid easement for encroachment be created in favor of an Owner or Owners, if said encroachment occurred due to the willful conduct of said Owner or Owners.

Section 7.2. Blanket Utility Easement. There is hereby created a blanket easement upon, across, over and under all of the Development for ingress, egress, installation, replacing, repairing, operating and maintaining all utilities, including but not limited to water, sewers, storm water drains and pipes, water systems, sprinkling systems, heating and gas lines or pipes, gas, telephones, drainage and electricity and the master television antenna or cable television system if any, and similar public or quasi-public improvements or facilities.

By virtue of this easement, it will be expressly permissible for the providing utility company and/or service provider to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Development except as initially designed and approved by the Declarant or thereafter approved by the Association's Board. The easements provided for in this Section 7.2 will in no way effect any other recorded easement on the Development.

Section 7.3. Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any management company or contractor selected by the Association to enter in or to cross over the Common Area, including Exclusive Use Common Area, and any Lot, including any Yard, to perform the duties of maintenance and repair of the Lots, Common Area and/or Common Facilities provided that any entry by any Member, the Association or its agents into any Lot may only be undertaken in strict compliance with Section 4.4(b).

Section 7.4. Party Fence Easements. Each Lot/Residence that shares a Party Fence with an adjoining Residence and its Owner is declared to have a reciprocal mutual nonexclusive easement appurtenant to, on, over, and upon such adjoining Lot/Residence for such Party Fence.

Said reciprocal mutual nonexclusive easements include the right to enter upon such adjoining Lot to service and maintain such easement and service, maintain, repair, reconstruct or replace the improvements constituting such Party Fence (including any drainage associated with the Party Fence or the Lot/Residence of which the Party Fence is a part, and an easement to accommodate the foundation and/or roof or eaves encroachment as depicted in the original design, plans and specifications which were the basis for the original construction of the Lot/Residence or Lots/Residences). Such entry will be at reasonable times after prior notice, except that in case of emergency the right of entry will be immediate in compliance with Sections 4.5(b) and 5.4(a)(iii).

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Section 7.5. Other Easements. Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Development and each Lot and Common Area as shown on the Map, including but not limited to driveways now or hereafter located upon the General Common Area for ingress, egress and utility purposes.

ARTICLE VIII: ARCHITECTURAL REVIEW.

Section 8.1. Improvements Generally & Approval by Board. No "Improvement" (as defined in Section 1.16) of any kind may be commenced, erected or maintained within the Development, nor may any addition to or change or alteration be made in or to the exterior of any Residence or Exclusive Use Common Area or which would affect the common utility services or installations until plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials, and location of the same will have been submitted to and approved in writing by the Association's Board (or Architectural Review Committee if one is formed by the Board) as to quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, setback lines, topography, finish grade elevations, etc.

Section 8.2. Appointment of Architectural Review Committee. If created by the Board, the Architectural Review Committee will consist of a chairman and no less than two (2) nor more than four (4) additional members. At least one of the members of the Architectural Review Committee will be a current member of the Board. All members must be Members of the Association

The Committee, if created, will submit a copy of its findings and determinations to the Board. Upon its own initiative or upon the written request of the Committee or any Association Member, the Board may review (and affirm or alter) any decision of the Committee, provided that any such request be presented to the Board within thirty (30) days after submission of the Committee's findings and determinations to the Board.

If at any time there may not be a duly-constituted Architectural Review Committee, the Board will exercise the functions of said Committee in accordance with the terms of this Article VIII.

Section 8.3. Architectural Review Duties of Board. It will be the duty of the Board (or the Architectural Review Committee if appointed) to consider and act upon the proposals and plans submitted to it pursuant to this Declaration, to adopt Architectural Rules and Regulations pursuant to Section 8.4 and to carry out all other duties imposed upon it pursuant to the Governing Documents.

Section 8.4. Architectural Rules. The Board may from time to time adopt, amend and repeal rules and regulations to be known as "Architectural Rules." The Architectural Rules may interpret and implement the provisions of this Declaration by setting forth the standards and procedures for the review and approval of proposed Improvements and guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended for use within the Development, provided that the Architectural Rules will not be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the Declaration will prevail.

Section 8.5. Submission of Plans; Action by Board. Plans, specifications and such information and documentation, as the Board (or Committee) may require, for all proposed Improvements must be delivered to the secretary of the Association or to the Association's mailing address.

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Approval by the Board can contain conditions or requests for modification of particular aspects of the Owner's plan and specifications.

All approvals and rejections of requests will be in writing; provided, however, in the event the Board fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, the request will be deemed denied. Under such circumstances, the written request may be resubmitted. If the Board fails to approve or disapprove such resubmitted application within thirty (30) days of its resubmittal, the request will be deemed approved.

Section 8.6. Basis for Approval of Improvements. When a proposed Improvement is submitted to the Board for review, the Board will grant the requested approval only if the Board, in its sole discretion, finds that all of the following provisions have been satisfied:

(a) The Owner has complied with those provisions of the Architectural Rules pertaining to the content, and procedures for submittal, of plans and specifications;

(b) The Owner's plans and specifications (i) conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Board; and (ii) will not interfere with the reasonable enjoyment of any other Owner of their property; and

(c) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Development, in harmony with the external structures and/or landscaping within the Development and are consistent with the overall plan and scheme of development and the purposes of this Declaration.

The Board will be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar improvement or component has previously been approved for use at another location within the Development if factors such as drainage, topography or visibility from roads, Common Areas or other Lots or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement or its use at other locations within the Development mitigate against erection of the Improvement or use of a particular component thereof on the Lot involved in the Owner's submittal.

It is expressly agreed that the Board will be entitled to make subjective judgments and to consider the aesthetics of a proposal when considering an Owner's request so long as the Board acts reasonably and in good faith.

In approving a request for construction of an Improvement, the Board may condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement, color or materials modifications or similar mitigating conditions.

Section 8.7. Non-Waiver. The approval by the Board of any plans, drawings or specifications for any work done or proposed or for any other matter requiring the approval of the Board under this Declaration, may not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 8.8. Meetings. The Board will meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Board will constitute the action of the Board. The Board will keep and maintain a written record of all actions taken.

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Section 8.9. Variances. The Board will be entitled to allow reasonable variances with respect to this Article VIII or any restrictions specified in Article III in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided that the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Board must conduct a hearing on the proposed variance after giving at least forty-five (45) days prior written notice to all Owners of Lots within one-hundred (100) feet of the property for which the variance applies. The Owners receiving notice of the proposed variance will have thirty (30) days in which to submit to the Board written comments or objections with respect to the variance. No decision will be made with respect to the proposed variance until the thirty (30) day comment period has expired.

(b) The Board must make a good faith determination that (i) the requested variance does not constitute a substantial deviation from the overall plan and scheme of development within the Development or from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement hereunder that is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not detrimentally effect, or create an unreasonable nuisance, with respect to any other Lot, Common Area or Owner within the Development.

Section 8.10. Compliance with Governmental Requirements. The application to the Association and the review and approval of any proposal, plans or other submittals will in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements. The Owner bears sole responsibility for obtaining all necessary governmental permits/authorizations and/or complying with all governmental requirements including specifically applicable building codes.

Section 8.11. Commencement. Upon receipt of approval pursuant to this Article VIII, the Owner will, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and/or excavations pursuant to said approval. Commencement by Owner will occur, in all cases, within ninety (90) days from the date of such approval.

If the Owner fails to comply with this Section 8.12, any approval previously given will be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of said ninety (90) day period, extends the time for such commencement. No such extension will be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

Section 8.12. Completion. The Owner will complete the construction, reconstruction, refinishing or alteration of any such improvement within one (1) year after commencing construction thereof, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section 8.13, the Board will proceed in accordance with the provisions of Sections 8.14 and 8.15, below, as though the failure to complete the improvements was a non-compliance with approved plans.

Section 8.13. Inspection. Inspection of work and correction of defects therein will proceed as follows:

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(a) Upon the completion of any construction, reconstruction, alteration or refinishing of the exterior of any improvements or upon the completion of any other work for which approved plans are

required under this Article VIII, the Owner will deliver written notice thereof to the Association's mailing address.

(b) Within ninety (90) days thereafter, the Board, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved plans. If the Board finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it will notify the Owner in writing of such non-compliance within such ninety (90) day period, specifying the particulars of noncompliance and will require the Owner to remedy such noncompliance.

(c) If the Owner fails to remedy such noncompliance upon the expiration of thirty (30) days from the date of such notification, the Board will then set a date on which a hearing before the Board will be held regarding the alleged noncompliance.

The hearing date will be not more than sixty (60) nor less than fifteen (15) days after the Board determines the existence of the subject noncompliance. Notice of the hearing date will be given to the Owner and, in the discretion of the Board, to any other interested party at least ten (10) days in advance of the hearing date.

(d) At the hearing, the Owner and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board will determine whether there is a noncompliance, and, if so, the nature thereof.

If noncompliance exists, the Board may require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance. All expenses incurred in connection therewith will be assessed against the Owner as a Special Individual Assessment.

(e) If, for any reason, the Board fails to notify an Owner of any noncompliance within sixty (60) days after receipt of the Owner's notice of completion, the improvement will be deemed to be in accordance with said approved plans.

Section 8.14. Enforcement. In the event that it comes to the knowledge and attention of the Association, the Board, or the agents or employees of either that a work of Improvement, or any modification thereof, is proceeding without proper approval and/or in noncompliance with approved plans (and without the Owner notifying the Board of completion), the Association will be entitled to exercise enforcement remedies specified in Article XIV, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Board review and approval is obtained.

Section 8.15. Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board will execute an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Lot owned by the applicant Owner) that as of the date thereof, either (i) all Improvements made and other work completed by said Owner with respect to the Lot comply with this Declaration; or (ii) that such Improvements or work do not so comply, in which event the certificate will also identify the noncomplying Improvements or work and set forth with particularity the bases of such noncompliance. Any purchaser from the Owner, or anyone deriving any interest in said Lot through the

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Owner, will be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

Section 8.16. Liability. Neither the Board nor any Member thereof will be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development of any property within the Development; and/or (d) the execution and filing of an estoppel certificate pursuant to Section 8.15, whether or not the facts therein are correct; provided, however, that the Board or such member has acted in good faith on the basis of such information as may be possessed by it or them. Without in any way limiting the generality of the foregoing, the Board, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Board.

ARTICLE IX: INSURANCE.

Section 9.1. Types of Insurance Coverage. The Association must purchase, obtain, and maintain, with the premiums therefor being paid out of Association funds, the following types of insurance with the coverages described below:

(a) Fire & Casualty Insurance. A policy of fire and casualty insurance naming as parties insured the Association and any Mortgagee of the Common Area, and containing the standard extended coverage and replacement cost endorsements and such other or special endorsements as will afford protection and insure, for the full insurable, current replacement cost (excluding foundations and excavation, but without deduction for depreciation) as determined annually by the insurance carrier, all Common Facilities and the personal property of the Association for or against the following:

(i) Loss or damage by fire or other risks covered by the standard extended coverage endorsement;

(ii) Loss or damage from theft, vandalism or malicious mischief;

(iii) Such other risks, perils or coverage as the Board may determine.

Such policy or the endorsement made a part thereof shall, to the extent available, provide that the insurer insuring the policy agrees to abide by the decision of the Association made in accordance with this Declaration as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Facilities.

(b) Public Liability & Property Damage Insurance. To the extent such insurance is available at a reasonable premium, the Association must obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each Director, any manager, the Owners and Residents of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and any other Association owned or maintained real or personal property including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance will not be less than two million dollars ($2,000,000.00) (or such higher amounts as may be required under California law, including but not limited to Civil Code Sections 1365.9) for claims for death, personal injury and property damage arising out of a single occurrence. Such insurance will include

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coverage against water damage liability, liability for non-owned and hired vehicles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(c) Directors & Officers Insurance. To the extent such insurance is available at a reasonable premium, the Association must obtain and maintain a policy of directors' and officers' errors & omissions insurance naming the Association's directors and officers as insured parties. The limits of such insurance will not be less than five hundred thousand dollars ($500,000.00) (or such higher amounts as may be required under California law, including but not limited to Civil Code Section 1365.7) If obtained, Directors' and officers' errors & omissions insurance must insure against claims arising out of or based upon negligent acts, errors, omissions, or alleged breaches of duty of any Director or any officer, while acting in its capacity as such.

(d) Personal Property Insurance. The Board must purchase and maintain such insurance on personal property owned by the Association and any other insurance, including directors and officers liability insurance, that it deems necessary or desirable, or that is required by any institutional First Mortgagee.

Section 9.2. Owners Right to Copies of Policies & Notice of Significant Changes in Coverage. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) will be retained by the Association and will be available for inspection by Members at any reasonable time.

Pursuant to Civil Code Section 1365(e)(2) or comparable superseding statute, the Association will notify Members if any insurance policies are not immediately renewed or replaced upon cancellation or lapse and/or if there is a significant change in the policy.

Section 9.3. First Mortgagees' Minimum Coverage Requirements & Right to Obtain Copies of Policies. A First Mortgagee for any Lot may supply the Association with its minimum insurance requirements. If the Association's insurance policies do not currently meet the minimum requirements of those First Mortgagees who have provided said minimum requirements to the Association, the First Mortgagees can request that the Association increase its coverage to match those minimum insurance requirements. The requesting First Mortgagees must pay any increase in the Association's insurance premiums due to said request.

All First Mortgagees for any Lot in the Development have the right, upon written request, to obtain copies of current insurance polies and/or satisfactory evidence of the Association's payment of premiums.

Notwithstanding any provision to the contrary elsewhere in this Declaration, the Association will continuously maintain in effect such fire, casualty, and liability insurance and fidelity bonds meeting the insurance and fidelity bond requirements for planned development projects established by the Federal National Mortgage Association (or the Federal Home Loan Mortgage Corporation) so long as said agency(ies) have notified the Association in writing that it is a Mortgagee, Owner of a Lot, an insurer of any Mortgage, or under contract to purchase a Mortgage, except to the extent that such coverage is not available or has been waived in writing by the Federal National Mortgage Association (or the Federal Home Loan Mortgage Corporation). Such insurance requirements may include, but not by way of limitation, a "Special Lot Endorsement" or an "Inflation Guard Endorsement."

Section 9.4. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 9.1 is for any reason not available, then the Association will obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage

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described above. The Board will notify the Owners of any material adverse changes in the Association's insurance coverage.

Section 9.5. Insurance Trustee. If a dispute arises as to allocation or use of insurance proceeds worth one million dollars ($1,000,000.00) or more, said insurance proceeds will be paid over to an insurance trustee. The insurance trustee will hold the funds in trust and expend the funds for the benefit of the Owners, Mortgagees and others, as their respective interests may appear. Said insurance trustee will be a commercial bank or other institution with trust powers within the Bay Area that agrees in writing to accept such trust.

Section 9.6. Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 9.1. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

Section 9.7. Distribution to Mortgagees. Any Mortgagee has the option to apply insurance proceeds payable on account of a Lot in reduction of the obligation secured by the Mortgage of such Mortgagee.

Section 9.8. Owner's Liability Insurance. An Owner may carry whatever personal liability and property damage liability insurance with respect to their Lot that they desire. However, any such policy will include a waiver of subrogation clause acceptable by the Board and to any institutional First Mortgagee.

Section 9.9. Deductibles.

(a) An Owner responsible for causing an insurable loss (by either the Owner's acts and/or the acts of Owner's family members, contract purchasers, lessees, guests, or invitees), will be obligated to contribute the Owner's proportional share of the insurance deductible, if any, corresponding to the insurance covering the loss. The proportional share of each Owner responsible for causing the insurable loss under this subsection will be based upon the ratio that the responsibility of each Owner responsible for causing the insurable loss bears to the total responsibility of the total of Owners responsible for causing the insurable loss.

(b) If, within thirty (30) days of notice by the Association to an Owner regarding that Owner's proportionate share under subsection (a) of Section 9.10, any Owner fails or refuses to pay their proportionate share, the Board may levy a Special Individual Assessment against the Lot of such Owner which may be enforced under the lien provisions contained in Article V or in any other manner provided in this Declaration.

(c) Within fifteen (15) days of the date that the notice to the Owner of their share of the liability is mailed, any Owner may contest the amount of their proportionate liability under subsection (a) of Section 9.10 by submitting to the Board written objections supported by cost estimates or other information that the Owner deems to be material. Upon receipt of said written objections, the Board will set a hearing date on the matter. The Owner(s) contesting liability may be represented by counsel at this hearing. Following such hearing, the Board will give written notice of its decision to all affected Owners, including any recommendation that adjustments be made with respect to the liability of any Owner(s). The Board's decision will be final and binding.

ARTICLE X: DAMAGE OR DESTRUCTION.

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Section 10.1. Common Facilities; Bids and Determination of Available Insurance Proceeds. In the event any Common Facilities are ever damaged or destroyed, then, and in such event, as soon as

practicable thereafter the Board of Directors shall (a) obtain bids from at least two reputable, licensed contractors, which bid shall set forth in detail the work required to repair, reconstruct and restore the damaged or destroyed portions of the Common Facilities to substantially the same condition as they existed prior to the damage and the itemized price asked for such work, and (b) determine that amount of all insurance proceeds available to the Association for the purpose of effecting such repair, reconstruction and restoration.

Section 10.2. Common Facilities: Sufficient Insurance Proceeds. Subject to the provisions of section 10.1 above, if, in the event of damage to or destruction of any portion of any Common Facility, the insurance proceeds available to the Association are sufficient to cover the cost of repair, reconstruction and restoration, then the Association may cause such facilities to be repaired, reconstructed and restored to substantially the same condition in which they existed prior to the loss.

Section 10.3. Common Facilities: Insurance Proceeds Insufficient in an Amount Exceeding $5,000. In the event that any Common Facility is totally or substantially damaged or destroyed or, if in the event of damage to or destruction of only a portion of the Common Facilities, the insurance proceeds available to the Association are insufficient in an amount exceeding $5,000 to cover the estimated cost of repair, reconstruction and restoration, then seventy-five percent (75%) of the Eligible Members entitled to vote shall determine whether (a) to repair, reconstruct and restore the damaged or destroyed Common Facilities, and specifically assess all Owners for such additional funds as may be needed for such purpose, or (b) not to repair, reconstruct or restore the damaged or destroyed Common Facilities but rather to utilize the insurance proceeds available for such reconstruction, together with any other sums otherwise available to the Association for such purpose, to demolish and remove the damaged or destroyed improvements from the Common Area and to level and landscape the sites thereof and apply any balance of such proceeds and/or funds as the Members holding such voting power and their First Mortgagees may determine.

Section 10.4. Definition of "Eligible Members" Entitled to Vote. For purposes of any vote pursuant to this Article X, the Members eligible to vote will be all of the Members which immediately prior to the casualty that caused the damage were eligible to vote at a meeting of the Members of the Association. Any membership vote required hereunder will be conducted either at a duly convened meeting at which a quorum is present or by written ballot conducted in accordance with Section 4.6 of the Bylaws.

Section 10.5. Damage or Destruction of Residences. In the event of damage or destruction by fire or other casualty affecting a residence, the Owner thereof shall, within six months thereafter, either:

(a) Diligently commence to rebuild the Residence in accordance with the terms hereof, including without limitation, the architectural review provisions of Article VIII; or

(b) Clear and level the Lot, removing all wreckage, debris and remains of the Residence therefrom and leaving the same in a level, clean condition.

ARTICLE XI: CONDEMNATION.

Section 11.1. Association as Trustee for Owner. If all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected Lots, shall be payable to the Association as trustee for all Owners and Mortgagees according to the loss or damages to their respective interest in the Common Area. The Association, acting through its Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation, settlement and litigation of the issues with respect to the taking and compensation affecting the Common

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Area. Each Owner hereby designates and appoints the Association as his or her attorney-in-fact for such purposes.

Article XII: BREACH & DEFAULT

Section 12.1. Remedy at Law Inadequate. Any Owner, the Association, its officers or Board, or by their respective successors in interest may enforce, by any proceeding at law or in equity, said provisions of the Governing Documents against any Owner, Member of Owner's family, lessee, contract purchaser, guest, invitee, licensee, occupant or user of any Lot, or any portion of the Common Area or Common Facilities. Further, the failure of any Owner, Member of Owner's family, lessee, contract purchaser, guest, invitee, licensee, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to strictly comply with any provision of the Governing Documents will be grounds for (1) an action to recover sums due for damages and/or (2) an action to enjoin by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board, or by their respective successors in interest.

Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration and the Association's Governing Documents is inadequate.

Section 12.2. Nuisance. Without limiting the generality of Section 14.1, the result of every act or omission whereby any covenant contained in this Declaration or the Association's Governing Documents is violated, in whole or in part, is hereby declared to be a nuisance. In addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association, its Officers, the Board and/or any Owner.

Further, every remedy against nuisance, either public or private, will be applicable against every such act or omission; provided, however, the Board will not be obligated to take action to abate or enjoin a particular violation if, in the discretion of the Board, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.

Section 12.3. Violation of Law. Any violation of a federal, state, county, municipal, local or other governmental law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all enforcement procedures set forth herein.

Section 12.4. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law will be cumulative, and not exclusive. The exercise of any one or more of such rights or remedies will not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration or the Governing Documents.

Section 12.5. Failure Not a Waiver. The failure of any Owner, the Board, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration and/or the Association's Governing Documents will not constitute a waiver of the right to enforce the same thereafter, nor will such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

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Section 12.6. Rights and Remedies of the Association.

(a) Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, Owner's family, contract purchasers, lessees, guests, invitees and/or licensees, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Facilities or suspension of the Owner's voting rights as a Member of the Association. The Association's right to undertake disciplinary action against its Members will be subject to the conditions set forth in this Section 14.6. The initiation of legal action will be subject to Section 14.7, below.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance will be within the sole discretion of the Association's Board. If the Association declines to take action in any instance, any Owner will have such rights of enforcement as may exist by virtue of California Civil Code Section 1354 or otherwise by law.

Upon a determination by the Board, after prior notice to the affected Member and an opportunity for a hearing pursuant to Sections 14.6(e) and (f), that said Member has violated any provision of the Governing Documents, including but not limited to a failure to pay any Assessment when due, the Board may give notice in writing to such Member that the Member is deemed to be a Member not in good standing. Such Member will be deemed to be a Member not in good standing until such time as the Board may determine in writing that the violation which resulted in the Board's determination that the Member was not in good standing has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member may again be deemed to be a Member of the Association in good standing.

(b) Schedule of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment and will be enforceable as a Special Individual Assessment pursuant to Section 5.4.

(c) Definition of "Violation". A violation of the Governing Documents will be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days will justify cumulative imposition of disciplinary measures.

The Association will take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Limitations of Disciplinary Rights.

(i) Loss of Rights: Forfeitures. The Association will have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of their Lot due to the failure by the Owner (or Owner's family members, lessees, contract purchasers, guests, invitees and/or licensees) to comply with any provision of the Governing Documents, including, but not limited to any duly enacted Association Rule, except where the loss or forfeiture is the result of A) the judgment of a court of competent jurisdiction, B) a decision arising out of arbitration, C) a foreclosure or sale under a power of sale for failure of the Owner

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to pay Assessments levied by the Association, or D) where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of Sections 14.6(e) and (f).

(ii) Liens Against Member's Lot. Except as provided in the Association's Delinquent Assessment Collection Policy, or Association Rules, if any, a monetary penalty imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the Member and/or the member's family, guests, lessees, contract purchasers, employees, invitees and/or licensees were responsible may become a lien against the Member's Lot enforceable by the sale of the Lot under Civil Code Sections 2924, 2924b, and 2924c.

(e) Hearings. No penalty or temporary suspension of rights will be imposed pursuant to this Article XIV unless the Owner alleged to be in violation is given prior notice of the proposed penalty or temporary suspension, and is given an opportunity to be heard before the Board or appropriate committee established by the Board with respect to the alleged violation(s) as provided in Association Rules adopted by the Board pursuant to Section 14.6(g).

(f) Notice of Hearing and Disciplinary Decision. The notice of hearing required by this article will, at a minimum, set forth the date, time, and place for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision alleged to have been violated, and a statement that the Member has a right to attend and may address the Board or committee at the hearing. The notice must be delivered by either personal delivery or first-class mail to the Member at least ten (10) days prior to the hearing. If the Board or committee decides to discipline the Member, the Association must notify the Member of the disciplinary action by either personal delivery or first-class mail within fifteen (15) days following the decision. The discipline will not be effective until five (5) days after the notification of the decision.

(g) Rules Regarding Disciplinary Proceedings. The Board will be entitled to adopt rules that set forth the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, will become a part of the Association Rules and will provide for notices and procedures satisfying the alternative dispute resolution requirements of Civil Code Section 1354 or comparable superseding statute.

Section 12.7. Court Actions; Mediation. As long as Civil Code Section 1354 (or comparable superseding statute requiring alternative dispute resolution) is in force, this Section 14.7 will control the initiation of a legal action by the Association and/or its Members. This Section 14.7 will automatically be repealed from this Declaration should Civil Code Section 1354 (or comparable superseding statute) be repealed by the California Legislature.

(a) Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the Board. Before initiating any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either of those actions coupled with a claim for monetary damages not in excess of five thousand dollars ($5000.00)), the Association and/or Members will first comply with the provisions of Civil Code Section 1354, or comparable superseding statute, relating to alternative dispute resolution.

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Disputes related to Association Assessments are expressly exempted from the provisions of this Section 14.7 unless the Member strictly complies with the requirements of Civil Code Section 1366.3, or comparable superseding statute.

The Small Claims Court provisions of Section 14.7(b) and mediation procedures described in Section 14.7(c) are intended to satisfy Civil Code Section 1354's alternative dispute resolution requirements. All notices issued and procedures followed in the mediation process will comply with the specific requirements imposed by Civil Code Section 1354, or comparable superseding statute.

(b) If any claim, dispute or controversy involves a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute will have the right to file a claim in Small Claims Court and have the matter determined therein in lieu of the alternative dispute resolution procedures set forth in Section 14.7(c).

(c) Before instituting any judicial action, arbitration, or other proceeding arising out of a dispute between the Association and any Member or between two or more Members of the Association which concerns any rights or obligations arising under or pursuant to the Governing Documents, the Association or Member who desires to initiate such action ("Complaining Party") must make a good faith attempt to mediate the dispute pursuant to this Section 14.7.

The Complaining Party will send the other party (the "Responding Party") written notice of the nature of the dispute, the facts giving rise to its claim and its desire to mediate (the "Request for Resolution"). Should either party commence a judicial action, arbitration, or other proceeding without sending a Request for Resolution, the Responding Party will be entitled to stay the action and request a Request for Resolution from the Complaining Party. The Request for Resolution will name a mediator. Both the Complaining Party and the Responding Party each will be obligated to pay one-half of the costs of mediation. Each party is to pay their own attorneys' fees, if any.

If the Responding Party does not agree with the Complaining Party's choice of a mediator, the parties may ask that the American Arbitration Association, JAMS/Endispute or other private mediation service/mediator select a mediator from their panels within ten (10) days from the Responding Party's receipt of the Request for Resolution. Within thirty (30) days after the mediator is chosen, the parties will schedule and attend a mediation and attempt in good faith to resolve their dispute. If the mediation does not resolve the dispute or if the Responding Party refuses to attend, the Complaining Party will be free to commence litigation.

The requirements of this subsection (c) will not apply under circumstances where the Complaining Party is entitled to a temporary restraining order or preliminary injunction in order to avoid irreparable harm or injury.

(d) Unless mutually agreed to in writing by all parties to the dispute, evidence of anything said or of any admissions made in the course of the alternative dispute resolution process will not be admissible into evidence in any legal proceeding. Testimony referring to such statement or admission will not be admissible. Nor will disclosure of any such statement or admission be compelled in any civil action. Documents prepared for the purpose of, in the course of or pursuant to alternative dispute resolution procedure will not be admissible into evidence and disclosure of such documents may not be compelled in any legal proceeding.

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Section 12.8. Joint and Several Liability of Co-Owners. If a Lot is owned jointly by two (2) or more persons, the liability of each Owner thereof in connection with the obligations of Owners imposed by this Declaration will be joint and several.

Section 12.9. Costs and Attorneys' Fees. In the event that the Association takes any action because of any alleged breach or default of any Owner or other party hereto under the Association's Governing Documents (whether or not any legal proceeding, including an arbitration, is initiated) the Association will be entitled to recover from that Owner (or other party) the costs, including attorneys' fees, the Association incurred as a result of the alleged breach or default. The Association's remedies to recover its costs and attorneys' fees will include, but are not limited to, the imposition of a Special Individual Assessment pursuant to Section 5.4.

In the event an action (including an arbitration) is brought by an Owner (or other individual with the right to enforce the Governing Documents) because of any alleged breach or default by any party hereto under the Association's Governing Documents, the court may award to the prevailing party in any such action (as defined by Civil Code 1717 or comparable superceding statute) such attorneys' fees and other costs, including by way of example, but not limited to court costs and experts' fees, incurred in connection therewith as the court deems just and reasonable.

ARTICLE XIII: NOTICES.

Section 13.1. Mailing Addresses. Any communication or notice of any kind permitted or required pursuant to any provision of the Governing Documents will be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

(a) Owners. To the street address of the Owner's Lot or to such other address as the Owner may from time to time designate in writing to the Association.

(b) The Association. The mailing address of McKinney Shores Owners Association is P.O. Box 574 Homewood, CA 96141 (or to such other address as the Association may from time to time designate in writing to the Owners).

(c) Directors/Officers. To the street address as the Director and/or Officer may from time to time designate in writing to the Association.

The foregoing addresses may be changed by written notice given as herein provided. Unless so changed, the last address provided for each party, whether herein or pursuant to notice hereunder, will be deemed to be the address of such party for any and all purposes.

Section 13.2. Personal Service Upon Co-Owners & Others. Personal service of a notice or demand to one of the co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, will be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

Section 13.3. Deemed Delivered. All notices and demands served by mail will be by first-class or certified mail, with postage prepaid, and will be deemed delivered seventy-two (72) hours after deposit in the United States mail unless specified otherwise by this document. All notices and demands served by personal delivery are delivered upon service.

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ARTICLE XIV: NO PUBLIC RIGHTS IN THE DEVELOPMENT.

Section 14.1. Dedication of Development. Nothing contained in this Declaration may be deemed to be a gift or a dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

ARTICLE XV: AMENDMENT OF DECLARATION.

Section 15.1. Amendment in General. This Declaration may be restated or revoked in any respect by the vote or assent of Members representing at least a two-thirds (2/3rds) majority of all eligible Members. (*See* Section 4.3 of the Bylaws which defines eligible Members). Notwithstanding the foregoing, the percentage of the Members necessary to amend a specific clause or provision of this Declaration will be at least the percentage of affirmative votes prescribed in said clause or provision.

Section 15.2. Effective Date of Amendments. Any amendment to this Declaration will be effective upon the recording in the Office of the Recorder of Placer County a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of Section 17.1, above, have been duly met.

Notwithstanding anything to the contrary herein contained, no such amendment will affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment.

If the consent or approval of any governmental authority, Mortgagee or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation may become effective unless such consent or approval is obtained.

Section 15.3. Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration will be presumed valid by anyone relying on them in good faith.

ARTICLE XVI: ANNEXATION.

Section 16.1. Annexation. Any real property which consists of a parcel or parcels shown on a final subdivision or parcel map of Record may be annexed to the Development in accordance with this article, and shall thereupon become subject to this Declaration with the consent of the Owner of the property.

The Association may annex real property to the Development provided that such annexation is approved by a vote or written consent of a majority of the Owners.

Section 16.2. Method of Annexation. Any annexation undertaken in accordance with this Section shall be effective when a Declaration of Annexation executed by the annexing party and the owner of the interest to be annexed covering the property to be annexed, and includes the following information.

(a) A description of the property to be annexed.

(b) A description of any parcel of the property to be annexed which is Common Area, and of any property to be annexed which is designated for maintenance in accordance with Section 6.1.

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Section 16.3. Effect of Declaration of Annexation. Upon any annexation becoming effective, the Declaration of Annexation shall become a part of this Declaration, and shall be deemed amended by any amendment to this Declaration.

Section 16.4. Adjustment for Capitol Improvements. Where annexation of a Phase occurs after existing Lots within the Subdivision have been assessed for capital improvements to Common Area, the Association may adjust the assessment on the annexed Lots so that the annexed Lots pay their proportionate share of the Improvement minus reasonable depreciation of the Improvement if it has been in use for one year or more at the time of annexation.

ARTICLE XVII: GENERAL PROVISIONS.

Section 17.1. Effective Date. This Declaration will become effective upon its recordation in the Official Records of the County of Placer, State of California.

Section 17.2. Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration will run with, and will benefit and burden the Lots and the Common Area as herein provided, and will inure to the benefit of and be binding upon the Owners, the Association, its Board, and its officers and agents, and their respective successors in interest, for the term of sixty (60) years from the date of the recording of this Declaration, after which time the same will be automatically extended for successive terms of ten (10) years each unless, within six (6) months prior to the expiration of any term (initial or successive), a recordable written instrument, approved by a majority of all Owners terminating the effectiveness of this Declaration will be filed for recording in the Office of the County Recorder of Placer County, California.

Section 17.3. Construction of Declaration.

(a) Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration will be liberally construed together to promote and effectuate the fundamental concepts of the development of the Development as set forth in the Recitals of this Declaration.

Failure to enforce any provision hereof will not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of subsection (a) above, the covenants, conditions, and restrictions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof will not affect the validity or enforceability of any other provision which will remain in full force and effect.

(c) Singular Includes Plural/Gender. The singular will include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter will each include the masculine, feminine and neuter, as the context requires.

(d) Captions. All captions, titles or headings used in this Declaration are intended solely for convenience of reference and will not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

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(e) Conflicts. In the event of any conflict between any of the provisions of this Article XVIII and any other provisions of this Declaration, the provisions of this Article XVIII will control. In the

event of any conflict between any of the provisions of this Declaration and any other provisions of the Governing Documents, the provisions of this Declaration will control.

Further, neither the Articles nor the Bylaws will be restated so as to be inconsistent with this Declaration; and, in the event of any inconsistency, the provisions of this Declaration will control.

(f) Exhibits. All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

Section 17.4. Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration and the Association's Governing Documents in general, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners.

Certification

We, the undersigned hereby certify, under penalty of perjury, that this Declaration of Covenants, Conditions and Restrictions set for herein was duly adopted with the vote or written consent of the Members (the Members consisting of at least greater than fifty percent (50%) of the total voting power held by the membership of the Association).

MCKINNEY SHORES PROPERTY OWNERS ASSOCIATION

Dated: 10-26-01

By: _____
Deborah Kais, President

Dated: 8-21-01

By: _____
Marc Roberts, Secretary

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Sacramento, CA 95815
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of El Dorado } ss.

On August 21st, 2001 (Date), before me, Seth M. Ponciano (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared Marc M. Roberts (Name(s) of Signer(s)),

☐ personally known to me

☑ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Seth M. Ponciano
Signature of Notary Public

SST1 Seth Matthias Ponciano Comm. # 1303725 NOTARY PUBLIC-CALIFORNIA EL DORADO COUNTY MY COMM. EXPIRES MAY 7, 2005 SST1

Place Notary Seal Above

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Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles } ss.

On OCTOBER 26, 2001 (Date), before me, Gustavo R. Salgado, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared DEBORAH KAIS (Name(s) of Signer(s)),

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

GUSTAVO R. SALGADO
Commission # 1271477
Notary Public - California
Los Angeles County
My Comm. Expires Aug 18, 2004

WITNESS my hand and official seal.

Gustavo R. Salgado
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: FIRST RESTATED DECLARATION

Document Date: 10-26-01 Number of Pages: 52

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

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