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**Copper Cove Association**  
c/o BAYDALINE & JACOBSEN LLP  
895 University Avenue  
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(Space Above for Recorder's Use)

**FIRST RESTATED DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**COPPER COVE**

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**FIRST RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
COPPER COVE**

This First Restated Declaration of Covenants, Conditions and Restrictions for Copper Cove is made by the Copper Cove at Lake Association, a California nonprofit mutual benefit corporation (the "Association").

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**RECITALS**

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A. The Association is an "association", as that term is defined in California Civil Code Section 4080 which has been created to manage the common interest development located in Calaveras County, State of California commonly known as Copper Cove (the "Development") and more particularly described in Exhibit "A".

B. The original developers of the Development, I.C. Deal Developments, Inc. (referred to herein as the "Declarant") executed a document entitled "Declaration of Establishment of Conditions and Restrictions, Copper Cove at Lake Tulloch Subdivision", recorded on June 11, 1969, in Book 280, at Page 167, in the Office of the Calaveras County Recorder (the "Original Declaration").

C. The Declarant executed a document entitled "Declaration of Restrictions, Copper Cove at Lake Tulloch Subdivision Unit No. 3 and 4", recorded on September 18, 1969, in Book 284, at Page 547, in the Office of the Calaveras County Recorder, which essentially serves to annex additional property into the Development (the "Declaration of Annexation for Units 3 and 4").

D. The Declarant executed a document entitled "Declaration of Restrictions, Copper Cove at Lake Tulloch Unit No. 7", recorded on December 8, 1969, in Book 288, at Page 670, in the Office of the Calaveras County Recorder, which essentially serves to annex additional property into the Development (the "Declaration of Annexation for Unit 7").

E. The Declarant executed a document entitled "Declaration of Additional Restrictions, Copper Cove at Lake Tulloch Unit No. 8-A", recorded on December 30, 1971, in Book 330, at Page 295, in the Office of the Calaveras County Recorder, which essentially serves to annex additional property into the Development (the "Declaration of Annexation for Unit 8-A").

F. The Original Declaration established 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 the real property comprising the Development.

G. The "Declarant", as that term is defined in the Original Declaration, no longer owns any property within the Development.

H. The Original Declaration does not specify the percentage of Members who must approve an amendment. Therefore, pursuant to the default rule set forth in Civil Code Sections 4270 and 4065, at least a majority of all Members voted to amend, restate, and supersede the Original Declaration.

**NOW, THEREFORE**, it is hereby declared as follows:

1. The Original Declaration is hereby amended, restated and superseded in its entirety to read as set forth in this Declaration.
2. All of the real property comprising the Development constitutes a "planned development", as that term is defined in California Civil Code Section 4175.
3. All of the real property comprising the Development is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following 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 Development and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the real property comprising the Development and any part thereof.
4. All of the covenants, conditions, and restrictions set forth in this Declaration shall constitute enforceable equitable servitudes as provided in California Civil Code Section 5975, shall constitute covenants that shall run with the real property comprising the Development, and shall be binding upon and inure to the benefit of each Owner of any portion of such real property or of any interest therein and their heirs, successors, and assigns.

## **ARTICLE 1 DEFINITIONS**

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1.1 Absolute Majority. "Absolute Majority" shall mean a majority of the Total Voting Power of the Association.

1.2 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.

1.3 Architectural Control Committee. "Architectural Control Committee" shall mean the committee created pursuant to Article 9 of this Declaration.

1.4 Architectural Rules. "Architectural Rules" shall mean the rules and regulations adopted by the Board pursuant to Section 9.5 of this Declaration.

1.5 Articles. "Articles" shall mean the Articles of Incorporation of the Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.

1.6 Assessment. "Assessment" shall mean a charge levied by the Association against an Owner and his or her Lot as provided in Article 6 of this Declaration. "Assessment" shall include any or all of the following:

1.6.1 Annual or Regular Assessments, which shall have the meaning set forth in Section 6.5 of this Declaration.

1.6.2 Enforcement Assessments, which shall have the meaning set forth in Section 6.8 of this Declaration.

1.6.3 Reimbursement Assessments, which shall have the meaning set forth in Section 6.7 of this Declaration.

1.6.4 Special Assessments, which shall have the meaning set forth in Section 6.6 of this Declaration.

1.7 Association. "Association" shall mean the Copper Cove at Lake Tulloch Owners' Association, dba "Copper Cove Association," a California non-profit mutual benefit corporation, its successors and assigns.

1.8 Association Rules. "Association Rules" shall mean rules and regulations regulating the use and enjoyment of the Common Area which may be adopted by the Board from time to time.

1.9 Board of Directors or Board. "Board of Directors" or "Board" shall mean the governing body of the Association.

1.10 Bylaws. "Bylaws" shall mean the Bylaws of the Association as they shall be adopted by the Board of Directors and Members and any duly-adopted amendments thereof.

1.11 Common Area. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners in the Development excluding the Lots. The Common Area includes, but is not limited to, a swimming pool, parking spaces, streets, entrance gates, garages, entrance signs, the Kiva Lake Center, Black Creek Park, and an equestrian center.

1.12 Common Facilities. "Common Facilities" shall mean all facilities constructed or installed, if any, or to be constructed or installed, or currently located on the Common Area and owned by the Association.

1.13 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.

1.14 County. "County" shall mean the County of Calaveras.

1.15 Declaration. "Declaration" shall mean this instrument, as it may be amended from time to time.

1.16 Development. "Development" shall mean all the real property described in Exhibit "A" of this Declaration as well as such other real property as may hereafter be brought within the jurisdiction of the Association.

1.17 Director. "Director" shall mean a member of the Board of Directors.

1.18 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean those portions of the Common Area set aside for exclusive use of a Lot Owner or Owners (to the exclusion of other



Owners), and shall constitute "exclusive use common area" as defined in California Civil Code Section 4145.

1.19 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, Association Rules (including the Architectural Rules), Election Rules and the policies and resolutions duly adopted by the Board and distributed to the Members.

1.20 Improvement(s). "Improvement(s)" shall mean everything constructed, installed or planted in the Development subject to this Declaration, including without limitations, buildings, streets, fences, walls, paving, pipes, wires, grading, landscaping and other works of improvement as defined in section 3106 of the California Civil Code, excluding only those Improvements or portions thereof which are dedicated to the public or a public or quasi-public entity or utility company, and accepted for maintenance by the public, such entity or utility company.

1.21 Lot. "Lot" shall mean any plot of land shown upon any Subdivision Map, with the exception of the Common Area.

1.22 Member. "Member" shall mean an Owner.

1.23 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all dues, Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents, as may be more particularly set forth in the Bylaws.

1.24 Owner. "Owner" shall mean any person, firm, corporation or other entity in which fee title to a Lot is vested as shown by the official records of the office of the County recorder, including Contract Sellers, but excluding Contract Purchasers and excluding those having such interest merely as security for the performance of an obligation. Where the context requires, the term "Owner" shall include the members of the Owner's household and the Owner's guests, tenants/lessees and invitees; provided, however, that such persons are not "Owners" for purposes of exercising voting rights in the Association.

1.25 Record. "Record" shall mean, with respect to any document, the recordation or filing of such document in the office of the County recorder.

1.26 Residence. "Residence" shall mean a residential structure located upon a Lot which is designed for human residential use and occupancy.

1.27 Resident. "Resident" shall mean any person who resides in a Residence within the Development whether or not such person is an Owner as defined in Section 1.24 of this Declaration.

1.28 Simple Majority. "Simple Majority" shall mean a majority of the votes of the Members: (a) represented and voting at a meeting at which a quorum is present, or (b) cast by written or secret ballot (in conformity with California Corporations Code Section 7513 or Civil Code Sections 5100 through 5125, respectively) in which the number of ballots received equals or exceeds the number required to establish a quorum.

1.29 Subdivision Map. "Subdivision Map" shall mean that subdivision maps set forth in Exhibit "A".

1.30 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one (1) vote for each Lot, excluding any Lots as to which an Owner is not then a Member in Good Standing.

## **ARTICLE 2 COMMON AREA**

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2.1 Purpose of Common Area. Subject to the provisions of the Declaration, the Common Area is held and maintained by the Association, and is used to meet the common interests of the Owners, the members of the Owners' households, and the Owners' tenants, resident Contract Purchasers, and guests as provided in the Governing Documents.

2.2 Owners Non-Exclusive Easements of Enjoyment. Every Owner shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area, including ingress and egress to and from his or her Lot. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

2.2.1 The right of the Board to establish and enforce reasonable Rules governing use of the Common Area.

2.2.2 The right of the Board, as more particularly addressed in the Bylaws, to suspend an Owner's right to use Common Facilities located on the Common Area for: (a) any period during which any Assessment against such Owner's Lot remains unpaid; and/or (b) for violations of the Governing Documents by an Owner or any person for whom an Owner is responsible.

2.2.3 The right of the Board, as set forth in Section 3.4 of this Declaration, to grant easements and rights of way in, on, over, or under the Common Area.

2.2.4 The right of the Board to sell, dedicate, or transfer all or any part of the Common Area, subject to the requirements of Sections 5.8 and Section 5.9.

2.2.5 The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association.

2.2.6 The right of the Board to borrow money in accordance with the Governing Documents.

2.2.7 The right of the Association, through its authorized agents, to enter any Lot or Residence to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair or replacement for the benefit of the Common Area or the Owners in common, or to make necessary repairs that the Lot Owner has failed to perform. The right shall be immediate in case of an emergency originating in or threatening such Residence or Lot and the obligation can be performed whether or not the Owner is present.

2.2.8 The right of the Association to establish, construct, maintain, repair and replace facilities upon the Common Area including without limitation recreation facilities, storage

facilities and workshops, which may be necessary or convenient in the discharge of the Association's duties and the exercise of its rights under the Governing Documents.

2.2.9 The right of the Association to grant exclusive use of a portion of the Common Area to an Owner, if approved by an Absolute Majority of the Members, except as provided by law.

2.3 Assignment of Rights of Use. Any Owner may assign his or her rights of use and enjoyment, including easements, in the Development to the members of his or her household, tenants, Contract Purchasers, guests and invitees, subject to the terms of the Governing Documents. Upon the leasing of a Lot, or upon occupancy of a Lot by a Contract Purchaser, the Owner shall be deemed to have assigned all such rights exclusively to the tenants or Contract Purchasers of such Lot except that such Owner shall continue to have an easement for ingress and egress to such Owner's Lot to the extent necessary to discharge of the Owner's obligations and rights as a landlord. Each Owner shall notify the Secretary of the Association of the names of any tenants or any such Contract Purchasers of such Owner's Lot. Each Owner, tenant, or Contract Purchaser shall also notify the Secretary of the Association of the names of all members of his or her household to whom such Owner, tenant, or Contract Purchaser has assigned any rights of enjoyment in the Development as provided herein and the relationship which each such person bears to such Owner, tenant, or Contract Purchaser. Any rights of enjoyment assigned pursuant to this section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. It is the express purpose and intent of the provisions of this section to limit the right of use and enjoyment of the Common Area to Residents and their guests.

2.4 Damage to Common Area or Association Property. An Owner is responsible for the cost to repair any damage caused to any Common Area, including Exclusive Use Common Area, which is caused by the negligence, gross negligence, or willful misconduct by the Owner or the Owner's tenants, residents, or invitees. In the event that the Association elects to submit a claim to its insurance provider for the cost to repair said damage, the Association may charge the cost of the deductible and any increased premiums to the Owner as a Reimbursement Assessment.

2.5 Common Area Construction. Except as may be authorized by the Board, no person or entity other than the Association or its duly-authorized agents: (a) shall construct, reconstruct, refinish, alter, or maintain any Improvement upon the Common Area; (b) shall make or create any excavation or fill upon the Common Area; (c) shall change the natural or existing drainage of the Common Area; or (d) shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

2.6 Mechanic's Liens. In the event there shall be filed against the Common Area a Notice of Mechanic's Lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner or his or her Lot, such Owner shall immediately cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be granted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a

Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

### **ARTICLE 3 EASEMENTS**

---

3.1 Easements for Utilities and Maintenance. Easements over and under the Development for the installation, repair and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities, heating facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping as shown on the recorded map of the property, and as may be hereafter required or needed to service the Development, are hereby reserved by Association and their successors and assigns, the Association, and applicable utility companies, together with the right to grant and transfer the same. There shall be no obstruction of the easements.

3.2 Encroachment Easements. Each Lot within the Development is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots or Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

3.3 Entry for Repairs. The Board may authorize its agents and employees to enter upon any Lot when necessary in connection with any maintenance, landscaping or construction for which the Association is responsible, to effect emergency repairs or to effect necessary repairs which the Lot Owner has failed to perform as required by this Declaration. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association. Except in case of an emergency, twenty-four (24) hour advance notice shall be given to the Owner or occupant.

3.4 Easements Granted by Board. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of: (a) constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and (b) for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association. Each purchaser, in accepting a deed to a Lot, expressly consents to such easements and rights of way. No such easements may be granted if they would materially interfere with the use, occupancy, or enjoyment by an Owner or Resident of his or her Lot without the consent of the affected Owner of the Lot. The Board has the power to terminate any easement to the fullest extent allowed under California law, including but not limited to termination by abandonment or termination by prescription.

## ARTICLE 4 USE RESTRICTIONS

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4.1 Single Family Residential Use. Except as specifically provided in Section 4.3, below, no Lot, or any portion thereof, shall be occupied or used for other than single-family residential purposes by the Owners, their Contract Purchasers, lessees, tenants, or guests.

4.2 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof; provided, however, that if any Lot shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition by sale as between such co-tenants.

4.3 Restriction on Businesses. Unless otherwise provided in Section 4.4 of this Declaration, no trade, business or commercial activity of any kind shall be established, maintained, operated, permitted, or conducted within the Development except:

4.3.1 Those professional and administrative occupations as may be permitted by, and which are conducted in conformance with, all applicable governmental ordinances provided that there is no external evidence thereof, and further provided that the Board may, in its complete discretion, prohibit the conduct of any such activities which the Board determines to be incompatible with the nature and character of the Development or which, in the Board's opinion, may or does otherwise negatively impact the quality of life and property values within the Development. The Board may also adopt Rules regulating the conduct of such occupations.

4.3.2 Those other businesses which by law must be permitted to be conducted within the Development.

4.4 Zoning Restrictions.

4.4.1 Lots from Original Declaration. Lots 1 to 47 inclusive, 91 to 390 inclusive, 420 to 642 inclusive shall be for single family residential purposes and such other purposes permitted by the R-1 zoning ordinance of Calaveras County.

4.4.2 Lots Established in Unit 4. Lots 48 to 61 inclusive, 63 to 90 inclusive, 391 to 419 inclusive shall be for multiple family residential purposes and such other purposes permitted by the R-2 zoning ordinance of Calaveras County.

4.4.3 Lots Established in Unit 7. Lots 1508 to 1621 inclusive, 1637 to 1673 inclusive, 1675 to 1698 inclusive, 1707 to 1823 inclusive, 1831 to 1882 inclusive, 1891 to 2171 inclusive, 2173 to 2208 inclusive, and 2210, shall be for residential purposes and such other purposes permitted by R-2 Zoning ordinance for Calaveras County. Lots 1622 to 1636 inclusive, 1699 to 1706 inclusive, 1824 to 1830 inclusive, 1883 to 1890 inclusive, 2172 and 2209, shall be for residential and such other purposes permitted by R-3 Zoning ordinance for Calaveras County. Any Lots mentioned in this Section 4.4.3 may be used as a church site.

4.4.4 Lots Established in Unit 8-A. Hereinafter set forth by number description are the respective lots comprising Unit No. 8-A and the zoning in effect, as of—December 30, 1971—as to each:

4.4.4.1 Commercial. 8-A-1 through 8-A-16.

4.4.4.2 Multiple Residential. 8-A-17 through 8-A-32.

4.4.4.3 Mobile/Modular Home Residential. 8-A-33 through 8-A-181.

4.4.4.4 Common Areas. 8-A-183 through 8-A-185 (Community recreation areas-parks); 8-A-186 (Dry Boat Storage Area); and 8-A-187 (Community recreation area).

4.5 Offensive Conduct, Nuisances, Noise. No noxious, harmful, unlawful, or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area and facilities thereon or the use and enjoyment of their Lots or Residences. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs or excessively loud music, to emanate from the Resident's Lot, which would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area. Excessive noise levels may be determined at the sole discretion of the Board which may, but shall not be obligated to, rely on the standards established in applicable County or City codes regulating such matters. Nothing in this section shall be construed to limit the Association's ability to discharge its duties in accordance with the Governing Documents or otherwise manage the Development.

4.6 Use of the Common Area. Nothing shall be placed, kept, stored, or parked on the Common Area without the prior written consent of the Association, except by the Association. Without limiting the foregoing, no Owner shall place rubbish, debris, or other unsightly or unsanitary materials in the Common Area. Each Owner shall avoid causing damage to the Common Area.

4.7 Requirement of Architectural Approval. As addressed in greater detail in Article 9, construction, installation, modification, or alteration of buildings, outdoor structures, fences, awnings, outdoor lighting, landscape and all other exterior Improvements are subject to approval of the Architectural Control Committee.

4.8 Building Restrictions. The Lots are subject to the following building restrictions:

4.8.1 That no dwelling Lot to be occupied as a Residence with a floor area of less than one thousand one hundred fifty (1,150) square feet must be placed or maintained on said property.

4.8.2 That no building shall be erected nearer to any side line than five (5) feet, nor shall be located closer than twenty (20) feet from the front or street line and shall be no closer than twenty (20) feet to the rear line.

4.8.3 That no basement, tent, shack, garage, barn, or other outbuildings erected in the Lot shall, at any time, be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence, except as herein provided.

4.8.4 That during the construction of a single family or multiple family residence, a house or trailer may be used as a temporary dwelling, provided, however, that such use of house trailers must be approved in writing by the Architectural Board and the County of Calaveras for a period of time which shall not exceed a total of one (1) year.

4.8.5 Individual sewage disposal systems will be each designed by a person familiar with the latest research on this field and sound principles of engineering and subject to the approval of the Calaveras Health Department.

4.8.6 That pedestrian and equestrian ways shall be reserved where shown on the Subdivision Map and shall be subject to the use of pedestrians, animals, and vehicles of all kinds, as to provide reasonable access to and from the streets and roads so as to serve the subject lot and all other Lots in the Development. These easements must not be utilized for vehicle access for construction purposes for an individual Lot, unless this access is authorized elsewhere in this Declaration.

4.8.7 That all lots subject to these provisions, conditions, restrictions and covenants shall be and remain of the size and dimension shown on the unit map referenced above, save and except where a change in Lot size and dimension shall be approved by the Architectural Control Committee and the County of Calaveras.

4.9 Signs. No sign of any kind shall be displayed to the public view from any portion of the Development except that this restriction shall not apply to: (a) signs required by legal proceedings; (b) signs which by law cannot be prohibited; (c) a single sign of customary and reasonable dimension and design, complying with the Rules and reasonably located on a Lot advertising the Residence for sale or rent; (d) a single identification sign which has been approved by the Board located on a Lot identifying the number or address of the Lot; (e) signs required for traffic control and regulation of streets or open areas within the Development; (f) signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association; and (g) such other signs as the Board, in its discretion, may approve provided that the Board may adopt limitations on such other signs including, without limitation, restrictions on the size of the signs, the duration of their posting, and their location. All permissible signs must be in good condition. Signs shall not be faded or cracked. The Board may adopt, amend and repeal Rules for the implementation of this section which Rules may include, without limitation, automatic approval of signs meeting specified requirements. It is the express purpose and intent of this section to permit the Association's regulation of signs within the Development to the greatest extent permitted by law.

4.10 Antennas; Roof Projections. No outside mast, tower, pole, antenna or satellite dish shall be erected, constructed or maintained within the Development or on any Common Area except: (a) those erected, constructed or maintained by the Association; (b) those expressly approved by the Board of Directors; or (c) those specifically permitted by law. With respect to those masts, towers, poles, antennae and satellite dishes specifically permitted by law, the Association shall have the authority to regulate their installation and maintenance to the greatest extent permitted by law. The Owner of each Lot shall be responsible for the repair and maintenance of any mast, tower, pole, antenna or satellite installed by him or her within the Development and shall indemnify and reimburse the Association for all costs and

expenses associated therewith, including without limitation any increased costs incurred by the Association in the performance of its maintenance obligations as specified in Article 9 of this Declaration.

4.11 Trash; Trash Containers; Storage of Materials. All garbage and trash shall be regularly removed from the Development and shall not be allowed to accumulate thereon. Trash may only be placed and kept in covered trash containers. Trash containers must be stored in a place where they are screened or concealed from view from the Common Area, the streets, or any other Lot in the Development except for a reasonable time prior to and after trash collection.

4.12 Parking and Vehicles.

4.12.1 Prohibited Vehicles. Inoperable vehicles are generally prohibited from the Development, unless screened from view from neighboring Lots, Streets, and Common Area.

4.12.2 Parking Spaces. Parking spaces are restricted to Owners and guests on a first-come, first-serve basis.

4.12.3 Parking Rules and Enforcement. In order to prevent or eliminate any parking problems within the Development, or to further define and enforce the restrictions contained in this section, the Board shall have the authority to adopt further reasonable rules and restrictions regarding vehicles and parking within the Development as the Board may deem prudent and appropriate. The Board shall also have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such authority and power shall include, without limitation, the power and authority:

4.12.3.1 To cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Development in violation of any of the provisions of the Governing Documents, provided that towing of vehicles of guests and other non-Residents of the Development shall be subject to the provisions of applicable law. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Lot Owner responsible or whose household members, tenants, Contract Purchasers, or guests are responsible for the presence of such vehicle.

4.12.3.2 To fix and impose fines for violations of this section in accordance with Section 10.5.3 of this Declaration and the Bylaws.

4.13 Garages. Each Owner shall keep their garage area in a neat and orderly condition.

4.14 Lease of Lots. All leases for a Lot within the Development must be in writing, for a term of not less than one (1) year, and a copy of said lease evidencing the lease term must be made available to the Association upon request. Following the initial one (1) year term, a lease may continue on a month to month basis. All leases are expressly subject to the terms of this Declaration and any breach of a provision of this Declaration constitutes a breach of the lease. Owners may not lease any garage or, accessory building or other similar improvement separate from the Residence. No Owner may lease or rent their Lot for transient or hotel-like services. Owners are prohibited from renting or leasing a Lot or



any portion thereof through online community platforms, including but not limited to, Airbnb and Vacation Rental by Owner/VRBO.

4.14.1 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 to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (a) the Owner has received written notice from the Board, the Association's property manager or an authorized committee of the Board detailing the nature of the lessee's/tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (b) 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 (c) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with the Bylaws.

4.14.2 Owner Responsibility. Each Owner renting a Lot shall be strictly responsible and liable to the Association for the actions of such Owner's tenants within the Development and for each tenant's compliance with the provisions of all the governing documents, including the Bylaws, the Declaration and any amendment thereto, and Association Rules. An Owner leasing or renting a Lot shall provide the tenants with copies of the Governing Documents and all subsequent amendments, and other pertinent information of general application to the members.

4.14.3 Association's Enforcement Rights. In addition to all other remedies available, in the event a tenant's conduct involves damage or misuse of any Common Areas or constitutes a nuisance to Owners or residents, the Association shall be entitled to maintain an eviction action against such tenant to the same extent as the Owner of the Lot with the Association being deemed a third-party beneficiary of any lease or rental agreement involving any Lot within the Development. The Association's right to maintain an eviction action shall arise only in the event that the Owner has not prevented and/or corrected the actions of the tenant giving rise to the damage or nuisance and: (a) the Association has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action, or (b) the Owner has appeared before the Board, or a duly authorized committee thereof, to present arguments as to why eviction by the Association is not necessary. Any disciplinary action shall be prosecuted in strict compliance with the notice requirements and hearing procedures set forth in Civil Code Section 5855, or comparable successor statute, and the Governing Documents.

4.14.4 Indemnification of Association. Every Owner of a Lot that is occupied by persons other than the Owner pursuant to a lease or otherwise, agrees to and shall indemnify and defend the Association, its officers, Directors, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, including but not limited to attorneys' fees arising out of the conduct or presence of the occupants of the Unit upon the Development, including any such arising or alleged to have arisen out of the enforcement or nonenforcement by the Association of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys'

fees incurred by the Association to enforce the Governing Documents against such occupants, including eviction as provided herein, shall be reimbursed to the Association by the Owner and may be assessed by the Association as a Reimbursement Assessment.

4.15 Variances. The Board shall be authorized to grant reasonable variances from the provisions of Article 4 of this Declaration upon written application from any Owner provided that the Board determines, in its sole discretion, that the specific application of the restriction to such Owner will: (a) cause substantial undue hardship to the Owner; or (b) fail to further or accomplish the common plan for the Development as contemplated by this Declaration. The Board shall have the power to limit any variance granted in scope or duration or otherwise impose such specific requirements as the Board may, in its complete discretion, see fit to require. The Board shall follow the following procedures in acting on any request for a variance:

4.15.1 The Board, in its sole discretion, shall make an initial determination of whether or not the variance request on its face meets the requirements set forth in this section. Where the Board deems it appropriate, the Board may, but shall not be required to, obtain the input of the Architectural Control Committee in considering the variance request. If the Board determines that the variance request does not meet the requirements set forth in this section, the variance request shall be denied and the Board shall so notify the applicant within thirty (30) days of the Board's decision. If the Board determines that the variance request does on its face meet the requirements set forth in this section, the procedures set forth in the remainder of this section shall be followed.

4.15.2 Provided the Board determines that the variance request does on its face meet the requirements set forth in this section, the Board shall conduct a hearing on the variance within sixty (60) days of the receipt of the written request for a variance. No decision regarding the request for variance shall be made until the conclusion of the hearing.

4.15.3 After the conclusion of the hearing, the Board shall, in its sole discretion, either grant or deny the request for variance in accordance with the standards set forth in this section. As more fully discussed above, if the Board grants the variance request, the Board may impose such conditions as the Board deems appropriate and shall so notify the applicant within thirty (30) days of the Board's decision.

## **ARTICLE 5 HOMEOWNERS ASSOCIATION**

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5.1 Management and Operation. The Association, through the Board of Directors, shall manage and operate the Development in accordance with the applicable provisions of the Governing Documents and the applicable provisions of California law. The Association shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

5.2 Membership. Each Owner of a Lot shall be a Member of the Association and shall remain a Member thereof until such time as his or her Lot ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.

5.3 Voting. Only Members in Good Standing shall be entitled to vote, and only one (1) vote shall be cast for each Lot, all as more particularly specified in the Bylaws.

5.4 Board of Directors. The affairs of the Association shall be managed by or under the direction of the Board. The number and qualifications of Directors shall be as established in the Bylaws, and the Directors shall be elected as provided in the Bylaws. The Board of Directors shall have all of the powers and duties set forth in any provision of the Governing Documents, including without limitation such powers and duties as may be expressly set forth in this Declaration.

5.5 Association Rules. The Board shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such rules and regulations, which shall be known as "Association Rules", as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association. The Association Rules may concern, but need not be limited to, matters pertaining to: (a) use of the Common Area; (b) pets; (c) signs; (d) collection and disposal of refuse; (e) minimum standards for maintenance of property; (f) use of recreation facilities, if any; (g) parking and traffic regulations; (h) rental or leasing of Lots; and (i) any other subject matter within the jurisdiction of the Association as provided in the Governing Documents or by law.

5.6 Manager and Other Personnel. The Board shall have the power and authority to employ a manager and such other persons or entities as the Board shall deem appropriate to assist it in managing the Development and conducting the business and affairs of the Association, as more particularly set forth in the Bylaws.

5.7 Insurance. The Board shall procure and maintain liability insurance and property insurance as it shall deem proper and as more particularly set forth in the Bylaws.

5.8 Association Property. The Board of Directors shall have the power to sell, transfer, lease or otherwise dispose of the Association's property, provided that the Board shall not, sell, transfer or otherwise dispose of real property owned by the Association without the approval of at least a Simple Majority.

5.9 Transfer of Common Area to Public Agency or Utility. The Board of Directors shall have the power to dedicate or transfer all or any part of the Common Area to a public agency, authority or utility. No such dedication or transfer shall be effective unless it has been approved by Members holding at least two-thirds (2/3) of the Total Voting Power.

5.10 Borrow Money. The Board of Directors shall have the power to borrow money in the name of the Association.

5.11 Mortgage of Association Property. The Board of Directors shall have the power and authority to mortgage, pledge, encumber, or otherwise hypothecate the real and personal property of the Association for money borrowed or debts incurred by the Association.

5.12 Mergers and Consolidations. The Association may: (a) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as the Association; or (b) annex additional property to the Development, provided that the approval of an Absolute Majority is obtained.

5.13 Dissolution. So long as there is any Lot, parcel or area for which the Association is obligated to provide management, maintenance, preservation or control, the consent of all Members must be obtained for the Association to: (a) transfer all or substantially all of its assets; or (b) file a certificate of dissolution.

5.14 Limitation of Liability. Neither the Association nor its Directors, officers, employees, agents or committee members (collectively and individually referred to as the "Released Party") shall be personally liable for damages or in equity to any of the 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 pursuant to the Bylaws, even if such Released Party is negligent, provided that such Released Party has not acted in bad faith. This standard of care and limitation of liability shall extend, without limitation, to matters such as: (a) the establishment of the Association's annual financial budget; (b) the funding of Association reserve accounts; (c) the discharge of the Association's maintenance, repair and replacement obligations; (d) the enforcement of the Governing Documents; and (e) to any other fiduciary duties or responsibilities imposed by law or the Governing Documents.

## **ARTICLE 6 ASSESSMENTS AND LIENS**

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6.1 Covenant of Owner. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (a) Annual Assessments; (b) Special Assessments; (c) Reimbursement Assessments; and (d) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.

Each Assessment levied by the Association under this Article, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of Record of any Lot shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is Record Owner of such Lot. After an Owner transfers of Record any Lot he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. A Contract Seller of any Lot shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is Recorded.

6.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot notwithstanding the transfer of Record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been Recorded as provided in this Declaration and by law. The priority of all such liens on each Lot shall be

in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Lot for succeeding months.

6.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively for: (a) managing and operating the Development; (b) conducting the business and affairs of the Association; (c) promoting the recreation, health, safety, welfare, benefit, and interests of the Owners in relationship to the Development; (d) improving and maintaining the Common Area and, to the extent provided for in the Governing Documents or by law, the Lots situated within the Development; (e) enforcing the Governing Documents; and/or (f) otherwise benefitting the Owners.

6.4 Authority of the Board. The Board shall have the power and the duty to levy Annual and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.

6.5 Annual or Regular Assessment.

6.5.1 Calculation of Estimated Required Funds. Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the funds required by the Association for such fiscal year to: (a) manage, administer, operate, and maintain the Development; (b) to conduct the affairs of the Association; and (c) to perform all of the Association's duties in accordance with this Declaration. Such estimate shall include a reasonable amount allocated to contingencies and to a reserve fund for the restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis.

6.5.2 Allocation of Annual Assessment. The Board shall allocate and assess the amount of estimated required funds equally among the Lots by dividing the amount by the number of Lots.

6.5.3 Payment of Annual Assessments. Unless the Board shall designate otherwise, Annual Assessments shall be levied on an annual basis and shall be paid in a single installment during the fiscal year, and each installment shall be due and payable on the first day of the fiscal year.

6.5.4 Increases in Annual Assessment. Pursuant to California Civil Code Section 5605 and 5610, except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

## 6.6 Special Assessments.

6.6.1 Purpose of Special Assessments. If at any time during any fiscal year the Annual Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of Improvements located in the Development, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost. The Board may also levy a Special Assessment for capital improvements within the Common Area. The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for routine maintenance, repair and replacement of Common Facilities through Annual Assessments.

6.6.2 Allocation of Special Assessments. Special Assessments shall be allocated and assessed equally among all Lots in the Development, except any Assessment against an Owner as a result of a deficiency in insurance proceeds or condemnation awards as provided in Article 7 of this Declaration.

6.6.3 Approval of Special Assessments. Except in the case of an emergency situation as defined in California Civil Code Section 5600 - 5650, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

6.7 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his or her Lot if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such Owner or his or her Lot into compliance, or to reimburse the Association for damage caused to the Common Area or Improvements thereon by any Owner or their family, guest, or tenant. The Association shall also levy a Reimbursement Assessment in the event that the Association has expended funds performing emergency repairs as authorized by this Declaration or for any other reasons specifically authorized by the provisions of this Declaration. A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Association, including costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied.

6.8 Enforcement Assessments. The Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.

6.9 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or

any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.

6.10 Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

6.11 Payment Under Protest. If a dispute exists between the Owner of a Lot and the Association regarding any disputed charge or sum levied by the Association, including, but not limited to an Assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits set forth in the Code of Civil Procedure Sections 116.220 and 116.221, or comparable successor statute, the Owner may, in addition to pursuing dispute resolution, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any, pursuant to subdivision (b) of Section 5650, and commence an action in small claims court. Nothing in this section shall impair the Association's ability to collect delinquent assessments as provided by California law.

6.12 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, except as prohibited by law. Except as prohibited by law, upon any delinquency in payment, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect such sums, including all Additional Charges. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive.

6.13 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, of the California Civil Code, and does further grant to the Board, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy such lien, except as prohibited by law. The Association or any Owner may purchase the Lot at the sale.

6.14 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall Record, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.

6.15 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article shall have priority as of the date of Recording of the original declaration applicable to the Development over all other liens and encumbrances applicable to the Lots.

Notwithstanding the preceding, a lien for Assessments which have become due and payable prior to the sale of a Lot pursuant to a decree of foreclosure of a First Mortgage, or pursuant to a power of sale contained in any such First Mortgage, shall be subordinate to the lien of any First Mortgage Recorded against the Lot. Such foreclosure sale shall not relieve the Lot from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

6.16 Association Funds. All Association accounts shall be maintained in one (1) or more banks or other depositories selected by the Board, which accounts shall be clearly designated as belonging to the Association. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be used for the purposes set forth in Section 6.3, above.

6.17 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this article, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article.

6.18 Property Exempt from Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:

6.18.1 All property dedicated to and accepted by the County or other local public authority and devoted to public use.

6.18.2 Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure. Such exemption shall be applicable only during the period in which the Association is Record Owner of such Lot.

6.18.3 All Common Areas.

6.19 Owner Assignment of Rents. Each Owner hereby presently assigns to the Association, absolutely and regardless of possession of the Lot, all rents and other monies now due or which may hereafter become due under any lease, 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 to 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, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. 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.

## **ARTICLE 7 DAMAGE OR DESTRUCTION; CONDEMNATION**

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7.1 Replacement or Repair of Association Property. In the event of damage to or destruction of the Common Area, the Common Facilities or other property of the Association or any part thereof, the Association shall repair or replace the same from the insurance proceeds payable to it by reason of such damage or destruction.



7.1.1 If any such damage or destruction was insured against and the insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may levy a Special Assessment against the Members of the Association as provided in this Declaration to cover the additional cost of the repair or replacement not covered by the insurance proceeds, unless the Owners vote to not have the damaged property-repaired or replaced, as provided in this Section 7.1.

7.1.2 The Owners may elect not to cause such replacement or repair by the vote or written consent of a majority of the total voting power of the Association.

7.1.3 If there is an election not to rebuild or repair, the applicable insurance proceeds shall be distributed by the Association to the Members pro rata or otherwise made use of as determined by the vote of the Members.

## 7.2 Rebuilding or Repair of Improvements on Lots.

7.2.1 Damage to One or More Lots. If any Lot or the Residence or any other structure thereon is damaged or destroyed by fire or other casualty, the Owner(s) of any such Lot shall repair or rebuild the structures upon such Lot and restore such Lot to its condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Architectural Committee.

7.2.2 Time Limitation. The Owner or Owners of any damaged Lot or Residence(s), the Architectural Committee and the Board of Directors (with regard to the disbursement of insurance proceeds) shall be obligated to proceed with all due diligence hereunder, and the Owner(s) shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within twelve (12) months after the damage occurs, unless an extension of these time limitations is obtained from the Architectural Committee.

7.3 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Development, shall be paid to the Association and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association. The Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

7.4 Condemnation of Lots. If an entire Residence or Lot, or so much thereof as to render the remainder unfit for use as a Residence, is condemned or taken for a public or quasi-public use, pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Owner's membership in the Association shall terminate as of the last day of the month in which the condemner obtains the right to possession, or upon Owner's vacating the premises, whichever occurs last. If only a portion of such Residence or Lot is taken and the remainder is fit for use as a residence, the Owner shall continue to be a Member of the Association. In any condemnation action involving an Owner's Residence or Lot, the Association shall have the right to seek compensation for any damages incurred by the Association.

## **ARTICLE 8 MAINTENANCE OF PROPERTY**

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8.1 Association Responsibilities. The Association is responsible for maintaining, repairing, and replacing the Common Area.

8.2 Owner Responsibilities. Except as specifically provided in Section 8.1 above, each Owner shall be responsible for the maintenance and repair of their Residence, Lot and Exclusive Use Common Area.

8.3 Owner Failure to Maintain. The Board has the reasonable discretion to determine whether any maintenance, repair, or replacement which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property comprising the Development, or any portion thereof, and may notify an Owner of the work the Board deems necessary. Subject to the authority of the Board to authorize immediate emergency repairs as specified in Section 8.5, below, in the event an Owner fails to perform such work within thirty (30) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment. The board may adopt and maintain rules for minimum maintenance standards of the properties.

8.4 Owner Liability. In the event the need for any maintenance, repair, or replacement by the Association is necessitated by the willful or negligent act or omission of an Owner, members of any Owner's household, or an Owner's tenants, Contract Purchaser, guests, invitees, or household pets, or livestock the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment.

8.5 Authority for Entry of Lot. The Association or its agents may enter any Lot, when such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is responsible for which it is authorized to perform, including without limitation the authorization provided in Section 8.3, above. Although under no obligation to do so, the Board, in its complete and sole discretion, may enter or may authorize the Association's agents to enter any Lot to effect emergency repairs where such repairs are necessary for safety reasons or to prevent or discontinue damage to the entered Lot, any other Lot or the Common Area. The cost of performing any such emergency repairs shall be charged to the Owner as a Reimbursement Assessment. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

8.6 Association Liability. Except as specifically provided in Section 8.1, the Association shall not be responsible or liable for any maintenance, repair, or replacement of a Lot or any Improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the gross negligence of the Association, its employees, contractors, or agents.

8.7 Board Discretion. The Board shall have the discretion to determine the manner, method, extent and timing of the performance of any and all maintenance, repair and replacement obligations imposed upon the Association by this Article.

8.8 Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

## **ARTICLE 9 ARCHITECTURAL CONTROL**

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9.1 Submission of Plans and Specifications. Except for Improvements made, or constructed by, or on behalf of, the Association, no Improvements including without limitation Residences, buildings, walls, solar panels, fences, awnings, or other structures of any kind which is visible from the Common Area, streets, may be commenced, located, erected, or maintained within the Development, nor may any exterior addition to, or change, or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, size, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to: (a) harmony of external design in relation to the nature and character of the Development and the Improvements thereon; (b) location in relation to surrounding structures, topography, finished grade elevation; and (c) compliance with the provisions of the Declaration.

### 9.2 Establishment of Architectural Control Committee.

9.2.1 Except as provided in Sections 9.2.2 and 9.2.3, below, the Board shall appoint an Architectural Control Committee that shall consist of at least three (3) Members to be selected by the Board, who serve at the pleasure of the Board. The Board shall have the power, in its complete discretion and either with or without cause, to remove any member of the Architectural Control Committee. In the event of death, resignation or removal of any member of the Architectural Control Committee, the Board shall have the full authority to designate a successor.

9.2.2 The Board may, in its discretion, elect to act as the Architectural Control Committee without appointing the separate committee provided for in Section 9.2.1.

9.2.3 If a duly-constituted Architectural Control Committee is not in existence, or if the Board elects to act as the Architectural Control Committee, the Board shall act as the Architectural Control Committee in accordance with the terms of this article.

9.3 Duties. It shall be the duty of the Architectural Control Committee to consider and act upon proposals or plans submitted to it, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

9.4 Meetings. The Architectural Control Committee may meet as necessary to properly perform its duties hereunder. Every act done or decision made by a majority of the members of the Architectural Control Committee shall be the act or decision of the Architectural Control Committee. The Architectural Control Committee shall keep and maintain a record of all actions taken by it at any meetings or otherwise. The Architectural Control Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Architectural Control Committee function.

9.5 Architectural Rules. The Architectural Control Committee may, from time to time, and subject to the Board's approval, adopt, amend, and repeal rules and regulations to be known as Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this Article

by setting forth the standards and procedures for Architectural Control Committee review and guidelines for architectural design, placement of Residences and other structures in the Development; provided, however, that the Architectural Rules shall not be in derogation of the minimum standards required by this Declaration. The Architectural Rules may also impose limits on the days and hours of construction and impose any other restrictions and regulations which the Board deems appropriate to limit the impact of construction activities on the Residents. In its discretion, and subject to the Board review and Section 9.11, the Architectural Control Committee may grant variances from specific Architectural Rules subject to such terms and conditions as it deems appropriate.

9.6 Application. Any Owner proposing to perform any work of any kind whatever, which requires prior approval pursuant to this Article, shall apply for approval by notifying the Association, in writing, of the nature of the proposed work and furnishing such information and documentation as the Architectural Control Committee or Board may require, including without limitation samples of finish materials in such sizes and formats as the Committee or the Board may deem appropriate. In addition to any other remedies the Association may have, the Board may impose a fine against any Owner who fails to obtain the approval required by this Article prior to proceeding with any Improvement, or any alteration to an existing Improvement, for which approval is required pursuant to this Article.

9.7 Expert Review. If at any time the Architectural Control Committee determines that it would be in the best interest of the community for an Owner-applicant to employ an architect, licensed building designer or engineer to design or review the structural integrity of any proposed Improvement or component thereof, the Architectural Control Committee shall so advise the Owner in writing of its determination, whereupon all plans and specifications so designated by the Architectural Control Committee must thereafter bear appropriate evidence of such preparation or review.

9.8 Grant of Approval. The Architectural Control Committee shall grant the requested approval only if:

9.8.1 The Owner shall have complied with the provisions of Section 9.1, 9.6, and 9.7 of this Declaration;

9.8.2 The Architectural Control Committee shall find that the plans and specifications conform to: (a) this Declaration and the Architectural Rules in effect at the time such plans were submitted to the Committee, unless a variance is granted from such Architectural Rules pursuant to this Article; (b) will be in harmony with the external design of other structures and/or landscaping within the Development; and (c) will not interfere with the reasonable use and/or enjoyment of any other Lot Owner of his or her property; and

9.8.3 The Architectural Control Committee shall determine that the proposed Improvements would be consistent with the standards of the Development and the purposes of this Declaration as to quality of workmanship, design and materials, as to harmony of exterior design with the existing structures, and as to location with respect to topography and finished grade elevations.

9.9 Form of Approval. All approvals and denials of requests for approval shall be in writing except as provided in Section 9.11, below. The Architectural Control Committee may approve a request for approval subject to the Owner's consent to any modifications made by the Architectural Control Committee. If the Owner does not consent to the modifications, the request for approval shall be deemed denied in its entirety. Any denial of a request for approval shall include: (a) an explanation of why the

request for approval was denied; and (b) a description of the procedure for Board review of the denial as set forth in this Article and any applicable Architectural Rules.

9.10 Time for Architectural Control Committee Action. The Architectural Control Committee shall act on a request for approval within forty-five (45) days from the date of receipt thereof by the Architectural Control Committee. Any request for approval which has not been acted on by the Architectural Control Committee within the preceding time frame shall be deemed approved. The Owner requesting approval shall have the burden of establishing the date of receipt of the request for approval by the Architectural Control Committee by evidence in the form of either a copy of such request for approval date-stamped by the Association or by certified mail provided by the U. S. Postal service acknowledging that such request for approval was delivered to the Association.

9.11 Board Review. This section shall only apply if there is a duly organized Architectural Control Committee, and shall not apply if the Board is acting in the capacity of an Architectural Control Committee pursuant to this Article. An Owner shall have a right to appeal the decision of the Architectural Control Committee to the Board, provided that such request shall be presented to within ten (10) days from the date of the Architectural Control Committee's decision. If a review is conducted: (a) it shall take place during an open meeting of the Board; (b) the Board may affirm, reverse or modify the decision in its discretion and in accordance with the provisions of the Governing Documents; and (c) the Board shall notify the applicant in writing of the Board's decision within fifteen (15) days following the review.

9.12 Commencement. Upon receipt of approval by the Architectural Control Committee, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all installation, construction, reconstruction, refinishing, alterations, and excavations pursuant to such approval, commencement to occur, in all cases, within ninety (90) days from the effective date of such approval or upon such later date as the Board may in its discretion designate. If the Owner shall fail to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the time for commencement, extends the time for such commencement. No such extension shall 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.

9.13 Completion. The Owner shall, in any event, complete the installation, construction, reconstruction, refinishing, or alteration of any Improvement, within one (1) year after commencing construction thereof (or in the case of projects under construction when this Declaration is Recorded, within one (1) year after the date of Recordation), 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/her agents. If an Owner fails to comply with this section, the Board shall proceed in accordance with the provisions of Section 9.17 of this Declaration, as though the failure to complete the Improvements was a noncompliance with approved plans.

9.14 Inspection. Inspection of work and correction of defects therein shall proceed as follows:

9.14.1 Upon the completion of any installation, 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, the Owner shall give written notice thereof to the Architectural Control Committee.

9.14.2 Within sixty (60) days after the receipt of such written notice, the Architectural Control Committee, or its duly authorized representative, may inspect such Improvement to determine whether it was installed, constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the Architectural Control Committee finds that such installation, construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such sixty (60) day period, specifying particulars of noncompliance and shall require the Owner to remedy such noncompliance.

9.14.3 If the Owner fails to remedy such noncompliance upon the expiration of thirty (30) days from the date of such notification, the Architectural Control Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing shall be noticed and conducted in accordance with Section 8.1.4 of the Bylaws.

9.14.4 At the hearing the Owner, the Architectural Control Committee 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 shall determine whether there is a noncompliance, and, if so, the nature thereof. If a noncompliance exists, the Board shall require the Owner to remedy or remove the same within a period determined in the discretion of the Board. 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 may (a) remove the noncomplying Improvement or remedy the noncompliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Reimbursement Assessment, and/or (b) exercise any of the enforcement rights specified in Section 10.5, below.

9.14.5 If, for any reason, the Architectural Control Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt of a notice of completion from the Owner, the Improvement shall be deemed to be in accordance with the approved plans. The Owner shall have the burden of establishing the date of receipt of the notice of completion by the Architectural Control Committee by evidence in the form of either a copy of such notice date-stamped by the Association's office or by a certified mail provided by the U. S. Postal service acknowledging that such notice was delivered to the Association.

9.15 Non-Waiver. The approval by the Architectural Control Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Control Committee under this Declaration, shall 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.

9.16 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall Record an estoppel certificate, if permitted by the County, certifying (with respect to any Lot of such Owner) that as of the date thereof, either: (a) all Improvements made and other work completed by such Owner comply with this Declaration; or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the Owner,

or from anyone deriving any interest in a Lot through him or her, shall be entitled to rely on such certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

9.17 Notice of Noncompliance. If any Improvements are installed within the Development that are not in conformance with this Declaration, the Association is authorized to Record a notice of noncompliance, if permitted by the County. The notice of noncompliance shall provide: (a) a legal description of the Lot affected; (b) the name of the record Owner as most recently reported to the Association; and (c) a description of the general nature of the noncompliance. If and when such Lot is brought into compliance with this Declaration, as determined by the Board, the Association shall issue and, if permitted by the County, Record an estoppel certificate in accordance with Section 9.16, above. Each Owner of a Lot, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to the recordation of notices of noncompliance as set forth in this Section.

9.18 Liability. Neither the Board, the Architectural Control Committee nor any member or representative thereof shall 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; (d) the execution and filing of an estoppel certificate pursuant to Section 9.16, above, whether or not the facts therein are correct; provided, however, that the Architectural Control Committee, the Board or any member or representative thereof has acted in good faith on the basis of such information as may be possessed by it or him or her; or (e) the execution and filing of a notice of noncompliance pursuant to Section 9.17, above, whether or not the facts therein are correct; provided, however, that the Architectural Control Committee, the Board or any member or representative thereof has acted in good faith on the basis of such information as may be possessed by it or him or her. Without in any way limiting the generality of the foregoing, the Architectural Control Committee, the Board or any member or representative 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 Architectural Control Committee. Every purchaser, by acquiring title to a Lot or portion thereof agrees not to bring any action or suit against the Board, the Architectural Control Committee, or their members or representatives seeking to recover any such damages.

9.19 Compliance with Governmental Requirements. The application to the Association, and the review and approval of any proposals, plans, or other submittals, shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on the Board, the Architectural Control Committee, or their members as to the accuracy, efficacy, or sufficiency of such proposals, plans or other submittals.

9.20 Variances. The Architectural Control Committee may, with approval of the Board, grant reasonable variances in any procedures specified in this Article 9 in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardship, provided the following conditions are met:

9.20.1 The Architectural Control Committee must make a good faith written determination that: (a) the requested variance does not constitute a material deviation from the overall plan and scheme of the Development or from any restriction contained in the

Declaration or that the proposal allows the objectives of the violated restriction(s) to be substantially achieved despite noncompliance; or (b) that the variance relates to a restriction or requirement that is unnecessary or burdensome under the circumstances; or (c) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Lot, Common Area or Owner in the Development.

9.20.2 After the conclusion of the hearing, the Architectural Control Committee shall consult with the Board to render a determination to either grant or deny the request for variance in accordance with the standards set forth in this section.

## **ARTICLE 10 ENFORCEMENT**

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10.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute 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 or by any Owner. The Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, 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.

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

10.3 Owners' Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing the members of his or her household and his or her tenants, Contract Purchasers, contractors and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets or livestock. If a Lot is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

10.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities, if any, or by abandonment of his or her Lot.

### 10.5 Rights and Remedies of the Association.

10.5.1 Enforcement Rights. The Association, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive. The Board shall not be obligated to take action to enforce a provision of the Governing Documents if, in the exercise of its discretion, the Board determines that acting to enforce the provision is not likely to foster or protect the interests of the Association and its Members as a whole.



10.5.2 Member Not in Good Standing. Upon a determination by the Board of Directors, after prior notice to the affected Member and an opportunity for a hearing, that such Member has violated any provision of the Governing Documents including a failure to pay any Assessment when due, the Board shall give notice in writing to such Member that he or she is deemed not to be a Member in Good Standing. Such Member shall be deemed to remain in that status until such time as the Board shall determine in writing that the violation which resulted in the Board's determination has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member shall again be deemed to be a Member in Good Standing of the Association. Such Member shall be so notified in writing with a copy given to the Secretary.

10.5.3 Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or his or her tenants, Contract Purchasers, contractors, guests or invitees, the Board shall have the power to impose sanctions against the Owner. Such sanctions may include, without limitation, the imposition of fines and/or the suspension of an Owner's rights as a Member, including an Owner's voting rights or an Owner's right to use the recreational or community facilities, if any, on the Common Area. Except as provided in Section 10.7, below, imposition of sanctions shall be effective only after notice and an opportunity for hearing as provided in Section 8.1.4 of the Bylaws. The payment of any such fine may be enforced as an Enforcement Assessment as provided in Section 6.8 of this Declaration as well as in any manner permitted by law. Further, each Owner shall be obligated to pay Reimbursement Assessments levied by the Board for reimbursement of any costs incurred by the Association relating to violation of any provisions of the Governing Documents by the members of such Owner's household and such Owner's tenants, Contract Purchasers, guests, pets, livestock or other invitees.

10.5.4 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of Article 6 of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, household pets, or livestock or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its Officers or Board of Directors, or by any Owner or by their respective successors in interest.

10.5.5 Limitation on Disciplinary Rights. The Association shall not have the power and authority to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests, invitees or household pets or livestock to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to Article 6 of this Declaration. The provisions of this subsection shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

10.6 Disciplinary Rules. The Board or Rules Committee (appointed by the Board for that purpose) may adopt rules and regulations that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such rules, when approved and adopted by the Board, shall be deemed to be a part of the Association Rules provided for in, and constituting a part of, the Governing Documents.

10.7 Emergency Situations. The following shall constitute emergency situations: (a) an immediate and unreasonable threat to the safety of Residents of the Development; (b) a traffic or fire hazard; or (c) a threat of material damage to or destruction of the Development or any portion thereof. Notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that constitutes an emergency situation, the Association may undertake immediate corrective or disciplinary action. Hearings with respect to such corrective or disciplinary action shall be in accordance with Section 8.1.4 of the Bylaws.

10.8 Alternative Dispute Resolution. Compliance with California Civil Code Sections 5925 through 5965 and Civil Code Sections 5900 through 5920, shall be required with respect to any dispute subject to such sections.

10.9 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.

10.10 Notices. Any notices required or given under this Article shall conform to Section 8.1.4 of the Bylaws.

10.11 Costs and Attorneys' Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Member or members of his or her household or his or her tenants, Contract Purchasers, guests, invitees, household pets, or livestock have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the prevailing party shall be entitled to recover the full amount of all costs incurred, including attorneys' fees, in responding to such a violation and/or in enforcing any Governing Document provision. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, without limitation, the imposition of a Reimbursement Assessment as provided in Section 6.7 of this Declaration.

10.12 Indemnification. Each Owner, by acceptance of his or her deed, agrees for himself or herself and for the members of his or her household, his or her Contract Purchasers, tenants, guests or invitees, to: (a) indemnify each and every other Owner for; (b) hold each and every other Owner harmless from; and (c) defend each and every other Owner against, any claim of any person for personal injury or property damage occurring within the Lot of such Owner, except that such Owner's duty to indemnify, hold harmless and defend may be diminished to the extent that the injury or damage occurred by reason of the negligence of any other Owner or person temporarily visiting in such Lot or is fully covered by the Owner's insurance.

## **ARTICLE 11 AMENDMENT**

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11.1 Amendments by Members. This Declaration may be amended by the affirmative vote or written consent of fifty-one percent (51%) of the Members. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officers of the Association and shall be Recorded.

11.2 Amendments by Board. The Board of Directors may, without the approval of the Members, amend any part of this Declaration to the limited extent necessary to comply with the lending requirements of any federally chartered lending institution or to comply with a mandatory change in applicable federal, state or local legislation.

Certain provisions of this Declaration reflect legal requirements prescribed by Federal law, California law, and other governmental statutes and regulations. In the event that any such laws, statutes or regulations are amended, revoked, or supplemented, the Board of Directors may, by the affirmative vote of a majority of the Directors present at a meeting at which a quorum has been established, amend the Declaration to reflect the underlying law, statute or regulation. The purpose of this provision is to provide the Members with notice of current legal requirements which affect their rights and obligations as they pertain to their Lot and membership within the Association.

11.3 Restatement of the Declaration. The Board of Directors may, by the affirmative vote of a majority of the Directors present at a meeting at which a quorum has been established, restate the Declaration when it has been properly amended pursuant to this Article. Any such restatement shall supersede any prior declarations and amendments in their entirety, but shall not affect the priority of any previous declarations or amendments in the chain of title to all Lots within the Development as established by the initial date of recordation of the original declaration for the Development. Such restatement may also:

11.3.1 Add, delete, or rearrange the text of the Declaration to maintain consistency with any amendments including, but not limited to, altering the title and numbering of the restatement;

11.3.2 Delete material that is no longer legally effective;

11.3.3 Add text which indicates that the Board of Directors has authorized the restatement and otherwise describes the background of the Development and the restatement process, and

11.3.4 Correct any errors or inaccuracies in the Declaration, including but not limited to, the legal description of the properties in the Development.

## **ARTICLE 12 GENERAL PROVISIONS**

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12.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.

12.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.

12.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.

12.4 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.

12.5 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.

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**IN WITNESS WHEREOF**, Members of the Copper Cove at Lake Tulloch Owners' Association consisting at least a majority of all Members, hereby affirm, approve, and adopt this First Restated Declaration of Covenants, Conditions, and Restrictions for Copper Cove at Lake Tulloch pursuant to the requirements of Civil Code Sections 4270 and 4065.

DATED: \_\_\_\_\_, 2019

**Copper Cove at Lake Tulloch Owners' Association** a  
California nonprofit mutual benefit corporation

\_\_\_\_\_, President

\_\_\_\_\_, Secretary

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## Exhibit "A"

### **Legal Description**

Lots 1 to 643 inclusive, of Copper Cove at Lake Tulloch Unit Two & Unit One, according to the map recorded in Volume 3 of Subdivisions, at Page 34, Calaveras County Records.

All the real property set forth and described on that certain map (herein called the "map") entitled "Copper Cove at Lake Tulloch Subdivision, Units No. 3 and 4," consisting of nineteen sheets each, marked respectively "sheet 1 of 19 sheets" through "sheet 19 of 19 sheets," which maps were recorded in the Office of the County Recorder of Calaveras County, California of August 18, 1969 in Map Book 3. There are three hundred and fourteen subdivided lots in Unit 3 and one hundred forty-seven subdivided lots in Unit 4 set forth and described in the recorded maps.

All the real property set forth and described on that certain map (herein called the "map") entitled "Copper Cove at Lake Tulloch Subdivision, Unit No. 7, consisting of thirty-one sheets marked respectively "sheet 1 of 31 sheets" through "sheet 31 of 31 sheets," which map was recorded in the Office of the County Recorder of Calaveras County, California of December 1, 1969 in Map Book No. 3, page No. 40. There are seven hundred and six subdivided lots set forth and described in the recorded map.

All of the real property set forth and described on that certain map ("Map") entitled "Copper Cove Subdivision at Lake Tulloch, Unit No. 8-A, Tract 236" (consisting of six sheets marked respectively "Sheet 1 of 6 Sheets" through "Sheet 6 of 6 Sheets", which said Map was recorded in the Office of the County Recorder of Calaveras County, California, on November 15, 1971, in Map Book No. 4, Page No. 10. There are 187 subdivided lots set forth and described in the aforementioned Map of Unit No. 8-A.