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FIRST RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
EAST MEADOWS SUBDIVISION

COMPARED

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OF
EAST MEADOWS SUBDIVISION

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**FIRST RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
EAST MEADOWS SUBDIVISION**

This First Restated Declaration of Covenants, Conditions and Restrictions of East Meadows Subdivision (the "Declaration") is made by East Meadows Homeowners Association, a California nonprofit mutual benefit corporation (the "Association").

RECITALS

A. The Association is an "association", as that term is defined in California Civil Code Section 1351(a), which has been created to manage that certain common interest development located in Alpine County, California commonly known as East Meadows Subdivision, which is more particularly described as follows (the "Development"):

Lots 201 through 227, inclusive, Lots 301 through 314, inclusive, Lots 407 through 424, inclusive, and Parcels A, B, C, and D, all as shown on the Map entitled "East Meadows Subdivision Unit 1" filed for record June 25, 1990 in Book 3 of Maps, Pages 94 through 97, in the Office of the Recorder of Alpine County, California.

Lots 501 through 531, inclusive, Lots 601 through 606, inclusive, and Parcels I, J, and K, all as shown on the Map entitled "East Meadows Subdivision Unit 2" filed for record (i) August 24, 1995 in Book 4 of Maps, Pages 23 through 25, in the Office of the Recorder of Alpine County, California, and (ii) August 25, 1995 in Book 7 of Maps, Pages 7 through 9, in the Office of the Recorder of Amador County, California.

Lots 701 through 713, inclusive, Lot A, and Sorrel Court, all as shown on the Map entitled "East Meadows Subdivision Unit No. 3" filed for record May 20, 1997 in Book 4 of Maps, Pages 59 through 62, in the Office of the Recorder of Alpine County, California.

B. Lot 201 as shown on the Phase 1 Map was subdivided into two parcels as shown on the Lot 201 Parcel Map. Lot 202 as shown on the Phase 1 Map was subdivided into two parcels as shown on the Lot 202 Parcel Map.

C. A portion of the Development was originally a part of Amador County. In 1995 a minor boundary line change between Alpine County and Amador County was adopted resulting in the entire Development being within the boundaries of Alpine County.

D. The original developer of the Development, Kirkwood Associates, Inc., a California corporation ("Declarant"), executed that certain Declaration of Covenants, Conditions, and Restrictions of East Meadows Subdivision which was Recorded on July 23, 1990, as Instrument No. 658 in Book 69, Page 358 et seq., in the Official Records of Alpine County, California (the "Original Alpine Declaration").

E. An instrument entitled Declaration of Annexation of East Meadows Subdivision (Phases 2, 3, and 4) was Recorded on August 6, 1993, as Instrument No. 632 in Book 81, Page 162 et seq., in the Official Records of Alpine County, California (the "Original Alpine Annexation").

F. The Original Alpine Annexation was subsequently amended by (i) an instrument entitled First Amendment to Declaration of Annexation of East Meadows Subdivision (Phases 2, 3 and 4) which was Recorded August 25, 1995, as Instrument No. 756 in Book 84, Page 2095 et seq., (ii) an instrument entitled Second Amendment to Declaration of Annexation of East Meadows Subdivision (Phases 2, 3 and 4) which was Recorded September 5, 1995, as Instrument No. 781 in Book 84, Page 2157 et seq., (iii) an instrument entitled Third Amendment to Declaration of Annexation of East Meadows Subdivision (Phases 2, 3 and 4) which was Recorded November 27, 1995, as Instrument No. 1054 in Book 84, Page 2917 et seq., and (iv) an instrument entitled Fourth Amendment to Declaration of Annexation of East Meadows Subdivision (Phases 2, 3 and 4) which was Recorded May 20, 1997, as Instrument No. 363 in Book 86, Page 961 et seq., all in the Official Records of Alpine County, California (the "Alpine Annexation Amendments").

G. The original developer of the Development, Kirkwood Associates, Inc., a California corporation ("Declarant"), executed that certain Declaration of Covenants, Conditions, and Restrictions of East Meadows Subdivision which was Recorded on August 25, 1995, as Instrument No. 1995-006315 in the Official Records of Amador County, California (the "Original Amador Declaration").

H. An instrument entitled Declaration of Annexation of East Meadows Subdivision (Phases 2, 3, and 4) was Recorded on August 25, 1995, as Instrument No. 1995-006316 in the Official Records of Amador County, California (the "Original Amador Annexation").

I. The Original Amador Annexation was subsequently amended by (i) an instrument entitled First Amendment to Declaration of Annexation of East Meadows Subdivision (Phases 2, 3 and 4) which was Recorded August 25, 1995, as Instrument No. 1995-006317, (ii) an instrument entitled Second Amendment to Declaration of Annexation of East Meadows Subdivision (Phases 2, 3 and 4) which was Recorded September 5, 1995, as Instrument No. 1995-006588, and (iii) an instrument entitled Third Amendment to Declaration of Annexation of East Meadows Subdivision (Phases 2, 3 and 4) which was Recorded December 7, 1995 as Instrument No. 1995-009249, all in the Official Records of Amador County, California (the "Amador Annexation Amendments").

J. The Original Alpine Declaration by its own terms and the terms of the Original Alpine Annexation, as amended by the Alpine Annexation Amendments, and the Original Amador Declaration by its own terms and the terms of the Original Amador Annexation, as amended by the Amador Annexation Amendments, establish 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.

K. Members of the Association holding at least a bare majority of the total voting power of the Association desire to amend, combine, consolidate, restate and supersede the Original Alpine Declaration and the Original Amador Declaration pursuant to Section 15.02 of the Original Alpine Declaration and Section 15.02 of the Original Amador Declaration.

NOW, THEREFORE, it is hereby declared as follows:

1. The Original Alpine Declaration and the Original Amador Declaration are hereby amended, combined, consolidated, restated and superseded in their 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 1351(k).

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 1354, 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

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 10 of this Declaration.

1.4 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.

1.5 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:

(a) Annual Assessments, which shall have the meaning set forth in Section 6.5 of this Declaration.

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

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

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

1.6 Association. "Association" shall mean East Meadows Homeowners Association, its successors and assigns.

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

1.8 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.

1.9 Common Area. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and Residents of the Development including, without limitation, (i) parcels A, B, C, and D as shown on the Phase 1 Map, (ii) parcels I, J, and K as shown on the Phase 2 Map, and (iii) lot A and Sorel Court as shown on the Phase 3 Map.

1.10 Construction Constraints Agreement. "Construction Constraints Agreement" shall mean a written agreement between the Association and the Owner of a Lot proposing to construct an improvement thereon which requires approval pursuant to Article 10, and such Owner's contractor, if any, all as more fully described in Section 10.7.

1.11 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.

1.12 County. "County" shall mean the County of Alpine, California.

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

1.14 Design Guidelines. "Design Guidelines" shall mean the rules and regulations adopted by the Architectural Control Committee pursuant to Section 10.6 of this Declaration.

1.15 Development. "Development" shall mean all the real property described in the Declaration comprising the East Meadows Subdivision residential planned development, including such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.16 Eligible First Mortgagee. "Eligible First Mortgagee" shall mean a First Mortgagee who has requested notice by sending a written request to the Association, stating both its name and address and the lot number or address of the lot it has a mortgage on.

1.17 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, Rules (including the Design Guidelines), and the policies and resolutions duly adopted by the Board and distributed to the Members.

1.18 Improvement. "Improvement" shall mean all structures and improvements on the Development, including without limitation buildings, landscaping, paving, fences, and signs.

1.19 Lot. "Lot" shall mean any plot of land shown upon any Subdivision Map, with the exception of the Common Area. Without limiting the foregoing, the two parcels shown on the Lot 201 Parcel Map and the two parcels shown on the Lot 202 Parcel Map are Lots as defined in this section.

1.20 Member. "Member" shall mean an Owner.

1.21 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.

1.22 Mortgage. "Mortgage" shall mean a mortgage or deed of trust encumbering a Lot or other portion of the Development. A "Mortgagee" shall include the beneficiary under a deed of trust and any guarantor or insurer of a Mortgage. "First Mortgage" or "First Mortgagee" is one having priority over all other Mortgages or holders of Mortgages encumbering the same Lot or other portion of the Development. A "First Mortgagee" shall include any holder (including FHLMC and FNMA), insurer (including FHA), or guarantor (including VA) of a First Mortgage on a Lot or other portion of the Development. "FHA" shall mean the United States Department of Housing and Urban Development, Federal Housing Administration. "VA" shall mean the United States Department of Housing and Urban Development, Veterans Administration. "FHLMC" shall mean the Federal Home Loan Mortgage Corporation. "FNMA" shall mean the Federal National Mortgage Association. Where any provision of the Project Documents requires the approval of a First Mortgagee, the approval of the holder, insurer or guarantor of that First Mortgage shall be deemed to be the required approval.

1.23 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 guests, tenants/lessees (hereafter, "tenants") and invitees of an Owner; provided, however, that such persons shall not be Members.

1.24 Project Documents. "Project Documents" shall mean and include this Declaration, as amended from time to time, the exhibits, if any, attached hereto, together with the other basic documents used to create and govern the Development, including the Phase I Map, the Articles and the Bylaws, but excluding unrecorded rules and regulations adopted by the Board or 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 on a Lot within the Development whether or not such person is an Owner as defined in Section 1.23 of this Declaration.

1.28 Rules. "Rules" shall mean the rules and regulations governing the use, occupancy, management, administration, and operation of the Development or any part thereof as adopted and published by the Board of Directors from time to time and shall include, without limitation, the Design Guidelines.

1.29 Simple Majority. "Simple Majority" shall mean a majority of the votes of the Members (i) represented and voting at a meeting at which a quorum is present, or (ii) cast by written ballot (in conformity with California Corporations Code Section 7513) in which the number of ballots received equals or exceeds the number required to establish a quorum.

1.30 Subdivision Map. "Subdivision Map" shall mean any Recorded subdivision map(s) for any portion of the Development including, without limitation, the following maps:

(a) The map entitled "East Meadows Subdivision Unit 1" filed for record June 25, 1990 in Book 3 of Maps, Pages 94 through 97, in the Office of the Recorder of Alpine County, California (the "Phase 1 Map").

(b) The map entitled "East Meadows Subdivision Unit 2" filed for record (i) August 24, 1995 in Book 4 of Maps, Pages 23 through 25, in the Office of the Recorder of Alpine County, California, and (ii) August 25, 1995 in Book 7 of Maps, Pages 7 through 9, in the Office of the Recorder of Amador County, California (the "Phase 2 Map").

(c) The map entitled "East Meadows Subdivision Unit No. 3" filed for record May 20, 1997 in Book 4 of Maps, Pages 59 through 62, in the Office of the Recorder of Alpine County, California (the "Phase 3 Map").

(d) The parcel map subdividing Lot 201 as shown on the Phase 1 Map filed for record February 19, 1999 in Book 4 of Maps, Page 141, in the Office of the Recorder of Alpine County, California (the "Lot 201 Parcel Map").

(e) The parcel map subdividing Lot 202 as shown on the Phase 1 Map filed for record February 15, 1995 in Book 4 of Maps, Page 18, in the Office of the Recorder of Alpine County, California (the "Lot 202 Parcel Map").

1.31 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 vote for each Lot, excluding any Lots as to which an Owner is not then a Member in Good Standing.

ARTICLE 2 PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT

2.1 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 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.

2.2 Common Area. Subject to the provisions of the Declaration, the Common Area shall be held, maintained, and used to meet the common interests of the Members and their families, tenants, resident Contract Purchasers, and guests as provided in the Governing Documents.

2.3 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 of the Development. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

(a) The right of the Board of Directors to establish and enforce reasonable Rules governing the use of the Common Area and the facilities thereon including, without limitation, Rules (i) limiting the number of guests of Members permitted to use the Common Areas and the facilities thereon at any one time, (ii) limiting the hours of use of the Common Areas and the facilities thereon, (iii) regulating the use of the Common Areas and the facilities thereon for group activities, and (iv) regulating parking upon the Common Area including, without limitation, prohibiting parking on portions of the Common Area, including the private streets, during certain periods of the year based on snow removal and road clearing considerations.

(b) The right of the Board to charge reasonable admission and other use fees for any facilities situated upon the Common Area;

(c) The right of the Board, as more particularly addressed in the Bylaws, to suspend an Owner's right to use the recreational facilities located on the Common Area for (i) any period during which any Assessment against such Owner's Lot remains unpaid, and/or (ii) for violations of the Governing Documents by an Owner or any person for which an Owner is responsible;

(d) The right of the Board, as set forth in Section 3.3 of this Declaration, to grant easements and rights of way in, on, over, or under the Common Area subject to such conditions as may be agreed to by the Board;

(e) Subject to Section 5.10, the right of the Board to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility;

(f) 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 subject to the limitations in Section 5.12;

(g) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including, without limitation, obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common;

(h) The right of the Association to establish, construct, maintain, repair and replace facilities upon the Common Area, including without limitation, 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 including, without limitation, the right of the Board to designate a portion of the Common Area as a storage area for snow removal equipment; and

(i) The right of the Board to authorize the temporary placement of storage containers for the storage of construction equipment and materials on a portion of the Common Area for the duration of a construction project approved in accordance with Section 4.12.

2.4 Assignment of Use. Any Owner may assign his rights of use and enjoyment, including easements, in the Development to the members of his family, tenants, Contract Purchasers, guests and invitees, subject to the terms of the Governing Documents. Upon the leasing or renting 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 Owners 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 delegated 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 delegated 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.

2.5 Common Area Construction. Except as may be authorized by the Board, no person or entity, other than the Association or its duly-authorized agents, shall construct, reconstruct, refinish, alter, or maintain any Improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or 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 Recorded 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 within the Development or his or her Lot, such Owner shall forthwith 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 permitted 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 of Directors 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 in General. In addition to all easements reserved and granted on the Subdivision Map and the easements provided in Article 2 of this Declaration, there are hereby specifically acknowledged, reserved and granted for the benefit of the Lots and Owners in common and for each Lot and Owner severally, and for the Association, as their respective interests shall exist, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this article.

3.2 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance, and replacement of electric, telephone, water, gas, and sanitary sewer lines,

meters, and facilities, cable lines, drainage facilities, walkways, and landscaping as shown on the Subdivision Map, and as may be hereafter required or needed to service the Development, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the Common Area except for those installations maintained by utility companies, public, private, or municipal.

3.3 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 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 and other purposes, public sewers, storm water 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 for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association, and each purchaser, in accepting a deed to a Lot, expressly consents thereto; provided, however, that no such easements may be granted if such easement would interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Lot without the consent of the affected Owner(s).

3.4 Association Easements for Maintenance and Repair. The Association shall have an easement in, on, over or under every Lot as reasonably necessary to (i) maintain and repair the Common Area including, without limitation, the private streets within the Development, (ii) perform maintenance upon a Lot which is not performed by its Owner as provided by Section 8.2 and Section 8.6, and (iii) otherwise perform its obligations under this Declaration.

3.5 Association Easements for Snow Removal and Snow Storage. The Association shall have a non-exclusive easement over the Lots for reasonable snow removal and reasonable snow storage purposes.

3.6 Pedestrian and Bicycle Easement. In conformance with the master plan approval for Kirkwood, the public shall have a non-exclusive easement for pedestrian and bicycle access and for vehicular access during an emergency over the streets lying within the Common Area of the Development.

ARTICLE 4 USE RESTRICTIONS

4.1 Single Family Residential Use. Except as specifically provided in Section 4.2, no Lot, or any portion thereof, shall be occupied or used for other than single-family residential purposes provided that Lots 201 through 204, inclusive, as shown on the Phase 1 Map may be utilized for the construction duplex Residences, which may in no event exceed two (2) separate living units.

4.2 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except: (i) such professional and administrative professions as may be permitted by applicable governmental ordinances and provided that there shall be no external evidence thereof and (ii) care facilities limited to the extent specifically authorized by statute, including family day care centers and community care facilities as provided in subsections (a) and (b) of this section. Copies of any licenses or permits issued or required for such businesses allowed by this section must be provided to the Association at all times that such businesses are operated.

(a) Family Day Care Centers. No family day care centers shall be permitted within the Development except as specifically authorized by California Health and Safety Code Section 1597.40 and other applicable state statutes. The owner/operator of any permitted day care facility shall provide

the Association with prior written notice as to its operation, comply with all local and state laws regarding the licensing and operation of a day care center, provide proof, upon the request of the Association, of such compliance, and, in addition, shall:

(i) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center, as provided under California Health and Safety Code Section 1597.531. This subsection is intended to be and shall be conclusively deemed to be the written notice to the operator or owner from the Association as specified in California Health and Safety Code Section 1597.531;

(ii) Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability action or cause of action arising out of the existence and operation of the day care center;

(iii) Abide by and comply with all of the Association's Rules;

(iv) Supervise and be completely responsible at all times for the persons for whom day care services are provided while they are within the Development; and

(v) Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

(b) Community Care Facilities. Except for residential facilities defined as community care facilities under California Health and Safety Code Section 1502, serving six (6) or fewer persons, no health care facilities shall be permitted in the Development. The owner/operator of any such community care facility shall comply with all local and state laws regarding the licensing and operating of such a community care facility, and, in addition, to the extent permitted by applicable laws, shall:

(i) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of such a community care facility;

(ii) Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability action or cause of action arising out of the existence and operation of such a community care facility;

(iii) Abide by and comply with all of the Association's Rules as applied to Residences in the Development in a general manner;

(iv) Supervise and be completely responsible for occupants of such a residential facility at all times while they are within the Development; and

(v) Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of such a community care facility to these conditions, or other reasonable requests.

4.3 Offensive Conduct, Nuisances, Noise. No noxious, harmful, 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 without limitation the barking of dogs or the playing of excessively loud music, in particular music and other noise from loudspeakers on a Lot which are located outside of the Residence, 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. Without limiting the Board's authority to adopt Rules in other instances, the Board shall have the power to adopt Rules regarding the use of exterior loudspeakers which may include limitations on the hours of operation of such speakers and on the volume of the sound emanating from the loudspeakers.

4.4 Use of Common Area. All use of the Common Area is subject to the Governing Documents. Without limiting the generality of the foregoing, no alterations or additions to the Common Area shall be permitted without the prior written approval of the Board. Subject to the provisions of Section 4.11, nothing shall be altered, constructed, placed, kept, stored, parked, planted on, or removed from the Common Area without the prior written consent of the Board. The Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. Each Owner shall avoid causing any damage to the Common Area.

4.5 Requirement of Architectural and Landscape Approval. As addressed in greater detail in Article 10, construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, fences, awnings, outdoor lighting and all other exterior Improvements, including without limitation any Improvement or alteration which would interfere with the natural or established drainage systems or patterns within the Development, are subject to approval of the Architectural Control Committee.

4.6 Tree Removal. Indigenous or other tress shall not be removed without approval of the Architectural Control Committee. Any tree removal shall also be subject to the Tree Ordinance contained in Exhibit F to the Kirkwood Master Plan.

4.7 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 Architectural Control Committee rules and reasonably located on a Lot advertising the Lot for sale or rent;
- (d) A single identification sign which has been approved by the Board of Directors located on a Lot identifying the number or address of the Lot and/or the name of the Owner of the Lot;
- (e) Signs approved by the Board located at or near any entrance to the Development identifying the Development;
- (f) Signs required for traffic control and regulation of streets or open areas within the Development; and
- (g) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association.

4.8 Antennas. No outside mast, tower, pole, antenna, or satellite dish shall be erected, constructed, or maintained on the Common Area or upon any Lot, except (i) those erected, constructed, or maintained by the Association, (ii) those expressly approved by the Architectural Control Committee or the Board of Directors, (iii) as specifically permitted by law.

4.9 Trash Disposal. All garbage and trash shall be kept indoors. Garbage and trash disposal is the responsibility of the Owner of each Lot.

4.10 Construction Materials, Construction Debris. No portion of the Development shall be used for the storage of building materials other than in connection with construction projects approved in accordance with Article 10. All construction debris shall be picked up and deposited daily in an appropriate container.

4.11 Vehicles and Parking. No trailer, camper, mobile home, motor home, recreational vehicle, boat, truck, automobile or other vehicle may be parked, kept, stored or permitted to remain within the Development except in compliance with the following restrictions:

(a) No vehicle of any kind may be parked within the Development unless placed or maintained (i) within a garage, (ii) on the driveway of a Lot, (iii) on the private streets, provided that no vehicle may be parked overnight on such streets and provided further that such parking does not interfere with snow removal operations within the Development, or (iv) on such other portions of the Common Area designated by the Board as parking areas.

(b) Portions of the Common Area normally used for parking may be set aside by the Board for Association facilities including, without limitation, storage areas for snow removal equipment in accordance with Section 2.3(h) and for the temporary placement of storage containers during the construction of improvements to a Lot pursuant to Section 4.12. In addition, the Board may prohibit parking on portions of the Common Area, including the private streets, during certain periods of the year based on snow removal and road clearing considerations in accordance with Section 2.3(a).

(c) No trailer, camper, mobile home, motor home, recreational vehicle, boat or truck, other than a standard-size pickup truck, may parked, kept, stored or permitted to remain within the Development except during such times as the owner thereof is actually in residence within the Development.

(d) No more than one boat and/or one trailer, camper, mobile home, motor home, recreational vehicle, or truck, other than a standard-sized pickup truck, may be parked, kept, stored or permitted to remain within the Development by the Owner of a Lot, and his or her family, guests and invitees.

(e) No boat in excess of twenty (20) feet in length shall be parked, kept, stored or permitted to remain within the Development unless placed or maintained completely within a garage.

(f) No dilapidated, unclean, unsightly, inoperable, unregistered, noisy, smoky or abandoned vehicle shall be parked, kept, stored, or permitted to remain within the Development unless placed or maintained completely within a garage. For the purposes of this provision, the term "unregistered vehicle" shall include a vehicle which is licensed and/or registered in a manner which does not allow the operation of the vehicle on the public streets and highways including, without limitation, a vehicle for which a declaration of nonoperation has been filed with a governmental entity.

(g) No commercial vehicle shall be parked, kept, stored or permitted to remain within the Development except temporarily in accordance with the Rules. The term "commercial vehicles" shall not include sedans or standard size pickup trucks which are used for both business and personal uses, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board.

(h) The presence and operation within the Development of vehicles and equipment related to construction projects shall be subject to, and in compliance with, any Design Guidelines adopted pursuant to Article 10 and any Construction Constraints Agreement related to a particular construction project.

(i) No unreasonably noisy vehicles and no vehicles emitting foul smelling or offensive exhaust fumes shall be operated within the Development.

(j) 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 this section and other provisions of the Governing Documents relating to vehicles and parking. Such authority and power shall include, without limitation:

(i) The power and authority 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;

(ii) The power and authority to more fully define overnight parking as referred to in Section 4.11(a) including, without limitation, the establishment of certain specific times during which vehicles may not be parked on the private streets; and

(iii) The power and authority to grant temporary variances from the restrictions of this section and from the Rules adopted by the Board on such terms and conditions as the Board deems appropriate.

4.12 Outbuildings. No outbuilding, shed, shack, cabana, tent, trailer, or temporary building of any kind shall be located upon any Lot, except in strict compliance with the provisions of this Declaration, including the requirements of Article 10 regarding the approval of the Architectural Control Committee. Notwithstanding this restriction, the Board of Directors may, but shall not be obligated to, authorize the temporary placement of storage containers for the storage of construction equipment and materials on a Lot or on a portion of the Common Area for the duration of a construction project approved in accordance with Article 10 subject to any applicable Construction Constraints Agreement and such other terms, conditions, and limitations as the Board deems appropriate.

4.13 Fuel Tanks. No tanks for the storage of fuel may be located on any Lot except for:

(a) Propane fuel tanks, not to exceed ten (10) gallons in capacity, as required for the operation of outdoor appliances.

(b) An appropriate, safe gasoline storage container not exceeding ten (10) gallons in capacity.

(c) Fuel tanks utilized by the Association and its agents in performing the Association's duties pursuant to this Declaration.

(d) As specifically authorized by the Architectural Control Committee, temporary fuel tanks utilized in conjunction with the construction of an Improvement which requires approval pursuant to Article 10. The Architectural Control Committee may impose such rules and limitations on the use, placement and maintenance of such fuel tanks as it deems appropriate, which rules and limitations may be specified in a Construction Constraints Agreement.

4.14 Restriction on Further Subdivision. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by the Owner thereof provided that Lot 203 and Lot 204 as shown on the Phase 1 Map may be resubdivided with the appropriate approvals from Alpine County.

4.15 Drilling and Mining Operations. No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon any Lot and no derrick, structure or quarrying equipment designed for use in drilling for oil or natural gas shall be erected, maintained or permitted on any Lot.

4.16 Compliance with Laws. Nothing shall be done or kept anywhere within the Development which violates any local, state or Federal law, ordinance, statute, rule or regulation.

4.17 Garages and Driveways.

(a) Each Owner and Resident shall keep his or her garage and driveway in a neat, orderly, sanitary, and safe condition.

(b) Each garage door shall remain closed except during the time the garage is in active use. Notwithstanding the preceding sentence, during the hours from dusk until dawn, the garage door shall remain closed except for the time necessary for the entry and exit of vehicles and individuals.

4.18 Variances. The Board shall be authorized to grant reasonable variances from the provisions of Article 4 and Article 10 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 (i) cause substantial undue hardship to the Owner, or (ii) 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:

(a) The Board, in its sole discretion, shall make an initial determination whether or not the variance on its face meets the requirements set forth in this section. If the Board determines that it does not, 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 does, the procedures set forth in the remainder of this section shall be followed.

(b) The Board shall conduct a hearing on the variance within thirty (30) days of the receipt of the written request for a variance. Notice shall be given to all Members not less than fifteen (15) days prior to the date of the hearing. Members may submit comments in writing prior to the hearing and/or appear at the hearing. The Board shall establish a reasonable time limit for Member comments during the hearing. No decision regarding the request for variance shall be made until the conclusion of the hearing.

(c) 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.

4.19 Household Pets. No animals, reptiles, rodents, birds, fish, livestock, or poultry shall be raised, bred or kept on any Lot or portion of the Development except that a reasonable number of household pets such as dogs, cats, fish or birds may be kept, provided that they are not kept, bred, or maintained for any commercial purposes, and they are kept under reasonable control at all times. Any use of the Development by pets must be in conformance with any County zoning ordinances. Owners shall prevent their pets from soiling any portions of the Common Area. Owners are responsible for cleaning up after their animals.

4.20 Right to Lease. All leases must be in writing and be expressly subject to the Governing Documents and the breach of any provision shall be a default under the lease or rental agreement. The entire Residence shall be rented to one party. Bed and breakfast and/or pension uses are prohibited. Subject to the foregoing restrictions, the Owners of Lots shall have the right to lease the same, provided that the Board is notified of the name of the tenant when the term of the lease exceeds thirty (30) days. The Owner shall provide the lessee with a copy of the Articles, Bylaws, Declaration and any Rules and regulations of the Association.

4.21 Clotheslines and Large Appliances. No exterior clotheslines or other outside clothes drying or airing facility shall be erected or maintained within the Development in any location where the same would be visible from any street or neighboring lot. Further, no clothes washers, clothes dryers, refrigerators or freezers may be kept, stored or operated on any balcony, patio porch or other exterior area.

4.22 Emergency Generator. Subject to Section 4.13, emergency electrical generators are permitted on the Lots provided they are used for emergency purposes only, do not exceed five (5) horsepower, and are integrated into the Residence on the Lot.

4.23 Building Envelopes. No Improvement or structure (including roof overhangs, decks, and the like) shall be constructed or erected outside of the building envelopes which define and control the setbacks from property lines for each Lot as shown on (i) Exhibit "C" attached to the Original Alpine Declaration and the Original Amador Declaration, and (ii) the exhibits to the Alpine Annexation Amendments and the Amador Annexation Amendments. Notwithstanding the above provisions, variances from this restriction may be permitted **only** with the express approval of **both** the Architectural Control Committee **and** the Tri-County Technical Advisory Committee and/or the County as applicable, subject to the minimum setback requirements of the County.

4.24 Fences. Fences may not be constructed on any Lot without the express approval of the Architectural Control Committee in compliance with the provisions of Article 10.

ARTICLE 5 HOMEOWNERS ASSOCIATION

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. Every 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. Member voting rights shall be as specified in the Bylaws.

5.4 Board of Directors. The affairs of the Association shall be managed by or under the direction of a Board of Directors. The number and qualifications of Directors shall be as established in the Bylaws, and the members of the Board 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 of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such rules and regulations, which shall be known as "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 Rules may concern, but need not be limited to, matters pertaining to use of the Common Area, pets, signs, collection and disposal of refuse, minimum standards for maintenance of property, use of recreation facilities, parking and traffic regulations, rental or leasing of Lots, and 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 of Directors 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 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Common Area, provided that in any fiscal year expenditures for capital improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year except upon the approval of an Absolute Majority. This limitation shall not apply to the expenditure of any funds accumulated in a reserve fund for

capital improvements so long as the expenditure is for the purpose for which the fund was established nor shall it apply to any reconstruction governed by Article 7.

5.9 Sale or Transfer of Association Property. The Board of Directors shall have the power to sell or transfer the assets of the Association provided that the Board shall not, in any fiscal year, sell property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without approval of an Absolute Majority.

5.10 Sale, Transfer or Dedication of Common Area to Public Agency or Utility. The Board of Directors shall have the power to dedicate, sell or transfer all or any part of the Common Area to a public agency, authority or utility provided that such dedication and transfer, and the purposes and conditions thereof, be approved by Members holding at least two-thirds (2/3) of the Total Voting Power.

5.11 Borrow Money. The Board of Directors shall have the power to borrow money in the name of the Association provided that such borrowing be approved by Members holding at least two-thirds (2/3) of the Total Voting Power.

5.12 Mortgage of Association Property. The Board acting on behalf of the Association 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 provided that the approval of at least three-fourths (3/4) of the Total Voting Power is obtained.

5.13 Mergers and Consolidations. The Association may (i) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as the Association, or (ii) annex additional property to the Development, provided that the approval of at least three-fourths (3/4) of the Total Voting Power is obtained.

5.14 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 (i) transfer all or substantially all of its assets, or (ii) file a certificate of dissolution.

ARTICLE 6 ASSESSMENTS AND LIENS

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: (i) Annual Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, and (iv) 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 (i) managing and operating the Development, (ii) conducting the business and affairs of the Association, (iii) promoting the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents of the Development, (iv) 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, (v) enforcing the Governing Documents, and/or (vi) 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 Assessment.

(a) Calculation of Estimated Requirement. Not later than forty-five (45) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Association for such fiscal year (including a reasonable amount allocated to contingencies and to a reserve fund for 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) to manage, administer, operate, and maintain the Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with this Declaration.

(b) Allocation of Annual Assessment.

(i) The Board shall allocate and assess the amount of estimated required funds equally among the Lots by dividing the amount determined pursuant to Section 6.5(a) above by the total number of Lots within the Development.

(ii) For the purposes of the calculation specified in Section 6.5(b)(i), Lot 204 as shown on the Phase 1 Map shall be counted as two (2) Lots, based on the fact that it has been

improved with a duplex Residence, until such time as Lot 204 is resubdivided to create separate, legally recognized parcels of land.

(iii) For the purposes of the calculation specified in Section 6.5(b)(i), if Lot 203 as shown on the Phase 1 Map is improved with a duplex Residence in the future, from the first day of the month following the completion of such improvement, Lot 203 shall be considered two (2) Lots until such time as Lot 203 is resubdivided to create separate, legally recognized parcels of land.

(iv) For the purposes of the calculation specified in Section 6.5(b)(i), from the first day of the month following the date that Lot 203 or Lot 204 is subdivided into separate, legally recognized parcels of land, each such new parcel shall be a considered a single Lot as defined in this Declaration.

(v) Lot 201 and Lot 202 as shown on the Phase 1 Map have been resubdivided into four separate, legally recognized parcels of land as shown on the Lot 201 Parcel Map and the Lot 202 Parcel Map. Each such separate, legally recognized parcel of land is a Lot pursuant to Section 1.19 and the calculation made pursuant to Section 6.5(b)(i) shall recognize this fact.

(vi) Subject to the power of the Board to adopt a different payment schedule, Annual Assessments shall be levied on an annual basis and shall be paid in four (4) equal quarterly installments during the fiscal year, and each installment shall be due and payable on the first day of each calendar quarter.

(c) Surplus Funds. If, as of the end of any fiscal year, there is a surplus of cash in the Association's current maintenance and operating account, as reflected in the Association's financial statement for such fiscal year, such surplus shall be applied to reserves unless some other disposition of such surplus funds is determined by the vote of the Members.

(d) Increases in Annual Assessment. Pursuant to California Civil Code Section 1366(b), 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.

(a) 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.

(b) Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots in the same manner as Annual Assessments.

(c) Approval of Special Assessments. Except in the case of an emergency situation as defined in California Civil Code Section 1366, 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 Lot into compliance. 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. 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 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. Prior to Recording a Notice of Delinquent Assessment, the Association shall provide notice to the Owner as required by California Civil Code Section 1367(a) or other applicable statute. The Notice of Delinquent Assessment shall be mailed in the manner set forth in California Civil Code Section 2924b to all record owners of the Lot no later than ten (10) days after recordation as required by California Civil Code Section 1367(b). No procedures shall be initiated to foreclose the lien securing any Assessment levied under this article until after the expiration of thirty (30)

days following the Recording of a lien created pursuant to California Civil Code Section 1367(b) or other applicable statute. Except as prohibited by law, upon the Recording of the Notice of Delinquent Assessment referred to above, 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.

6.12 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 of Directors, 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. 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 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.

6.14 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; provided, however, that such Assessment lien shall be subordinate to the lien of any First Mortgage Recorded against the Lot; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

6.15 Association Funds. The Association shall maintain at least two separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated as EAST MEADOWS HOMEOWNERS ASSOCIATION OPERATING ACCOUNT and EAST MEADOWS HOMEOWNERS ASSOCIATION RESERVE ACCOUNT, or such other similar names as reasonably create a distinction between the purposes of the accounts. 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.

6.16 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.

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

- (a) All property dedicated to and accepted by the County, or other local public authority and devoted to public use;

(b) Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure; provided, however, that such exemption shall be applicable only during the period in which the Association is Record Owner of such Lot; and

(c) All Common Area.

ARTICLE 7 DAMAGE OR DESTRUCTION; CONDEMNATION

7.1 Destruction.

(a) Minor Destruction Affecting Common Area. Notwithstanding Section 7.1(b), the Board shall have the duty to repair and reconstruct the Common Area without the consent of the Members and irrespective of the amount of available insurance proceeds or other funds, in all instances of partial destruction where the estimated cost of repair and reconstruction does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The Board may levy a Special Assessment for the cost of such repair and reconstruction to the extent insurance proceeds or other funds are unavailable.

(b) Major Destruction Affecting Common Area.

(i) Destruction - Proceeds 85% or Greater of Reconstruction Costs. If there is a total or partial destruction of the Common Area, and if the available proceeds of the insurance carried pursuant to the Bylaws or other available funds are sufficient to cover at least eighty-five percent (85%) of the costs of repair and reconstruction, the Common Area shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, Members then holding at least three-quarters (3/4) of the Total Voting Power determine that repair and reconstruction shall not take place.

(ii) Destruction - Proceeds Less than 85% of Reconstruction Costs. If the proceeds of insurance carried pursuant to the Bylaws or other available funds are less than eighty-five percent (85%) of the costs of repair and reconstruction, repair and reconstruction shall not take place unless, within ninety (90) days from the date of destruction, Members then holding at least an Absolute Majority determine that repair and reconstruction shall take place. If repair and reconstruction is to take place, the Board shall execute, acknowledge and record in the office of the County Recorder not later than one hundred twenty (120) days from the date of destruction, a certificate declaring the intention of the Members to rebuild.

(iii) Special Assessment to Rebuild. If the determination is made to rebuild pursuant to this article, the Association may levy a Special Assessment against all Owners to cover the cost of rebuilding not covered by insurance proceeds or other funds.

(iv) Rebuilding Contract. If the determination is made to rebuild, the Board shall obtain bids from at least three reputable contractors, and shall award the repair and reconstruction work to the most reasonable bidder. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds shall be disbursed to said contractor according to the terms of the contract.

It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

(v) Rebuilding Not Authorized. If the determination is made not to rebuild, then any insurance proceeds and any other funds held for rebuilding of the Common Area shall, subject to Corporations Code Section 8724, be distributed among the Lots on the same basis as their Regular Assessment obligation, and between the Owners and their Mortgagees as their respective interests shall appear.

(c) Destruction Affecting Lots. In the event of damage to or destruction of the improvements on any Lot, the Owner of such Lot shall (i) completely repair or rebuild the improvements, or (ii) completely remove all remaining portions of such damaged or destroyed improvements. Such repair, rebuilding, or removal shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction and shall be completed within one (1) years after the date of commencement unless a longer period is agreed to in writing by the Board.

7.2 Condemnation.

(a) Condemnation Affecting Common Area.

(i) Sale in Lieu. If an action for condemnation of all or a portion of the Common Area is proposed or threatened by an entity having the right to eminent domain, then on the unanimous written consent of all of the Owners and subject to the rights of all Mortgagees, the Common Area, or a portion of it, may be sold by the Board. Subject to Corporations Code Section 8724, the proceeds of the sale shall be distributed among the Lots on the same basis as their Regular Assessment obligations and between the Owners and their Mortgagees as their respective interests shall appear.

(ii) Award. If the Common Area, or a portion of it, is not sold, but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees. If the judgment of condemnation does not apportion the award, then the award shall be distributed as provided above.

(b) Condemnation Affecting Lots. If an action for condemnation of all, a portion of, or otherwise affecting a Lot is proposed or threatened, the Owner and the Mortgagees of the affected Lot, as their respective interests shall appear, shall be entitled to the proceeds of any sale or award relating to the affected Lot.

If any Lot is rendered irreparably uninhabitable as a result of such a taking, the Lot shall be deemed deleted from the Development and the Owners and Mortgagees of the affected Lot, upon receiving the award and any portion of the reserve funds of the Association reserved for the Lot, shall be released from the applicability of the Project Documents and deemed divested of any interest in the Common Area.

ARTICLE 8

MAINTENANCE OF PROPERTY

8.1 Association Responsibility.

(a) Maintenance of Common Area. The Association shall provide maintenance, repair, and replacement of the Common Area and all facilities, Improvements, and landscaping thereon, including without limitation fences, tennis courts and other recreation facilities, storage sheds, private streets, parking areas, walks and utility facilities (except for those utility facilities which are maintained by public or private utility companies or agencies), and all other real and/or personal property that may be acquired by the Association, keeping such property in good condition and repair. The Association shall further be responsible for providing lighting, landscaping, gardening (including periodic replacement, as the Board deems necessary, of trees, shrubs, and other plants upon the Common Area), and janitorial services for the Common Area, as needed, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in good condition and repair, including painting of the exterior surfaces of any building(s) and such other portions of the Common Area as the Board, in its discretion, deems to be necessary. The Association shall provide snow removal and clearing from the Common Area private streets.

(b) Maintenance of Lots. The Association shall have the obligation to provide snow clearing and removal from the private driveways of the Lots to within at least six (6) feet from the garage doors of the Residences. The frequency, manner and method of such clearing and removal shall be in the discretion of the Board and each Resident and Owner shall refrain from interfering with the process. The Association shall have no other maintenance obligations with respect to the Lots.

8.2 Authority for Entry of Lot. The Association or its agents may enter any Lot, whenever 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 or which it is authorized to perform, including without limitation the authorization provided in Section 8.6. 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.

8.3 Association Liability. Except as specifically provided in Section 8.1(b), 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 negligence or fault of the Association, its employees, contractors, or agents.

8.4 Owner Responsibility for Lots. Except for the maintenance specifically assigned to the Association pursuant to Section 8.1(b), each Owner shall be responsible for the maintenance, repair and replacement of his or her Lot and all Improvements thereon including, without limitation, the following:

(a) Residence. Each Owner shall maintain, in good condition and repair, the Residence located on his or her Lot.

(b) Landscaping. Each Owner shall maintain the landscaping on his or her Lot in a neat and attractive condition.

(c) Weeds and Trash. Each Owner shall keep his or her Lot free of trash, non-native invasive plants and other debris.

(d) Ditches and Swales. Each Owner shall keep and maintain natural drainage channels, ditches, sub-drains from underground water sources and streams, swales and other drainage facilities located on his or her Lot unobstructed, free of accumulations of debris and in good condition and repair and shall provide for the installation of such additional culverts, ditches or other drainage facilities upon his or her Lot as may reasonably be required for proper drainage thereon.

(e) Utility Connections. Utility lines and connections, including without limitation, water, sewer, electrical, cable television, telephone and gas lines, which are located on, under, or over any Lot and which provide service to the Residence or other Improvements located upon such Lot, shall be maintained, repaired and replaced by the Owner of such Lot or by the utility company providing such service.

8.5 Compliance With Architectural Provisions. An Owner's right and responsibility for maintaining, repairing or replacing any portions of his or her Lot, including landscaping, shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control, including Article 10.

8.6 Owner Failure to Maintain. The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement which is the responsibility of an Owner, including without limitation those specific responsibilities listed in Sections 8.4(a) through 8.4(e), 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. 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.

8.7 Owner Liability. In the event the need for any maintenance, repair, or replacement by the Association is caused by the willful or negligent act or omission of an Owner or an Owner's family, tenants, Contract Purchaser, guests, invitees, or household pets, 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.

ARTICLE 9 MORTGAGEE PROTECTION

9.1 Mortgages Permitted. Any Owner may encumber his Lot with Mortgages.

9.2 Priority of Mortgage. Notwithstanding any other provisions of this Declaration, it is hereby provided that a breach of any of the conditions contained in the Project Documents by any Owner or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said Lot or any part thereof. Any lien which the Association may have on any Lot in the Development for the payment of common expense assessments attributable to such Lot will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such common expense assessments became due.

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

9.4 Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

9.5 Mortgagee's Rights. A First Mortgagee's rights shall include, but not be limited to, the following:

(a) Attend Meetings. Any First Mortgagee, upon written request, shall receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(b) Furnish Information. Any Mortgagee may furnish information to the Board concerning the status of any Mortgage.

(c) Inspect Books and Records. The Association shall make available to Owners, prospective purchasers and First Mortgagees current copies of the Project Documents and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours.

In addition, if the Development contains fifty (50) or more lots, the Association must provide an audited financial statement for the immediately preceding fiscal year if the First Mortgagee submits a written request for it. Said financial statement shall be furnished by the Association within a reasonable time following such request. If the Development contains fewer than fifty (50) lots and there is no audited financial statement available, any First Mortgagee should be allowed to have an audited financial statement prepared at its own expense.

9.6 No Restrictions on Owner's Right to Ingress and Egress. There shall be no restriction upon any Owner's right to ingress and egress to his Lot, which right shall be perpetual and appurtenant to his Lot ownership.

9.7 Notices of Mortgagees. Upon written request to the Association, any First Mortgagee shall be entitled to timely written notice of the following:

(a) Any proposed amendment to the Project Documents effecting a change in:

(i) The boundaries of any Lot or the exclusive use rights appurtenant thereto, if any;

(ii) The interests in the general or exclusive use Common Areas, if any, appurtenant to any Lot or the liability for common expenses appurtenant thereto;

- (iii) The number of votes in the Association appurtenant to any Lot; or
- (iv) The purposes to which any Lot or the Common Area are restricted.
- (b) Any proposed termination of the legal status of the Development as a planned development.
- (c) Any condemnation or casualty loss which affects either a material portion of the Development or any Lot on which there is a First Mortgage held, insured or guaranteed by such requesting party.
- (d) Any 60-day delinquency in the payment of Assessments or individual charges owed by an Owner subject to a First Mortgage held, insured or guaranteed by such requesting party.
- (e) Any default in the performance by the affected Owner of any obligation under the Project Documents which is not cured within sixty (60) days.
- (f) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (g) Any proposed action which requires the consent of a specified percentage of First Mortgagees as specified in Section 9.8.

9.8 FNMA, FHLMC, FHA, VA Mortgages.

(a) Conditions When This Section is Applicable. The provisions of this Section 9.8 shall apply if any of the following conditions exist pertaining to First Mortgages on any of the Lots:

- (i) Any First Mortgage is sold or transferred to FNMA;
- (ii) Any First Mortgage is sold or transferred to FHLMC; or
- (iii) Any First Mortgage is FHA insured or a Veterans Administration ("VA") mortgage.

(b) Approval of Material Amendments. The approval of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) or more of the Eligible First Mortgagees (based upon one vote for each first mortgage owned) must be obtained for amendments of a material nature to the Project Documents. A change to any of the following would be considered as material:

- (i) Voting rights;
- (ii) Assessments, assessment liens, or subordination or assessment liens;
- (iii) Reserves for maintenance, repair and replacement of common areas or any other portions of the Development which the Association has a duty to maintain, repair and replace.

- (iv) Responsibility for maintenance and repairs;
- (v) Reallocation of interests in the general or exclusive use common areas, if any, or rights to their use;
- (vi) Boundaries of any Lot;
- (vii) Convertibility of Lots into common areas or vice-versa;
- (viii) Expansion or contraction of the Development or the addition, annexation or withdrawal of property to or from the Development;
- (ix) Insurance or fidelity bonds;
- (x) Leasing of lots;
- (xi) Imposition of any right of first refusal or similar restrictions on a Lot Owner's right to sell, transfer or convey his Lot;
- (xii) A decision by the Owner's Association to establish self management when professional management has been required previously by a First Mortgagee;
- (xiii) Restoration or repair of the Development (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (xiv) Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs; or
- (xv) Any provisions that expressly benefit First Mortgagees, insurers or guarantors.

An addition or amendment to the Project Documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

If an addition or amendment is not considered as a material change, approval will be implied when a First Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is submitted.

(c) Termination of Legal Status. Except as provided above, any election to terminate the legal status of the Development as a planned development must be approved by at least sixty-seven percent (67%) of the voting power of the Association and sixty-seven percent (67%) of the Eligible First Mortgagees based upon one vote for each First Mortgage owned.

(d) Reallocation of Interests in the Common Area. No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Development shall be effected without the approval of fifty-one percent (51%) of the Eligible First Mortgagees based upon one vote for each First Mortgage owned.

(e) Restriction on Certain Changes. Unless at least sixty-six and two-thirds percent (66-2/3%) of the First Mortgagees (based on one vote for each First Mortgage owned) or sixty-six and two-thirds percent (66-2/3%) of the Owners other than Declarant have given their prior written approval, the Association shall not:

(i) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause); or

(ii) Change the method of determining the Assessments, or other charges which may be levied against a Lot Owner; or

(iii) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of any Common Area party walls or common fences and driveways, or the upkeep of lawns and plantings in the Development; or

(iv) Fail to maintain fire and extended coverage on insurable Common Area and other portions of the Development which the Association has a duty to insure on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or

(v) Use hazard insurance proceeds for losses to any Common Area or other Development Improvements for other than the repair, replacement or reconstruction of such Common Area or Improvements.

(f) No right of First Refusal. The right of an Owner to sell, transfer or otherwise convey his Lot shall not be subject to any "right of first refusal" or similar restriction.

(g) Foreclosure Eliminates Unpaid Assessments. Each holder of a first mortgage lien on a Lot who comes into possession of the Lot by virtue of foreclosure of the mortgage or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid Assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessments or charges of all Lots, including the mortgaged Lot.

(h) Mortgage Priority in Case of Distribution. No provision in any Project Document will entitle a Lot Owner or other party to priority over any rights of the First Mortgagee on the Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of the Lot and/or Common Area.

(i) Leasing Restrictions. No Owner shall be permitted to lease his Lot for transient or hotel purposes. No Owner may lease less than the entire Lot. Any lease or rental agreement must be in writing and be subject to the provisions of the Project Documents.

(j) Taxes Relate Only to Individual Lots. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Lots and not to the Development as a whole.

(k) Compliance with FHA/VA, FHLMC or FNMA Requirements. Declarant intended that the Development should comply with all of the requirements of the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA"). All casualty and liability insurance covering any portion of the Development encumbered by a Mortgage insured by FHA, guaranteed by VA, or held by FHLMC or FNMA, shall therefore conform to the applicable FHA/VA, FHLMC or FNMA requirements. Declarant and all Lot Owners also agree that in the event the Development or the Project Documents do not comply with the applicable FHA/VA, FHLMC or FNMA requirements, the Board and each Owner shall take any action or adopt any resolutions required by any First Mortgagee to conform such Project Documents, or the Development, to the FHA/VA, FHLMC or FNMA requirements.

(l) Waivers. A Mortgagee may waive any requirement contained in this Declaration as they pertain to such Mortgagee, provided such waiver shall be in writing.

(m) Conflicts. In the event of conflict between any of the provisions of this article and any other provisions of this Declaration, the provisions of this article shall control.

ARTICLE 10 ARCHITECTURAL CONTROL

10.1 Submission of Plans and Specifications. Except for Improvements made or constructed by or on behalf of the Association, (i) no building, fence, wall, obstruction, screen, patio cover, tent, awning, Improvement or other structure of any kind, (ii) no landscaping, and (iii) no Improvement or alteration of any kind which would interfere with the natural or established drainage systems or patterns within the Development, shall be commenced, erected, painted, or maintained within the Development, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to quality of workmanship and design, harmony of external design and location in relation to surrounding structures, topography, and finished grade elevation. Notwithstanding this section, an Owner may repaint and refinish the exterior of the Improvements on his or her Lot in an identical color and finish without the approval of the Committee.

10.2 General Design Standards. The following minimum design standards shall apply:

(a) All Improvements shall be constructed, painted and changed in compliance with the applicable zoning laws, building codes, subdivision restrictions, and all other laws, ordinances and regulations applicable to the Development.

(b) All Lots shall be landscaped with a combination of natural vegetation. Landscaping shall be designed so as to complement, protect and harmonize with the natural terrain, existing trees and vegetation and shall be consistent with generally accepted, customary and conventional landscape designs for Kirkwood Meadows. Stone, gravel, concrete and similar materials shall be used only for complementary and supplementary purposes.

(c) The light pollution impact of Residences shall be minimized. Windows shall have drapes, blinds or other window coverings and all exterior and decorative lighting shall be, whenever possible, placed in such a manner that the source of the light is not visible to adjacent portions of the

Development. Colored landscaping lighting shall be prohibited, unless specifically approved by the Architectural Control Committee.

(d) All solar collection devices shall be integrated aesthetically into the Residence on a Lot and the visibility thereof from adjacent portions of the Development shall be minimized to the greatest extent reasonably possible.

(e) All one-story Dwellings shall have a minimum size of one thousand eight hundred (1,800) square feet (excluding garages, carports, accessory buildings and covered or uncovered patios and porches). All two-story Dwellings shall have a minimum size of two thousand (2,000) square feet (excluding garages, carports, accessory buildings and covered and uncovered patios and porches), and all Lots shall have a minimum of two enclosed parking spaces. Except for Dwellings already constructed, or for which plans have already been approved by the Committee, as of the date of the recordation of this Declaration, no Dwelling shall exceed a maximum size of five thousand (5,000) square feet (including garages but excluding carports and covered and uncovered patios and porches).

(f) All Residences shall have a minimum of two (2) covered parking spaces and one (1) un-covered paved parking space for automobiles. All driveways shall be paved.

10.3 Establishment of Architectural Control Committee. The Board shall appoint an Architectural Control Committee consisting of three (3) to five (5) Members of the Association, who shall 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 Committee, the Board shall have the full authority to designate a successor. If at any time there shall not be a duly-constituted Architectural Control Committee, the Board shall exercise the functions of the Architectural Control Committee in accordance with the terms of this article.

10.4 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.

10.5 Meetings. The Architectural Control Committee shall meet as necessary to properly perform its duties hereunder. The Architectural Control Committee, by majority vote of its members, shall establish its quorum requirements, which shall be subject to the approval of the Board. The Architectural Control Committee shall keep and maintain a record of all actions taken by it at such 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.

10.6 Design Guidelines. 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 "Design Guidelines" which shall be Rules as defined in Section 1.28. The Design Guidelines 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, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Development; provided, however, that the Design Guidelines shall not be in derogation of the minimum standards required by this Declaration. In its discretion, and subject to the Board review provisions of Section 10.13, the Architectural Control Committee may grant variances from specific Design Guidelines subject to such terms and conditions as it deems appropriate.

10.7 Construction Constraints Agreements. The Committee may require an Owner proposing any work which requires prior approval pursuant to this article, as well as his or her contractor, if any, to enter into a written agreement with the Association which specifies such constraints and conditions on the manner of construction including, without limitation, the hours and days of construction and the use of the private roads by construction vehicles and equipment, as the Committee shall in its discretion deem appropriate. As a part of the creation of Construction Constraint Agreements, the Committee is specifically empowered to engage the services of professional consultants to assist in the development of project-specific constraints and shall be entitled to recover the costs thereof pursuant to Section 10.9. If the Committee requires a Construction Constraints Agreement, such agreement must be executed by the Owner and his or her contractor, if any, prior to the commencement of construction of the proposed improvements.

10.8 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.

10.9 Fees. The Architectural Control Committee may charge a reasonable fee or fees for its review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors.

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

- (a) The Owner shall have complied with the provisions of Section 10.1 above;
- (b) The Committee shall find that the plans and specifications conform to this Declaration, including without limitation Section 10.2, and to the Design Guidelines, unless a variance is granted pursuant to Section 10.6, in effect at the time such plans were submitted to the Committee;
- (c) The Owner, and his or her contractor, if any, have entered into any Construction Constraints Agreement required by the Architectural Control Committee pursuant to Section 10.7; and
- (d) 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.

10.11 Form of Approval. All approvals and denials of requests for approval shall be in writing except as provided in Section 10.12. 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 approval or approval with modifications shall become effective on the thirty-first day following the date of such approval and shall be subject to Board review as provided in Section 10.13.

10.12 Time for Architectural Control Committee Action. Any request for approval which has not been acted upon within forty-five (45) days from the date of receipt thereof by the Architectural Control Committee 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 a return receipt provided by the U. S. Postal service acknowledging that such request for approval was delivered to the Association.

10.13 Board Review. The Architectural Control Committee shall submit a copy of its findings and determinations to the Board which shall then have thirty (30) days from the date of the approval or denial of the request for approval to review, upon its own initiative, the action of the Architectural Control Committee. The Board may also review the action of the Architectural Control Committee at the request of the Architectural Control Committee or any Member, including the Owner submitting the request for approval, provided that any such request shall be presented to the Board within ten (10) days from the date of the approval or denial of the request for approval by the Architectural Control Committee. If a review is conducted, the Board may affirm, reverse or modify the decision in its discretion and in accordance with the provisions of the Governing Documents and shall so notify the applicant within thirty (30) days following the Board's decision.

10.14 Commencement. Upon receipt of approval pursuant to this article, the Owner shall, as soon as practicable following the effective date of such approval as specified in Section 10.11, 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 Architectural Control Committee may designate based on weather considerations. 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.

10.15 Completion. The Owner shall, in any event, complete the installation, construction, reconstruction, refinishing, or alteration of any Improvement within eighteen (18) months after commencing construction thereof (or in the case of projects under construction when this Declaration is Recorded, within eighteen (18) months 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 agents. If an Owner fails to comply with this section, the Architectural Control Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 10.16, below, as though the failure to complete the Improvements was a non-compliance with approved plans.

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

(a) 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.

(b) 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 non-compliance within such sixty (60) day

period, specifying particulars of non-compliance and shall require the Owner to remedy such non-compliance.

(c) If the Owner shall have failed to remedy such non-compliance 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 non-compliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the Architectural Control Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the Architectural Control Committee and, in the discretion of the Board, to any other interested party.

(d) 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 non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying Improvement or remedy the non-compliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.

(e) If, for any reason, the Architectural Control Committee fails to notify the Owner of any non-compliance 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 return receipt provided by the U. S. Postal service acknowledging that such notice was delivered to the Association.

10.17 Preliminary Approval. Any Owner proposing to construct Improvements requiring the prior approval of the Architectural Control Committee may apply to the Architectural Control Committee for preliminary approval by submission of preliminary drawings of the proposed Improvements in accordance with the Design Guidelines. The purpose of the preliminary approval procedure is to allow an Owner proposing to make substantial Improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Application for preliminary approval shall be considered and disposed of as follows:

(a) Within forty-five (45) days after proper application for preliminary approval, the Architectural Control Committee shall consider and act upon such request. However, notwithstanding any other provision of this Declaration, no failure to act upon an application for preliminary approval shall be deemed to be an approval of such application. The Architectural Control Committee shall grant the approval only if the proposed Improvement, to the extent its nature and characteristics are shown by the preliminary application, would be entitled to a final approval on the basis of a full and complete application. In granting or denying approval, the Architectural Control Committee may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant.

(b) Any preliminary approval granted by the Architectural Control Committee shall be effective for a period of ninety (90) days from the date of the issuance thereof or such longer period as may be approved by the Architectural Control Committee. During such period, any application for final approval which consists of proposed Improvements in accordance with the provisions of the preliminary approval, and is otherwise acceptable under the terms of this Declaration, shall be approved by the Architectural Control Committee.

(c) In no event shall any preliminary approval be deemed to be an approval authorizing installation or construction of the subject Improvements.

10.18 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.

10.19 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: (i) all Improvements made and other work completed by such Owner comply with this Declaration, or (ii) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in a Lot through him, 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.

10.20 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: (i) a legal description of the Lot affected, (ii) the name of the record Owner as most recently reported to the Association, and (iii) 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 10.19.

10.21 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: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any property within the Development; (iv) the execution and filing of an estoppel certificate pursuant to Section 10.19, 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 (v) the execution and filing of a notice of noncompliance pursuant to Section 10.20, 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. 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.

10.22 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.

ARTICLE 11 ENFORCEMENT

11.1 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 and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association or its Officers or Board of Directors or by any Owner; provided, however, that 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.

11.2 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.

11.3 Owners' Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her family 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. If a Lot is owned jointly by two or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

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

11.5 Rights and Remedies of the Association.

(a) Rights Cumulative. 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.

(b) 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.

(c) 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 family, or his or her tenants, Contract Purchasers, contractors or guests, the Board shall have the power to impose a sanction against the Owner who is responsible as provided in Section 11.3 for such breach or infraction. A sanction may include, but shall not necessarily be limited to, the imposition of monetary penalties (fines) and/or the suspension of an Owner's rights as a Member of the Association, including an Owner's voting rights or an Owner's right to use the recreational or community facilities on the Common Area. Imposition of a sanction shall be effective only after notice and an opportunity for hearing as provided in the Bylaws. The payment of any such monetary penalty 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 such Owner's family, tenants, Contract Purchasers, guests, pets, or other invitees.

(d) 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 family of any Owner or an Owner's tenants, guests, or household pets 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.

(e) 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 family, or his or her tenants, guests, invitees or household pets 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.

11.6 Disciplinary Rules. The Board or a 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.

11.7 Emergency Situations. The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development,

(ii) a traffic or fire hazard, (iii) a threat of material damage to or destruction of the Development or any portion thereof, (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations). Notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that constitutes an emergency, the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the Owner as to whom such corrective or disciplinary action has been taken, or on its own initiative, conduct a hearing as soon thereafter as reasonably possible. If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of the disciplinary action which is transmitted to the Owner. If the Board has not scheduled a hearing and the Owner desires a hearing, the Owner's written request therefor shall be delivered to the Association no later than five (5) days following the date when the notice of the Board's disciplinary action is transmitted to the Owner. The hearing shall be held not later than fifteen (15) days following the date of the Board's notice of the disciplinary action or fifteen (15) days following the receipt of the Owner's request for a hearing, whichever is later. If a hearing is scheduled or requested, any sanctions imposed or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

11.8 Alternative Dispute Resolution. California Civil Code Section 1354(b) shall be complied with respect to any dispute subject to such section.

11.9 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.

11.10 Notices. Any notices required or given under this article shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board, if any. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Association.

11.11 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 family or his or her tenants, Contract Purchasers, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Association shall be entitled to recover the full amount of all costs including attorney's fees incurred by the Association 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 attorney's fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment as provided in Section 6.7 of this Declaration.

11.12 Indemnification. Each Owner, by acceptance of his or her deed, agrees for himself or herself and for the members of his or her family, his or her Contract Purchasers, tenants, guests or invitees, to (i) indemnify each and every other Owner for, (ii) to hold each and every other Owner harmless from, and (iii) to 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 liability 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 insurance.

ARTICLE 12 AMENDMENT

12.1 Amendment. This Declaration may be amended by the affirmative vote or written consent of Members representing at least an Absolute Majority. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and shall be Recorded.

12.2 Unanimous Consent for Specific Amendments. The consent of all Owners shall be required for any amendment of the Project Documents effecting a change in:

- (a) the number of votes in the Association appertaining to the Lot; and
- (b) the fundamental purposes to which any Lot or the common elements are restricted.

ARTICLE 13 GENERAL PROVISIONS

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.


13.7 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Lots and Common Areas, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, for a term of thirty (30) years from the date of Recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six months prior to the expiration of the initial

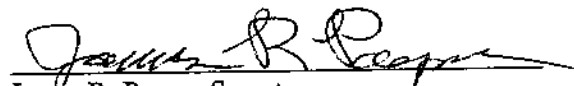
thirty (30) year term or any ten (10) year extension period a written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association, terminating the effectiveness of this Declaration shall be Recorded.

IN WITNESS WHEREOF, the Members of EAST MEADOWS HOMEOWNERS ASSOCIATION holding at least a bare majority of the total voting power of the Association, which includes at least a bare majority of the votes of Members other than the Declarant, hereby affirm, approve, and adopt this First Restated Declaration of Covenants, Conditions and Restrictions of East Meadows Subdivision pursuant to Section 15.02 of the Original Alpine Declaration and Section 15.02 of the Original Amador Declaration, by means of the signatures of the President and Secretary of the Association, which Declaration shall be Recorded.

DATED: December 14 2000.

EAST MEADOWS HOMEOWNERS ASSOCIATION,
a California nonprofit mutual benefit corporation


H. Anton Tucher, President


James R. Payne, Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

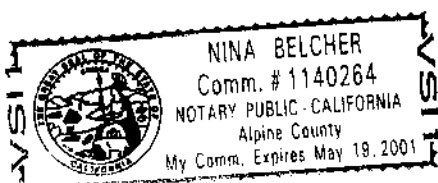
County of Alpine

SS.

On DECEMBER 22, 2000, before me, NINA BELCHER,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared H. ANTON TUCKER AND JAMES R. PAYNE,
Name(s) of Signer(s)

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.

Nina Belcher

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

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