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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DEER CREEK PARK II**

**If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DEER CREEK PARK II**

This Declaration of Covenants, Conditions and Restrictions for Deer Creek Park II (the "Declaration") is made by Terra Alta Development Co., a California corporation ("Declarant").

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**RECITALS**

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A. Declarant is the owner of certain real property located within unincorporated Nevada City, County of Nevada, California, Phase 1, which is more particularly described in attached Exhibit "A" ("Phase 1").

This Declaration includes certain provisions required by the County of Nevada, all related to lands shown on the Final Map, Subdivision Map No. 01-001, for Deer Creek Park IIa, Recorded on \_\_\_\_\_ in Book \_\_\_\_\_ of Maps, at Page \_\_\_\_\_, Official Records of Nevada County.

B. This Declaration shall initially apply only to Phase 1, as the initial Phase of a multi-phased development known as Deer Creek Park II. All or portions of the real property more particularly described in the attached Exhibit "B" (the "Subsequent Phase Property") may be made subject to this Declaration by annexation in accordance with the terms of Article 14 of this Declaration. As property is annexed, the annexed property shall become part of the "Development", as defined herein. Phase 1 and the Subsequent Phase Property are hereafter referred to as the "Overall Development".

C. Declarant hereby declares that all of the Development shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the following easements, restrictions, covenants, conditions, and equitable servitudes, all of which are imposed for the attractiveness and desirability of the Development in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Development, or any portion thereof.

D. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein are covenants running with the land pursuant to California Civil Code Section 1468 and shall be binding upon all persons having any right, title, or interest in any portion of the Development, and may be enforced by Declarant, the Association, or by any Owner. **The Development is not a common interest development as defined by California Civil Code Section 4100, and is not subject to the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code Section 4000 et seq.).**

E. The Development consists of seven (7) Lots with Residences to be constructed thereon. This Declaration establishes a property owners association (the "Association"), of which the Owners of each Lot is a Member of the Association, and the Association will maintain the Association Maintenance Area within the Development for the benefit of the Owners and Residents.

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**ARTICLE 1                      DEFINITIONS**

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1.1 Definitions, Generally. When the words and phrases described in this Article are used in the Declaration, they will have the meanings set forth in this Article. 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. The use of the term "may" in this Declaration indicates discretion or choice, and the use of the term "shall" in this Declaration means imperative, mandatory or imposing an absolute duty. Except as otherwise provided herein, all capitalized terms used in this Declaration shall have the same meanings as set forth in this Article 1.

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 Review Committee. "Architectural Review Committee" shall mean the committee created pursuant to Article 8 of this Declaration.

1.4 Architectural Rules. "Architectural Rules" shall mean the rules and regulations adopted by the Board pursuant to Section 8.5 of this Declaration.

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

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

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

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

1.6 Association. "Association" shall mean the Deer Creek Park II Homeowners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.7 Association Maintenance Area. "Association Maintenance Area" shall mean the private streets, street lighting, signage, sewer, water and storm drainage within the private streets, perimeter vegetative fire break areas, and cluster mailboxes. All Association Maintenance Area shall be subject to a non-exclusive maintenance easement in favor of the Association.

1.8 Board. "Board" shall mean the governing body of the Association.

1.9 Bylaws. "Bylaws" shall mean the Bylaws of the Association as they may be adopted by the Members and any duly-adopted amendments thereof. Unless the Members adopt a separate set of Bylaws, the provisions of Article 2, below, shall constitute the Association's Bylaws.

1.10 Conditions of Approval. "Conditions of Approval" shall mean the Conditions of Approval of the Final Map, FM01-001 and Environmental Impact Report, EIR01-001 approved August 28, 2007 by the County of Nevada Community Development Agency and 2 as attached hereto and incorporated herein as Exhibit "C".

1.11 Cost Center. "Cost Center" shall mean those portions of the Development which directly receive a special benefit from the Association for maintenance, repair, replacement (including reserves), management and insurance, which serve only specific Lots and are not generally accessible or intended for use by the Association's membership in general.

1.12 County. "County" shall mean Nevada County, California, and its various departments, divisions, employees and representatives.

1.13 Declarant. "Declarant" shall mean Terra Alta Development Co., a California corporation. The term "Declarant" shall also mean any successor or assign of Declarant, provided a certificate, signed by Declarant and Declarant's successor or assign, is Recorded against the portion of the Development which the successor or assign assumes the rights and duties of Declarant.

1.14 Declaration. "Declaration" shall mean this instrument, as it may be amended from time to time. If any Supplemental Declarations or Declarations of Annexation are approved and Recorded in accordance with Article 15, below, then following such Recordation any reference to this Declaration shall mean this Declaration as amended and supplemented by the Supplemental Declaration(s) and any Declarations of Annexation.

1.15 Development. "Development" shall mean the real property described in Recital A, together with all Improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto, together with any real property annexed to this Declaration pursuant to a Declaration of Annexation.

1.16 Director. "Director" shall mean a member of the Board.

1.17 Governing Documents. "Governing Documents" shall mean the articles of incorporation, Bylaws, Declaration, Rules (including the Architectural Rules), and the policies and resolutions duly adopted by the Board.

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

1.19 Lot. "Lot" shall mean any plot of land shown upon the Subdivision Map.

1.20 Member. "Member" shall mean an Owner, and refer to membership in the Association.

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.

1.22 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense. "First Mortgage" shall mean any Recorded Mortgage on a Lot with first priority over other Mortgages on such Lot. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

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 the purchaser under an installment land contract, but excluding those having such interest merely as security for the performance of an obligation. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust. A person or entity is not an Owner due to: (i) community property or other equitable rights not shown of Record; or (ii) rights of adverse possession not shown of Record. Where the

context requires, the term "Owner" shall include the members of the Owner's household and the Owner's guests, tenants, lessees and invitees; provided, however, that such persons are not "Owners" for purposes of exercising voting rights in the Association.

1.24 Record; Recorded; Recordation; Filed. "Record", "Recorded", "Recordation", and "Filed" shall mean, with respect to any document, the recordation or filing of such document in the official records of the County Recorder's office.

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

1.26 Resident. "Resident" shall mean any person who resides in a Residence on a Lot within the Development whether or not such person is an Owner as defined in this Declaration.

1.27 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 from time to time, and the Architectural Rules as adopted and published by the Board from time to time.

1.28 Subdivision Map. "Subdivision Map" and "Final Map" shall mean the final subdivision map Filed with the County Recorder for any portion of the Development.

## **ARTICLE 2                      HOMEOWNERS ASSOCIATION**

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2.1 Management and Operation. The Association, through the Board, 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. The Association is not subject to the Davis-Stirling Common Interest Development Act (California Civil Code Section 4000 et seq.), even though numerous Governing Document provisions impose the same obligations as required by the Act.

### **2.2            Association Membership.**

(a) Ownership Includes 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.

(b) Membership Meeting Notice. The annual meeting of the Members shall be held annually at a date and time established by the Board. Special meetings of the Members may be called at any time by the President or by the Board or pursuant to the written request of Members entitled to cast at least five percent (5%) of the total voting power of the membership. Written notice of annual and special membership meetings shall be mailed first class, postage prepaid, or otherwise delivered at least ten (10) but not more than ninety (90) days before such meeting, to each Member entitled to vote at such meeting, except that in the case of a special meeting called pursuant to a written request of Members, notice of such special meeting shall be mailed or otherwise delivered within twenty (20) days after receipt of such written request by the Board, and the date of such special meeting shall be set by the Board and shall be not sooner than thirty-five (35) days nor later

than ninety (90) days after the date of the Board's receipt of such written request. Notice of meetings shall be addressed or otherwise delivered to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Notice of any meeting of Members shall specify the date, hour, and place of the meeting, and the general nature of those matters which the Board intends to present for action by the Members.

(c) Membership Meeting Quorum. The presence at any meeting, in person or by proxy, of Members entitled to cast at least a majority of the total voting power of the membership shall constitute a quorum for the transaction of any business. If, however, such quorum shall not be present or represented at any meeting, the Members otherwise entitled to vote at that meeting may not transact any business but may adjourn the meeting from time to time, to be reconvened at a subsequent date which is not less than five (5) days and not more than thirty (30) days from the time of the adjourned meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. At all meetings of the Members, each Member may vote in person or by proxy.

2.3 Classes of Membership. The Association shall have the following classes of membership:

(a) Class A Members. Each Owner, with the exception of Declarant, shall be a Class A Member of the Association. If a Lot is owned by more than one (1) person, there shall be only one (1) vote with respect to such Lot. Declarant shall become a Class A Member upon the occurrence of the events specified in subsection 2.4(c), below.

(b) Class B Members. The Class B Member shall be Declarant until the occurrence of the events specified in subsection 2.4(c), below.

2.4 Voting Rights of Classes of Members.

(a) Commencement of Voting Rights. Voting rights attributable to the ownership of Lots shall not vest until Assessments against those Lots have been levied by the Association.

(b) Class A Members. Class A Members shall have one (1) vote for each Lot that the Member owns.

(c) Class B Members. The Class B Member shall be entitled to three (3) votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership when ninety percent (90%) of the Lots within the Development have been conveyed to Class A Members.

(d) Members Entitled to Vote. Only Members in Good Standing shall be entitled to vote. The tenants or lessees of any Lot within the Development shall have no voting or membership rights in the Association.

(e) Suspension of Voting Rights. A Member's voting rights may be temporarily suspended under those circumstances described in Article 10, below.

(f) Consent of Membership Classes. As long as there are Class A and Class B memberships within the Association, no action by the Association that must have the prior approval of the Members shall be deemed approved by the Members unless approved by the appropriate percentage of both classes of Members. Whenever any provision of this Declaration or any other Governing Document of the Association requires the approval of a prescribed majority of the voting power of the Members "other than Declarant", the intent of the quoted phrase is that the action be

approved by the vote or written assent of a bare majority of the Class B voting power, as well as the vote or written assent of the prescribed majority of the total voting power of Members other than Declarant. After all the Class B memberships have been converted into Class A memberships, any such provisions shall be deemed to require the vote or written assent of a bare majority of the total voting power of the Association, as well as the vote or written assent of the prescribed majority of the total voting power of Members other than Declarant.

2.5 Board. The affairs of the Association shall be managed by or under the direction of the Board.

(a) Purpose and Function of the Board. The purpose of the Board is to manage and oversee the maintenance obligations prescribed in this Declaration, and establishing, enforcing, and collecting Assessments for such maintenance obligations.

(b) Authorized Number of Directors. The initial Board shall be comprised of three (3) persons designated by Declarant, and shall hold office until the first meeting of the membership. Thereafter, the Board shall consist of three (3) Directors. No reduction in the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires.

(c) Election of Directors. Except as noted herein, each elected Director shall hold office for a term of two (2) years and until a successor Director has been elected or until the earlier disqualification, death, resignation, or removal of such Director. Any tie in the number of votes cast for candidates shall be decided by random drawing or other method of chance as determined by the Board. There shall be no limitation on the number of consecutive terms to which a Director can be re-elected. The first election of the Board shall be conducted at the first annual meeting of the Members and the terms of office shall be staggered as follows: One (1) Director shall be elected by the votes of Class A Members only, as more particularly described in subsection 2.5(d), below. This initial one (1) elected Director shall serve a term of one (1) year. In addition to the election of the one (1) Director, Declarant shall appoint two (2) Directors pursuant to Declarant's Class B voting rights. The two (2) Directors initially appointed by Declarant at the first annual meeting shall serve a term of two (2) years. Thereafter, term of office of a Director shall be two (2) years.

(d) Special Rule for Election of Director by Class A Members. From the first election of the Board and thereafter for so long as the majority of the voting power of the Association resides with Declarant, or so long as there are Class B memberships in the Association, not less than twenty percent (20%) of the Board shall be elected solely by the votes of Owners of Lots other than Declarant (i.e. the Class A Members only).

(e) Compensation. No member of the Board shall be compensated for being on the Board. However, upon approval by the Board, any Director may be reimbursed for his or her expenses actually incurred in the performance of his or her duties.

(f) Board Vacancy. Any vacancy occurring on the Board, except a vacancy created by the removal of a Director by Declarant or by the Members or due to an increase in the authorized number of Directors, may be filled by approval of the Board, or if the number of Directors then in office is less than a quorum, by the vote of a majority of the remaining Directors at a meeting of the Board, or by unanimous written consent of the Directors then in office, or by a sole remaining Director. A Director so chosen shall serve the remainder of the term of office of the Director whom he or she replaces. The Members may elect a Director at any time to fill any vacancy not filled by the Directors. If the Board accepts the resignation of a Director tendered to take effect at a future time, the Board or, if the Board fails to act, the Members may elect a successor to take office when the resignation becomes effective.

(g) Board Meetings. The Board shall meet at least quarterly at a place within the County. Regular and special meetings of the Board shall be open to all Members of the Association, except when the Board meets in executive session meetings as permitted by the California Corporations Code. A reasonable time limit for all Members to speak to the Board shall be established by the Board. Except for emergency meetings affecting the safety of Members and executive sessions for matters which by law are reserved for executive session, Members shall be given notice of the day, time, and place of each meeting of the Board, whether regular or special, at least four (4) days prior to such meeting. Notice shall be given to all Members by posting the notice in a prominent place or places within the Association Maintenance Area, and by mail to any Owner who has requested notification of Board meetings by mail, at the address requested by the Owner.

(h) Election of Officers. The Board shall elect the officers. The election of officers shall take place immediately following the election of the Board, or at the first meeting of the Board following each annual meeting of the Members.

2.6 Association Rules. The Board shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such rules and regulations, which shall be known as "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 Association Maintenance Area, signs, collection and disposal of refuse, minimum standards for maintenance of property, parking and traffic regulations, rental or leasing of Lots, the keeping of pets on Lots, and any other subject matter within the jurisdiction of the Association as provided in the Governing Documents or by law.

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

2.8 Capital Improvements. The Board shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Association Maintenance 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 at least a majority of each class of Members. 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 12 of this Declaration. For purposes of this Section "capital improvements" is defined as any: (i) substantial discretionary addition to the Association Maintenance Area; (ii) voluntary significant upgrade to Association Maintenance Area materials; or (iii) discretionary material alterations to the appearance of the Development.

2.9 Transfer or Dedication of Association Maintenance Area to Public Agency or Utility. The Board shall have the power to dedicate or transfer all or any part of the Association Maintenance Area to a public agency, authority or utility or other person or entity for such purposes and subject to such conditions as may be agreed to by the Board, and upon the approval of at least a majority of each class of Members.

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

2.11 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 prior written consent of the County and

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.

2.12 Limitation of Liability. Neither the Association or its Directors, officers, employees, agents or committee members (collectively and individually referred to as the "Released Party") shall be personally liable for damages or in equity to any of the Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or pursuant to the Governing Documents, even if such Released Party is negligent, provided that such Released Party has not acted in bad faith. This standard of care and limitation of liability shall extend, without limitation, to matters such as: (i) the establishment of the Association's annual financial budget; (ii) the funding of Association reserve accounts; (iii) the discharge of the Association's maintenance, repair and replacement obligations; (iv) the enforcement of the Governing Documents; and (v) to any other fiduciary duties or responsibilities imposed by law or the Governing Documents.

### **ARTICLE 3                      ASSOCIATION MAINTENANCE AREA**

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3.1 Purpose of Association Maintenance Area. Subject to the provisions of the Declaration, the Association Maintenance Area shall be maintained, and used to meet the common uses of the Owners, the members of the Owners' households, and the Owners' tenants, and guests as provided in the Governing Documents.

3.2 Acceptance of Association Maintenance Area. The Association shall be deemed to have accepted the Association Maintenance Area for maintenance when assessments have commenced.

3.3 Owners Non-Exclusive Easements of Enjoyment. Every Owner and the Association shall have a non-exclusive easement for ingress, egress, use of, and enjoyment in, to, and throughout the Association Maintenance Area private streets as shown on the Subdivision Map. 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) Adoption of Rules. The right of the Board to establish and enforce reasonable Rules governing the use of the Association Maintenance Area;

(b) Granting of Easements. The right of the Board to grant easements and rights of way in, on, over, or under the Association Maintenance Area;

(c) Perform Obligations. The right of the Association or its authorized agents to perform its obligations under this Declaration, including, without limitation, obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Association Maintenance Area;

(d) Establish Signage. The right of the Association to establish, construct, maintain, repair and replace signs, lights, and other similar improvements upon the Association Maintenance Area;

(e) Development and Sales Rights. The right of Declarant and its employees, sales agents, prospective purchasers, customers and representatives, to enter upon and to use the Association Maintenance Area for development and sales activities in accordance with Article 14, below. Such use shall not unreasonably interfere with the rights of use and enjoyment of the other Owners as provided herein.

3.4 Association Maintenance Area Construction. No person or entity other than Declarant or the Association or their duly-authorized agents: (i) shall construct, reconstruct, refinish, alter, or maintain any Improvement upon the Association Maintenance Area; (ii) shall make or create any excavation or fill upon the Association Maintenance Area; (iii) shall change the natural or existing drainage of the Association Maintenance Area; or (iv) shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Association Maintenance Area.

## **ARTICLE 4                      USE RESTRICTIONS**

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4.1 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 Association Maintenance 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 excessively loud music, to emanate from the Resident's Lot, vehicles, or the vehicles of guests and invitees, which would unreasonably disturb another Resident's enjoyment of his or her Lot. Nothing in this Section shall be construed to limit the Association's ability to discharge its duties in accordance with the Governing Documents or otherwise manage the Development.

4.2 Residential Use. Except as specifically provided in Sections 4.3, 4.19 and 4.20, below, no Lot, or any portion thereof, shall be occupied or used for other than residential purposes. No trailer, basement or loft attic, tents, shack, or outbuilding structure shall be utilized at any time as a Residence temporarily or permanently, nor shall any structure of a temporary or mobile character be used as a Residence.

4.3 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except:

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

(b) Development and Sales of Residences. As more particularly provided in Article 15, below, Declarant shall be entitled to use Residences as models, sales or rental offices or construction headquarters for the purpose of constructing Residences and marketing of Residences within the Development or for development projects located outside of the Development.

(c) Permitted by Law. Those other businesses which by law must be permitted to be conducted within the Development, including, but not limited to the businesses described in Sections 4.19 and 4.20, below.

4.4 Use of the Association Maintenance Area. All use of the Association Maintenance Area is subject to the Governing Documents. No alterations or additions to the Association Maintenance Area shall be made except as authorized in writing by the Board pursuant to the Governing Documents. Nothing shall be placed, kept, stored, or parked on the Association Maintenance Area without the prior written consent of the Board, except by the Association. Without limiting the foregoing, no Owner shall place rubbish, debris, or other unsightly or unsanitary materials on the Association Maintenance Area. Each Owner shall avoid causing damage to the Association Maintenance Area.

4.5 Requirement of Architectural Approval. As addressed in greater detail in Article 8, construction, installation, modification, or alteration of buildings, outdoor structures, fences, awnings, outdoor lighting and all other exterior Improvements visible from the public or private streets are subject to approval of the Architectural Review Committee.

4.6 Sports Apparatus. No sports apparatus shall be installed on a Lot or the exterior of a Residence without the prior written approval of the Architectural Review Committee in accordance with Article 8, below.

4.7 Window Coverings. Drapes, window shades, or shutters shall be installed in the windows of all Residences and garages and shall comply with any Rules adopted by the Board. In no event shall windows be painted, nor shall aluminum foil, newspaper, bed sheets, cardboard or similar materials be placed in windows. All window coverings shall be maintained in good repair and condition at all times.

4.8 Signs. To the extent permitted by law, the Board may adopt limitations on signs including, without limitation, restrictions on the size of the signs, the duration of their posting, and their location.

4.9 Antennas. No outside television antenna, aerial, satellite dish or similar device for the transmission or reception of television, radio, satellite, or other signals of any kind, are permitted within the Development, except as provided in this Section. Antennas or satellite dishes with a diameter or diagonal measurement not greater than one (1) meter which are designed to receive direct broadcast satellite services, video programming services via multi-point distribution services, or television broadcast signals (collectively "Permitted Dishes") may be erected, placed or installed on a Lot, subject to the following restrictions, provided that the application of these restrictions do not unreasonably delay installation or expense, or preclude reception of an acceptable quality signal:

(a) Not Visible from Streets. All Permitted Dishes shall be placed in locations which are not visible from the public or private streets within the Development, where possible.

(b) Preferred Placement List. All Permitted Dishes shall be installed at locations in accordance with a prioritized list of placement preferences, if such a list is adopted by the Board.

(c) Reasonable Rules. All Permitted Dishes shall be installed in accordance with such reasonable restrictions which may be imposed as part of the Architectural Rules.

(d) Post Installation Review. The Architectural Review Committee may review the location and installation of Permitted Dishes after installation. After its review, to the extent permitted by law, the Architectural Review Committee may require a Permitted Dish be moved to a preferred location designated by the Architectural Review Committee.

4.10 Trash Disposal. All Residences shall subscribe to the County solid waste hauling service, and shall participate in curbside recycling. Trash, garbage, recycling, accumulated waste plant material and all other waste and refuse shall be deposited only in covered sanitary containers or recycling containers in accordance with the following provisions:

(a) Trash and Recycling Storage: Screened Containers. No Owner or Resident shall permit or cause any garbage, recycling, trash, rubbish, or other waste material to be kept upon any portion of any Lot outside of the Residence or elsewhere in the Development, except in sanitary, covered disposal containers that are located within the garage of the Owner's Residence.

(b) Trash Pickup. The containers may be placed for pickup at a reasonable time prior to trash collection and shall be promptly stored as specified in subsection 4.10(a) after collection. The Board shall adopt Rules regulating the placement of the solid waste and recycling containers as necessary to accommodate any parking restrictions, safe and reliable collection service on the collection day, including specific limitations on the period of time during which containers may be placed for collection. All containers shall be placed away from parked vehicles and other obstructions.

#### 4.11 Vehicles and Parking.

(a) Limitations on Types of Vehicles.

(i) Recreational Vehicles. No trailer, motor home, recreational vehicle, camper, or boat shall be parked, kept or permitted to remain within the Development unless placed or maintained completely within an enclosed garage, or side yard and provided that the parking of such recreational vehicle or trailer does not displace the parking of otherwise permitted vehicles within the garage. The Board, in its complete discretion and upon such basis and terms as it deems prudent, shall have the power to adopt, modify and repeal Rules permitting the temporary use and parking within the Development of vehicles otherwise prohibited by the provisions of this subsection.

(ii) Commercial Vehicles. No truck, van or commercial vehicle shall be parked, kept or permitted within the Development unless placed or maintained completely within an enclosed garage, or side yard, except for such limited times as are necessary for deliveries, the performance of maintenance, repair and replacement of Improvements within the Development and other similar situations, and then subject to any Rules adopted by the Board which may include, without limitation, a limit on the time of day or days of the week when such vehicles may be present within the Development. The term "truck, van or commercial vehicles" shall not include sedans or standard size cars, pickup trucks and vans which are used for both business and personal uses, provided that any signs or markings of a commercial or governmental nature on such vehicles shall be unobtrusive as determined by the Board.

(b) Condition of Vehicles. No unreasonably noisy vehicles and no vehicles (including, without limitation, scooters, motorcycles or other motorized devices) emitting foul smelling or offensive exhaust fumes shall be operated within the Development. No dilapidated, unsightly, inoperable, unlicensed, or abandoned vehicle shall be parked, kept or permitted to remain upon any area within the Development unless completely enclosed within a garage. Each vehicle operated or located within the Development shall maintain, and the Board shall have the authority to require written evidence of, current registration which permits the vehicle to be legally operated on public streets.

(c) No Vehicle Repairs. No vehicle maintenance, or repairs of any kind may be made to vehicles within the Development except such emergency repairs as are necessary to remove the vehicle from the Development and except within an enclosed garage.

(d) Parking of Permitted Vehicles. Vehicles permitted by this Section 4.11 may be parked within the Development only as follows:

(i) Garage Parking. Owners and Residents shall utilize their Residence's garage and driveway as the primary parking space for vehicle parking.

(ii) Visitor and Guest Parking. An Owner's guest or invitee may park their vehicles in the Owner's garage or on the driveway of the Owner's Lot, provided the Owner does not own a vehicle that must be parked in the garage as required in Section 4.11. Such visitor vehicles may not be parked within the driveway overnight for more than three (3) nights within any seven (7) day period. The nominal movement of any vehicle for the purposes of preventing the application of this subsection shall be ineffective. Vehicles parked within a driveway shall not extend into the roadway serving the Development. The Board shall have the power to adopt Rules that allow visitor parking on a driveway for more than three (3) nights, as well as any changes to this or any parking provision.

(e) Parking Rules and Enforcement. In order to prevent or eliminate 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 sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such authority and power shall include, without limitation:

(i) Towing of Vehicles. 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, or guests are responsible for the presence of such vehicle. Any vehicle parked within any designated fire lane, posted "No Parking Fire Lane", red-curbings or other markings/measures as required by the County, shall be subject to immediate towing at the expense of the vehicle owner.

(ii) Parking Fines. The power and authority to fix and impose fines for violations of this Section.

4.12 Garages. No garage shall be converted or remodeled or used as a workshop, storage space, hobby facility or for any other use or facility which would interfere with the ability of the Owner of the Lot to accommodate the number of vehicles the garage was originally designed to contain. The garage of each Residence shall be maintained for off-street parking and in no event shall any garage be converted to or used as a living area.

4.13 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. To the extent that wood burning devices are installed within the Development, all wood burning devices shall comply with all applicable state and county laws, regulations and ordinances.

4.14 Animals.

(a) Household Pets. No animals, reptiles, rodents, birds, fish, livestock, or poultry shall be raised, bred or kept on any Lot or other portion of the Development. The Board may adopt Rules regulating a reasonable number of domesticated birds, cats, dogs (except for dog breeds described below) or aquatic animals kept within an aquarium, to be kept, provided that they are not kept, bred, or maintained for any commercial purposes and they are maintained under reasonable control at all times, all in conformance with any County ordinances. A Resident shall be permitted to have a total

of two (2) dogs and two (2) cats. Except for legally designated service animals, the Board may adopt Rules prohibiting Owners and Residents from bringing or keeping within the Development dogs which are all or part of a specified breed, and may establish specific protocols to identify a dog's breed. The Board, after notice and hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any Resident in the Development or otherwise to be a nuisance within the Development. Each dog must be restrained on a leash held by a responsible person capable of controlling it whenever it is outside of its owner's Lot.

(b) Owner's Responsibility for Pets. The owner of each pet or the pet of any tenant, guest or invitee, shall be responsible for immediately removing and disposing of any excrement and/or waste introduced to any portion of the Development by such pet. The Board shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to pets, including without limitation fines for failure to remove and dispose of pet waste as required by this subsection. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Development by such person or by members of his or her household, tenants, guests, or invitees. Each Owner and Resident shall indemnify the Association and its officers, Directors, and agents against any and all claims, damages, losses, demands, liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner or Resident, members of his or her household, guests, tenants, or invitees. Dog barking audible from within an adjacent Lot's Residence for more than ten (10) minutes within an hour shall constitute a nuisance pursuant to this Declaration. In no event shall any animal be maintained within the Development that constitutes a nuisance to any Resident.

(c) Pet Rules. The Board may adopt and enforce pet Rules in addition to the provisions of this Section. Such Rules may include, without limitation, regulations regarding the presence of pets on the Association Maintenance Area and requirements that pets be registered with the Association. The Association shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance or danger to any other person.

4.15 Rental of Residences. An Owner shall have the right to rent his or her Residence subject to the provisions of the Governing Documents, including without limitation the following specific requirements:

(a) Notification of the Board. The Owner shall notify the Association of the duration of the lease, a term of which shall not be less than thirty (30) days, and shall provide the Association with: (i) the names of the tenants; (ii) the names of the members of the tenants' household; (iii) the tenants' telephone numbers; and (iv) such other information as the Board deems appropriate. The Association may, in its discretion, adopt a form for the provision of the information required by this subsection, together with an acknowledgment by the tenants that they have read, understand and agree to abide by the Governing Documents, which form shall be submitted to the Association for each rental of a Lot.

(b) Owner Responsibility. Each Owner renting a Residence shall be strictly responsible and liable to the Association for the actions of such Owner's tenant in or about all Lots, Residences and Association Maintenance Area and for each tenant's compliance with the provisions of all Governing Documents. An Owner renting a Residence shall provide the tenant with copies of the Governing Documents and all subsequent amendments. Owners renting a Residence shall provide the Board with a forwarding mailing address so that the Owner may be contacted.

(c) Indemnification of Association. Every Owner of a Residence that is occupied by persons other than the Owner pursuant to a rental agreement or otherwise, agrees to and shall indemnify and defend the Association, its officers, Directors, managers, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, including but not limited to attorneys' fees arising out of the conduct or presence of the occupants of the Residence upon the Development, including any such cost, loss, claim or damages arising or alleged to have arisen out of the enforcement or nonenforcement by the Association of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys' fees incurred by the Association to enforce the Governing Documents against such occupants, shall be reimbursed to the Association by the Owner and may be assessed by the Association as a Reimbursement Assessment.

(d) Requirements of Written Rental Agreement. Any rental of any Residence shall be only by written rental agreement which shall expressly provide: (i) that it is subject to all of the provisions of the Governing Documents; (ii) that the tenants of such Residence shall comply with all provisions of the Governing Documents; and (iii) that any violation of any provisions of the Governing Documents shall constitute a breach and default of the terms of such rental agreement. The rental agreement shall not attempt to, nor shall any such agreement be effective to, transfer membership in the Association to the lessee. Any lease or rental agreement entered into between an Owner and a tenant or renter shall be for a minimum term of thirty (30) days.

4.16 Clotheslines and Sideyard Storage. Except as allowed by California Civil Code Section 4753, no exterior clotheslines or other outside clothes drying or airing facility shall be erected or maintained upon any Lot, except below the fence-line. The Board may adopt Rules regarding the use of clotheslines as allowed by law. No personal property shall be stored along the side yard area immediately adjacent to a Residence's garage, except below the fence-line and not visible from the Association Maintenance Area, or any first floor of any other Residences.

4.17 Activities Affecting Insurance. Nothing shall be done or kept within the Development which will increase the rate of insurance maintained by the Association without the prior written consent of the Association. No Owner shall permit anything to be done or kept within the Development which would result in cancellation of any insurance policy maintained by the Association or any other Owner.

4.18 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. Notwithstanding the preceding, if any Lot is owned by two (2) or more co-tenants as tenants in common or as joint tenants, this Section shall not be deemed to prevent a judicial partition by sale as between such co-tenants.

4.19 Family Day Care Centers. No family day care center shall be permitted within the Development except as specifically mandated by California Health and Safety Code Section 1597.40 and other applicable statutes. The owner/operator of any permitted day care facility shall provide the Association with prior written notice as to the facility's operation, and shall comply with all local and state laws regarding the licensing and operation of a day care center and, in addition, shall:

(a) Association Additional Insured. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center, in accordance with Health & Safety Code Section 1597.531. This subsection 4.19(a) is intended to be and shall be conclusively deemed to be the written notice to the operator and owner from the Association as specified in Health & Safety Code Section 1597.231;

(b) Indemnify. 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;

(c) Association Rules. Abide by and comply with the Association's Rules;

(d) Responsibility. Supervise and be completely responsible at all times all persons for whom day care services are provided while such persons are within the Development; and

(e) Proof of Insurance. 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 provisions, or other reasonable requests.

4.20 Community Care Facilities. Except for residential facilities defined as community care facilities under Health & Safety Code Section 1502, no health care facilities operating as a business or charity shall be permitted in the Development. The owner/operator of any permitted community care facility shall provide the Association with prior written notice as to the facility's operation, and shall comply with all local and state laws regarding the licensing and operation of a community care facility and, in addition, shall:

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

(b) Indemnify. 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 community care facility;

(c) Association Rules. Abide by and comply with the Association's Rules;

(d) Responsibility. Supervise and be completely responsible at all times all persons for whom community care services are provided while such persons are within the Development; and

(e) Proof of Insurance. 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 community care facility to these provisions, or other reasonable requests.

4.21 Variances. The Board shall be authorized to grant reasonable variances from the provisions of Article 4 of this Declaration upon written application from any Owner provided that the Board determines, in its sole discretion, that the specific application of the restriction to such Owner will: (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) Initial Determination by Board. 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) Board Hearing. The Board shall conduct a hearing on the variance within forty-five (45) 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) Board Decision. 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.

4.22 Second Dwelling Units. To the extent that second dwelling units are allowed on Lots 1-7, second dwelling units within the Subsequent Phase Property are prohibited. All Lots within the Subsequent Phase Property shall comply with the Conditions of Approval.

4.23 Hours of Construction and Timber Harvest Work. All construction plans, improvement plans, and Project building plans and permits shall include a note that reads: "Site preparation and construction shall be limited to the hours of 7:00 am and 7:00 pm on Monday through Friday, and between 8:00 am and 5:00 pm on Saturday. No construction shall occur on Sunday or federal holidays". All timber harvest work shall be limited to the hours of 7:00 am and 7:00 pm on Monday through Friday, and between 8:00 am and 5:00 pm on Saturday. No work shall occur on Sunday or federal holidays. This limitation shall apply to warm-up of equipment, arrival and departure times.

4.24 Burning. There shall be no open burning or exterior fires except for gas barbecue fires or gas fire pits contained within receptacles designed for such purpose. No Owner or resident shall permit any condition to exist on his or her Lot, including without limitation, trash piles or weeds, which create a fire hazard or is in violation of local fire regulations.

4.25 Flammable Materials. Including, but not limited to, explosives, fireworks, highly flammable or highly corrosive materials are prohibited from being stored or used by any Owner, Resident, guest, tenant, or invitee on any Lot.

4.26 Unmanned Aerial Vehicles. No person may operate, allow or authorize the operation of any unmanned aircraft guided by remote control or onboard computer in the airspace above any portion of the development in such a way as to invade the privacy of Residents and their guests and invitees, whether such aircraft is equipped with a camera or otherwise. Unmanned aircraft that is registered with the Federal Aviation Administration is exempt from this Section and must be registered with the Association. The Board in its sole discretion may establish Rules that require an Owner, Resident, tenant, guest, or invitee to register this information with the Association.

## **ARTICLE 5 CONSTRUCTION STANDARDS AND DISCLOSURES**

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5.1 Approval by Architectural Review Committee. Except for Improvements constructed or installed by Declarant, no building, fence, wall, pool or spa equipment, or other structure or Improvement shall be erected, altered or placed on any Lot until building plans, specifications and a plot plan showing the location of structures on the Lots have been submitted to the Architectural Review Committee for review and approval as described in Article 8, below.

5.2 Drainage. No Owner shall do any work, construct any Improvement, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Owner's or any adjacent Lots or parcels or Association Maintenance Area as established in connection with the approval of the final Subdivision Map applicable to the Development, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Review Committee, and all other

public authorities having jurisdiction.

5.3 **Photovoltaic Reception.** By acceptance of a deed, all persons acquiring an ownership interest in a Lot within the Development acknowledge and agree not to allow any landscaping, including trees, but excluding existing trees and trees planted pursuant to the conditions of approval, located within that Owner's Lot, to interfere with the reception of any photovoltaic systems located within the Development.

5.4 **Exterior Lighting and Fixtures.** All external light fixtures on individual homes shall be designed to minimize light spillage and glare. This will include the use of shielding devices to orient the light downward, reducing glare. In addition, all external residential light fixtures shall utilize low-pressure sodium lamps, or other similar low intensity lights, to reduce light spillage. Exterior lighting shall be shielded and deflected away from neighboring properties and from windows of Residences within the Development. The Board may establish Architectural Guidelines regarding the placement of holiday lighting and decorations, including, but not limited to, the duration of display prior to and following the celebrated holiday.

5.5 **Reflective Building Materials.** All potentially reflective building materials and surfaces shall be painted or otherwise treated to minimize reflectivity. All glass used on external building walls shall be low reflectivity.

5.6 **Hours of Construction.** All construction plans, improvement plans, and Project building plans and permits shall include a note that reads: "Site preparation and construction shall be limited to the hours of 7:00 am and 7:00 pm on Monday through Friday, and between 8:00 am and 5:00 pm on Saturday. No construction shall occur on Sunday or federal holidays".

5.7 **Burning.** There shall be no open burning or exterior fires except for gas barbecue fires or gas fire pits contained within receptacles designed for such purpose. No Owner or resident shall permit any condition to exist on his or her Lot, including without limitation, trash piles or weeds, which create a fire hazard or is in violation of local fire regulations.

5.8 **Fuel Reduction Plan.** In accordance with the Conditions of Approval for the Development, and prior to Recordation of the Final Maps, Declarant shall, subject to Nevada County Consolidated Fire District Fire Marshal approval, provide a plan for proactive fuels reduction. Financing of periodic maintenance of the fuels reduction plan shall be included in the Declaration for the Development as stated in this Section 5.8 and in the attached **Exhibit "C"** attached hereto and incorporated herein. As part of the fuel management plan, an access roadway in the westerly portion of the Project shall be improved pursuant to an approved route by the Nevada County Consolidated Fire District and maintained in such a manner as to provide at least a twelve foot (12') wide roadway that could be utilized to access the westerly portion of the development during the wildland fire season. The fuels reduction plan shall include the following components or those deemed by the Fire Marshal to be equally effective.

5.9 **Maintenance of Undeveloped Residential Lots.** Each of the Residential Lots shall be maintained in accordance with the following until the Lot is developed:

(a) **Removal of Brush.** Remove all native brush. Some brush may remain provided the crowns of individual or small groupings of plants (groups of two to three) are at least ten feet (10') apart;

(b) **Removal of Fine Fuels.** Remove all grasses, blackberries, and other fine fuels to within four inches or less of the ground level by using equipment such as weed eaters or mowers;

(c) **Removal of Lower Tree Branches.** Remove lower tree branches 1/3 to 1/2 the overall height of the tree, or eight (8') to ten (10') feet above the ground, whichever is lower. Remove all

brush and other fuels under these trees; and

(d) Removal of Understory Trees. Remove a majority of the understory trees (small trees less than eight inches in diameter) throughout the parcels. These trees are considered ladder fuels and would allow a fire burning on the ground to quickly transition to the larger trees. Some of the understory trees may remain provided the crowns of the individual trees are at least ten feet (10') apart.

5.10 Maintenance of Developed Lots. Once the parcels are developed, vegetation clearance around all structures shall be maintained in accordance with the minimum requirements of Section 4291 of the Public Resources Code. This requires that a fire break at least one hundred foot (100') in width, or to the property line, whichever is nearer, be maintained around all structures by removing and clearing away all brush, flammable vegetation, or combustible growth.

5.11 Maintenance of Open Space Lots. In the areas of the Development that are not to be developed or are designated as open space, fuel breaks shall be provided as follows. In addition to Parcels D and E, fuel breaks shall be maintained during any time when any future timber harvest plan for Lot A is not in effect. Required fuel break areas, as specified below, shall not be included in any future timber harvest plan area unless the same level of fuel management, subject to County and Fire District approval, is included as a part of timber harvest plan activity:

(a) Fuel Break Areas. Along the northerly side of Parcel A, which borders along parcels 35 through 47, 100 through 107, 172 through 187, the entire area between parcels 47 and 48 plus one hundred fifty feet (150') to the south, and parcels 48 through 56; construct and maintain a minimum one hundred fifty foot (150') wide fuel break in areas with slopes of less than thirty percent (30%) and a two hundred foot (200') wide fuel break in areas with slopes greater than thirty percent (30%);

(b) Parcel A and Red Dog Road. In the northeast portion of Parcel A, in the area south of the existing parcels along Red Dog Road, construct and maintain a one hundred foot (100') wide fuel break;

(c) Parcel A, Parcels 63 through 69, 118 through 122, Parcels 123 through 128, and 162 through 169. In the northwesterly portion of Parcel A, along the northwesterly side of Parcels 63 through 69 and 118 through 122, and the westerly side of Parcels 123 through 128, and 162 through 169; construct and maintain a two hundred foot (200') wide fuel break;

(d) Red Dog Road, Parcels 188 through 193. The areas to the west, south and east of the Parcels 188 through 193 construct and maintain a two hundred foot (200') wide fuel break. The entire area between Parcels 188 through 193 and Red Dog Road shall be maintained as a fuel break; and

(e) Red Dog Road and Cedar Springs Road. Along Red Dog Road, from the northwest corner of the project easterly to the Wilson parcel near the intersection of Cedar Springs Road construct and maintain a fifty foot (50') wide fuel break.

5.12 Maintenance within the Fuel Break. These fuels breaks shall be constructed and maintained by removing all native brush. Within the fuel break, the following work is also required:

(a) Removal of Grasses and other Fine Fuels. Remove all grasses, blackberries, and

other fine fuels to within four inches or less of the ground level by using equipment such as weed eaters or mowers;

(b) Removal of Tree Branches. Remove lower tree branches 1/3 to 1/2 the overall height of the tree, or eight (8') to ten (10') feet above the ground, whichever is lower. Remove all brush and other ladder fuels under these trees; and

(c) Removal of Understory Trees. Remove a majority of the understory trees (small trees less than eight inches (8") of diameter) throughout the fuel break. These trees are considered ladder fuels and would allow a fire burning on the ground to quickly transition to the larger trees. Some of the understory trees may remain provided the crowns of individual trees are at least ten feet (10'), apart.

5.13 Logging Slash and Maintenance of St. Anthony Road. The designated fuels breaks shall be maintained in an approved manner at all times, including the future timber harvests and St. Anthony Road:

(a) Logging Slash. Large accumulations of logging slash, located on steep slopes below a densely developed residential area, tend to create a significant hazard and would not be acceptable. If logging operations are proposed in the designated fuel break areas, the accumulations of slash shall either be relocated outside of the fuel breaks or disposed of in an approved manner and within a reasonable time;

(b) St. Anthony Road. The Association shall maintain St. Anthony Road between Red Dog Road to the north and Banning Way to the south. During the summer fire season, St. Anthony Road shall be maintained in such a manner as to provide a twelve foot (12') wide roadway with a 10-foot wide driving surface. In addition, a ten foot (10') vegetative fuel reduction zone shall be maintained on each side of the roadway. Since the road is intended for use for firefighting purposes and is not intended for public use, locked gates may be installed at both ends. The gates shall provide a clear opening of at least fourteen feet (14') and shall be provided with approved locks; and

(c) Clearing of Brush Adjacent to Structures. The Association shall clear brush and other low lying vegetation within one hundred feet (100') of all structures.

5.14 Driveway Improvements. In addition to Nevada County Ordinance Section L-XVI, Article 3 requirements, the following driveway improvements are required of the Declarant, and shall be shown on the Improvement Plans (if applicable), included as notes on the Supplemental Information Sheets to be recorded with the Final Maps, and shall be part of the Project Declaration:

(a) Driveways Exceeding 150 Feet. Driveways exceeding one hundred fifty feet (150') but less than eight hundred feet (800') in length shall provide a turnout near the midpoint of the driveway;

(b) Driveways Exceeding 800 Feet. Where the driveway exceeds eight hundred feet (800') feet, turnouts shall be provided no more than 400 feet apart;

(c) Driveways Exceeding 300 Feet. A turnaround shall be provided at all building sites on driveways over three hundred feet (300') in length; and

(d) Fire Equipment Access. Driveways shall be located to allow fire equipment access

to within fifty feet (50') of the structure they serve.

5.15 Residential Sprinkler System. In accordance with the Conditions of Approval, the following shall be required:

(a) Residential Structures. All residential structures shall be provided with an approved automatic fire sprinkler system complying with the minimum requirements of Standard 13D of the National Fire Protection Association.

5.16 Wildland Interface Requirements. All Residential structures shall incorporate the following common urban wildland interface building construction requirements:

(a) Eaves and/or Soffits. Eaves or soffits shall be protected on the exposed side by materials approved for one (1) hour construction. Fascias shall be provided and must be protected on the backside by materials approved for one (1) hour fire-resistive construction or two inch (2") nominal dimensional lumber;

(b) Gutters and Downspouts. Gutters and downspouts to be constructed of noncombustible materials;

(c) Exterior Walls. Exterior walls of building and structures shall be constructed of materials approved for one (1) hour fire-resistive construction on the exterior side or the exterior siding shall be of approved noncombustible materials;

(d) Accessory Structures. Unenclosed accessory structures attached to buildings with habitable spaces and projections, such as decks, shall be a minimum of one (1) hour fire-resistive construction, heavy-timber construction, or constructed of approved noncombustible materials;

(e) Windows. Exterior windows, window walls, glazed doors and windows within exterior doors shall be tempered glass, multilayered glazed panels, glass block or other window assemblies having a fire-protection rating of not less than twenty (20) minutes;

(f) Exterior Doors. Exterior door assemblies shall be of noncombustible construction, solid core wood not less than one and three quarters inches (1-3/4") thick, or shall have a fire-protection rating of not less than twenty (20) minutes;

(g) Roof and Attic Vents. Roof and attic vents shall resist intrusion of flame and embers into the attic area of the structure, or shall be protected by corrosion resistant, noncombustible wire mesh with one quarter inch (1/4") openings or its equivalent;

(h) Wall Vents. Wall vents, unless otherwise prohibited by provisions of other codes, shall resist the intrusion of flame and embers into the structure or the vents shall be screened with a corrosion-resistant, noncombustible wire mesh with a one quarter inch (1/4") opening and be a minimum of ten feet (10') from the property line; and

(i) Ventilation Openings. Under-floor ventilation openings shall be located as close to grade as practical.

5.17 Erosion Control. The Association shall contract with an erosion control specialist to conduct

annual visual monitoring (June of each year) of the detention basins to ensure that they continue to provide adequate storm water storage and report to the Association and the Department of Transportation and Sanitation on an annual basis (July of each year). If visual monitoring determines that the detention basins are no longer providing adequate storm water storage or that a breach has occurred, appropriate maintenance and/or repairs would be completed. Repairs may include, but are not limited to, dredging, earthen berm repair, and re-vegetation. The Association shall fund costs associated with the visual monitoring, reporting, and maintenance. The Association shall establish an ongoing mechanism to fund the inspection activities specified in this Section 5.17.

5.18 Storm Water Pollution Prevention Plan, Best Available Techniques and Best Management Practices. Storm Water Pollution Prevention Plan (SWPP), Best Available Techniques (BATs) and Best Management Practices (BMPs) practices as further described in Exhibit "C" attached hereto and incorporated herein, shall apply to the Development. The Association shall fund the costs associated with annual monitoring of the linear detention basins after construction. This monitoring shall use a similar methodology as the General Permit to determine if sediment sampling will be required prior to determining the appropriate disposal method. Monitoring after construction will be annual and will rely strictly on visual inspections of the accumulated sediments and upon records of spills and/or leaks on-site gathered by the Association. The post-construction monitor will determine, based on the visual inspection and existing records, whether the sediments should be sampled and analyzed prior to determining the appropriate disposal method. Soil samples will be collected and analyzed if the construction storm water monitor or the post-construction monitor determines it is required prior to disposal of the waste to ensure that all applicable environmental criteria are met. If the wastes are deemed hazardous, the wastes shall be legally transported to a hazardous waste landfill. Otherwise, wastes will be disposed using routine methods.

5.19 Pedestrian Trail. The trail within Parcel E shall not be gated (prohibiting pedestrian access) and shall not be posted with "No Trespassing" signs.

5.20 Adjacent Land Use. The Development is located adjacent to property zoned for and subject to periodic timber harvest. Associated noise impacts include that of loud tree cutting, chipping, and moving equipment.

## **ARTICLE 6                      ASSESSMENTS AND LIENS**

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### **6.1        Covenant of Owner.**

(a) Owner's Assessment Obligation. 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) Regular 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 as hereinafter provided.

(b) Owner's Personal Obligation. 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. The seller of any Lot under an installment land contract 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 shall be secured by a lien upon the property against which such Assessment is levied, 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. 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. Any reference in the Governing Documents to the right of the Association to utilize the power of foreclose with respect to any Association lien, shall only refer to a judicial action and shall specifically not include any form of non-judicial foreclosure rights set forth in California Civil Code 5700 et seq.

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) maintaining and promoting the property values of the Owners and Residents of the Development; (iv) improving and maintaining the Association Maintenance 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 Regular Assessments and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.

6.5 Regular Assessment.

(a) Calculation of Estimated Requirement. Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the 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. The funds required by the Association pursuant to this subsection shall be assessed among the Owners of Lots within the Development as "Regular Assessments" as further provided in this Section 6.5.

(b) Regular Assessment Components. Regular Assessments shall consist of the following components:

(i) General Budgeted Expenses. The "General Assessment Component" of the Regular Assessments shall consist of the budgeted expenses of the Association, as described in Section 6.5(a), excluding any Cost Center and expenses as such expenses are more particularly described in subsection 6.5(b)(ii), below.

(ii) Special Benefit Expense Component. The "Special Benefit Expense Component" of the Regular Assessments shall consist of the expenses described in this subsection 6.5(b)(ii). Declarant and the Association shall have the power and authority to establish additional Special Benefit Expense Components by designating Association Maintenance Area within the Development as "Cost Centers" for purposes of expense accounting and the equitable allocation of Regular Assessments. A Cost Center is likely to be designated when one of the following occurs: (A) the maintenance or use of a particular Improvement or maintenance area within the designated Cost Center is fully or partially restricted to Owners of Lots located within the area designated as a "Cost Center"; or (B) when certain Owners of Lots within a designated Cost Center are receiving services from the Association that are in addition to, or significantly greater than, the services provided to other Owners. Ordinarily, a Cost Center shall be established whenever it is reasonable to anticipate that any Owner or group of Owners will derive as much as ten percent (10%) more than Owners in general in the value of a common service(s) supplied by the Association. In addition to the Cost Centers established in this Declaration, additional Cost Centers may be designated in a Declaration of Annexation or Supplemental Declaration which shall: (i) identify the Lots comprising the Cost Center; (ii) identify the Association Maintenance Area, or other services that will exclusively or disproportionately benefit the Owners of said Lots; and (iii) provide for the allocation of common expenses attributable to the identified Association Maintenance Areas or services to Owners within the Cost Center as a Special Benefit Expense Component of their Regular Assessment.

(c) Allocation of Regular Assessment

(i) General Assessment Component. Regular Assessments shall be allocated and assessed equally among the Lots within the Development by dividing the amount by the number of Lots, so that each Lot bears an equal share of the Regular Assessment.

(ii) Residential Cost Center of Special Benefit. The Residential Cost Center Special Benefit Regular Assessments shall be allocated and assessed equally among the Owners of a Lot withing the Development by dividing the amount by the number of Lots, so that each Lot bears an equal share of the Cost Center Special Benefit Assessment.

(d) Payment of Regular Assessments. Unless the Board shall designate otherwise, Regular 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 quarter.

(e) Increases in Regular Assessment.

(i) General Assessment Component. The Board shall not increase the Regular Assessment for any fiscal year above the amount of the Regular Assessment for the preceding fiscal year by more than twenty percent (20%), except upon the affirmative vote or written consent of a majority of Owners. The limitation imposed upon the Board pursuant

to this Section 6.5(e) shall not apply to any increase in Regular Assessments required to fund any maintenance, repair, or replacement of any Improvement subject to Sections 7.1(b) through (f), inclusive, below.

(ii) Cost Center Assessment Components. The Board shall not increase the Cost Center Assessment Component of the Regular Assessment for any fiscal year above the amount of the Cost Center Assessment for the preceding fiscal year by more than twenty percent (20%), except upon the affirmative vote or written consent of a majority of Owners. The limitation imposed upon the Board pursuant to this Section 6.5(e) shall not apply to any increase in Cost Center Assessments required to fund any maintenance, repair, or replacement of any Improvements subject to Section 7.1(b) through (f), inclusive, below.

(f) Commencement of Regular Assessment. Regular Assessments shall commence as to each Lot within the Development on the first day of the first month following the month in which the first conveyance occurs for the sale of a Lot to a person other than Declarant. Each Lot within the Development shall thereafter be subject to its share of the then established annual Regular Assessment. The first annual Regular Assessment shall be pro rated, if necessary, according to the number of months remaining in the fiscal year established by the Association.

(g) Partial Assessment Exemption for Uncompleted Association Maintenance Area. All Owners, including Declarant, shall be exempt from the payment of that portion of any Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Association Maintenance Area Improvement that is not completed at the time Assessments commence. The Assessment exemption provided by this subparagraph shall be in effect only until the earliest of the following events: (A) a notice of completion of the Association Maintenance Area has been Recorded; or (B) the Association Maintenance Area Improvement has been placed in use.

#### 6.6 Special Assessments.

(a) Purpose of Special Assessments. If at any time during any fiscal year the Regular 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 within the Development in the same manner as Regular Assessments.

(c) Approval of Special Assessments.

(i) General Assessment Component. Except in the case of an emergency situation, 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 Owners.

(ii) Cost Center Assessment Components. Except in the case of an emergency situation, 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 Owners.

6.7 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his or her Lot: (i) 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; or (ii) in the event that the Association has expended funds performing repairs as authorized by Section 7.4 of this Declaration or for any other reasons specifically authorized by the provisions of this Declaration. A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Association, including costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied.

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

6.9 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Regular 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 Regular Assessment fixed for the preceding fiscal year shall be the amount of the Regular Assessment for the ensuing fiscal year until a new Regular 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, except as provided in this Section, 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. Declarant and the Association may enter into a written agreement which permits Declarant to perform Association maintenance obligations or other services in exchange for an offset in Assessments.

6.11 Delinquent Assessments. Any Assessment payment, including any installment payment, shall become delinquent if payment is not received within fifteen (15) days after its due date. There shall be a late charge of ten percent (10%) or ten dollars (\$10.00), whichever is greater. A late charge may not be imposed more than once on any delinquent payment, but it shall not eliminate or supersede any charges imposed on prior delinquent payments. Interest also shall accrue on any delinquent payment at the highest rate allowed by law. Interest shall commence thirty (30) days after the Assessment becomes due.

6.12 Collection of Assessments.

(a) Liquidated Damages. The Association may enforce delinquent Assessments, including delinquent installments, by suing the Owner directly on the debt established by the Assessment. If the Association successfully sues an Owner for the nonpayment of Assessments, the Board shall be entitled to collect delinquent Assessments, accompanying late charges, penalties, or

interest, reasonable attorneys' fees and costs and liquidated damages for the burden and expense of enforcement. Such liquidated damages shall be a sum equal to fifty percent (50%) of the amount of delinquent Assessments owed to the Association by the Owner. Such liquidated damages represent a reasonable sum considering the Association's small size, limited resources, and the significant burden placed on the Board to prosecute its collection efforts, and represents a fair and reasonable estimate of the costs that will be sustained by the Association due to the undertaking of an enforcement action, including administrative and other overhead costs. Each Owner by acceptance of the deed to a Lot each acknowledge that proof of actual damages would be costly and inconvenient.

(b) Owners' Consent to Liens. If an Owner is delinquent more than sixty (60) days in the payment of Assessments, the amount of the Assessments, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed upon the Recordation of a notice of delinquent assessment executed by two (2) Directors. The notice of delinquent assessments shall set forth: (i) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this Article; (ii) the legal description of the Owner's Lot against which the Assessments and other sums are levied; (iii) the name of the Owner of such Lot; and (iv) the name and address of the Association. Upon payment in full of the sums specified in the notice of delinquent assessment, the Board shall Record a further notice stating the satisfaction and release of the lien thereof and a reasonable charge can be imposed for the preparation and recordation of that release. **The lien prescribed by this subsection may only be enforced by judicial action and shall not be enforceable by any form of non-judicial foreclosure or by a power of sale under Civil Code Sections 2924, 2924b, and 2924c.** Each Owner by acceptance of the deed to a Lot consents to the Association the right to Record a lien pursuant to this subsection 6.12(b).

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. The lien of the Assessments provided for under this article, including interest and costs (including attorneys' fees), shall be prior and superior to: (i) any declaration of homestead Recorded after the Recordation of this Declaration; and (ii) all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of Record made in good faith and for value and Recorded prior to the date on which a lien against the respective Lot was Recorded. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. 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. All Association accounts shall be maintained in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated as belonging to the Association. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be used for the purposes set forth in Section 6.3, above.

6.16 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.

## **ARTICLE 7                      MAINTENANCE OF PROPERTY**

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### **7.1      Association Maintenance Responsibilities.**

(a)      Association Maintenance Area, Generally. The Association shall maintain, repair and replace the Association Maintenance Area and all facilities, and Improvements thereon, and all other real and personal property that may be acquired or controlled by the Association, keeping such property in good condition and repair. The Association shall be responsible for providing street cleaning services for the Association Maintenance Area and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Association Maintenance Area in good condition and repair. The Board shall have the discretion to determine the nature, extent and level of care to be performed by the Association in discharging its obligations under this Article.

(b)      Non-Exclusive List of Association Maintenance Components. The Association's responsibility pursuant to this Section shall include, without limitation, the maintenance, repair and replacement of the following elements within the Development:

(i)      Private Streets. The Association shall maintain, repair and replace the private street within the private reciprocal easement for ingress/egress, which area is reserved as shown on the Subdivision Map, including the private street signs, pavement markings/stripping within the private street and the private streets shall be maintained to allow for appropriate site distance for all expected pedestrian, bike and vehicle movements.

(ii)      On Site Signage. The Association shall establish, construct, maintain, repair and when necessary replace maintain all on-site signage, including but not limited to curb painting, maps, directories and other similar improvements upon the Association Maintenance Area.

(iii)      Centralized Mail Delivery Units; Cluster Mailboxes. To the extent that the mailboxes are not maintained by the County, the Association shall maintain, repair and replace the cluster mailboxes.

(iv)      Entry and Exit Landscaping. To the extent that entry and/or exit landscaping exists, the Association shall maintain such landscaping within the Development.

(v)      Entry Monuments. To the extent that entry monuments exist, the Association shall maintain, repair, repaint and replace such entry monuments to the Development.

(vi)      Private Storm Drains. The private storm drains and related facilities for the on-site drainage systems shall be a separate system from the sewer system. The Association shall maintain non-road related drainage features such as drainage swales, storm drains, sedimentation ponds and storm flow metering facilities.

(vii)      Lighting. To the extent that street lighting exists, the Association shall

maintain, repair and replace all Association Maintenance Area lighting.

(viii) Utility Connections. To the extent that the water, utility lines and connections, including without limitation, electrical, cable television, telephone, telecommunication, and gas lines, which are located on, under, or over private street, shall be maintained, are not repaired and replaced by the utility provider providing such service, the Association shall maintain, repair and replace such services, storm drain lines and connections located within the private street.

(ix) Association Inspections. The Association shall adopt an inspection and maintenance manual for the periodic inspection and maintenance of the Association Maintenance Area. Such maintenance inspection may be undertaken by a qualified reserve study analyst as part of the Association reserve study mandated by Section 7.9, below. The Board may, from time to time, make appropriate revisions to any maintenance manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained.

7.2 Owners' Responsibilities. Except as specified in Section 7.1, above, each Owner shall be solely and exclusively responsible for the maintenance, repair and replacement of his or her Lot and all Improvements thereon, and shall keep the same in good and attractive condition and repair.

(a) Garage. Each Owner shall clean, maintain, repair and replace the garage door, serving his or her Lot.

(b) Yard Maintenance. Each Owner shall maintain all landscaping, on his or her Lot in a neat and attractive condition, including but not limited to, weed removal.

(c) 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.

(d) Fencing Between Two Residential Lots. For any fencing or walls which separates the areas between two (2) Residential Lots, each Owner shall maintain the interior of the fence or wall and the Owners shall share, on an equitable basis, the cost of replacing such fencing or wall. The Owner of each affected portion of the property upon which a party wall or fence is located shall have a reciprocal non-exclusive easement to the property immediately adjacent to the interior fence for the limited purpose of maintaining the party wall or fence.

(e) Maintenance of Residences and Access for Maintenance. Each Owner of a Residence shall have an easement for reasonable access over the adjoining Lot to properly maintain the building structure, including without limitation the Residence, common fences and landscaping. In addition, each Owner of a Residence shall have an easement for reasonable access over the adjoining Lots for the eradication of insects, pests or wood-destroying organisms.

(f) Interior Sprinkler System. All Residences shall be provided with an approved automatic fire sprinkler system complying with the minimum requirements of Standard 13D of the

National Fire Protection Association. Each Owner shall maintain the interior sprinkler systems within his or her Residence.

7.3 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 is necessary to preserve the appearance and value of the property comprising the Development, or any portion thereof, and may notify an Owner of the work the Board deems necessary. Subject to the authority of the Board to authorize immediate emergency repairs as specified in Section 7.5, 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.

7.4 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, members of any Owner's household, or an Owner's tenants, 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.

7.5 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 9.4. 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 Association Maintenance 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.

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

7.7 Association Liability. 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.

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

7.9 Inspection of Property Maintained by Association. For all property and Improvements required to be maintained by the Association pursuant to Section 7.1, above, the Board shall cause the inspection of the condition of such property and Improvements as provided in this Section. Inspections shall be conducted in accordance with any applicable maintenance manuals, and in the absence of inspection frequency recommendations in any applicable maintenance manuals, at least once every three (3) years.

## ARTICLE 8

## ARCHITECTURAL CONTROL

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8.1 Submission of Plans and Specifications. Except as provided in subsection 8.1(c), the construction, installation, placement or alteration of Improvements visible from the exterior of a Residence shall be subject to this Article 8.

(a) Residences and Structures. No Improvements including without limitation Residences, buildings, landscaping, fences, walls, obstructions, balconies, screens, patio covers, awnings, or other structures of any kind, shall be commenced, located, 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 Review Committee. Notwithstanding this subsection, and provided that the existing color and finish were approved by the Architectural Review Committee in the first instance, 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 Architectural Review Committee. The Owner shall repaint and refinish the exterior of the Improvements approximately every ten (10) years and/or as necessary to maintain the exterior of his or her Residence.

(b) Enclosed Yard Area. If the Lot includes an enclosed yard area, all Improvements and proposed landscaping within such area which is or may become visible above the fence line or which alter the Lot's drainage, and all Improvements which generate noise, including but not limited to motorized equipment, shall be subject to the approval of the Architectural Review Committee in accordance with this Article.

(c) Exemption of Declarant from Committee Approval Requirements. Declarant shall not be subject to the provisions of this Article 8 and shall not be required to seek the approval of the Architectural Review Committee with respect to any of its activities within the Development.

### 8.2 Establishment of Architectural Review Committee.

(a) Initial Declarant Appointments. The Architectural Review Committee shall consist of three (3) members. Declarant may appoint all of the members of the Architectural Review Committee and all replacements until each Lot within the Development is improved with a completed Residence and landscaping.

(b) Board as Committee. Following the completion of all Residences and all initial landscaping within the Development, the Board shall exercise the functions of the Architectural Review Committee in accordance with the terms of this Article.

8.3 Duties. It shall be the duty of the Architectural Review 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. All decisions regarding proposed Improvements shall be made in good faith and shall not be unreasonable, arbitrary, or capricious.

8.4 Meetings. The Architectural Review Committee shall meet as necessary to properly perform its duties hereunder. Every act done or decision made by a majority of the members of the Architectural Review Committee shall be the act or decision of the Architectural Review Committee. The Architectural

Review Committee shall keep and maintain a record of all actions taken by it at such meetings or otherwise. The Architectural Review Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Architectural Review Committee function.

8.5 Architectural Rules. The Board may, from time to time, adopt, amend, and repeal rules and regulations to be known as Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards and procedures for Architectural Review 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 Architectural Rules shall not be in derogation of the minimum standards required by this Declaration. The Architectural Rules may also impose limits on the days and hours of construction and impose any other restrictions and regulations which the Board deems appropriate to limit the impact of construction activities on the Residents.

8.6 Application. Any Owner proposing to perform any work of any kind whatever, which requires prior written 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 Review Committee or Board may require, including without limitation samples of proposed paints in such sizes and formats as the Committee or the Board may deem appropriate. In accordance with subsection 10.5(c), and in addition to any other remedies the Association may have, the Board may impose a fine against any Owner who fails to submit an application, and obtain the required prior written approval thereof, prior to proceeding with any Improvement for which approval is required pursuant to this Article. Except as provided in the last sentence of Section 8.1, any Owner who paints his or her Residence or any other Improvement without first submitting an application and obtaining the approval required by this Article may be required, in the Board's discretion, to repaint the Residence or Improvement.

8.7 Fees. The Architectural Review 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. In addition to review fees, the Architectural Review Committee may require an Owner to post a deposit for major or even minor Improvements when submitting plans to the Committee to ensure compliance with the Architectural Rules and this Declaration. The Committee shall establish a schedule or formula for determining a different amount of the deposit, and may require a separate deposit for proposed landscaping improvements. Owners acknowledge that all or a portion of any deposit may be forfeited to the Architectural Review Committee if the Owner fails to properly and timely complete works of Improvement in accordance with approved plans and specifications or if an Owner or an Owner's agents cause damage to the Association Maintenance Area. Prior to any deposit forfeiture, the Architectural Review Committee shall provide the Owner with notice and an opportunity to be heard.

8.8 Grant of Approval. The Architectural Review Committee shall grant the requested approval only if:

(a) Application. The Owner has complied with the application submission procedures established by this Declaration and any applicable Architectural Rules;

(b) Plans and Specifications. The Architectural Review Committee finds that the plans and specifications conform to both: (i) this Declaration; and (ii) the Architectural Rules in effect at the time such plans were submitted to the Committee, unless a variance is granted from such Architectural Rules pursuant to Section 8.18; and

(c) Aesthetics and Workmanship. The Architectural Review Committee determines that the proposed Improvements would be consistent with the standards of the Development and the purposes of this Declaration as to 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.

8.9 Form of Approval. All approvals and denials of requests for approval shall be in writing and no verbal approval of a request for approval is permitted by any member of the Architectural Review Committee or the Association. The Architectural Review Committee may approve a request for approval subject to the Owner's consent to any modifications made by the Architectural Review Committee. If the Owner does not consent to the modifications, the request for approval shall be deemed denied in its entirety.

8.10 Appeal of Denial to Board. Unless the Architectural Review Committee is comprised of the Directors, who make their decision at a Board meeting, if an Owner's Improvement application is disapproved by the Architectural Review Committee, the applicant shall be entitled to request reconsideration by the Board. The Board shall consider the reconsideration request at a regular or special meeting of the Board.

8.11 Time for Architectural Review Committee Action. Any request for approval which has not been acted upon by the Architectural Review Committee within forty-five (45) days from the date of receipt thereof by the Architectural Review 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 Review 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.

8.12 Commencement. Upon receipt of approval pursuant to this Article, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all installation, construction, reconstruction, refinishing, alterations, and excavations pursuant to such approval, commencement to occur, in all cases, within ninety days from the effective date of such approval or upon such later date as the Board may in its discretion designate. If the Owner shall fail to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the time for commencement, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

8.13 Completion. The Owner shall, in any event, complete the installation, construction, reconstruction, refinishing, or alteration of any Improvement, within one (1) year after commencing construction thereof, 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 Board shall proceed as though the failure to complete the Improvements was a non-compliance with approved plans.

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

(a) Owner's Notice of Completion. 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 Review Committee.

(b) Committee Inspection. Within sixty (60) days after the receipt of such written notice, the Architectural Review 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 Review 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) Hearing Regarding Non-Compliance. 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 Review 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 Review 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 Review Committee and, in the discretion of the Board, to any other interested party.

(d) Determination of Non-Compliance. At the hearing the Owner, the Architectural Review 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, grant a variance for such non-compliant Improvement, 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) Failure to Notify Owner of Non-compliance. If, for any reason, the Architectural Review 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 Review 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.

8.15 Non-Waiver. The approval by the Architectural Review Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Review 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.

8.16 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to

time by the Board), the Board shall issue an estoppel certificate, 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.

8.17 Liability. Neither Declarant, Association, Board, the Architectural Review 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 portion of the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 8.16, whether or not the facts therein are correct; provided, however, that the Architectural Review 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, him or her. Without in any way limiting the generality of the foregoing, the Architectural Review 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 Review Committee. Every Owner, by acquiring title to a Lot or portion thereof agrees not to bring any action or suit against Declarant, Association, Board, the Architectural Review Committee, or their members or representatives seeking to recover any such damages.

8.18 Variances.

(a) Reasonable Variances. The Architectural Review Committee, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article and those minimum construction standards in Article 5 in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships.

(b) Criteria for Variances. The Architectural Review Committee must make a good faith written determination that the variance is consistent with one or more of the following criteria: (i) the requested variance will not constitute a material deviation from any restriction contained herein or that the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) that the variance relates to a requirement land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect, to any other Lot or Association Maintenance Area within the Development. At the request of the Architectural Review Committee the Association Board is authorized and empowered to execute and Record a notice of any variance granted pursuant to this Section in a form acceptable to the County Recorder's Office.

8.19 Compliance With Governmental Requirements. The application to the Architectural Review Committee, 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 Declarant, Association, Board, the Architectural Review Committee, or their members as to the accuracy, efficacy, or sufficiency of such

proposals, plans or other submittals.

## **ARTICLE 9                      EASEMENTS**

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9.1     Easements in General. In addition to all easements reserved and granted on the Subdivision Map, there are hereby specifically acknowledged, reserved and granted for the benefit of the Lots and the Owners in common and for each Lot and Owner severally, and for the Association, as their respective interests shall exist, the easements and rights of way as particularly identified in this Article.

9.2     Easements Granted by Board.

(a)     Non-Exclusive Easements. The Board shall have the power to grant and convey to any person or entity non-exclusive easements and rights of way, in, on, over, or under the Association Maintenance Area for the purpose of: (i) constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm drains and pipes, water systems, sprinkler systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and (ii) for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association. Each Owner, in accepting a deed to a Lot, expressly consents to such easements and rights of way. No such easements may be granted if they would materially interfere with the use, occupancy, or enjoyment by an Owner or Resident of his or her Lot without the consent of the affected Owner of the Lot.

(b)     Exclusive Use Common Maintenance Area Easements. The Board shall have the authority to execute and Record a maintenance agreement designating portions of the Association Maintenance Area as exclusive use and maintenance areas for the benefit of an appurtenant Lot, for the purpose of promoting an efficient division of the use and maintenance responsibilities between the Owners and the Association.

9.3     General Association Easements for Maintenance, Repair and Replacement. The Association shall have a non-exclusive easement in, on, over or under every Lot as reasonably necessary to: (i) maintain and repair the Association Maintenance Area; (ii) perform maintenance pursuant to subsection 7.1; (iii) perform maintenance upon a Lot which is not performed by its Owner as provided by Section 7.3 and Section 7.5 and (iv) otherwise perform its obligations under this Declaration.

9.4     Sideyard Maintenance Easements. In order to permit each Lot's Owner to have sufficient access for the maintenance, repair, and reconstruction of a Residence or the fence, the Owner of each Lot within the Development shall have reciprocal non-exclusive ingress and egress easements and rights of use of the sideyard between the adjacent Lots' Residences and the Lots' common boundaries. An Owner's right of use pursuant to this Section 9.4 shall be irrevocable, and no Owner or Resident shall install any Improvement or take any action which impedes the adjacent Lot's Owners or Residents from utilizing the sideyard area pursuant to this Section. The Association shall also have a non-exclusive easement and right of access to inspect for compliance with, and to enforce the provisions of, this Section. Such entry pursuant to this Section 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.

9.5     Utility Maintenance and Repair Easements. Wherever sanitary sewer connections or water connections, electricity, gas, telephone, telecommunications, television lines or drainage facilities are installed

within the Development, which connections, lines or facilities, or any portion thereof, lie in or upon Lots owned by other than the Owner of the Lot served by said connections, the Owners of any Lots served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter such Lots or to have utility companies enter therein, or any portion thereof, to repair, replace and generally maintain said connections as and when the same may be necessary. All utility companies having easements on the property covered by this Declaration shall have easements for cleaning, repairing, replacing, and otherwise maintaining or causing to be maintained service in all underground utility lines, including, when reasonably necessary, the entry into an improvement constructed upon a Lot for uncovering any such lines. Any Owner or utility company exercising the rights granted in this Section shall be obligated to restore the Lot and the Residence entered to substantially its former condition.

9.6 Encroachment Easements. The Association Maintenance Area and each Lot within the Development is hereby declared to have an easement over all adjoining Lots and the Association Maintenance Area for the purpose of accommodating any minor encroachment due to engineering errors, errors in original construction, settlement or shifting of structures, or any other similar cause. There shall be valid easements for the maintenance of such encroachments as long as they shall exist. Notwithstanding the preceding, in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if such encroachment occurred due to the willful misconduct of such Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots or Association Maintenance Area shall be permitted and that there shall be valid easements for the maintenance of such encroachments so long as they shall exist.

9.7 Private Access and Utility Easement. Declarant hereby reserves and grants a non-exclusive private access, private vehicle access, and utility easement across the Lots as shown on the Subdivision Map for the benefit of all the Lots within the Development.

9.8 Private Reciprocal Easements. Declarant hereby reserves non-exclusive private reciprocal ingress, egress, maneuvering easements as required by the County Conditions of Approval over the private drive and the ingress/egress easement as shown on the Subdivision Map for the benefit of each Lot within the Development and grants said easements to the Association, Owners, Residents, their guests and invitees.

9.9 Fire Department Access. Declarant hereby grants the Nevada County Consolidated Fire District a non-exclusive easement for ingress and egress and use of the Association Maintenance Area private drive within the Development.

9.10 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.

9.11 Water Meter Easements. Declarant hereby reserves and grants a non-exclusive private easement for unrestricted access at all times for County personnel and maintenance vehicles across the Lots and private drives as shown on the Subdivision Map for the benefit of all the Lots within the Development. Declarant hereby reserves and grants a non-exclusive utility easement for the placement of water meters on each Lot within the utility easements as shown on the Subdivision Map.

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## **ARTICLE 10                      ENFORCEMENT**

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10.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any

of the provisions of the Governing Documents shall be deemed to constitute a nuisance. In addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association, its officers, the Board or by any Owner. The Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.

10.2 Legal Principles Applicable to Enforcement. Although the Development is not subject to the Davis-Stirling Common Interest Development Act, in any action to enforce this Declaration or any other Governing Documents, the community and each Owner acknowledges and agrees to be bound by the legal principles and legal presumptions governing common interest developments. Such legal principles and legal presumptions shall include, for example and without limitation, the holdings and precedents of the following cases:

(a) Nahrstedt v. Lakeside Village Condominium Association, (1994) 8 Cal 4<sup>th</sup> 361.  
(CC&Rs are presumed reasonable; burden is on the party challenging provision to show that provision is unreasonable).

(b) Villa De Las Palmas Homeowners Association v. Terifaj, (2004) 33 Cal 4<sup>th</sup> 73.  
(Amendments are as valid as the original CC&Rs, and duly adopted Rules are enforceable).

(c) Rancho Santa Fe Association v. Dolan-King (2004) 115 Cal. App. 4<sup>th</sup> 28.  
(Architectural rules and review by Board is subject to requirements of good faith, and if good faith, the courts won't overrule the Board).

(d) La Jolla Shores Clubdominium Association v. Lamden (1999) 21 Cal 4<sup>th</sup> 249.  
(Courts won't overrule Board decisions, so long as decisions were made in good faith, in the best interest of the community, and based upon reasonable inquiry).

10.3 Owners' Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her household and his or her tenants, 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 (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

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

10.5 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, 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 household, or his or her tenants, contractors, guests, invitees or pets, the Board shall have the power to impose sanctions against the Owner. Such sanctions may include, without limitation, the imposition of fines and/or the suspension of an Owner's rights as a Member, including an Owner's voting rights. Except as provided in Section 10.7, below, imposition of sanctions shall be effective only after the Board has held a duly noticed hearing. The payment of any such fine may be enforced as an Enforcement Assessment as provided in Section 6.8 of this Declaration as well as in any manner permitted by law. Further, each Owner shall be obligated to pay Reimbursement Assessments levied by the Board for reimbursement of any costs incurred by the Association relating to violation of any provisions of the Governing Documents by such Owner, members of such Owner's household, or his or her tenants, contractors, guests, pets or 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 household of any Owner or an Owner's tenants, guests, invitees 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, 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 household, 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, or a decision arising out of an arbitration proceeding. 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.

(f) Claims Regarding Defects. The Association's right to maintain an action for alleged construction defects shall be limited to claims involving Association Maintenance Areas only, and the Association shall not have standing to assert claims on behalf of individual Owners with respect to alleged defects to Residences.

10.6 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.

10.7 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; or (iii) a threat of material damage to or destruction of the Development or any portion thereof. Notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that constitutes an emergency situation, the Association may undertake immediate corrective action.

10.8 Alternative Dispute Resolution. Although not required because the Development is not subject to the Davis-Stirling Common Interest Development Act, the Association and each Owner subject to a dispute related to the Governing Documents shall make a good-faith effort to comply with California Civil Code Section 5900 et seq.

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

10.10 Notices. Any notices required or given under this Article shall, 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.

10.11 Costs and Attorneys' Fees. In the event any action is taken to enforce any of the provisions of the Governing Documents, the prevailing party shall be entitled to recover the full amount of all costs incurred, including attorneys' fees, in enforcing any Governing Document provision. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, without limitation, the imposition of a Reimbursement Assessment as provided in Section 6.7 of this Declaration. Although California Civil Code Section 5930 is not statutorily applicable to the Development, for purposes of awarding attorneys' fees pursuant to this Section 10.11, the court may reduce or deny a party's award of attorneys' fees due to the such party's failure to utilize mediation prior to litigating the dispute.

10.12 Owner Indemnification. Each Owner, by acceptance of his or her deed, agrees 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.

10.13 No Obligation to Enforce. None of the provisions of this Declaration shall obligate or be construed to obligate Declarant, or its respective agents, representatives or employees, to undertake any affirmative action to enforce the provisions of this Declaration, or to undertake any remedial or corrective action with respect to any actual or asserted violation hereof or thereof.

10.14 Enforcement by County. Notwithstanding any provision of this Declaration to the contrary,

and with respect to matters within the regulatory powers of the County, the County has the right, but not any duty, to enforce the terms of this Declaration in the County's absolute discretion.

## **ARTICLE 11                      INSURANCE**

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11.1    **Types of Insurance Coverage.** The Association shall, at the discretion of the Board, purchase, obtain and maintain the following types of insurance, if and to the extent they are available at a reasonable premium cost:

(a)    **Property Insurance.** The Association shall obtain and maintain a policy of property insurance, written on all risk, replacement cost basis, on all Association Maintenance Area, and all Improvements within the Development for which the Association has an obligation to maintain or insure. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be redetermined on an annual basis. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this Section shall contain an agreed amount endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall name as insured the Association and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 11.5, below.

(b)    **General Liability Insurance.** To the extent such insurance is reasonably obtainable, a policy of comprehensive general liability insurance naming as parties insured the Association, each Director, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Association Maintenance Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to common interest development projects similar in construction, location, facilities, and use.

(c)    **Director's and Officer's Liability Insurance.** To the extent such insurance is reasonably obtainable the Association shall maintain individual liability insurance for its Directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least One Million Dollars (\$1,000,000.00).

(d)    **Additional Insurance and Bonds.** To the extent such insurance is reasonably obtainable, the Association may also purchase such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this subsection, demolition, flood, earthquake, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than three (3) months operating expenses and one hundred percent (100%) of the Association's reserves and shall contain an endorsement of any person who may serve without compensation. The Association's fidelity bond shall also include computer fraud and funds transfer fraud. If the Association uses a managing

agent or management company, the Association's fidelity bond coverage shall additionally include dishonest acts by that person or entity and its employees. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance, including Directors and officers liability insurance, that it deems necessary or desirable.

11.2 Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 11.1 is for any reason unavailable, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described in this Article 11. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

11.3 Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

11.4 Individual Owner's Property Insurance. Each Owner shall purchase and at all times maintain a policy of personal liability and property insurance insuring the Owner's Lot, Residence, any Improvements to the Owner's Lot, and personal property.

11.5 Trustee. All insurance proceeds payable under Section 11.1, above, and subject to the rights of Mortgagees under Article 13, below, may, in the discretion of the Board, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank or financial institution in the County that agrees in writing to accept such trust.

11.6 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 11.1, above. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

11.7 Governmental Lender Requirements. Notwithstanding anything herein to the contrary, the Association shall maintain such policies, containing such terms, amount of coverage, endorsements, deductible amounts, named insureds, loss payees, standard mortgage clauses, notice of changes or cancellation, and an appropriate insurance company rating that shall satisfy the minimum requirements imposed by the Fannie Mae, Freddie Mac, FHA, or VA or any successor thereto. If such requirements conflict, the more stringent requirements shall be met. In the event the Board is provided notice that any required insurance policy does not satisfy the minimum requirements imposed by Fannie Mae, Freddie Mac, FHA, or VA or any successor thereto, the Board shall make all reasonable efforts to satisfy such minimum requirements within thirty (30) days of receiving such notice.

11.8 Indemnification by Association. The Association shall indemnify, defend and hold harmless each Owner from any suits, claims, legal proceedings, demands, costs, fees and expenses including those for attorneys' fees, of whatever kind relating to or arising from any use of the private drive easement located on each Owner's Lot, unless the claim is based upon the gross negligence or willful misconduct of the Owner. The claims subject to this Section shall include, without limitation, personal injury or death to any person, or property damage by or to any person, including any Owner, Resident, tenant, guest, or invitee of any Owner.

## ARTICLE 12

## DAMAGE OR DESTRUCTION; CONDEMNATION

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12.1 Damage to or Destruction of Association Maintained Improvements. In the event of damage to or destruction of any portion of the Association Maintenance Area, the Board shall, in its discretion and based upon considerations such as, the duty of an Owner to reimburse the Association for such damage or destruction as provided herein, or the existence of insurance proceeds from insurance coverage for such damage or destruction and the frequency of use of the Improvement, determine whether to repair or replace the damaged or destroyed Improvement. If any such damage or destruction was insured against and the insurance proceeds are insufficient to cover the costs of repair or replacement of the damaged or destroyed Improvement, and if the Board elects to repair or replace the Improvement, the Association may levy a Special Assessment against the Members as provided in this Declaration to cover the additional cost of the repair or replacement not covered by the insurance proceeds. If the Board elects not to repair or replace the Improvement, the applicable insurance proceeds shall be used in the manner consistent with the purposes of the Association and as determined by the Board.

12.2 Damage to or Destruction of Owner Maintained Improvements. 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 to the same state as they existed prior to such damage or destruction or in any other manner consistent with the requirements of Article 8, above; 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) year after the date of commencement unless a longer period is agreed to in writing by the Board.

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

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

12.5 Appraisals. Where the provisions of this Article require an independent appraisal of property, said appraisal shall be made by a qualified real estate appraiser selected in the discretion of the Board.

## **ARTICLE 13**

### **PROTECTION OF MORTGAGEES**

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13.1 Amendments Affecting Mortgages. No amendment of this Declaration shall affect any of the rights of the holder of any Mortgage which is made in good faith and for value, if such Mortgage is Recorded prior to the Recording of such amendment.

13.2 Default by Owner; Mortgagee's Right to Vote. In the event of a default by any Owner under a Mortgage encumbering such Owner's Lot, the Mortgagee under such Mortgage shall, upon: (i) giving written notice to the defaulting Owner; (ii) Recording a notice of default in accordance with California Civil Code Section 2924; and (iii) delivering a copy of such Recorded notice of default to the Association, have the right to exercise the vote of the Owner at any regular or special meeting of the Association held only during such period as such default continues.

13.3 Breach; Obligation After Foreclosure. No breach of any provision of this Declaration by Declarant, the Association or any Owner shall impair or invalidate the lien of any recorded Mortgage made in good faith and for value and encumbering any Lot. Declarant, Owners, and the Association and their successors and assigns, shall be obligated to abide by all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes provided for in this Declaration with respect to any person who acquires title to or any beneficial interest in any Lot through foreclosure, trustee's sale or otherwise.

13.4 Right to Examine Books and Records of the Association. All Mortgagees, insurers and guarantors of any Mortgages on any Lot shall have the right, upon written request to the Association, to:

(a) Association Records. Examine current copies of the Governing Documents and the Association's books, records and financial statements, during normal business hours;

(b) Financial Statements. Require the Association to provide a financial statement for the preceding fiscal year at no expense to the requesting entity; and

(c) Notice of Meetings. Receive a written notice of all meetings of the Association and designate a representative to attend all such meetings.

13.5 Declaration to Conform With Mortgage Requirements. It is the intent of this Article that the Governing Documents and the development in general, shall now and in the future meet all requirements of any institutional Mortgagee intending to secure its Mortgage by a Lot or necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot by Freddie Mac, Fannie Mae, or the Veterans' Administration. The provisions of this Article may be amended solely by the vote of the Board in order to conform to any requirements of the secondary lender market.

## **ARTICLE 14**

### **ANNEXATIONS AND SUPPLEMENTAL DECLARATIONS**

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14.1 Annexation of Subsequent Phase Property. An owner of any portion of the Subsequent Phase Property shall have the right to annex all or any portions of the Subsequent Phase Property to the Development so as to be subject to this Declaration and so that membership in the Association shall be appurtenant to ownership of Lots within the annexing Phase. Such annexation shall not require the approval of either the Association or the Owners.

14.2 Annexation of Other Property. In addition to the unilateral right of annexation of all or any portion of the Subsequent Phase Property without the consent of the Association or its Members pursuant to Section 14.1, above, any real property which is not subject to this Declaration may annex to and become subject to this Declaration with the approval by vote or written consent of: (i) the property owner; (ii) Members entitled to exercise not less than two-thirds of the voting power of each class of membership of the Association; and (iii) the Board. After the Class B membership has ceased, the approval of the Members required by this Section shall require the affirmative vote of at least two-thirds of the voting power of Members other than Declarant. Upon obtaining the requisite approval of the Members pursuant to this Section, the owner of the annexing property shall Record a Declaration of Annexation and, if appropriate, a Supplemental Declaration, as more particularly described in Section 14.4, below.

14.3 Declarations of Annexation. To effectuate an annexation, a Declaration of Annexation shall be Recorded covering the applicable portion of the annexing real property. The Declaration of Annexation shall identify the Lots within the annexing property, and shall be signed by the owner of the annexing property and, in cases where membership and Board approval are required, shall include a certificate, signed by any two (2) officers of the Association attesting to the fact that the required Member and Board approval has been obtained. A Declaration of Annexation may include a Supplemental Declaration which adds or modifies restrictions and rights with respect to the annexing property.

14.4 Supplemental Declarations. A Supplemental Declaration may be Recorded against all or any portion of the Development or any annexing property, upon the written consent of the Owners. The Supplemental Declaration may include restrictions which are different from the restrictions contained in this Declaration. A Supplemental Declaration may not alter the general common plan or scheme created by this Declaration, revise any restriction imposed by a governmental entity as a condition of Subdivision Map approval (without the consent of that entity) or revoke the covenants, conditions and restrictions imposed by this Declaration with respect to portions of the Development already subject to this Declaration.

14.5 Commitment Concerning Reserve Contributions Relating to Rental Programs. If Residences in an annexing Phase have been used and occupied under a rental program conducted by the Declarant which has been in effect for a period of at least one (1) year as of the date of closing of escrow for the first sale of a Lot in the annexing Phase, the Owner of the Lots within the annexing Phase shall provide a written commitment to pay to the Association, concurrently with the close of escrow for the first sale of a Lot in the annexing Phase, appropriate amounts for reserves for replacement or deferred maintenance of Association Maintenance Area in the annexing Phase necessitated by or arising out of such use and occupancy.

14.6 Commitment Concerning Contributions Relating to Subsequent Phase Property. Prior to the commencement of Regular Assessments for the Subsequent Phase Property, if the Owner of any portion of the Subsequent Phase Property utilizes the Association Maintenance Area streets and roadways, such Owner shall be obligated to pay an equal share of the Association's Regular Assessments for such roadway use. There is reserved by each owner of any portion of the Subsequent Phase Property an easement for ingress and egress over the Association Maintenance Area streets and roadways for the benefit of the Subsequent Phase Property until such property is subject to the commencement of Regular Assessments.

## **ARTICLE 15                      DECLARANT'S DEVELOPMENT RIGHT**

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15.1 Declarant's Right to Develop the Development. The Association and Owners shall not do anything to interfere with the right of Declarant to subdivide, sell, or rent any portion of the Development.

Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or installation of Residences and related Improvements may impair the view of such Owner, and hereby consents to such impairment.

15.2 Use of Association Maintenance Area by Declarant. Declarant may enter upon the Development and Association Maintenance Area to complete the development, improvement and sale of Lots and the construction of any landscaping or other Improvement to be installed on the Association Maintenance Area. Declarant shall also have the right of nonexclusive use of the Association Maintenance Area without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right Declarant hereby reserves; provided, however, that such use rights shall terminate on the date on which Declarant no longer owns any Lots within the Development. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein and all direct costs and expenses associated with Declarant's sales and promotional activities (including, without limitation, any costs or expenses required to clean or repair any portion of the Association Maintenance Area that are damaged or cluttered in connection with such activities) shall be borne solely by Declarant and any other sponsor of the activity or event. The rights reserved to Declarant by this Section shall extend to any employee, sales agents, prospective purchasers, customers and/or representatives of Declarant.

15.3 Amendment of Development Plans. Declarant may amend its plans for the Development and apply for changes in zoning, use and use permits, for any property within the Development.

15.4 Independent Design Review. For so long as Declarant has the right to appoint any members of the Architectural Review Committee, Declarant shall have the right to initiate action to correct or prevent any activity, condition or Improvement that is not in substantial compliance with approved plans and specifications to the same extent as the Association, after having a reasonable opportunity to do so, does not initiate enforcement action.

15.5 Disclaimer of Declarant's Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth in a Recorded instrument with the County Recorder, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Development may or will be carried out, or that any land now controlled or owned or hereafter controlled or acquired by Declarant is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

15.6 No Amendment or Repeal. So long as Declarant owns any Lot within the Development, the provisions of this Article may not be amended or repealed without the consent of Declarant.

## **ARTICLE 16                      AMENDMENT**

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16.1 Amendment Before First Conveyance. Before the conveyance of the first Lot within the Development to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant of an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be Recorded.

16.2 Amendment After First Conveyance. After the conveyance of the first Lot within the

Development to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect upon compliance with the following provisions:

(a) Member Approval Requirements. Except as provided in this Section, any amendment to this Declaration shall be approved by the vote or assent by written ballot of an absolute majority, including the holders of not less than a majority of the total voting power of each class of Members. If a two-class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership, any amendment thereof will require the vote or assent by written ballot of both: (i) an absolute majority of the Association; and (ii) the vote of a majority of the total voting power held by Members other than Declarant. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.:

(i) Amendment to Cost Center Provisions. Notwithstanding any other applicable requirements for amendment set forth in this Article, or any other provisions of the Governing Documents, there shall be no amendment to any provision of this Declaration which pertain solely for the purpose of including, but not limited to, establishing, amending, eliminating or changing any Cost Center Improvements, Cost Center or Cost Center Assessment without the approval of a majority of the voting power of the Owners who are subject to the Cost Center Assessments.

(b) Additional Approvals of Declarant for Amendments to Particular Provisions. For so long as Declarant owns a Lot within the Development, the provisions of Articles 14 and 15 may not be amended without the prior written consent of Declarant.

(c) Right of Amendment if Requested by Governmental Mortgage Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant and the Association reserve the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by Governmental Mortgage Agencies which require such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot. Any such amendment shall be effectuated by the Recordation, by Declarant or the Association, of an amendment duly signed by or on behalf of the authorized agents, or authorized officers of Declarant or the Board, as applicable, with their signatures acknowledged, specifying the Governmental Mortgage Agency, or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when Recorded, shall be binding upon all of Lots and Association Maintenance Area comprising the Development and all persons having any interest therein.

(d) Right of Amendment if Requested by County. Anything in this Article to the contrary notwithstanding, Declarant and the Board reserve the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the County to reflect a modification of the development permits which requires a conforming amendment to this Declaration. The Association shall Record any amendment requested by the County within sixty (60) days of receipt of a request from the County. Any such amendment shall be effectuated by the Recordation of an amendment duly signed by or on behalf of the authorized agents, or authorized officers of Declarant, or the Association as applicable, with their signatures acknowledged, specifying the County requested the amendment and setting forth the amendatory language requested

by the County. Recordation of such an amendment shall be deemed conclusive proof of the County's request for such an amendment, and such amendment, when Recorded, shall be binding upon all of the real property comprising the Development and all persons having an interest therein.

(e) Right of Amendment by Board. The Board may, without the approval of the Members, amend any part of this Declaration to the limited extent necessary to comply with a change in applicable federal, state or local legislation, or to correct a typographical error.

16.3 Effective Date of Amendment. The amendment will be effective upon the Recording of the amendment, duly executed and certified by any two (2) officers of the Association setting forth in full the amendment so approved and that the approval requirements of Section 16.2, above, have been duly met. If the consent or approval of any governmental authority, Mortgagee, or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

16.4 Reliance on Amendment. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## **ARTICLE 17                      GENERAL PROVISIONS**

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17.1 Term. This Declaration continues in full force and effect unless an amendment terminating this Declaration is unanimously approved by the Owners, and Recorded in accordance with Article 15, above.

17.2 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.

17.3 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.

17.4 Statutory References. Any reference to a California or federal statute, code or regulation shall also incorporate and include any successor statutes or laws.

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Dated: 7-9, 20 20

**DECLARANT:**

**Terra Alta Development Co.,**  
a California corporation

By: Laurence V. Amaral  
Laurence V. Amaral, President

By: Brad Amaral  
\_\_\_\_\_, Secretary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

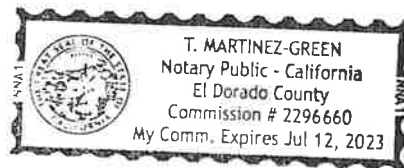
STATE OF CALIFORNIA )  
COUNTY OF El Dorado ) ss.

On 7-9, 2020, before me, T. Martinez-Green, a Notary Public, personally appeared Brad A. Amaral, who 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 within instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

T. Martinez-Green  
Notary Public



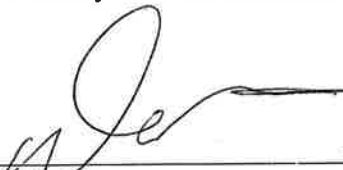
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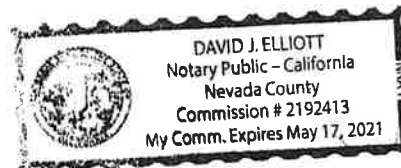
STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF Nevada                    )

On 7/20/2020, 20  , before me, David J. Elliott, a Notary Public, personally appeared Lawrence V Amara, who 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 within instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public



**EXHIBIT "A"**

**PHASE 1**

All of the real property located within unincorporated Nevada City, County of Nevada, California, which is more particularly described as follows:

Lots 1 through 7, and Parcel D, inclusive, as shown on that certain Final Map, Subdivision Map No. 01-001, for Deer Creek Park IIa, Recorded on \_\_\_\_\_ in Book \_\_\_\_\_ of Maps, at Page \_\_\_\_\_, Official Records of Nevada County.

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF THE SUBSEQUENT PHASE PROPERTY**

All of the real property located within unincorporated Nevada City, County of Nevada, California, which is more particularly described as follows:

**Phase 2:**

Parcel I, as said parcel is shown and designated on said Final Map of Deer Creek Park IIa, as referenced on Page 1 herein.

**Phase 3:**

Parcel J, as said parcel is shown and designated on said Final Map of Deer Creek Park IIa, as referenced on Page 1 herein.

**Phase 4:**

Parcel H, as said parcel is shown and designated on said Final Map of Deer Creek Park IIa, as reference on Page 1 herein.

Excepting therefrom Lots 1 through 7, and Parcel D, inclusive, as shown on that certain Final Map, Subdivision Map No. 01-001, for Deer Creek Park IIa, Recorded on \_\_\_\_\_ in Book \_\_\_\_\_ of Maps, at Page \_\_\_\_\_, Official Records of Nevada County.

## **EXHIBIT "C"**

### **NOTICE AND NOTIFICATION REQUIREMENTS IMPOSED BY THE CONDITIONS OF APPROVAL**

The Conditions of Approval for the Deer Creek Park II subdivision (FM No. 01-001) and the Deer Creek Park II Phase 1 Amendment (PLN17-0081; AAM17-001) require that owners and residents of Deer Creek Park be notified of the following matters relating to the Development:

1. Mitigation Measure AES-1a. All external light fixtures on individual homes shall be designed to minimize light spillage and glare. This will include the use of shielding devices to orient the light downward, reducing glare. In addition, all external residential light fixtures shall utilize low-pressure sodium lamps, or other similar low intensity lights, to reduce light spillage. A note shall be specified on the Supplemental Information Sheet recorded with the Final Maps indicating these restrictions. This restriction shall also be included in the Project's CC&Rs.
2. Mitigation Measure AES-1b. All potentially reflective building materials and surfaces shall be painted or otherwise treated to minimize reflectivity. All glass used on external building walls shall be low-reflectivity. A note shall be specified on the Supplemental Information Sheet recorded with the Final Maps indicating these restrictions. This restriction shall also be included in the Project's CC&Rs.
3. Mitigation Measure AQ-1c. Open burning shall be prohibited within proposed residential properties. This prohibition shall be required and enforced through the Project CC&Rs. This mitigation measure does not apply to Air District-approved burning on the proposed Lot A.
4. Mitigation Measure PSF-1b. Prior to recordation of the Final Maps, Project applicant shall, subject to Nevada County Consolidated Fire District Fire Marshal approval, provide a plan for proactive fuels reduction. Financing of periodic maintenance of the fuels reduction plan shall be included in the CC&Rs for the subdivision. As part of the fuel management plan, an access roadway in the westerly portion of the Project shall be improved pursuant to an approved route by the Nevada County Consolidated Fire District and maintained in such a manner as to provide at least a 12-foot wide roadway that could be utilized to access the westerly portion of the development during the wildland fire season. The fuels reduction plan shall include the following components or those deemed by the Fire Marshal to be equally effective:

Each of the proposed residential parcels shall be maintained in accordance with the following until they are developed:

- a. Remove all native brush. Some brush may remain provided the crowns of individual or small groupings of plants (groups of two to three) are at least 10 feet apart;
- b. Remove all grasses, blackberries, and other fine fuels to within four inches or less of the ground level by using equipment such as weed eaters or mowers;
- c. Remove lower tree branches 1/3 to 1/2 the overall height of the tree, or eight to 10 feet above the ground, whichever is lower. Remove all brush and other fuels under these trees;
- d. Remove a majority of the understory trees (small trees less than eight inches in diameter) throughout the parcels. These trees are considered ladder fuels and would allow a fire burning on the ground to quickly transition to the larger trees. Some of the understory trees may remain provided the crowns of the individual trees are at least 10 feet apart.

Once the parcels are developed, vegetation clearance around all structures shall be maintained in accordance with the minimum requirements of Section 4291 of the Public Resources Code. This requires that a fire break at least 100-foot in width, or to the property line, whichever is nearer, be maintained around all structures by removing and clearing away all brush, flammable vegetation, or combustible growth.

In the areas of the Project that are not to be developed or are designated as open space, fuel breaks shall be provided as follows. Fuel breaks shall be maintained during any time when any future timber harvest plan for Lot A is not in effect. Required fuel break areas, as specified below, shall not be included in any future timber harvest plan area unless the same level of fuel management, subject to County and Fire District approval, is included as a part of timber harvest plan activity:

- a. Along the northerly side of Parcel A, which borders along parcels 35 through 47, 100 through 107, 172 through 187, the entire area between parcels 47 and 48 plus 150 feet to the south, and parcels 48 through 56; construct and maintain a minimum 150-foot wide fuel break in areas with slopes of less than 30% and a 200-foot wide fuel break in areas with slopes greater than 30%;
- b. In the northeast portion of Parcel A, in the area south of the existing parcels along Red Dog Road, construct and maintain a 100-foot wide fuel break;
- c. In the northwesterly portion of Parcel A, along the northwesterly side of Parcels 63 through 69 and 118 through 122, and the westerly side of Parcels 123 through 128, and 162 through 169; construct and maintain a 200-foot wide fuel break;
- d. The areas to the west, south and east of the Parcels 188 through 193 construct and maintain a 200-foot wide fuel break. The entire area between Parcels 188 through 193 and Red Dog Road shall be maintained as a fuel break;
- e. Along Red Dog Road, from the northwest corner of the project easterly to the Wilson parcel near the intersection of Cedar Springs Road construct and maintain a 50-foot wide fuel break.

These fuel breaks shall be constructed and maintained by removing all native brush. Within the fuel break, the following work is also required:

- a. Remove all grasses, blackberries, and other fine fuels to within four inches or less of the ground level by using equipment such as weed eaters or mowers;
- b. Remove lower tree branches 1/3 to 1/2 the overall height of the tree, or 8 to 10 feet above the ground, whichever is lower. Remove all brush and other ladder fuels under these trees;
- c. Remove a majority of the understory trees (small trees less than 8-inches of diameter) throughout the fuel break. These trees are considered ladder fuels and would allow a fire burning on the ground to quickly transition to the larger trees. Some of the understory trees may remain provided the crowns of individual trees are at least 10 feet, apart.

Mitigation Measure PSF-1c. In addition to Nevada County Ordinance Section L-XVI, Article 3 requirements, the following driveway improvements are required of the Project applicant, and shall be shown on the Improvement Plans (if applicable), included as notes on the Supplemental Information Sheets to be recorded with the Final Maps, and shall be part of the Project CC&Rs:

- a. Driveways exceeding 150 feet but less than 800 feet in length shall provide a turnout near the midpoint of the driveway;
- b. Where the driveway exceeds 800 feet, turnouts shall be provided no more than 400 feet apart;
- c. A turnaround shall be provided at all building sites on driveways over 300 feet in length;
- d. Driveways shall be located to allow fire equipment access to within 50 feet of the structure they serve.

Mitigation Measure PSF-Id. The following requirements shall be included as notes on the Supplemental Information Sheets to be recorded with the Final Maps and shall be part of the Project CC&Rs:

- a. All residential structures shall be provided with an approved automatic fire sprinkler system complying with the minimum requirements of Standard 13D of the National Fire Protection Association;
- b. The development fee for residences provided with approved fire sprinkler systems in areas provided with fire hydrants is reduced to \$0.28 per square foot for all sprinklered areas;
- c. All structures shall incorporate the following common urban wildland interface building construction requirements:
  - (i) Eaves or soffits shall be protected on the exposed side by materials approved for one-hour construction. Fascias shall be provided and must be protected on the backside by materials approved for one-hour fire-resistive construction or 2-inch nominal dimensional lumber;
  - (ii) Gutters and downspouts to be constructed of noncombustible materials;
  - (iii) Exterior walls of building and structures shall be constructed of materials approved for one-hour fire-resistive construction on the exterior side or the exterior siding shall be of approved noncombustible materials;
  - (iv) Unenclosed accessory structures attached to buildings with habitable spaces and projections, such as decks, shall be a minimum of one-hour fire-resistive construction, heavy-timber construction, or constructed of approved noncombustible materials;
  - (v) Exterior windows, window walls, glazed doors and windows within exterior doors shall be tempered glass, multilayered glazed panels, glass block or other window assemblies having a fire-protection rating of not less than 20 minutes;
  - (vi) Exterior door assemblies shall be of noncombustible construction, solid core wood not less than 1-3/4 inches thick, or shall have a fire-protection rating of not less than 20 minutes;
  - (vii) Roof and attic vents shall resist intrusion of flame and embers into the attic area of the structure, or shall be protected by corrosion resistant, noncombustible wire mesh with 1/4 inch openings or its equivalent;

- (viii) Wall vents, unless otherwise prohibited by provisions of other codes, shall resist the intrusion of flame and embers into the structure or the vents shall be screened with a corrosion-resistant, noncombustible wire mesh with a ¼ inch opening and be a minimum of 10 feet from the property line;
- (ix) Under-floor ventilation openings shall be located as close to grade as practical.

Mitigation Measure PSF-4. All Project residences shall subscribe to the County solid waste hauling service, and shall participate in curbside recycling. This requirement shall be included on the Supplemental Information Sheet to be recorded with the Final Maps and as a part of the Project's CC&Rs.

Mitigation Measure SHWQ-1. The Homeowners' Association shall contract with an erosion control specialist to conduct annual visual monitoring (June of each year) of the detention basins to ensure that they continue to provide adequate storm water storage and report to the Homeowners' Association and the Department of Transportation and Sanitation on an annual basis (July of each year). If visual monitoring determines that the detention basins are no longer providing adequate storm water storage or that a breach has occurred, appropriate maintenance and/or repairs would be completed. Repairs may include, but are not limited to, dredging, earthen berm repair, and revegetation. The Homeowners' Association shall fund costs associated with the visual monitoring, reporting, and maintenance. The Homeowners' Association governing documents must reflect the requirements specified under Mitigation Measure SHWQ-1, SHWQ-2a, and SHWQ-2b. There must be established an ongoing mechanism to fund activities specified under mitigation in this EIR prior to issuance of certificate of occupancy.

Mitigation Measure SHWQ-2a. Coverage under the General Construction Storm Water Permit would be obtained prior to performing any land disturbing activities. As part of the requirements of the General Permit, a Storm Water Pollution Prevention Plan (SWPP) would be prepared for this Project. The SWPP would be designed to reduce or eliminate pollutant discharges to surface waters. The SWPP practices shall apply to both the original construction undertaken by the Project proponents, and the subsequent home site improvements. It would specify the implementation of site-specific Best Available Techniques (BAT) and/or BMPs. Monitoring of the BATs and BMPs would be performed pursuant to the requirements of the General Permit. Implementation of BATs and BMPs would help meet stormwater discharge water quality criteria for the proposed Project by capturing urban runoff pollutants before they can enter area waterways. In addition, Project Conditions of Approval shall specify that appropriate BMPs and BATs are to be incorporated into Project design to reduce urban pollutants in runoff, consistent with goals and standards under federal and State non-point source discharge regulations (NPDES permits) and Basin Plan water quality objectives. Stormwater runoff BMPs may be selected from the Storm Water Quality Task Force (California Storm Water Best Management Practices Handbook, 1993), the Bay Area Stormwater Management Agencies Association Start at the Source-Design Guidance Manual, the California Stormwater Quality Association Stormwater Best Management Practice Handbook, or equally effective measures shall be identified prior to final design approval. To maximize effectiveness, the selected BMPs shall be based on finalized site-specific hydrologic conditions, with consideration for the types and locations of development. Mechanisms to maintain the BMPs shall be identified in the Project's conditions of approval.

Typical construction-related (temporary) BMPs and BATs that could be implemented as part of the proposed Project include, but are not limited to, the following:

- a. Application of a street-sweeping program to remove potential contaminants from street and roadway surfaces before they reach drop inlets or discharge locations;

- b. Proper installation of erosion control measures to all disturbed areas including, but not limited to, the installation of straw mulch, hydraulic mulch, hydroseed, and erosion control blankets;
- c. Proper installation of sediment control measures below all areas that have a moderate to high potential for erosion. Sediment control measures to be installed on-site include, but are not limited to, silt fence, straw wattles, gravel bag check dams, sediment traps, drop inlet (DI) bags and gravel bags.

Typical long-term (permanent) BMPs and BATs that could be implemented as part of the proposed Project include, but are not limited to, the following:

- a. Minimize sources of concentrated flow by maximizing use of natural drainages to decelerate flows;
- b. Establish vegetation in stormwater drainages to achieve balance of conveyance and water quality protection characteristics;
- c. Placement of velocity dissipaters, rip-rap, and/or other appropriate measure to slow runoff, promote deposition of waterborne particles, and reduce the erosive potential of storm flows;
- d. Provide proper maintenance of the linear detention basins to ensure adequate stormwater storage and prevent bank failure and associated erosion;
- e. Use of efficient irrigation systems that decrease the potential for pollutant transport.

Monitoring of all BATs and BMPs shall be performed for the duration of coverage under the General Construction Storm Water Permit. Monitoring consists of performing routine and storm-based site inspections and making specific recommendations to the Project manager, such as installing additional BMPs and performing maintenance on existing BMPs.

Additional BMPs and BATs are provided in the Nevada County grading, erosion control, and hazardous materials ordinances. Final conditions of approval shall utilize all such sources in considering appropriate BMPs and BATs.

Waste that has accumulated in the sediment traps and other BMPs will be removed from the areas of accumulation when monitoring, both during and after construction, determines necessary for the traps and/or BMPs to continue to function as intended. A large portion of wastes that accumulate in sediment traps and other BMPs is sediment, but other contaminants may be contained in this waste from spills, leaks, and/or improper material storage. For this reason, monitoring during and after construction will rely on visual monitoring and records of spills, leaks and/or any knowledge of pollutant contact with storm water onsite to determine if soil sampling is necessary prior to disposing of the waste.

During construction, storm water monitors rely on the visual and non-visual monitoring requirements contained in the NPDES General Construction storm water permit (General Permit) to determine if the storm water leaving the site is in violation of the applicable water quality standards. These requirements specify that water quality samples shall be collected whenever it has been determined that storm water has come into contact with a pollutant. If this required water quality monitoring determines that water quality criteria have been exceeded, the responsible monitor will decide, based upon the water quality data, whether the sediments should be sampled and analyzed prior to determining the appropriate disposal method.

The Homeowners' Association shall fund the costs associated with annual monitoring of the linear detention basins after construction. This monitoring shall use a similar methodology as the General Permit to determine if sediment sampling will be required prior to determining the appropriate disposal method. Monitoring after construction will be annual and will rely strictly on visual inspections of the accumulated sediments and upon records of spills and/or leaks on-site gathered by the Homeowners' Association. The post-construction monitor will determine, based on the visual inspection and existing records, whether the sediments should be sampled and analyzed prior to determining the appropriate disposal method.

Soil samples will be collected and analyzed if the construction storm water monitor or the post-construction monitor determines it is required prior to disposal of the waste to ensure that all applicable environmental criteria are met. If the wastes are deemed hazardous, the wastes shall be legally transported to a hazardous waste landfill. Otherwise, wastes will be disposed using routine methods.

## **VESTING TENTATIVE FINAL MAP AND LOT LINE ADJUSTMENT CONDITIONS OF APPROVAL**

### **A. Planning Department.**

11. Prepare and submit to the Planning Department for review and approval, the proposed CC&R's that provide for the following:

- a. Ownership and maintenance of all Common Areas (Parcels D and E), including the requiring of the homeowner's association to levy an annual fee which will adequately maintain the fire buffer within the Common Areas;
- b. A Property Owners Association that implements and enforces the provisions of the document;
- c. As amended: Restrictions on land usage per the Comprehensive Master Plan (including the prohibition of ~~second~~ accessory dwellings on lots created by this subdivision outside of Phase I where accessory dwelling units are allowed on each of the seven (7) residential parcels).
- d. All of the applicable standards with the Mitigation Measures and Conditions of Approval;
- e. The trail within Parcel E shall not be gated (prohibiting pedestrian access) and shall not be posted with "No Trespassing" signs.

### **B. Department of Public Works.**

4. Storm Drainage:
  - a. The applicant's engineer shall prepare an analysis of the pre-project versus post-project storm runoff and measures shall be incorporated into the improvement plans that reduce the offsite drainage flows to pre-project conditions. Features shall also be incorporated into the plans that minimize the discharge of pollutants in conformance with General Plan Policy 11.6A.
  - b. A maintenance entity shall be specified to maintain non-road related drainage features such as drainage swales, storm drains, sedimentation ponds and storm flow metering facilities and incorporated into the CC&Rs.

D. Nevada County Consolidated Fire Department.

2. The following fuel breaks, in addition to Parcels D and E, which are identified in the EIR as mitigation measures shall be included in the fuel management program for the development:

- a. Construct and maintain a 50-foot wide fuel break in the Northwesterly portion of Parcel A along Red Dog Road, from the northwest corner of the project to the westerly side of Parcel D.
- b. Construct a 50-foot wide fuel break on the northerly side of Parcel A along Red Dog Road, from the easterly side of Parcel D to APN 36-660-09 including along the southerly sides of the adjacent parcels identified, as APN 36-720-15 through 36-660-09. (The Assessor's Parcel Numbers above have been provided for clarification purposes.)

The above fuel breaks shall be identified on the Supplemental Data Sheet recorded concurrently with the final map for the development and also need to be included in the fuel break maintenance program for the development.

3. The designated fuels breaks shall be maintained in an approved manner at all times, including the future timber harvests. Large accumulations of logging slash, located on steep slopes below a densely developed residential area, tend to create a significant hazard and would not be acceptable. If logging operations are proposed in the designated fuel break areas, the accumulations of slash shall either be relocated outside of the fuel breaks or disposed of in an approved manner and within a reasonable time. These provisions all be added to the CC&Rs (reference Condition A.11.2).

4. Pursuant to Mitigation Measure PSF-1b.2, improve and maintain St. Anthony Road between Red Dog Road to the north and Banning Way to the south. During the summer fire season, St. Anthony Road shall be maintained in such a manner as to provide a 12-foot wide roadway with a 10-foot wide driving surface. In addition, a 10-foot vegetative fuel reduction zone shall be maintained on each side of the roadway. Since the road is intended for use for firefighting purposes and is not intended for public use, locked gates may be installed at both ends. The gates shall provide a clear opening of at least 14 feet and shall be provided with approved locks. These provisions all be added to the CC&Rs (reference Condition A.11.2).

5. In the Fire Protection portion of Section 3.0-Infrastructure of the Comprehensive Master Plan and Vesting Tentative Final Map document, the distance identified in the bullet point "Clearing of brush and other low lying vegetation within 30 feet of all structures" shall be revised to 100 feet of all structures which is the current requirement of the Public Resources Code. These provisions all be added to the CC&Rs (reference Condition A.11.2)