



## **BOARD MEETING AGENDA SUBMITTAL**

TO: CVCS Board of Directors

FROM: Peter Kampa, General Manager

DATE: August 20, 2024

SUBJECT: Item 7b) Discussion on The Garden Bungalows at Saddle Creek, privately owned street; Quail Hollow Lane

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### **RECOMMENDED ACTION:**

This agenda item is informational only and no action is required

### **BACKGROUND:**

This item was requested to be discussed at a board meeting, to provide information in an attempt to clarify road responsibilities in the Bungalows area of the community. There have been misunderstandings of the responsibilities of the Copper Valley CSD and the Bungalow owners association in the maintenance and ownership of Quail Hollow Lane.

Attached to this document are a number of legal documents which created the Bungalows, as well as an e-mail to a property owner there, describing where the road ownership responsibilities are defined in the various documents. In summary, Quail Hollow Lane was recorded as a common area owned by the bungalow association to provide vehicle access and parking for the properties. The Copper Valley CSD was dedicated an easement over Quail Hollow Lane for pedestrian access between the golf course and the golf course parking lot, and to each of the properties. The CSD has no responsibility for the maintenance of Quail Hollow Lane.

### **ATTACHMENTS:**

- Bungalows Subdivision Map
- Pedestrian easement Acceptance resolution
- Bungalow CC&Rs

**OWNERS' STATEMENT**

THE UNDERSIGNED BEING THE PARTIES HOLDING A RECORD TITLE INTEREST IN THE LANDS SHOWN ON THIS MAP DO HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS FINAL MAP AND DO HEREBY OFFER TO DEDICATE IN PERPETUITY FOR CERTAIN PUBLIC USES AS FOLLOWS:

- A. TO THE SADDLE CREEK COMMUNITY SERVICES DISTRICT BY SEPARATE INSTRUMENT NO. 2000 122446 (TO BE RECORDED CONCURRENTLY).
- 1) A PEDESTRIAN PATH EASEMENT, OVER, UPON AND ACROSS:
  - a) QUAL HOLLOW LAKE (ROAD LOT 'A')
  - b) THAT CERTAIN 7.5 WIDE RECIPROCAL ACCESS EASEMENT APPURTENANT TO LOTS B-9, B-9, B-10, AND B-11 AS THE SAME IS DELINEATED HEREON.
- 2) A NON-EXCLUSIVE EASEMENT FOR STORM DRAINAGE PURPOSES OVER, UNDER, UPON AND ACROSS LOTS B-12, B-13, B-14 AND QUAL HOLLOW LAKE (ROAD LOT 'A') AS DELINEATED HEREON.

B. TO THE PUBLIC:

- 1) THE PUBLIC UTILITY EASEMENTS AS DELINEATED HEREON, CONCURRENT TO QUAL HOLLOW LAKE (ROAD LOT 'A').
- 2) A PUBLIC UTILITY EASEMENT OVER, UNDER, UPON AND ACROSS QUAL HOLLOW LAKE (ROAD LOT 'A') WHICH IS SUBORDINATE TO SAID ROAD LOT 'A' SLICE AS VEHICULAR, GOLE CART, BICYCLE AND PEDESTRIAN TRAFFIC PURPOSES; AND THE PARKING AND/OR THE GAMING (INCLUDING OF SAID VEHICLES / GOLF CARTS, IN ACCORDANCE WITH THE 'CONDITIONS, COVENANTS, AND RESTRICTIONS' FOR THIS SUBDIVISION.

CASTLE & COOKE SADDLE CREEK, INC.  
A CALIFORNIA CORPORATION

*Dave Haley*  
DAVE HALEY, DEVELOPMENT DIRECTOR  
INSTRUMENT NO. 2000 122446

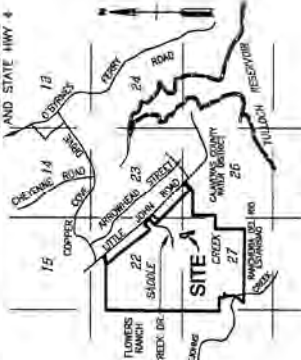
**ACKNOWLEDGEMENT**

STATE OF CALIFORNIA }  
COUNTY OF CALAVERAS }  
ON August 30, 2000 }  
BEFORE ME Kelly J. Stegmank }  
PERSONALLY APPEARED }  
*Dave Haley* }

PERSONALLY KNOWN TO ME (OR 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/IT EXECUTED THE SAME IN HIS/HER/ITHEIR AUTHORIZED CAPACITY(IES), AND THAT HE/SHE/IT WAS/WERE AN INSTRUMENT SIGNER UNDER THE INSTRUMENT, OR THE ENTRY UPON BEHALF OF WHICH THE PERSON(S) ACTED, DESCRIBED IN THE INSTRUMENT.

WITNESS MY HAND:  
*Kelly J. Stegmank*  
NOTARY SIGNATURE  
Kelly J. Stegmank  
DATE COMMISSION EXPIRES 1/1/2003

TO COPPERPOPLIS  
AND STATE HWY 4



T.M., H.S.L., M.D.W.  
**VICINITY MAP**  
NO SCALE

**FINAL MAP**  
FOR THE  
**GARDEN BUNGALOWS**  
OF  
**SADDLE CREEK**  
TRACT NO. 580

BEING A RE-SUBDIVISION OF THAT CERTAIN RE-ADJUSTED PARCEL 'J' AS THE SAME AS SHOWN ON THAT CERTAIN PARCEL MAP FOR LOT LINE ADJUSTMENT OF SADDLE CREEK RECORDED IN BOOK 10 OF PARCEL MAPS AT PAGE 43 CALAVERAS COUNTY RECORDS; AND LYING WITHIN PORTIONS OF SECTIONS 22 AND 27, T.1N., R.12 E., M.D.M.

CALAVERAS COUNTY, CALIFORNIA  
JUNE, 2000

PREPARED FOR:  
CASTLE & COOKE SADDLE CREEK, INC.  
3840 LITTLE JOHN ROAD  
COPPERPOPLIS, CA 95228  
(209) 756-6653

PREPARED BY:  
SIERRA ENGINEERING ASSOCIATES, LTD.  
130 EAST SAINT CHARLES STREET  
SAN ANGELES, CA 95249  
(209) 754-427

**NOTES:**

- 1) ACREAGE: THE TOTAL ACREAGE OF THIS PROJECT IS 2.417 ACRES ±.
- 2) NUMBER OF LOTS: THE TOTAL NUMBER OF LOTS IS 17 BUNGALOW LOTS AND 1 ROAD LOT.
- 3) BASIS OF BEARINGS: (B.O.B.)

THE BASIS OF BEARINGS OF THIS FINAL MAP IS THE MONUMENT LINE OF STATE HIGHWAY 4, AS SHOWN AS MAP ASSISE ON SHEET FOR 23 OF THE STATE HIGHWAY RIGHT OF WAY MONUMENT MAP FOR STATE ROUTE 4, DATED APRIL 1, 1974 AND ON FILE AT THE DEPARTMENT OF TRANSPORTATION, DISTRICT 10 OFFICE. BEARINGS ARE ON THE CALIFORNIA COORDINATE SYSTEM ZONE 3. DISTANCES ARE AT GROUND LEVEL. MULTIPLY DISTANCE SHOWN BY 0.999669 TO OBTAIN GRID DISTANCE.

4) IMPROVEMENTS: THIS SURVEY DOES NOT LOCATE / INCLUDE / REFLECT ANY IMPROVEMENTS UNDER CONSTRUCTION AS OF THE RECORDING DATE OF THIS FINAL MAP.

5) RECORD TITLE: THE RECORD TITLE INFORMATION (BOUNDARY, OWNERSHIP INTERESTS AND EASEMENTS) UPON WHICH THIS FINAL MAP RELIES ON WAS PROVIDED BY THE OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, 400 SECOND AVENUE SOUTH, MINNEAPOLIS, MINNESOTA 55401 IN ITS PRELIMINARY SUBDIVISION GUARANTEE NO. 7555487 ISSUED WITH AN EFFECTIVE DATE OF APRIL 1, 1974. THIS FINAL MAP IS A RE-SUBDIVISION OF SAID GUARANTEE NO. 7555487. SAID PRELIMINARY SUBDIVISION GUARANTEE NO. 7555487 FOR ANY PROVISIONS, EXCLUSIONS, LIMITATIONS, EXCEPTIONS AND/OR STIPULATIONS AFFECTING SAID SUBJECT REAL PROPERTY CONTAINED THEREIN, AS IF PARTICULARLY SET FORTH HEREON.

**SURVEYORS STATEMENT**

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES AT THE REQUEST OF CASTLE & COOKE SADDLE CREEK, INC. IN JUNE 2000. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONSENTED APPROVED VESTING TENTATIVE TRACT MAP NO. 580, THAT ALL BOUNDARY MONUMENTS AND ALL INTERIOR MONUMENTS WERE SET UPON COMPLETELY OF TRACT NO. 580 IMPROVEMENTS, BUT NO LATER THAN JUNE 30, 2001, AND THAT THEY WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

*R. Pitto*  
ROBERT R. PITTO, L.S. 4626  
(EXPIRES 09/30/02)

8/29/00  
DATE



**COUNTY SURVEYORS STATEMENT**

I, ROBERT U. KAWASAKI, COUNTY SURVEYOR OF CALAVERAS COUNTY, CALIFORNIA, HAVE EXAMINED THIS FINAL MAP AND HEREBY STATE THAT THIS FINAL MAP AS SHOWN SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONSENTED APPROVED VESTING TENTATIVE TRACT MAP NO. 580, THAT ALL BOUNDARY MONUMENTS AND ALL INTERIOR MONUMENTS WERE SET UPON COMPLETELY OF TRACT NO. 580 IMPROVEMENTS, BUT NO LATER THAN JUNE 30, 2001, AND THAT THEY WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

ROBERT U. KAWASAKI, R.C.E. 26822  
COUNTY SURVEYOR

9/18/00  
DATE



BY: *Bruce R. Child Jr.*  
BRUCE R. CHILD, JR., L.S. 5888  
DEPUTY

**REDEMPTION OFFICER'S STATEMENT**

I, LYNETTE NORFOLK, HEREBY CERTIFY THAT I AM THE REDEMPTION OFFICER OF CALAVERAS COUNTY, CALIFORNIA; THAT ACCORDING TO THE RECORDS OF MY OFFICE THERE ARE NO LIENS AGAINST THE SUBDIVISION PORTRAYED ON THIS WITHIN MAP OR ANY PART THEREOF FOR UNPAID STATE, COUNTY, MUNICIPAL OR LOCAL TAXES ON SPECIAL ASSESSMENTS NOT YET PAYABLE.

*Lynette Norfolk*  
LYNETTE NORFOLK  
COUNTY REDEMPTION OFFICER  
9-19-00  
DATE

**CLERKS STATEMENT**

I, KAREN VARNI, HEREBY CERTIFY THAT I AM THE CLERK OF THE BOARD OF SUPERVISORS OF CALAVERAS COUNTY, CALIFORNIA; THAT THE BOARD BEING THE PROPER APPROVING BODY, HAS APPROVED THE WITHIN FINAL MAP OF THE GARDEN BUNGALOWS OF SADDLE CREEK, TRACT NO. 580 AND ACCEPTS ON BEHALF OF THE PUBLIC, THE PUBLIC UTILITY EASEMENTS OFFERED HEREON.

BY AN ORDER DULY MADE ON September 18, 2000.

*Karen Varni*  
KAREN VARNI, CLERK OF THE BOARD OF SUPERVISORS  
CALAVERAS COUNTY, CALIFORNIA

**RECORDERS STATEMENT**

FILED THIS 19th DAY OF SEPTEMBER, 2000 AT 2:30 PM, IN BOOK 7 OF SUBDIVISIONS AT PAGE 54, AT THE REQUEST OF THE CALAVERAS COUNTY SURVEYOR

DOCUMENT NO. 2000 122446

*Barbara Lee*  
BARBARA VARNI  
CALAVERAS COUNTY RECORDER

SHEET 1 OF 3

C-566

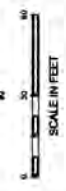
# FINAL MAP FOR THE GARDEN BUNGALOWS OF SADDLE CREEK TRACT NO. 580

BEING A RE-SUBDIVISION OF THAT CERTAIN RE-ADJUSTED PARCEL, V AS THE SAME AS SHOWN ON THAT CERTAIN PARCEL MAP FOR LOT LINE ADJUSTMENT OF SADDLE CREEK RECORDED IN BOOK 12 OF PARCEL MAPS AT PAGE 63 CALAVERAS COUNTY RECORDS; AND LYING WITHIN PORTIONS OF SECTIONS 22 AND 27, T.1N., R.12.E., M.D.M.

CALAVERAS COUNTY, CALIFORNIA  
JUNE, 2000

PREPARED BY:  
SIERRA ENGINEERING ASSOCIATES, LTD.  
100 EAST SAINT CHARLES STREET  
SAN ANTONIO, CA 95249  
(209) 754-4037

PREPARED FOR:  
CASTLE L COOKS SADDLE CREEK, INC.  
3840 LITTLE ACHON ROAD  
COPPERHOLM, CA 95228  
(209) 765-8550



### LEGEND

- SET 5/8" REBAR TAGGED LS 4628.
- FOUND 5/8" REBAR TAGGED LS 4628 PER (A) OR AS NOTED.
- ⊕ FOUND CULTRANS 2" BRASS DISC MONUMENT SET IN CONCRETE PER (A).
- DIMENSION POINT, NOTHING FOUND OR SET.
- (A) RECORD DATA AS PER P.M. 10-63, CALAVERAS COUNTY RECORDS.
- RAM RECORD DATA IS THE SAME AS MEASURED DATA.
- P.M. PARCEL MAP, CALAVERAS COUNTY RECORDS.
- (R) RADIAL BEARING.
- INS.# INSTRUMENT NUMBER, CALAVERAS COUNTY.
- O.R. OFFICIAL RECORD, CALAVERAS COUNTY.
- ▨ AREA CONTAINING PUBLIC UTILITY EASEMENTS OFFERED FOR DEDICATION HEREON.
- ▩ AREA CONTAINING 7.6 WIDE RECIPROCAL ACCESS EASEMENT APPLICANT TO LOTS B-6, B-10, B-11 WHICH IS SUBJECT TO A PEDESTRIAN PATH EASEMENT TO THE SADDLE CREEK COMMUNITY SERVICES DISTRICT OFFERED FOR DEDICATION HEREON.
- ▧ WETLANDS PROTECTED AREA PER INS. # 1998 7538.
- ▦ AREA CONTAINING EXISTING EASEMENT AS NOTED.

### MISCELLANEOUS DIMENSIONS (THIS SHEET ONLY)

- ① R=612.57 L=600.00
- ② R=612.57 L=600.00

### SPECIAL NOTE:

- 1) THERE ARE NO AREAS SUBJECT TO INUNDATION FROM A 100 YEAR STORM EVENT LYING WITHIN THE BOUNDARY OF THIS FINAL MAP.

*Robert F. Kraetsch*  
ROBERT F. KRAETSCH, R.C.E. 12681  
DATE 09-5-00



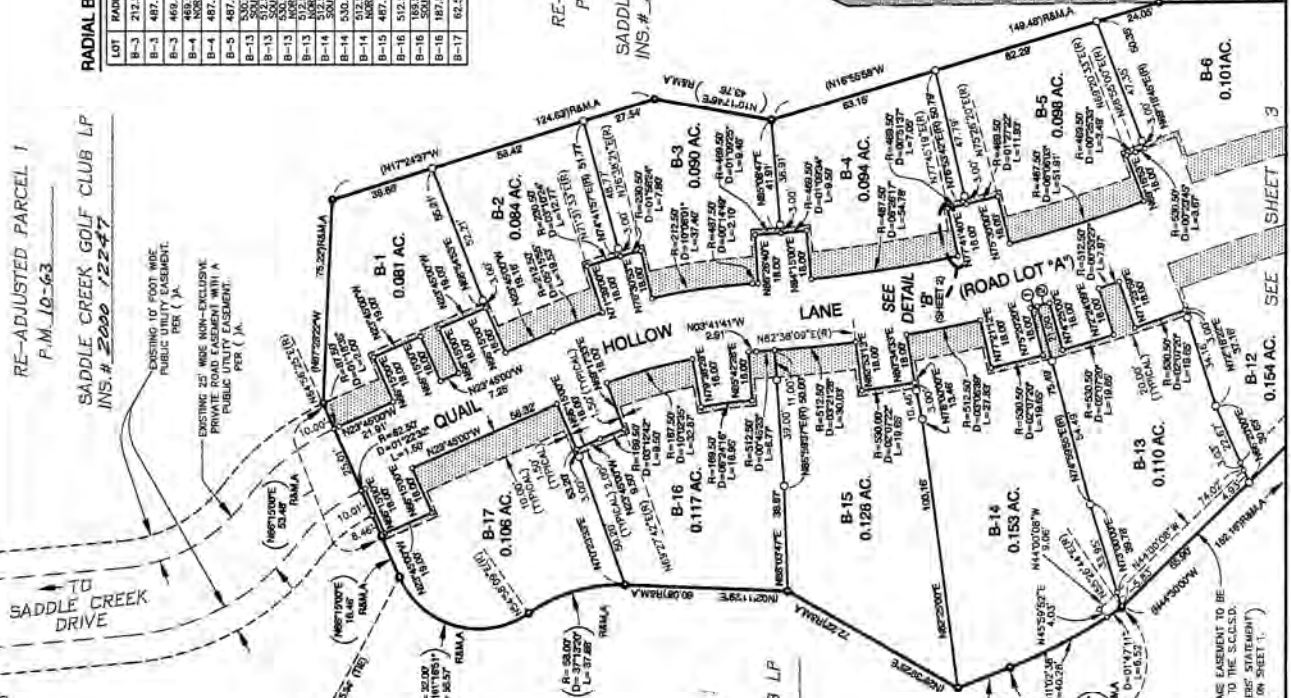
### RADIAL BEARINGS (THIS SHEET ONLY)

LOT	RADIUS	COURSE IN	COURSE OUT
B-3	212.50	N86°45'00"E	N73°38'59"E
B-3	469.50	N86°30'11"E	N86°45'00"E
B-3	469.50	N85°20'54"E	N86°30'11"E
B-4	487.50	N84°11'20"E	N85°20'54"E
B-4	487.50	N77°45'11"E	N84°11'20"E
B-5	487.50	N89°20'23"E	N79°28'28"E
B-13	500.00	N89°19'55"E	N79°27'31"E
B-13	500.00	N72°20'47"E	N79°27'31"E
B-13	500.00	N74°26'14"E	N72°20'47"E
B-13	512.50	N74°59'52"E	N74°26'14"E
B-14	500.00	N75°16'59"E	N74°59'52"E
B-14	500.50	N72°24'26"E	N75°16'59"E
B-14	500.00	N80°31'12"E	N72°24'26"E
B-15	487.50	N82°38'40"E	N80°31'12"E
B-16	512.50	N86°45'00"E	N82°38'40"E
B-16	500.00	N79°28'28"E	N86°45'00"E
B-16	500.00	N89°28'43"E	N79°28'28"E
B-17	62.50	N64°24'38"E	N65°47'30"E

RE-ADJUSTED PARCEL 1  
P.M. 10-63

SADDLE CREEK GOLF CLUB LP  
INS. # 2000 12247

RE-ADJUSTED PARCEL 1  
P.M. 10-63  
SADDLE CREEK GOLF CLUB LP  
INS. # 2000 12247



RE-ADJUSTED PARCEL 1  
P.M. 10-63  
SADDLE CREEK GOLF CLUB LP  
INS. # 2000 12247

STORM DRAINAGE EASEMENT TO BE DEDICATED TO THE S.C.G.S.D. (SEE OWNER'S STATEMENT (A.2) ON SHEET 1.)

SEE SHEET 3

SEE SHEET 1

# FINAL MAP FOR THE GARDEN BUNGALOWS OF SADDLE CREEK TRACT NO. 580

BEING A RE-SUBDIVISION OF THAT CERTAIN RE-ADJUSTED PARCEL 'J' AS THE SAME AS SHOWN ON THAT CERTAIN PARCEL MAP FOR LOT LINE ADJUSTMENT OF SADDLE CREEK RECORDED IN BOOK 26 OF PARCEL MAPS AT PAGE 63 CALAVERAS COUNTY RECORDS; AND LYING WITHIN PORTIONS OF SECTIONS 22 AND 27, T.1N., R.12 E., M.D.M.

CALAVERAS COUNTY, CALIFORNIA  
JUNE, 2000

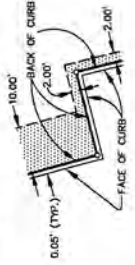
PREPARED FOR:  
CASTLE & COOKE SADDLE CREEK, INC.  
3840 LITTLE JOHN ROAD  
COPPERPOOLS, CA 95228  
(209) 765-8586

PREPARED BY:  
SIERRA ENGINEERING ASSOCIATES, LTD.  
130 EAST SAINT CHARLES STREET  
P.O. BOX 279  
SAN ANGELES, CA 96349  
(209) 754-4057



RADIAL BEARINGS (THIS SHEET ONLY)

LOT	RADIUS	COURSE IN	COURSE OUT
B-6	N075°00'00"E	N70°28'21"E	
B-6	S30°50'00"E	N77°53'22"E	N75°26'09"E
B-6	S12°50'00"E	N77°50'00"E	N77°53'22"E
B-7	N07°50'00"E	N75°56'54"E	N75°50'00"E
B-7	N09°24'52"E	N75°59'53"E	
B-7	N09°24'52"E	N07°50'00"E	N05°25'51"E
B-7	N09°24'52"E	N07°50'00"E	N05°25'51"E
B-12	S12°50'00"E	N05°19'46"E	N05°53'00"E



RE-ADJUSTED PARCEL 1  
P.M. 10-63

SADDLE CREEK GOLF CLUB LP  
INS. # 2000 12247

### LEGEND

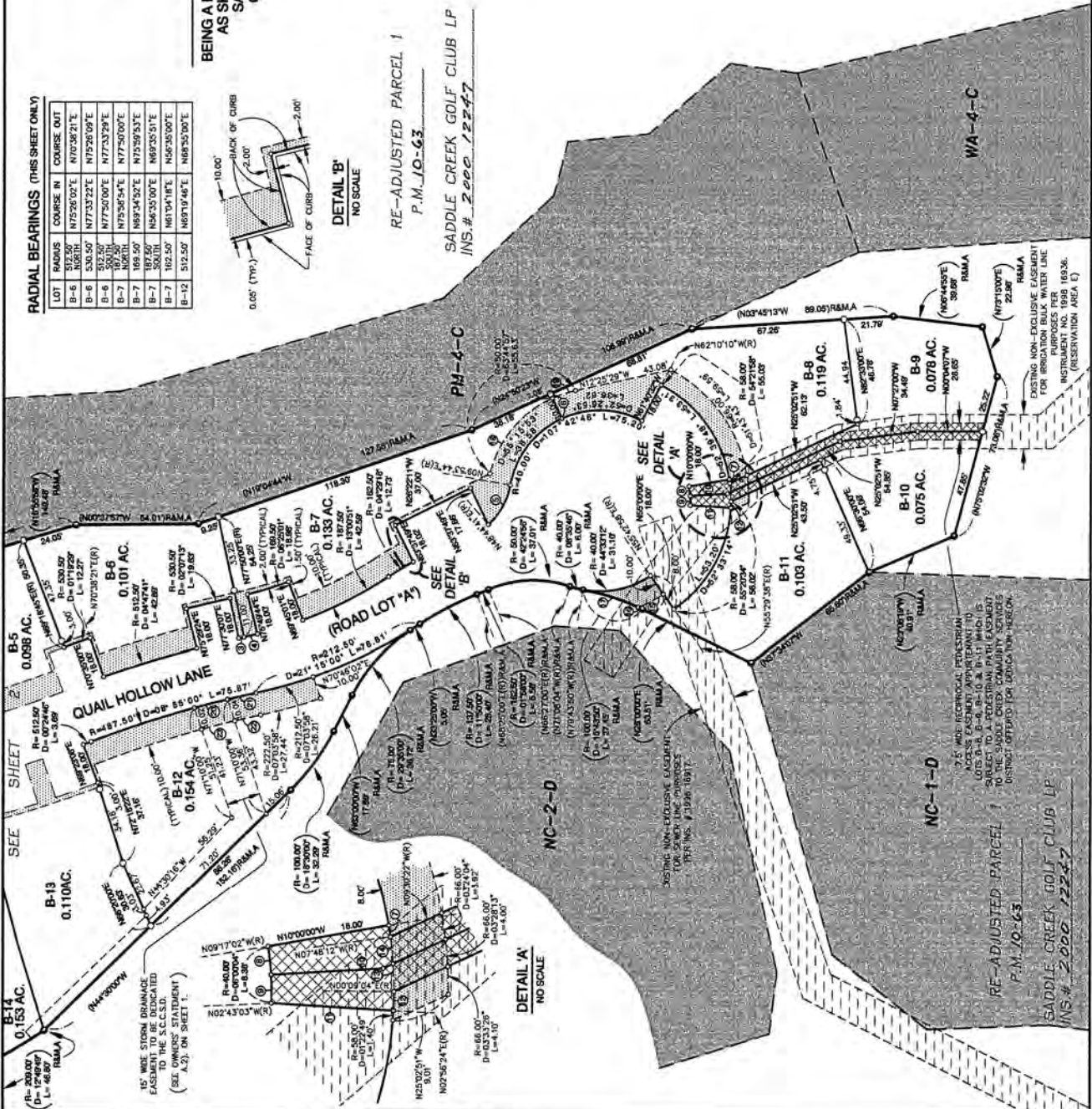
- SET 5/8" REBAR TAGGED LS 468E.
- FOUND 6/8" REBAR TAGGED LS 4628 PER (1/A, OR AS NOTED).
- FOUND CALTRANS # 2 BRASS DREG MONUMENT SET IN CONCRETE PER (1/A).
- DIMENSION POINT, NOTHING FOUND OR SET.
- RECORD DATA AS PER P.M. 10-63, CALAVERAS COUNTY RECORDS.
- PARCEL MAP, CALAVERAS COUNTY RECORDS.
- RADIAL BEARING.
- INSTRUMENT NUMBER, CALAVERAS COUNTY.
- OFFICIAL RECORD, CALAVERAS COUNTY.
- AREA CONTAINING PUBLIC UTILITY EASEMENTS OFFERED FOR DEDICATION HEREON.
- AREA CONTAINING 7.5' WIDE RECIPROCAL ACCESS EASEMENT APPURTENANT TO LOTS B-8, B-9, B-10 & B-11 WHICH IS SUBJECT TO A PEDESTRIAN PATH EASEMENT TO THE SADDLE CREEK COMMUNITY SERVICES DISTRICT OFFERED FOR DEDICATION HEREON.
- WETLANDS PROTECTED AREA PER INS. # 1988 7838.
- AREA CONTAINING EXISTING EASEMENT AS NOTED.

### MISCELLANEOUS DIMENSIONS (THIS SHEET ONLY)

- ① R=512.87 D=074200" L=11.72
- ② R=512.87 D=074200" L=11.72
- ③ R=512.87 D=074200" L=11.72
- ④ R=512.87 D=074200" L=11.72
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- ⑦ R=512.87 D=074200" L=11.72
- ⑧ R=512.87 D=074200" L=11.72
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SHEET 3 OF 3

C-5668



After Recording Return to:  
Saddle Creek CSD  
c/o Board of Supervisors  
County of Calaveras

**RESOLUTION 00- 05 OF THE  
SADDLE CREEK COMMUNITY SERVICES DISTRICT**

*Ril*

(A)

**WHEREAS**, Castle & Cooke Saddle Creek, Inc. desires to cause certain easements (the "Easements") to be conveyed to the Saddle Creek Community Services District (the "District"); and,

**WHEREAS**, the Easements to be conveyed are described more fully in Exhibit "A" Attached hereto and incorporated by reference herein, and,

**WHEREAS**, the District desires to obtain said Easements,

**THEREFORE, BE IT RESOLVED,**

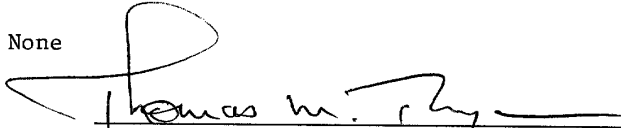
1. That the District accepts the Grant of Easements, and
2. The President of the District is authorized to execute the Grant attached hereto as Exhibit "A" on behalf of said District.

**PASSED AND ADOPTED THIS** 18 **th day of** September, 2000.

**AYES:** Directors Thein, Stein, Callaway, Bailey and Tryon

**NOES:** None

**ABSTAIN:** None

  
\_\_\_\_\_  
President, Saddle Creek Community Services District

**ATTEST:**

  
\_\_\_\_\_  
Secretary, Saddle Creek Community Services District

Recording Requested by:  
Saddle Creek Community Services District

After Recordation, Mail to:  
Saddle Creek C.S.D.  
c/o Calaveras County Board of Supervisors  
Calaveras County  
891 Mountain Ranch Road  
San Andreas CA 95249

**No Recording Fee Required**

---

A.P.N.'s: 55-051-33 and 34

Space above this line for  
Recorder's use.

**GRANT OF EASEMENTS  
EXHIBIT "A"**

1. Castle & Cooke Saddle Creek, Inc.; is the party holding a record fee title in all of that real property lying within the bounds of the Final Map described in 3. below.
2. Saddle Creek Community Services District (the "Grantee"), desires to acquire certain easements for the purpose of storm drainage and pedestrian path purposes, as more particularly described in 3. Below:
3. Grantors grant to Grantee, and Grantee accepts the following interests in real property as said interests/easements are further depicted and described on the following map: That certain "Final Map for the Garden Bungalows at Saddle Creek, Tract No. 580", filed for record on SEPTEMBER 19, 2000, in Book 7 of Subdivisions, at Page 54 et seq., Instrument No. 2000 12445, Calaveras County Records. Said interests/easements are thereon and herein described as follows:

A. Final Map for The Garden Bungalows at Saddle Creek, Tract No. 580:

1. A Pedestrian Path Easement, over, upon and across:
  - a.) Quail Hollow Lane (Road Lot "A").
  - b.) That certain 7.5' wide Reciprocal Access Easement appurtenant to Lots B-8, B-9, B-10 and B-11 as the same is delineated thereon.
2. A non-exclusive easement for Storm Drainage purposes over, under, upon and across Lots B-12, B-13, B-14 and Quail Hollow Lane (Road Lot "A") as delineated thereon.

4. This Grant of Easements is effective upon recording of the aforementioned map.

5. On September 18, 2000, the District, by signature of the President set forth below, accepted this Grant of Easements.

GRANTORS:

CASTLE & COOKE SADDLE CREEK, INC.

BY:   
DAVE HALEY, DEVELOPMENT DIRECTOR  
INSTRUMENT NO. 1999 6517

8/29/00  
DATE

GRANT OF EASEMENTS ACCEPTED:

  
PRESIDENT, SADDLE CREEK COMMUNITY SERVICES DISTRICT

9-18-00  
DATE

ATTEST:

  
SECRETARY, SADDLE CREEK COMMUNITY SERVICES DISTRICT

9-18-00  
DATE

ATTACH ACKNOWLEDGEMENTS

[GRANTOEASEXBA/05-99-01#6]

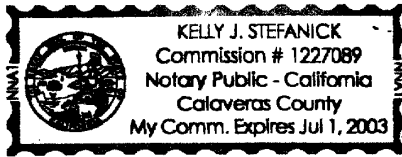
State of California

County of Calaveras

On August 29, 2000 before me, Kelly J. Stefanick  
personally appeared Dave Haley

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

(This area for official notarial seal)



WITNESS my hand and official seal.

Kelly J. Stefanick  
Notary's Signature

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

No. 5193

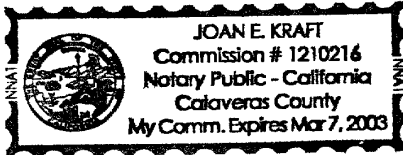
State of California

County of Calaveras

On 9/18/00 before me, Joan E. Kraft, Notary Public  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Thomas M. Tryon  
NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

Joan E. Kraft  
SIGNATURE OF NOTARY

**OPTIONAL SECTION**

**CAPACITY CLAIMED BY SIGNER**

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

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- CORPORATE OFFICER(S)
- TITLE(S)
- PARTNER(S)  LIMITED  GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: public entity

**SIGNER IS REPRESENTING:**

NAME OF PERSON(S) OR ENTITY(IES)  
Saddle Creek Community Services District

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

**OPTIONAL SECTION**

TITLE OR TYPE OF DOCUMENT Grant of Easements (Exhibit A)  
NUMBER OF PAGES Two (2) DATE OF DOCUMENT 9/18/00 (by Mr. Tryon)  
SIGNER(S) OTHER THAN NAMED ABOVE Dave Haley, Castle & Cooke Saddle Creek



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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
(THE LODGE BUNGALOWS AT SADDLE CREEK)**

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CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0002 OF 0080  
INST#: 2001 3372

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
(THE LODGE BUNGALOWS AT SADDLE CREEK)

TABLE OF CONTENTS

**ARTICLE I DEFINITIONS** ..... 2

SECTION 1.1 "ARCHITECTURAL COMMITTEE" ..... 2

SECTION 1.2 "ARTICLES" AND "BYLAWS" ..... 2

SECTION 1.3 "ASSESSMENTS" ..... 2

SECTION 1.4 "ASSOCIATION" ..... 3

SECTION 1.5 "ASSOCIATION RULES" ..... 3

SECTION 1.6 "BOARD" ..... 3

SECTION 1.7 "BUSINESS DAY" ..... 3

SECTION 1.8 "CSD" ..... 3

SECTION 1.9 "CSD AREAS" ..... 3

SECTION 1.10 "COMMON AREAS" ..... 3

SECTION 1.11 "COMMON EXPENSES" ..... 3

SECTION 1.12 "COUNTY" ..... 4

SECTION 1.13 "DECLARANT" ..... 4

SECTION 1.14 "DESIGN GUIDELINES" ..... 4

SECTION 1.15 "DEVELOPER LOTS" ..... 4

SECTION 1.16 "DEVELOPER PARTY(IES)" ..... 5

SECTION 1.17 "DEVELOPMENT AGREEMENT" ..... 5

SECTION 1.18 "DIRECTORS" ..... 5

SECTION 1.19 "DISTRICT(S)" ..... 5

SECTION 1.20 "DISTRICT AREAS" ..... 5

SECTION 1.21 "DRE" ..... 5

SECTION 1.22 "DRE APPROVED BUDGET" ..... 5

SECTION 1.23 "EXCLUSIVE USE COMMON AREAS" ..... 5

SECTION 1.24 "EXHIBIT" ..... 6

SECTION 1.25 "FEDERAL AGENCIES" ..... 6

SECTION 1.26 "FINAL SUBDIVISION PUBLIC REPORT" ..... 6

SECTION 1.27 "GOLF COURSE" ..... 6

SECTION 1.28 "GOLF COURSE LOT" ..... 6

SECTION 1.29 "INITIAL SALE DATE" ..... 6

SECTION 1.30 "INSTITUTIONAL MORTGAGEE" ..... 6

SECTION 1.31 "LOT" ..... 6

SECTION 1.32 "MAP" ..... 6

SECTION 1.33 "MEMBER" ..... 6

SECTION 1.34 "MORTGAGE" ..... 7

SECTION 1.35 "MORTGAGEE" ..... 7

SECTION 1.36 "OPERATOR" ..... 7

SECTION 1.37 "OWNER" ..... 7

SECTION 1.38 "PERSON" ..... 7

SECTION 1.39 "PROGRAM ADMINISTRATOR" ..... 7

SECTION 1.40 "PROGRAM GUEST" ..... 7

SECTION 1.41 "RENTAL POOL AGREEMENT" ..... 7

SECTION 1.42 "RENTAL POOL PROGRAM" OR "PROGRAM" ..... 7

SECTION 1.43 "RETAIL PURCHASER" ..... 7

33909/842796v9

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RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0003 OF 0080  
INST#: 2001 3372

	<u>Page</u>
SECTION 1.44 "SPECIAL MAINTENANCE AREAS" .....	7
SECTION 1.45 "SPECIFIC PLAN" .....	8
<b>ARTICLE II MEMBERSHIP</b> .....	<b>8</b>
SECTION 2.1 - MEMBERSHIP .....	8
SECTION 2.2 - TRANSFER .....	8
SECTION 2.3 - VOTING RIGHTS .....	8
SECTION 2.4 - CLASSES OF VOTING MEMBERSHIP .....	8
SECTION 2.5 - SPECIAL CLASS A VOTING RIGHTS .....	9
SECTION 2.6 - APPROVAL OF MEMBERS .....	9
SECTION 2.7 - SPECIAL DECLARANT REPRESENTATION RIGHTS .....	9
<b>ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS</b> .....	<b>10</b>
SECTION 3.1 - CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS .....	10
SECTION 3.2 - PURPOSE OF ASSESSMENTS .....	10
SECTION 3.3 - REGULAR ASSESSMENTS .....	10
SECTION 3.4 - CAPITAL IMPROVEMENT ASSESSMENTS .....	11
SECTION 3.5 - UNIFORM ASSESSMENT .....	11
SECTION 3.6 - CERTIFICATE OF PAYMENT .....	11
SECTION 3.7 - EXEMPT PROPERTY .....	12
SECTION 3.8 - SPECIAL ASSESSMENT .....	12
SECTION 3.9 - REMEDIAL ASSESSMENT .....	12
SECTION 3.10 - REIMBURSEMENT ASSESSMENT .....	12
SECTION 3.11 - DATE OF COMMENCEMENT OF REGULAR ASSESSMENTS .....	12
SECTION 3.12 - NO OFFSETS .....	12
SECTION 3.13 - HOMESTEAD WAIVER .....	12
SECTION 3.14 - RESERVES .....	13
<b>ARTICLE IV NONPAYMENT OF ASSESSMENTS</b> .....	<b>13</b>
SECTION 4.1 - EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION .....	13
SECTION 4.2 - ASSIGNMENT OF RENTS .....	15
<b>ARTICLE V ARCHITECTURAL CONTROL</b> .....	<b>15</b>
SECTION 5.1 - ARCHITECTURAL DESIGN GUIDELINES .....	15
SECTION 5.2 - APPOINTMENT OF ARCHITECTURAL COMMITTEE .....	16
SECTION 5.3 - GENERAL PROVISIONS .....	17
SECTION 5.4 - APPROVAL AND CONFORMITY OF PLANS AND IMPROVEMENTS .....	18
SECTION 5.5 - NON-LIABILITY FOR APPROVAL OF PLANS .....	20
SECTION 5.6 - APPEAL .....	21
SECTION 5.7 - INSPECTION AND RECORDING OF APPROVAL .....	21
SECTION 5.8 - APPLICABILITY OF ARTICLE TO COMMON AREAS .....	21
SECTION 5.9 - CONSULTANTS TO BOARD AND ARCHITECTURAL COMMITTEE .....	21
SECTION 5.10 - SUBSTITUTION OF CSD FOR THE ARCHITECTURAL COMMITTEE .....	22
<b>ARTICLE VI DUTIES AND POWERS OF THE ASSOCIATION</b> .....	<b>22</b>
SECTION 6.1 - GENERAL DUTIES AND POWERS .....	22
SECTION 6.2 - GENERAL DUTIES OF THE ASSOCIATION .....	22
SECTION 6.3 - GENERAL POWERS OF THE ASSOCIATION .....	23
SECTION 6.4 - GENERAL LIMITATIONS AND RESTRICTIONS ON THE POWERS OF THE BOARD .....	23
SECTION 6.5 - ASSOCIATION RULES .....	24
SECTION 6.6 - DELEGATION OF POWERS .....	25
SECTION 6.7 - PLEDGE OF ASSESSMENT RIGHTS .....	25
SECTION 6.8 - EMERGENCY POWERS .....	25

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0004 OF 0080  
INST#: 2001 3372

Page

**ARTICLE VII REPAIR AND MAINTENANCE.....26**

SECTION 7.1 - REPAIR AND MAINTENANCE BY ASSOCIATION.....26

SECTION 7.2 - REPAIR AND MAINTENANCE BY OWNER.....26

SECTION 7.3 - RIGHT OF ASSOCIATION TO MAINTAIN AND INSTALL.....27

SECTION 7.4 - STANDARDS FOR MAINTENANCE AND INSTALLATION.....28

SECTION 7.5 - RIGHT OF ENTRY.....29

SECTION 7.6 - MAINTENANCE OF PUBLIC UTILITY FACILITIES.....29

SECTION 7.7 - ASSUMPTION OF MAINTENANCE OBLIGATIONS.....29

SECTION 7.8 - SPECIAL MAINTENANCE AREAS.....29

**ARTICLE VIII INSURANCE.....29**

SECTION 8.1 - TYPES.....29

SECTION 8.2 - WAIVER BY MEMBERS.....30

SECTION 8.3 - OTHER INSURANCE.....30

SECTION 8.4 - PREMIUMS, PROCEEDS AND SETTLEMENT.....31

SECTION 8.5 - ANNUAL INSURANCE REVIEW.....31

SECTION 8.6 - ABANDONMENT OF REPLACEMENT COST INSURANCE.....31

SECTION 8.7 - NOTICE OF EXPIRATION REQUIREMENTS.....31

SECTION 8.8 - FEDERAL REQUIREMENTS.....31

**ARTICLE IX DESTRUCTION OF IMPROVEMENTS.....32**

SECTION 9.1 - DUTY OF ASSOCIATION.....32

SECTION 9.2 - AUTOMATIC RECONSTRUCTION.....32

SECTION 9.3 - VOTE OF MEMBERS.....32

SECTION 9.4 - EXCESS INSURANCE PROCEEDS.....32

SECTION 9.5 - USE OF RECONSTRUCTION ASSESSMENTS.....33

SECTION 9.6 - RECONSTRUCTION OF CONDOMINIUMS AND SIMILAR STRUCTURES.....33

**ARTICLE X EMINENT DOMAIN.....33**

SECTION 10.1 - DEFINITION OF TAKING.....33

SECTION 10.2 - REPRESENTATION BY BOARD IN CONDEMNATION PROCEEDINGS.....33

SECTION 10.3 - INVERSE CONDEMNATION.....33

SECTION 10.4 - AWARD FOR COMMON AREAS.....33

**ARTICLE XI USE RESTRICTIONS.....34**

SECTION 11.1 - RESIDENTIAL USE ONLY.....34

SECTION 11.2 - TRADES OR BUSINESSES.....34

SECTION 11.3 - USE OF NAME.....34

SECTION 11.4 - CONSTRUCTION AND COMPLETION OF DWEL INGS.....34

SECTION 11.5 - STRUCTURAL INTERFERENCE.....35

SECTION 11.6 - STRUCTURE REPAIR.....35

SECTION 11.7 - SIGNS.....35

SECTION 11.8 - NONSTANDARD VEHICLES; MOBILE HOMES.....35

SECTION 11.9 - EQUIPMENT REPAIR; POWER EQUIPMENT.....36

SECTION 11.10 - PARKING AREAS.....36

SECTION 11.11 - DRAINAGE.....36

SECTION 11.12 - WEEDS AND DEBRIS.....36

SECTION 11.13 - WINDOW COVERINGS.....36

SECTION 11.14 - CLOTHESLINES; APPLIANCES.....36

SECTION 11.15 - ANIMALS.....37

SECTION 11.16 - NUISANCE.....37

SECTION 11.17 - BARS ON WINDOWS.....37

RECORDED: 03/06/2001 FILE TIME: 12:00  
 CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0005 OF 0080  
 INST#: 2001 3372

	<u>Page</u>
<u>SECTION 11.18 - LIGHTING</u> .....	37
<u>SECTION 11.19 - HAZARDOUS MATERIALS</u> .....	37
<u>SECTION 11.20 - FIRE MANAGEMENT</u> .....	37
<u>SECTION 11.21 - MINING</u> .....	38
<u>SECTION 11.22 - FIRES</u> .....	38
<u>SECTION 11.23 - BICYCLE PATHS</u> .....	38
<u>SECTION 11.24 - SHORTWAVE OR OTHER ELECTRONIC INTERFERENCE</u> .....	38
<u>SECTION 11.25 - TEMPORARY STRUCTURES</u> .....	38
<u>SECTION 11.26 - UTILITY LINES</u> .....	38
<u>SECTION 11.27 - MAIL BOXES</u> .....	38
<u>SECTION 11.28 - YARD SALES</u> .....	38
<u>SECTION 11.29 - PARKING</u> .....	38
<u>SECTION 11.30 - NO FURTHER SUBDIVISION</u> .....	38
<u>SECTION 11.31 - NOISE</u> .....	39
<u>SECTION 11.32 - TREE REMOVAL</u> .....	39
<u>SECTION 11.33 - EXCEPTIONS</u> .....	39
<b><u>ARTICLE XII RIGHTS OF ENJOYMENT</u></b> .....	<b>40</b>
<u>SECTION 12.1 - MEMBERS' RIGHT OF ENJOYMENT</u> .....	40
<u>SECTION 12.2 - DELEGATION OF USE</u> .....	41
<u>SECTION 12.3 - WAIVER OF USE</u> .....	41
<b><u>ARTICLE XIII EASEMENTS</u></b> .....	<b>41</b>
<u>SECTION 13.1 - AMENDMENT TO ELIMINATE EASEMENTS</u> .....	41
<u>SECTION 13.2 - NATURE OF EASEMENTS</u> .....	42
<u>SECTION 13.3 - CERTAIN RIGHTS AND EASEMENTS RESERVED TO DECLARANT</u> .....	42
<u>SECTION 13.4 - CERTAIN EASEMENTS FOR OWNERS</u> .....	43
<u>SECTION 13.5 - CERTAIN EASEMENTS FOR ASSOCIATION</u> .....	44
<u>SECTION 13.6 - CERTAIN EASEMENTS FOR DISTRICTS</u> .....	45
<u>SECTION 13.7 - SUPPORT, SETTLEMENT AND ENCROACHMENT</u> .....	45
<u>SECTION 13.8 - RIGHT TO GRANT AND TRANSFER EASEMENTS</u> .....	46
<u>SECTION 13.9 - NEIGHBORS</u> .....	46
<b><u>ARTICLE XIV RIGHTS OF LENDERS</u></b> .....	<b>46</b>
<u>SECTION 14.1 - FILING NOTICE, NOTICES AND APPROVALS</u> .....	46
<u>SECTION 14.2 - PRIORITY OF MORTGAGE LIEN</u> .....	47
<u>SECTION 14.3 - CURING DEFAULTS</u> .....	47
<u>SECTION 14.4 - RESALE</u> .....	47
<u>SECTION 14.5 - RELATIONSHIP WITH ASSESSMENT LIENS</u> .....	47
<u>SECTION 14.6 - SEVENTY-FIVE PERCENT (75%) VOTE OF INSTITUTIONAL MORTGAGEES</u> .....	48
<u>SECTION 14.7 - OTHER RIGHTS OF INSTITUTIONAL MORTGAGEES</u> .....	49
<u>SECTION 14.8 - MORTGAGEES FURNISHING INFORMATION</u> .....	49
<u>SECTION 14.9 - RIGHT OF FIRST REFUSAL</u> .....	49
<u>SECTION 14.10 - CONFLICTS</u> .....	49
<u>SECTION 14.11 - VOTING RIGHTS OF INSTITUTIONAL MORTGAGEES</u> .....	50
<u>SECTION 14.12 - NOTICE OF DESTRUCTION OR TAKING</u> .....	50
<u>SECTION 14.13 - PAYMENT OF TAXES OR PREMIUMS BY INSTITUTIONAL MORTGAGEES</u> .....	50
<b><u>ARTICLE XV GENERAL PROVISIONS</u></b> .....	<b>50</b>
<u>SECTION 15.1 - ENFORCEMENT</u> .....	50
<u>SECTION 15.2 - NO WAIVER</u> .....	51
<u>SECTION 15.3 - CUMULATIVE REMEDIES</u> .....	51
<u>SECTION 15.4 - SEVERABILITY</u> .....	51

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0006 OF 0080  
INST#: 2001 3372

Page

**SECTION 15.5 - COVENANTS TO RUN WITH THE LAND: TERM** ..... 51

**SECTION 15.6 - SALE OR TITLE TRANSFER** ..... 51

**SECTION 15.7 - CONSTRUCTION** ..... 51

**SECTION 15.8 - SINGULAR INCLUDES PLURAL** ..... 52

**SECTION 15.9 - NUISANCE** ..... 52

**SECTION 15.10 - ATTORNEYS' FEES** ..... 52

**SECTION 15.11 - NOTICES** ..... 52

**SECTION 15.12 - OBLIGATIONS OF DECLARANT** ..... 53

**SECTION 15.13 - EFFECT OF DECLARATION** ..... 53

**SECTION 15.14 - PERSONAL COVENANT** ..... 53

**SECTION 15.15 - NON-LIABILITY OF OFFICIALS** ..... 53

**SECTION 15.16 - ENFORCEMENT OF BONDED OBLIGATIONS** ..... 53

**SECTION 15.17 - LEASES** ..... 54

**SECTION 15.18 - CONSTRUCTION BY DECLARANT** ..... 54

**SECTION 15.19 - RIGHT TO CURE ALLEGED DEFECTS** ..... 55

**SECTION 15.20 - AMENDMENTS** ..... 56

**SECTION 15.21 - ALTERNATIVE DISPUTE RESOLUTION** ..... 58

**SECTION 15.22 - LIMITATION ON EXPENDITURES** ..... 58

**SECTION 15.23 - LIMITATION ON DAMAGES** ..... 58

**SECTION 15.24 - NO REPRESENTATIONS OR WARRANTIES** ..... 58

**SECTION 15.25 - INTERSTATE LAND SALES ACT** ..... 59

**ARTICLE XVI ANNUAL INSPECTION** ..... 59

**SECTION 16.1 - DUTY TO INSPECT** ..... 59

**SECTION 16.2 - PURPOSE OF INSPECTION** ..... 59

**SECTION 16.3 - SCOPE OF INSPECTION** ..... 59

**SECTION 16.4 - EXPERTS AND CONSULTANTS** ..... 59

**SECTION 16.5 - REPORT TO OWNERS** ..... 59

**ARTICLE XVII DECLARANT RIGHTS** ..... 60

**SECTION 17.1 - POWER OF ATTORNEY** ..... 60

**SECTION 17.2 - MORTGAGE INTERESTS TO TAKE SUBJECT TO POWER OF ATTORNEY** ..... 62

**SECTION 17.3 - POWER OF ATTORNEY BINDING ON SUCCESSORS IN INTEREST** ..... 62

**SECTION 17.4 - ASSIGNMENT OF POWERS** ..... 63

**ARTICLE XVIII GOLF COURSE** ..... 63

**SECTION 18.1 - OWNER'S ACKNOWLEDGEMENTS** ..... 63

**SECTION 18.2 - GOLF EASEMENT** ..... 64

**SECTION 18.3 - THIRD PARTY BENEFICIARY** ..... 65

**ARTICLE XIX RENTAL POOL PROGRAM** ..... 65

**SECTION 19.1 - IN GENERAL** ..... 65

**SECTION 19.2 - RENTAL POOL PARTICIPATION** ..... 65

**SECTION 19.3 - RENTAL POOL AGREEMENTS** ..... 66

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0007 OF 0080  
INST#: 2001 3372

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
(THE LODGE BUNGALOWS AT SADDLE CREEK)**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS (THE LODGE BUNGALOWS AT SADDLE CREEK) (this "**Declaration**") is made this 27<sup>th</sup> day of February, 2001, by Castle & Cooke Saddle Creek, Inc., a California corporation ("**Declarant**").

**RECITALS**

A. Declarant is the fee owner of the real property described in **Exhibit "A"** to this Declaration (the "**Covered Property**").

B. Declarant deems it desirable to establish covenants, conditions and restrictions upon the Covered Property and each and every portion thereof, which will constitute a general scheme for the management of the Covered Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property and enhancing the quality of life within the Covered Property.

C. The Covered Property will be developed as a "Common Interest Development," as defined in California Civil Code Section 1351(c) and as a "Planned Development," as defined in California Civil Code Section 1351(k).

D. It is desirable for the efficient management of the Covered Property and the preservation of the value, desirability and attractiveness of the Covered Property to create a nonprofit mutual benefit corporation to which should be delegated and assigned the powers of managing the Covered Property, maintaining and administering the "Common Areas" (as hereinafter defined) and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the "Assessments" (as hereinafter defined) and charges hereinafter created and referred to and to perform such other acts as shall generally benefit the Covered Property. The Lodge Bungalows at Saddle Creek Homeowners Association, a California nonprofit mutual benefit corporation (the "**Association**"), has been or will be incorporated under the laws of the State of California for the purpose of exercising the powers and functions aforesaid.

E. Declarant will hereafter hold and convey title to all of the Covered Property subject to those certain protective covenants, conditions and restrictions hereafter set forth.

33909/842796v9

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0008 OF 0080  
INST#: 2001 3372

NOW, THEREFORE, for the purposes above set forth, Declarant, hereby declares that the Covered Property and each part thereof shall be held, sold and conveyed subject to the following easements, equitable servitudes, restrictions, covenants, and conditions in accordance with California Civil Code Section 1354, which are for the purpose of protecting the value and desirability of, and which shall constitute equitable servitudes on, the Covered Property and which shall run with the Covered Property and be binding on and inure to the benefit of all parties having any right, title or interest therein, or in any part thereof, their heirs, successors and assigns.

## ARTICLE I

### DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

Section 1.1 "Architectural Committee" shall mean and refer to the committee or committees provided for in the Article hereof entitled "Architectural Control."

Section 1.2 "Articles" and "Bylaws" shall mean and refer to the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended.

Section 1.3 "Assessments". The following meanings shall be given to the Assessments hereinafter defined:

(a) "Capital Improvement Assessment" shall mean a charge against each Owner and such Owner's Lot, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Areas which the Association may from time to time authorize pursuant to the provisions of this Declaration.

(b) "Reconstruction Assessment" shall mean a charge against each Owner and his Lot representing a portion of the cost to the Association for reconstruction of any portion or portions of the Common Areas pursuant to the provisions of this Declaration.

(c) "Regular Assessment" shall mean the amount which is to be paid by each Member to the Association for Common Expenses.

(d) "Reimbursement Assessment" shall mean any charge designated as a Reimbursement Assessment in this Declaration, the Articles, Bylaws or Association Rules.

(e) "Remedial Assessment" shall mean any charges and/or fines levied by the Association against a particular Owner who fails to comply with this Declaration, the Articles, Bylaws or Association Rules, together with attorneys' fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.



RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0009 OF 0080  
INST#: 2001 3372

(f) **"Special Assessment"** shall mean any charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules.

**Section 1.4 "Association"** shall mean and refer to the Lodge Bungalows at Saddle Creek Homeowners Association, a California nonprofit mutual benefit corporation, incorporated under the laws of the State of California, its successors and assigns.

**Section 1.5 "Association Rules"** shall mean rules adopted by the Association pursuant to the Article hereof entitled "Duties and Powers of the Association."

**Section 1.6 "Board"** shall mean the Board of Directors of the Association.

**Section 1.7 "Business Day"** shall mean any day other than a Saturday, Sunday, or California or national holiday on which banks in the County are customarily closed.

**Section 1.8 "CSD"** shall mean the Saddle Creek Community Services District.

**Section 1.9 "CSD Areas"** shall mean all streets, roads, recreation areas, open space and other property (including the improvements thereon) owned by the CSD for the use and enjoyment of the Owners and for such other purposes as may be determined by the CSD.

**Section 1.10 "Common Areas"** shall mean all real property and the improvements thereon owned or leased from time to time by the Association or over which the Association has an easement for maintenance and the common use and enjoyment of the Members. Common Areas may include any District Areas at such time (if ever) that such District Areas are no longer maintained and/or owned by a District or any successor entity. In such case, the Association shall undertake all necessary steps including without limitation, acquisition and assumed maintenance, in order to ensure that such District Areas remain available for access and use by the "Members" (as defined below) and such other Persons having rights thereto. Upon the "Initial Sale Date" (as hereinafter defined), the Common Areas shall be that certain property described on Exhibit "B" attached hereto.

**Section 1.11 "Common Expenses"** shall mean and refer to the actual and estimated costs of:

(a) maintenance, management, operation, repair and replacement of the Common Areas and all other areas on the Covered Property which are maintained by the Association in accordance with Section 7.1 herein;

(b) unpaid Assessments;

(c) maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Covered Property as provided in this Declaration or pursuant to agreements with the County or any other applicable governmental or quasi-governmental agency;

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0010 OF 0080  
INST#: 2001 3372

- (d) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;
- (e) utilities, trash pickup and disposal, gardening and other services which generally benefit and enhance the value and desirability of the Common Areas;
- (f) fire, casualty, liability, workmen's compensation and any other insurance covering the Common Areas;
- (g) any other insurance obtained by the Association;
- (h) reasonable reserves as deemed appropriate by the Board, and any reserve study pursuant to California Civil Code Section 1365.5(e);
- (i) bonding of the members of the Board, any professional managing agent or any other person handling the funds of the Association;
- (j) taxes paid by the Association;
- (k) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;
- (l) expenses incurred by the Architectural Committee or any other committee established by the Board; and
- (m) other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas, or the costs of any other item or items designated by this Declaration, the Articles, Bylaws or Association Rules, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

Section 1.12 "County" shall mean and refer to the County of Calaveras, State of California.

Section 1.13 "Declarant" shall mean and refer to Castle & Cooke Saddle Creek, Inc., a California corporation, its successors and assigns by merger, consolidation or by purchase of all or substantially all of its assets.

Section 1.14 "Design Guidelines" shall have the meaning set forth in Section 5.1 hereof.

Section 1.15 "Developer Lots" shall mean and refer to all of the separate residential interests proposed for the Covered Property that have not yet been conveyed to Retail Purchasers and are owned by the Declarant. For purposes of this Section only, and in no way limiting the rights of Declarant to modify the development plan for the Covered Property or the actual number of Lots within the Covered Property, the total number of projected Developer Lots for the Covered Property as of the date of this Declaration is seventeen (17).

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RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0011 OF 0080  
INST#: 2001 3372

**Section 1.16** "**Developer Party(ies)**" shall mean Declarant, and its directors, officers, members, partners, employees, contractors, subcontractors, consultants, agents, successors and assigns.

**Section 1.17** "**Development Agreement**" shall mean that certain Development Agreement by and between the County of Calaveras and Declarant (or its predecessor-in-interest), related to the development known as Calaveras Country Club, as approved by the Calaveras County Board of Supervisors per Ordinance No. 2378, dated June 13, 1994, which agreement was recorded on June 16, 1994, as Instrument No. 94-010002 in the Official Records of Calaveras County.

**Section 1.18** "**Directors**" shall mean and refer to the members of the Board.

**Section 1.19** "**District(s)**" shall mean and refer to such district(s) as is/are or may be established in conjunction with Calaveras County, which is/are or may be responsible for the landscape, maintenance, repair and administration of certain portions of the Covered Property including, without limitation, the CSD. Additional Districts, if formed, will be funded through assessments levied against all of the properties within the boundaries of such Districts. The CSD is funded through assessments levied against all of the properties within the boundaries of such CSD.

**Section 1.20** "**District Areas**" shall mean those areas which are or will be maintained by a District. District Areas may include all or a portion of the Common Areas if the District agrees to assume the maintenance of such Common Areas. Pursuant to this Declaration, Declarant has the power to cause the transfer of certain Common Areas to a District in which case such Common Areas shall no longer be Common Areas within the scope of this Declaration and shall constitute District Areas. Notwithstanding any provision in this Declaration to the contrary, the District Areas shall not be subject to this Declaration unless and until the Association has assumed maintenance of such District Areas in accordance with this Declaration.

**Section 1.21** "**DRE**" shall mean and refer to the California Department of Real Estate.

**Section 1.22** "**DRE Approved Budget**" shall mean and refer to that certain budget or budgets which has/have been or will be submitted to and approved by the DRE by Declarant which provides for either (i) a range on the amount of the Regular Assessments, or (ii) a level amount of Regular Assessments, over the course of the development of the Covered Property.

**Section 1.23** "**Exclusive Use Common Areas**" shall mean and refer to those portions of the Common Areas designated as parking stalls on Exhibit "C" attached hereto and made a part hereof, in, over, under and through which, Declarant, and/or the Association have conveyed or may convey appurtenant easement(s) for the exclusive use of any specific Owner(s).

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0012 OF 0080  
INST#: 2001 3372

**Section 1.24** "**Exhibit**" shall mean and refer to those documents so designated herein and attached hereto (as such Exhibits may be amended pursuant to **Section 15.20** herein) and each of such Exhibits is by this reference incorporated in this Declaration.

**Section 1.25** "**Federal Agencies**" shall mean and refer to collectively one or more of the following agencies and the following letter designation of such agencies shall mean and refer to respectively the agency specified within the parentheses following such letter designation: "**VA**" (United States Department of Veterans Affairs), "**FHLMC**" (Federal Home Loan Mortgage Corporation), "**FNMA**" (Federal National Mortgage Association), and "**GNMA**" (Government National Mortgage Association).

**Section 1.26** "**Final Subdivision Public Report**" shall refer to that report issued by the DRE pursuant to Section 11018.2 of the California Business and Professions Code or any similar statute hereafter enacted.

**Section 1.27** "**Golf Course**" shall mean that certain real property adjacent to the Covered Property, designated on that certain Large Lot Parcel Map, filed in the Official Records of Calaveras County, on September 11, 1995, in Book 9 of Parcel Maps, at Page 43, as Lots 1 and 9 (as amended, from time to time, pursuant to lot line adjustments, parcel map revisions and the like), on which the owner thereof shall have the right to maintain a golf course, clubhouse facilities, other recreational facilities, maintenance area, and related landscaping improvements and fixtures. The Golf Course is not part of the Covered Property.

**Section 1.28** "**Golf Course Lot**" shall mean any Lot that fronts or abuts the Golf Course.

**Section 1.29** "**Initial Sale Date**" shall mean the date of the close of escrow for the sale of the first Lot in the Covered Property to a Retail Purchaser.

**Section 1.30** "**Institutional Mortgagee**" shall mean and refer to a First Mortgagee which is a bank or savings and loan association or established mortgage company, other entity chartered under federal or state laws, any corporation or insurance company, any federal or state agency, or any other institution regulated by federal or state law.

**Section 1.31** "**Lot**" shall mean and refer to a lot shown on the Map.

**Section 1.32** "**Map**" shall mean that certain final subdivision map entitled "Final Map for the Garden Bungalows of Saddle Creek Tract No. 580" filed for record in the Official Records of Calaveras County on September 19, 2000 in Book 7 of Subdivision Maps, Page 54.

**Section 1.33** "**Member**" shall mean and refer to every "Person" (as hereinafter defined) who qualifies for membership in the Association pursuant to the Article of this Declaration entitled "Membership," including Declarant.

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0013 OF 0080  
INST#: 2001 3372

**Section 1.34** "**Mortgage**" shall mean and refer to any duly recorded mortgage or deed of trust encumbering a Lot. A "**First Mortgage**" shall refer to a Mortgage which has priority over all other Mortgages encumbering a specific Lot.

**Section 1.35** "**Mortgagee**" shall mean and refer to the mortgagee or beneficiary under any Mortgage. A "**First Mortgagee**" shall mean the holder of a First Mortgage.

**Section 1.36** "**Operator**" shall mean the Person which holds legal title to the Golf Course and/or the right to manage or operate the Golf Course, and such Person's agents, employees, contractors, and consultants. As of the date hereof, Declarant is the Operator.

**Section 1.37** "**Owner**" shall mean and refer to one or more persons or entities who are alone or collectively the record owner of a fee simple title to a Lot, including Declarant, or the vendee under an installment land sales contract, but excluding those having any such interest merely as security for the performance of an obligation. If a Lot is leased by Declarant for a term in excess of twenty (20) years and the lease, or memorandum thereof, is recorded, the lessee or transferee of the leasehold interest and not the Declarant shall be deemed to be the Owner. If fee title to a Lot is owned other than by Declarant, the Owner of the fee title and not the lessee or transferee of such Lot shall be deemed the Owner regardless of the term of the lease.

**Section 1.38** "**Person**" shall mean and refer to a natural individual, corporation, partnership, limited liability company, or any other entity with the legal right to hold title to real property.

**Section 1.39** "**Program Administrator**" shall have the meaning set forth in Section 19.1 hereof.

**Section 1.40** "**Program Guest**" shall have the meaning set forth in Section 19.1 hereof.

**Section 1.41** "**Rental Pool Agreement**" shall have the meaning set forth in Section 19.3 hereof.

**Section 1.42** "**Rental Pool Program**" or "**Program**" shall have the meaning set forth in Section 19.1 hereof.

**Section 1.43** "**Retail Purchaser**" shall mean any Owner of a Lot other than Declarant.

**Section 1.44** "**Special Maintenance Areas**" shall mean those areas delineated on Exhibit "D" attached hereto and made a part hereof (as such Exhibit may be amended, from time to time pursuant to Section 15.20 herein), which areas include, without limitation: (1) any District Areas; (2) those areas which will be maintained by the Association (the "**Association Maintenance Areas**"); and (3) Exclusive Use Common Areas.

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0014 OF 0080  
INST#: 2001 3372

Section 1.45 "Specific Plan" shall mean that certain Specific Plan of the Calaveras County Club, as adopted by the Calaveras County Board of Supervisors per Resolution No. 93-440A dated December 6, 1993.

## ARTICLE II

### MEMBERSHIP

Section 2.1 - Membership. Every Owner shall be a Member. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws, Design Guidelines, and Association Rules to the extent the provisions thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to, and may not be separated from, the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership; provided, however, a Member's voting rights or privileges in the Common Areas or both may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Except for Declarant, not more than one membership shall exist based upon ownership of a single Lot.

Section 2.2 - Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred to the transferee of the interest of an Owner required for membership. Any attempt to make a prohibited membership transfer is void and will not be reflected upon the books and records of the Association. The Association shall have the right to record the membership transfer upon the books of the Association without any further action or consent by the transferring Owner.

Section 2.3 - Voting Rights. Except for Declarant, an Owner's right to vote shall not vest until the date Regular Assessments upon such Owner's Lot have been levied as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules.

Section 2.4 - Classes of Voting Membership. The Association shall have two classes of voting membership:

(a) Class A. Class A Members shall be all Owners except Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When more than one person owns a Lot required for membership, each such person shall be a Member and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. The Class B Member shall be Declarant. Declarant shall be entitled to three (3) votes for each Developer Lot; provided, however, solely for the purpose of counting votes in order to determine when Class B membership shall cease and convert to Class

RECORDED: 03/07/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0015 Of 0080  
INST#: 2001 3372

A membership as provided in subparagraph (i) below, Declarant shall be entitled to five (5) votes for each Developer Lot.

Class B membership shall cease and be converted to Class A membership upon the happening of the earliest of the following events:

(i) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership;

(ii) ten (10) years from the date of issuance of the Final Subdivision Public Report (the "Conversion Date"); provided that if at the time of the Conversion Date less than seventy-five percent (75%) of the projected Lots for the Covered Property have been sold to Retail Purchasers, the Conversion Date shall be extended for consecutive two (2) year periods until seventy-five percent (75%) of the projected Lots for the Covered Property have been sold to Retail Purchasers; or

(iii) twenty-five (25) years after the Initial Sale Date.

Section 2.5 - Special Class A Voting Rights. Notwithstanding the provisions of this Article, if the Class A Members do not have sufficient voting power pursuant to the voting rights set forth in this Declaration and the Bylaws to elect at least twenty percent (20%) of the total number of Directors on the Board, at any meeting of Members at which Directors are to be elected, then such Class A Members shall, by majority vote, among themselves, elect the number of Directors required to equal twenty percent (20%) of the total number of Directors on the Board. In the event twenty percent (20%) of the total number of Directors is equal to any fractional number, the number of Directors to be elected pursuant to the special Class A voting right shall be rounded to the next higher whole number.

Section 2.6 - Approval of Members. Unless otherwise specifically provided in this Declaration or the Bylaws, any provision of this Declaration or the Bylaws which requires the vote or written assent of the voting power of the Association or any class or classes of membership shall be deemed satisfied by either of the following:

(a) the vote, in person or by proxy, of the Owners constituting a quorum casting a majority of the votes at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members; or

(b) written consents signed by the Owners constituting a quorum casting a majority of the votes.

Section 2.7 - Special Declarant Representation Rights. Notwithstanding the provisions of this Article, until such time as at least ninety percent (90%) of the Lots anticipated to be developed in the Covered Property have been sold to Retail Purchasers, Declarant shall have the absolute authority to elect at least twenty percent (20%) of the total number of Directors on the Board.

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0016 OF 0080  
INST#: 2001 3372

### ARTICLE III

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 3.1 - Creation of the Lien and Personal Obligation of Assessments. Each Owner, including Declarant, to the extent Declarant is an Owner as defined herein, of any Lot, by acceptance of a deed or other conveyance, creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Reimbursement Assessments, Capital Improvement Assessments, Remedial Assessments, and Reconstruction Assessments. Such Assessments shall be fixed, established and collected from time to time as provided in this Declaration. The Regular, Special, Reimbursement, Capital Improvement, and Reconstruction Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a charge upon the Lot against which each such Assessment is made. Each such Assessment, including Remedial Assessments, together with such interest, late charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment becomes due. The personal obligation for delinquent Assessments shall not pass to the successors in title of an Owner unless expressly assumed by such successors. No Owner may waive or otherwise escape liability for Assessments by nonuse of the Common Areas or any part thereof, or abandonment of his or her Lot.

Section 3.2 - Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of carrying out and/or enforcing the provisions of this Declaration, and promoting the recreation, health, safety and welfare of the Members, the management of the Covered Property enhancing the quality of life in the Covered Property, and the value of the Covered Property including, without limitation, the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, or in furtherance of any other duty or power of the Association. The Association shall not impose or collect an assessment, penalty or fee that exceeds the amount necessary (including applicable reserve amounts) for the purpose or purposes for which it is levied.

Section 3.3 - Regular Assessments. The Board shall determine the amount of the Regular Assessment to be paid by each Member. The Association shall provide written notice by first-class mail to all Owners of any change in Regular Assessments, or the due dates therefore, not less than thirty (30) days, nor more than sixty (60) days, prior to the due date for such Regular Assessments. Each Member shall thereafter pay to the Association his or her Regular Assessment in installments by the due date established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Member, and the date or dates when due. After the Association's first accounting year of operation, it shall comply with the provisions of Section 1366 of the California Civil Code prior to any increase in Regular Assessments. In the event the amount budgeted to meet Common Expenses for the then-current

13909/842796v9

-10-



RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0017 OF 0080  
INST#: 2001 3372

year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate. Until such time as the Class B Membership has ceased and been converted into Class A Membership, Regular Assessments may not be reduced if such reduction would diminish the quantity or quality of services provided by the Association. Notwithstanding the foregoing, Regular Assessment increases shall not be limited in the case of "emergency situations" as provided in Section 1366 of the California Civil Code. Notwithstanding the foregoing, Regular Assessments to be paid by Declarant may be reduced or abated pursuant to the terms of any maintenance agreement or similar document. Notwithstanding any other provisions of this Declaration, until the earlier to occur of (1) the recordation of a notice of completion of an improvement on the Common Areas, or (2) the placement of such improvement into use, each Owner (including Declarant) shall be exempt from paying that portion of any Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such improvement.

Section 3.4 - Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any calendar year, a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Common Areas to the extent the same is not covered by the provisions affecting Reconstruction Assessments in the Article hereof entitled "Destruction of Improvements," including the necessary fixtures and personal property related thereto. The Association shall not impose a Capital Improvement Assessment the total amount of which exceeds five percent (5%) of the estimated Common Expenses as set forth in the Section of this Article entitled "Regular Assessments," without the approval of a majority of a quorum of the voting power of the Association. Any reserves collected by the Association for the future maintenance and repair of the Common Areas, or any portion thereof, shall not be included in determining said annual Capital Improvement Assessment limitation. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members. The Association shall provide notice to all Owners, by first-class mail, of any decision by the Association to levy a Capital Improvement Assessment, not less than thirty (30) nor more than sixty (60) days prior to the due date for such Assessment.

Section 3.5 - Uniform Assessment. Regular, Reconstruction and Capital Improvement Assessments shall be fixed at an equal amount for each Lot and may be collected at intervals selected by the Board.

Section 3.6 - Certificate of Payment. The Association shall, upon demand, furnish to any Member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0018 OF 0080  
INST#: 2001 3372

**Section 3.7 - Exempt Property.** All properties dedicated to, and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.

**Section 3.8 - Special Assessment.** Special Assessments may be levied by the Association to fund any budgetary shortfall or to restore any funds transferred from the Association's reserve account. Special Assessments shall also be levied by the Board against an Owner and his or her Lot to reimburse the Association for any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules. Notwithstanding the foregoing, the Board shall not impose Special Assessments without first complying with the provisions of Section 1366 of the California Civil Code. The foregoing limitation shall be subject to the exception of "emergency situations" as provided in **Section 3.3** above.

**Section 3.9 - Remedial Assessment.** In the event the Board levies any fines or charges against an Owner who fails to comply with this Declaration, the Articles, Bylaws or the Association Rules, such fines or charges shall be Remedial Assessments.

**Section 3.10 - Reimbursement Assessment.** Reimbursement Assessments may be levied by the Association to reimburse the Association for materials or services provided by the Association which benefit individual Lots. Reimbursement Assessments shall also be levied by the Board against an Owner (and his or her Lot) to reimburse the Association for any other charge designated as a Reimbursement Assessment in this Declaration, the Articles, Bylaws or Association Rules. The Association shall provide notice by first-class mail to the Owners subject to a Reimbursement Assessment of any decision to levy such Reimbursement Assessment, not less than thirty (30) nor more than sixty (60) days prior to the Reimbursement Assessment becoming due.

**Section 3.11 - Date of Commencement of Regular Assessments.** Subject to any assessment maintenance or subsidy program established by the Declarant, the Regular Assessments shall commence on the date (the "**Initial Assessment Commencement Date**") which is the first day of the month following the first close of escrow for the sale of a Lot by Declarant to a Retail Purchaser.

**Section 3.12 - No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (i) the Association is not properly exercising its duties and powers as provided in this Declaration; (ii) a Member has made or elects to make no use of the Common Areas; or (iii) any construction or maintenance performed pursuant to the Section entitled "Assumption of Maintenance Obligations" of the Article entitled "Repair and Maintenance" of this Declaration shall in any way postpone Assessments or entitle a Member to claim any such offset or reduction.

**Section 3.13 - Homestead Waiver.** Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0019 OF 0080  
INST#: 2001 3372

liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of California now in effect, or in effect from time to time hereafter.

Section 3.14 - Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Areas (including Exclusive Use Common Areas), or any other purpose as determined by the Board. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from, and not commingled with, any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board shall not expend funds designated as reserve funds for any purpose other than those purposes set forth in Section 1365.5 of the California Civil Code. Withdrawal of funds from the Association's reserve account shall require the signatures of either (a) two (2) members of the Board; or (b) one (1) member of the Board and an officer of the Association who is not also a member of the Board.

#### ARTICLE IV

##### NONPAYMENT OF ASSESSMENTS

Section 4.1 - Effect of Nonpayment of Assessments; Remedies of the Association. In the event any Assessment is not paid when due, such Assessment shall be deemed to be delinquent and in default. Each Owner vests in the Association or its assigns the right and power to bring all actions at law and in equity and exercise such other remedies provided herein against such Owner for the collection of delinquent Assessments. In the event an attorney or attorneys are employed for collection of any Assessment, whether by suit or otherwise, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against such Owner. In addition to any other remedies herein or by law provided, the Association may enforce the obligations of the Owners to pay the Assessments in any manner provided by law or in equity, and without any limitation of the foregoing, by any or all of the following procedures:

(a) Suspension of Rights; Monetary Penalties. After a hearing by the Board (whether or not the delinquent Owner appears), upon ten (10) days prior written notice to the delinquent Owner, the Board may (i) suspend the voting rights of any Owner, (ii) impose reasonable monetary penalties pursuant to a monetary penalty schedule established and posted by the Board, and/or (iii) suspend such Owner's right to use the Common Areas for any period during which any Assessment against such Owner's Lot remains unpaid; provided, however, these provisions shall not operate or be construed to deny or restrict ingress or egress of any Owner to and from such Owner's Lot.

(b) Enforcement by Suit. By commencement and maintenance of a suit at law or equity against any Owner or prior Owner to enforce the Assessment obligation, such suit to be maintained in the name of the Association. Any judgment rendered in any such action may

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0020 OF 0080  
INST#: 2001 3372

include the amount of the delinquency, interest thereon at the maximum legal rate per annum from the date of the delinquency, court costs and reasonable attorneys' fees, in such amount as the court may adjudge against the delinquent Owner.

(c) Enforcement by Lien. There is hereby created a "Claim of Lien," with power of sale, on each and every Lot to secure payment to the Association of any and all Assessments charged against any and all Lots pursuant to this Declaration (except Remedial Assessments), together with interest thereon at the maximum legal rate per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time after the delinquency, the Association may elect to file and record in the Official Records of the County a Claim of Lien against the Lot of the defaulting Owner. Such Claim of Lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

- (i) the name of the delinquent Owner;
- (ii) the legal description of the Lot against which the Claim of Lien is made;
- (iii) the total amount of the delinquency, interest thereon, penalties, collection costs and reasonable attorneys' fees if then known (with any proper offset allowed);
- (iv) a statement that the Claim of Lien is made by the Association pursuant to this Declaration and that a lien is claimed against said Lot in an amount equal to the amount stated; and
- (v) the name and address of the trustee authorized by the Association to enforce the Claim of Lien by sale.

Upon such recordation of a duly executed original or copy of such Claim of Lien and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended. The Association shall have the power to bid in at any foreclosure sale, trustee's sale or judgment sale and to purchase, acquire, lease, hold, mortgage and convey any Lot. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. The proceeds of any foreclosure, trustee's or judgment sale provided for in this Declaration shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the unpaid sales proceeds, after satisfaction of such charges and unpaid assessments hereunder or any liens, shall be paid to the defaulting Owner. Any purchaser at such sale shall thereupon be entitled to a deed to the Lot and immediate possession of the Lot and shall have the right to apply to a court of competent jurisdiction for such orders as may be reasonable for the purpose of

RECORDED: 03/06/2001 FILE TIME: 12:00  
 CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0021 OF 0080  
 INST#: 2001 3372

acquiring and possessing the Lot. It shall be a condition of such sale, and the deed so made shall provide, that the purchaser shall take the interest in the said Lot subject to this Declaration. Upon the timely curing of any default for which a Claim of Lien was filed by the Association, the officers of the Association are hereby authorized to record an appropriate release of such lien in the Office of the County Recorder.

Section 4.2 - Assignment of Rents. As security for the payment of all such liens, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of such Owner's obligation under this Declaration, or the Bylaws or the Articles, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time, upon ten (10) days written notice to such Owner, then either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration.

The assignment of rents and powers described in the foregoing paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder or beneficiary of any First Mortgage or deed of trust on any Lot or second Mortgage or deed of trust on any Lot if the holder or beneficiary of such second Mortgage or deed of trust is Declarant, to do the same or similar acts.

## ARTICLE V

### ARCHITECTURAL CONTROL

Section 5.1 - Architectural Design Guidelines. Declarant has adopted, or will adopt, guidelines setting forth general standards for the design and appearance of the Covered Property (the "Design Guidelines"). Declarant has built, or will build, all of the original improvements to the Covered Property. This Article, any applicable provisions of Article XI hereof, and the Design Guidelines, shall only apply to modifications or reconstruction of such improvements, and not to the original construction of such improvements by Declarant. The Design Guidelines are intended to provide design professionals with standardized design vocabularies and materials intended to preserve the quality and overall appearance of the Covered Property. However, in the event of any conflict between the Design Guidelines and this Declaration, this Declaration shall control. The Design Guidelines shall not be amended, modified, changed, or waived in any manner, without the prior written approval of Declarant; provided, however, Declarant shall have the right at any time to relinquish to the Board its rights

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0022 OF 0080  
INST#: 2001 3372

concerning the Design Guidelines in which case the Board shall have the right to unilaterally exercise same. Notwithstanding any other provision herein, no amendment to the Design Guidelines shall act to make any previously constructed or installed improvement or landscaping out of compliance with such amended Design Guidelines, provided that such improvement and/or landscaping was in compliance with the applicable Design Guidelines prior to such amendment to the Design Guidelines. Each prospective Retail Purchaser should become familiar with the Design Guidelines applicable to the Lot such person intends to purchase before executing any agreement for the purchase of such Lot. The Architectural Committee shall maintain a copy of the Design Guidelines on file at all times, and the Architectural Committee shall provide each Owner with a copy of the Design Guidelines upon written request. The Architectural Committee shall not approve the construction, modification, or alteration of any improvement which is not designed and constructed substantially in accordance with the Design Guidelines. The Design Guidelines may include among other things those restrictions and limitations upon the Owners set forth below:

(a) time limitations for the completion of the architectural improvements for which approval is required pursuant to the Design Guidelines;

(b) conformity of completed architectural improvements to plans and specifications approved by the Architectural Committee; provided, however, as to purchasers and encumbrancers in good faith and for value, unless notice of non-completion or nonconformance identifying the violating Lot and its Owner and specifying the reason for the notice, executed by the Architectural Committee, shall be filed of record in the Office of the County Recorder of the County, and given to such Owner within one (1) year of the expiration of the time limitation described in subsection (a) above, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one (1) year period, the completed architectural improvements shall be deemed to be in compliance with plans and specifications approved by the Architectural Committee and in compliance with the Design Guidelines, but only with respect to purchasers and encumbrancers in good faith and for value;

(c) such other limitations and restrictions as the Declarant, in its reasonable discretion, shall adopt, including, without limitation, the regulation of the following: construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of such dwelling structure; and

(d) a description of the types of such construction, reconstruction, additions, alterations or maintenance which, if completed in conformity with the Design Guidelines, do not require the approval of the Architectural Committee.

Section 5.2 - Appointment of Architectural Committee. The Architectural Committee shall consist of not less than three (3) nor more than five (5) persons as fixed from time to time by resolution of the Board. The Declarant shall initially appoint the Architectural Committee. The Declarant shall retain the right to appoint, augment or replace all members of the Architectural Committee until one (1) year after the Initial Sale Date. Thereafter, the Declarant shall retain the right to appoint, augment or replace a majority of the members of the

33909/842796v9

-16-

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0023 OF 0080  
INST#: 2001 3372

Architectural Committee until five (5) years after the Initial Sale Date, or until ninety percent (90%) of the Lots within the Covered Property have been conveyed to Retail Purchasers, whichever shall last occur. Notwithstanding the foregoing, commencing one (1) year following the Initial Sale Date, the Board shall have the right but not the obligation to appoint the remaining members of the Architectural Committee. Five (5) years after the Initial Sale Date, or when ninety percent (90%) of the Lots within the Covered Property have been conveyed to Retail Purchasers, whichever shall last occur, the right to appoint, augment or replace all members of the Architectural Committee shall automatically be transferred to the Board. Notwithstanding any other provision herein, the members of the Architectural Committee appointed by Declarant may be members of that certain architectural committee designated to review and approve similar matters for the neighboring residential subdivision project commonly known as "Saddle Creek" (the "Adjacent Project"). The appointment of any such persons, or such committee as a whole, to act as the Architectural Committee for the Covered Property shall not in any way imply, or be deemed to imply, that the Covered Property is part of the Adjacent Project or in any way subject to any declarations, covenants, conditions, restrictions, easements or the like related to the Adjacent Project.

#### Section 5.3 - General Provisions.

(a) The Architectural Committee may establish reasonable procedural rules and may assess a reasonable fee in connection with review of plans and specifications including, without limitation, the number of sets of plans to be submitted; provided, however, the Architectural Committee may delegate its plan review responsibilities to one or more members of such Architectural Committee. Upon such delegation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Architectural Committee. Unless any such rules are complied with, such plans and specifications shall be deemed not submitted. Plans required to be submitted may include, without limitation, site plans, floor plans, drainage plans, elevations, color and/or material samples, and such other plans and/or samples reasonably required by the Architectural Committee.

(b) The address of the Architectural Committee shall be the address established for giving notice to the Association. Such address shall be the place for the submittal of plans and specifications and the place where the Design Guidelines shall be kept.

(c) The establishment of the Architectural Committee and the systems herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter or modify or otherwise have control over the Lots as may otherwise be specified in this Declaration, in the Bylaws or in any Association Rules.

(d) In the event the Architectural Committee fails to approve or disapprove such plans and specifications within sixty (60) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by the Architectural Committee, such plans and specifications will be deemed approved.

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0024 OF 0080  
INST#: 2001 3372

Section 5.4 - Approval and Conformity of Plans and Improvements.

(a) No building, fence, wall, structure, landscaping improvements (including such landscaping improvements that consist of predominantly hardscape material(s) (including but not limited to cement, rock and gravel)), shall be commenced, erected, maintained upon, or removed from the Covered Property, nor shall there be any addition to, alteration, modification, or change in the exterior of any Lot, building, fence, wall, structure, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and solar and other energy saving devices, except in compliance with the Design Guidelines, this Declaration, the Association Rules, and the plans and specifications (showing the nature, kind, shape, height, width, color, materials and location) which have been submitted to and approved by the Architectural Committee as to their structural integrity and harmony of external design and location in relation to surrounding structures and topography.

(b) Each Owner, by acceptance of a deed to his or her Lot recognizes that the unique characteristics of such Lot, including its size, location, configuration, grade, soil composition and geologic setting, as well as governmental and private regulations, limit what modifications and/or additions, if any, such Owner can make to such Lot. As such, each Owner understands that any physical modification and/or addition to any Lot or the improvements thereon after acquisition thereof by such Owner (collectively, "**Future Work**"), including, without limitation, the construction of any dwelling, installation of infrastructure improvements, and/or installation or modification of swimming pools, concrete flat work, walls (including, without limitation, retaining walls), fencing, landscaping and the like, and any structural foundations related thereto (collectively, "**Future Improvements**"), will require specific and additional design and engineering considerations to accommodate the unique characteristics and limitations of such Lot and neighboring Lots and Common Areas. Each Owner, by accepting a deed to his or her Lot recognizes and agrees that there is no guarantee that such Owner will be able to construct any particular improvement on such Lot. It is therefore required that the following actions and/or conditions be undertaken and/or satisfied by each Owner to assure that any Future Work is planned and performed to the highest possible design, engineering, and construction standards:

(i) Before performing any Future Work, the Owner is required to consult with appropriate, qualified, experienced, and financially sound civil, structural, geotechnical and/or soils engineers, architects, landscape architects, and/or other consultants (collectively, the "**Design Professionals**") to prepare all plans, specifications and guidelines to be implemented in performing the Future Work. All Design Professionals must be licensed and in good standing with their respective licensing bodies, and must maintain adequate commercial general liability, errors and omissions, automotive, and workers' compensation insurance. Each Owner is strongly advised, prior to retaining any Design Professional, to have an attorney review any written contract(s) for the proposed services to assure that (i) such Owner's rights are protected, (ii) the Design Professional provides adequate and appropriate warranties and indemnification for defects in design of Future Improvements and/or failure to properly perform the tasks and/or duties for which such Design Professional was hired, and (iii) such contract is consistent with the requirements of this Article.

33909842796v9

-18-





RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0025 OF 0080  
INST#: 2001 3372

(ii) In all events, and prior to any plan preparation, appropriate review of all soils, building sites, geological conditions, retaining wall drainage patterns and the like must be performed by the appropriate Design Professionals to assure that any and all planned Future Improvements can, in fact, be safely and adequately constructed on or about the Owner's Lot in light of the physical constraints presented by such Lot. If any Design Professional determines that any Future Work, no matter how designed, can not appropriately be constructed on or upon a particular Lot, such Future Improvement shall not be constructed.

(iii) The recommendations of an Owner's Design Professionals shall be included with all plans and specifications submitted by such Owner to the Architectural Committee. The Architectural Committee shall have the right to base any decision to approve or disapprove any Future Work on (i) the recommendations and/or information supplied by such Design Professionals, and/or (ii) any Owner's failure to retain adequate Design Professionals as required hereby. The Architectural Committee shall also have the right, without obligation of any kind, to consult with its own panel of Design Professionals to determine whether or not the recommendations and/or findings of the Owner's Design Professionals are satisfactory. The Architectural Committee does not assume any liability or responsibility for any improvements, including, without limitation, any Future Improvements, constructed by any Owner.

(iv) With respect to landscape improvements and/or any other Future Improvements which will introduce, or redirect the flow of, water into, on, or about the Property, each Owner is also obligated to provide a drainage and watering plan and impact study prepared by appropriate Design Professionals indicating, in the opinion of such Design Professionals, the impacts such landscape improvements will have on such Owner's Lot and neighboring properties, and the mitigation measures necessary or appropriate to avoid over-saturation of the Lot, and to avoid excessive run off or seepage which could deteriorate or harm the Improvements, soils, or landscaping on neighboring properties.

(v) Any Future Work involving construction of a concrete slab or foundation must take into account, in addition to and not in limitation of any other recommendation of an Owner's Design Professionals, moisture-protection measures and possible adverse reaction to sulfate content in any soil, if applicable.

(vi) Upon approval by the Architectural Committee of any proposed Future Work, all such Future Work shall be undertaken by experienced contractors and subcontractors who are licensed in the State of California and in good standing with their respective licensing bodies, and who maintain broad-form commercial general liability (including completed products liability), errors and omissions, automotive, and workers' compensation insurance. Such approval by the Architectural Committee shall not constitute an endorsement or assumption of any responsibility or liability regarding such contractors or subcontractors or any work performed thereby. All Future Work must be performed in compliance with all applicable laws and regulations, including, without limitation, applicable building codes and zoning laws.

(vii) Any Future Work requiring excavation or modification of soils must be monitored by appropriate Design Professionals to (i) identify field conditions that differ

RECORDED: 03/06/2001 FILE TIME: 12:00  
 CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0026 OF 0080  
 INST#: 2001 3372

from those anticipated by such Design Professionals' preliminary investigation, and (ii) to determine that any such Future Work is otherwise performed in accordance with such Design Professionals' recommendations. Owners should recognize that such observation/monitoring requirements may be required by such Owner's Design Professionals as a condition to such Design Professionals' warranty and indemnity obligations to such Owner. Declarant shall not be responsible for an Owner's failure to require its Design Professionals to monitor such Future Work. Owners are strongly advised, prior to retaining any contractor, to have an attorney review any written contract for the proposed services to assure that (a) such Owner's rights are protected, (b) the contractor provides adequate and appropriate warranties and indemnification for defects in construction of Future Improvements; and (c) such contract is consistent with the requirements of this Article V.

(viii) In the event that there is any substantial delay between the date the Architectural Committee approves any proposed Future Work and the commencement of such Future Work, or, irrespective of any such delay, if any physical conditions of the Property or neighboring properties have sufficiently changed between the date the Architectural Committee approves any proposed Future Work and the commencement of such Future Work, the Owner desiring to perform such Future Work is required to have its Design Professionals review, assess, and update their previous analysis, reports and plans to assure that same remain valid and appropriate, and such Owner shall submit same to the Architectural Committee for its review. The Architectural Committee may thereafter disapprove such Future Work based on changes presented by such updated materials.

(ix) In performing any Future Work and/or constructing or installing any Future Improvement each Owner agrees to release, indemnify, defend (with counsel reasonably acceptable to the indemnified party), and hold harmless Declarant and the Architectural Committee from and against claims, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) arising out of, caused by, or related to such Future Work and/or Future Improvements.

Section 5.5 - Non-liability for Approval of Plans. Each Owner shall be solely responsible for any violation of this Declaration, the Design Guidelines, or any applicable instrument, law or regulation, caused by any Future Work or Future Improvement made by such Owner, even though same is approved by the Architectural Committee. Plans and specifications shall be approved by the Architectural Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, this Declaration, easements, deed restrictions and other rights and obligations affecting the Covered Property, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Members, the Board, nor Declarant, assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. The Architectural Committee shall have the right to require, as a condition of approval, that an Owner provide separate, express indemnification on terms and conditions satisfactory to the Architectural Committee. Notwithstanding any other provision herein, under no circumstances shall the approval by the Architectural Committee of any modification or improvement on any one occasion, or for the

33909/842796v9

-20-

RECORDED: 03/06/2001 FILE TIME: 12:00  
 CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0027 OF 0080  
 INST#: 2001 3372

benefit of any particular Owner, constitute or be deemed to constitute approval of any other modification or improvement on any other occasion or for any other Owner.

Section 5.6 - Appeal. In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request must be received by the Board not more than fifteen (15) days following the final decision of the Architectural Committee. The Board shall submit such request to the Architectural Committee for review, whose written recommendations will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant; provided, however, the submitted plans and specifications shall remain subject to the Design Guidelines.

Section 5.7 - Inspection and Recording of Approval. Any member of the Architectural Committee or any Director, officer, employee or agent of the Association may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after notice to the Owner in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with plans and specifications approved by the Architectural Committee and in accordance with the Design Guidelines. The Architectural Committee shall cause such an inspection to be undertaken within forty-five (45) days of a request therefor from any Owner as to his Lot, and if such inspection reveals that the improvements located on such Lot have been completed in compliance with this Article, the President and the Secretary of the Association shall provide to such Owner a notice of such approval in recordable form, which, when recorded, shall be conclusive evidence of compliance with the provisions of this Article as to the improvements described in such recorded notice, but as to such improvements only. In the event that the inspection reveals that the improvements or landscaping were not completed in accordance with the approved plans, the Owner shall promptly modify or replace any such improperly constructed or installed improvements or landscaping and thereafter notify the Architectural Committee upon completion of same (which modified improvements or landscaping shall thereafter be subject to inspection in accordance with this Section).

Section 5.8 - Applicability of Article to Common Areas. The provisions of this Article shall also apply to any addition to or change in any Common Areas after such Common Areas have been originally constructed.

Section 5.9 - Consultants to Board and Architectural Committee. Notwithstanding any other provision herein, the Board and the Architectural Committee shall maintain relationships with a panel of geological, geotechnical, architectural, landscaping and legal consultants with whom the Board and Architectural Committee shall consult, as necessary or appropriate, to determine the physical appropriateness of any proposed Future Work, and the likely impacts of such Future Work on other portions of the Covered Property; provided, however, the ultimate decision making authority shall lie with the Board and the Architectural Committee as set forth in this Article V.

33909/842796v9

-21-

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0028 OF 0080  
INST#: 2001 3372

Section 5.10 - Substitution of CSD for the Architectural Committee. At any time, the members of the Architectural Committee may elect to assign the responsibilities of the Architectural Committee to the CSD. No such assignment shall be valid unless and until the CSD accepts the assignment by appropriately adopted resolution. Upon acceptance of such assignment, the CSD shall thereafter discharge all duties of the Architectural Committee as set forth herein. The CSD may in turn assign its responsibilities to a committee of its own determination. A decision of the CSD shall thereafter be final.

## ARTICLE VI

### DUTIES AND POWERS OF THE ASSOCIATION

Section 6.1 - General Duties and Powers. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article.

Section 6.2 - General Duties of the Association. The Association through the Board shall have the duty and obligation to:

- (a) enforce the provisions of this Declaration, the Articles, Bylaws and Association Rules, by appropriate means and carry out the obligations of the Association hereunder;
- (b) maintain in good and attractive condition and repair, and otherwise manage the following:
  - (i) all easements and real property and all facilities, improvements and landscaping thereon in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association;
  - (ii) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and
  - (iii) all property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration, including, without limitation, the Article of this Declaration entitled "Repair and Maintenance";
- (c) pay any real and personal property taxes and other charges assessed to or payable by the Association;
- (d) obtain, for the benefit of the Common Areas, water, gas and electric, refuse collections and other services;
- (e) make available the books, records and financial statements of the Association for inspection by Owners and First Mortgagees during normal business hours;

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNT - CLERK-RECORDER

PAGE #: 0029 OF 0080  
INST#: 2001 3372

(f) undertake well-informed decisions based on fair and objective information, and engage in actions which achieve objectives without unnecessary controversy and/or disruption to the Covered Property; and

(g) avoid litigation and/or adversarial proceedings and, prior to engaging in any adversarial proceedings in accordance with this Declaration, submit same to good faith, confidential mediation.

Section 6.3 - General Powers of the Association. The Association through the Board shall have the power but not the obligation to:

(a) employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall have (i) a term of not more than one (1) year with successive one (1) year renewal periods upon mutual agreement of the parties, and (ii) shall provide for the right to terminate without cause, and without payment of a penalty, upon no more than ninety (90) days notice;

(b) acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Covered Property, the administration of the affairs of the Association or for the benefit or enjoyment of the Members;

(c) borrow money in a total amount not to exceed ten percent (10%) of the then existing estimated annual Common Expenses, as may be needed in connection with the discharge by the Association of its powers and duties;

(d) establish in cooperation with the County a District for the performance of all or a portion of the maintenance or other functions now within the responsibility of the Association;

(e) convey all or a portion of the Common Areas to a District;

(f) establish and maintain a working capital and contingency fund in an amount to be determined by the Board. Such contribution shall be a Common Expense and shall be used by the Board as it deems fit to carry out the objectives and purposes of the Association; and

(g) negotiate and enter into contracts with Institutional Mortgagees and mortgage insurers and guarantors as may be necessary or desirable to facilitate the availability of loans secured by Mortgages within the Covered Property.

Section 6.4 - General Limitations and Restrictions on the Powers of the Board. In addition to the limitations and restrictions enumerated in the Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Board shall be prohibited from taking any of the following actions without the approval of a majority of the voting power of the Association and a majority of the votes of Members other than the Declarant:

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0030 OF 0080  
INST#: 2001 3372

(a) enter into contracts for materials or services for the Common Areas which have a term in excess of one (1) year, with the following exceptions:

(i) contracts with public utility companies if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contracts shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(ii) prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the applicable policy permits short rate cancellation by the insured;

(iii) management contracts which provide that the Association may terminate the contract without cause, and without payment of a penalty, upon no more than ninety (90) days notice;

(iv) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more; and

(v) agreements for cable television services and equipment or satellite television services and equipment of not to exceed five (5) years duration, provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(b) sell any real or personal property of the Association with an aggregate fair market value in excess of five percent (5%) of said estimated Common Expenses during any accounting year;

(c) pay compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association;

(d) incur aggregate indebtedness in excess of five percent (5%) of the then existing estimated annual Common Expenses;

(e) fill any vacancy on the Board created by the removal of a member of the Board; and

(f) undertake any litigation and/or adversarial proceedings affecting the Covered Property except as provided herein.

Section 6.5 - Association Rules. The Board shall also have the exclusive power to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules") which may include the establishment of a system of fines and penalties enforceable as

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-REC'D JFR

PAGE #: 0031 OF 0080  
INST#: 2001 3372

Remedial Assessments, all as provided in the Bylaws. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Institutional Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, or the Articles and Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such conflict.

Section 6.6 - Delegation of Powers. The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles and Bylaws; provided, however, no such delegation to a professional management company, the Architectural Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

Section 6.7 - Pledge of Assessment Rights. The Association shall have the power to pledge the right to exercise its Assessment powers in connection with obtaining funds to repay a debt of the Association; provided, however, any such pledge shall require the prior affirmative vote or written assent of not less than sixty-six and two-thirds percent (66-2/3%) of the voting power present in person or by proxy at a duly and validly held meeting of the Members or by written consent as set forth in the Bylaws. Said power shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to or which will become payable to the Association; which assignment may be then presently effective but shall allow said Assessments to continue to be paid to and used by the Association as set forth in this Declaration, unless and until the Association shall default on the repayment of the debt which is secured by said assignment. The Association may levy Special Assessments against the Members to obtain such funds. Upon the failure of any Member to pay said Special Assessment when due, the Association may exercise all its rights, including, without limitation, the right to foreclose its lien, pursuant to the Article hereof entitled "Nonpayment of Assessments." Without limiting the generality of the foregoing, any pledge of Assessment rights in excess of an amount equal to twenty-five percent (25%) of the total Regular Assessments collected by the Association in the then preceding accounting year, shall require the prior written approval of seventy-five percent (75%) of the Institutional Mortgagees based on one (1) vote for each First Mortgage held.

Section 6.8 - Emergency Powers. The Association or any person authorized by the Association may enter any Lot or Common Area in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0032 OF 0080  
INST#: 2001 3372

inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association, at its expense, unless covered by insurance carried by the Owner.

## ARTICLE VII

### REPAIR AND MAINTENANCE

Section 7.1 - Repair and Maintenance by Association. Except to the extent that an Owner or any other party may be obligated to maintain and repair as hereinafter provided, and without limiting the generality of the statement of duties and powers contained in this Declaration, the Articles, Bylaws or Association Rules, the Association shall have the duty to accomplish the following upon the Covered Property or other land in such manner and at such times as the Board shall prescribe:

(a) maintain, repair, restore, replace and make necessary improvements to the Common Areas and the Association Maintenance Areas, including, without limitation, all landscaping and related improvements (e.g., sprinklers and irrigation lines) on the individual Lots of each Owner which shall be maintained in good, attractive, healthy and thriving condition and repair, free of weeds, trash and/or debris;

(b) maintain, repair, restore, replace and make necessary improvements to any District Areas located within the Covered Property (or improvements located on such District Areas) to the extent such actions are (1) necessary, and (2) outside the scope of the maintenance obligations of a District (or arise due to such District's failure to perform its obligations);

(c) maintain all other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of a majority of the voting power of the Members; and

(d) provide for a method of continual maintenance of the open space and/or recreation lots and an adequate lighting system along all walkways to be constructed within the Covered Property, to the extent such maintenance obligations are both (1) necessary, and (2) outside the scope of a District (or arise due to such District's failure to perform its obligations).

The costs of any such maintenance and repair pursuant to this Section shall be paid out of the general funds of the Association, except as otherwise herein specified as payable by the particular Owners.

Section 7.2 - Repair and Maintenance by Owner. Subject to any arrangement for maintenance, replacement, or repair of any improvements and/or landscaping to be performed by, or under the direction of, any third party, including, without limitation, any professional property management company as part of the Rental Pool Program, and except to the extent that the Association or any District shall be obligated to maintain and repair as may be provided in this Declaration, every Owner shall be responsible for the following maintenance and repair:



RECORDED: 03/06/2001 LE TIME: 12:00  
CALAVERAS COUNTY, KARL. VARNI - CLERK-RECORDER

PAGE #: 0033 OF 0080  
INST#: 2001 3372

(a) every Owner shall maintain, in good and attractive condition and repair, and consistent with applicable local ordinances, those portions of the exterior of his Lot which are visible from the street on which said Lot fronts, including without limitation, the walls, fences and roof of such Lot (except those portions of such Lot which constitute Association Maintenance Areas);

(b) every Owner shall maintain, in good and attractive condition, those portions of the Exclusive Use Common Area, including, without limitation, any improvements constructed or existing thereon, as have been or may be conveyed to Owner by Declarant (except those portions of such Exclusive Use Common Area which constitute Association Maintenance Areas);

(c) in the event the Board shall determine that any Lot perimeter walls, roofs, or fences have been damaged from within a Lot, the Owner of the Lot shall be responsible for repairing such damage in a timely manner and in accordance with such rules as the Board or the Architectural Committee shall from time to time adopt. In the event such repair is not so accomplished by the Owner, the Association or its delegates shall have the right at reasonable times to enter the Lot to effect such repair and the cost thereof shall be charged to the Owner of the Lot and, if not paid in a timely manner, shall be a Reimbursement Assessment and enforceable in accordance with the provisions of this Declaration applicable thereto; and

(d) every Owner shall maintain furnishings, in a manner and quality reasonably acceptable to the Board and otherwise in accordance with any furnishing requirements established as part of the Association Rules, in all living space in any residence on such Owner's Lot, so as to be utilizable by any Program Guest occupying such residence under the Rental Pool Program.

Section 7.3 - Right of Association to Maintain and Install. In the event that any Owner fails to accomplish any maintenance, repair or installation required by this Section or pay his or her share of expenses incurred in the accomplishment of the same, the Association or its delegates may, but shall not be obligated to, cause such maintenance, repair and installation to be accomplished or such payment to be made to the appropriate parties (said maintenance, repair, installation or lack of payment shall be referred to in this Article as a "deficiency") as hereinafter set forth.

(a) Upon finding by the Board of a deficiency, the Board shall give notice of the deficiency to the violating Owner which shall briefly describe the deficiency and set a date for the cure thereof. If the violating Owner submits a written request to the Board for a hearing within fifteen (15) days after the mailing of such deficiency notice, the Board shall set a date for such hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its powers under this subsection to a duly appointed committee of the Association.

(b) Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said request for hearing.

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0034 OF 0080  
INST#: 2001 3372

(c) Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine any person offering at such hearing evidence adverse to such Owner. If the Board or any such committee renders a decision against the Owner, it may set another date by which the deficiency is to be corrected by the Owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.

(d) If the deficiency continues to exist after the time limitation set forth in the deficiency notice or, in the event a hearing is held, the date imposed by a final decision of the Board or any such committee, the Board or such committee may cause such maintenance, repair or installation to be accomplished or such payment to be made.

(e) In the event the Board or such committee elects to cause such maintenance, repair or installation to be accomplished, it shall give written notice of such election to the violating Owner and the following shall apply:

(i) the Owner shall have no more than ten (10) days following the receipt thereby of said written notice of election in which to select a day or days upon which such maintenance, repair or installation work shall be accomplished;

(ii) the date which said Owner selects shall be not less than ten (10) days nor more than thirty (30) days following the last day of the ten (10) day period specified in such notice of election;

(iii) if said Owner does not select such day or days within the ten (10) day period specified in such notice of election, the Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of the ten (10) day period specified in such notice of election; and

(iv) unless the Owner and/or the Board otherwise agree, such maintenance or installation shall take place only during daylight hours on any Business Day.

(f) If the Association pays for all or any portion of correcting such deficiency or if an Owner has not paid his or her share of the maintenance and repair expenses as set forth in Section 7.2 and Section 7.3 of this Article regardless of whether the Association has reimbursed the appropriate parties pursuant to this Section, such amount shall be a Reimbursement Assessment to the violating Owner and his or her Lot.

Section 7.4 - Standards for Maintenance and Installation.

(a) Maintenance of the exterior of the Lots, including without limitation walls, fences and roofs, shall be accomplished in accordance with the Design Guidelines and, if required by the Design Guidelines, only after approval of the Architectural Committee.

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0035 OF 0080  
INST#: 2001 3372

(b) All portions of the yard of a Lot which are unimproved and visible from the street on which said Lot fronts shall be landscaped in conformance with customary landscaping material(s), primarily living plants, lawn (sod), trees and shrubs.

Section 7.5 - Right of Entry. The Association shall have the right to enter upon any Lot in connection with any exterior maintenance, repair or construction in the exercise of the powers and duties of the Association, including, without limitation, to maintain, repair or replace any landscaping on any Lot. Any damage caused by such entry shall be repaired by the Association to the extent that the damage is unreasonable under the circumstances to carry out the Association's rights and obligations.

Section 7.6 - Maintenance of Public Utility Facilities. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the facilities of public utilities which are located within easements in the Common Areas owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

Section 7.7 - Assumption of Maintenance Obligations. Declarant and its contractors, subcontractors, agents and employees shall have the right to enter upon the Common Areas to complete the construction of any landscaping or other improvement to be installed on the Common Areas as provided in this Declaration. If any excess of Assessments collected over actual Common Expenses incurred by the Association is caused by reason of construction or maintenance pursuant to this Section, or otherwise, such excess shall be placed in reserve to offset the future expenses of the Association in any manner designated by the Board.

Section 7.8 - Special Maintenance Areas. Certain portions of the Common Areas may be conveyed to and/or maintained by a District which shall assume responsibility for the maintenance and repair of such Common Areas. In the event Common Areas are to be maintained by a District, (a) no improvement, excavation or work which in any way alters any portion of any Common Area shall take place, except (i) in compliance with all laws and regulations, and (ii) upon the prior approval of the District, and (b) such District Areas shall be held, maintained and used to meet the recreational interests of Owners or to enhance their enjoyment of the natural environment of the District Areas and for no other purpose. If for any reason, any District Area ceases to be maintained by the District, the Association shall immediately undertake maintenance and repair of such District Area in accordance with this Article.

## ARTICLE VIII

### INSURANCE

Section 8.1 - Types. The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance with such deductible provisions as may be appropriate so long as such amounts or type of insurance coverage are not,

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0036 OF 0080  
INST#: 2001 3372

in the good faith judgment of the Board, prohibitively expensive or no longer necessary or appropriate for the protection of the Covered Property, the Association and the Members:

(a) a comprehensive policy of general liability insurance covering the Common Areas with a limit of not less than Two Million Dollars (\$2,000,000) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile and liability for property of others, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Covered Property, and shall contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners;

(b) a policy of fire and casualty insurance (all-risk) with extended coverage for the full replacement value of the Common Areas (including all building service equipment and the like), without deduction for depreciation, with an "agreed amount endorsement" or its equivalent and clauses waiving subrogation against Members and the Association and persons upon the Covered Property with the permission of a Member, such insurance to afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Covered Property;

(c) fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible to handle the funds of the Association, and such fidelity bonds shall name the Association as obligee, shall be written in an amount equal to twenty-five percent (25%) of the estimated annual operating expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of "employee" or similar expression; and

(d) directors and officers liability coverage with a limit not less than One Million Dollars (\$1,000,000), for individual liability of officers and directors of the Association for negligent acts or omissions in that capacity.

Section 8.2 - Waiver by Members. All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association, the Owners and the Mortgagees as their interests may appear. As to each of said policies which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, other Owners, the Developer Parties, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

Section 8.3 - Other Insurance. The Board may and, if required by any Institutional Mortgagee, shall purchase and maintain in force demolition insurance in adequate

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0037 OF 0080  
INST#: 2001 3372

amounts to cover demolition in the event of total or partial destruction and a decision not to rebuild, as well as a blanket policy of flood insurance. The Board shall also purchase and maintain workers' compensation insurance, to the extent that the same shall be required by law, for all employees of the Association. The Board shall also purchase and maintain in effect such insurance on personal property owned by the Association, and such other insurance, as it deems necessary or as is required by an Institutional Mortgagee including, without limitation, earthquake insurance, plate-glass insurance, and errors and omissions insurance.

Section 8.4 - Premiums, Proceeds and Settlement. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Casualty insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in the Article hereof entitled "Destruction of Improvements." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Members.

Section 8.5 - Annual Insurance Review. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Covered Property in light of increased construction costs, inflation, practice in the area in which the Covered Property is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association, or otherwise required to comply with then applicable laws, rules, or regulations. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 8.6 - Abandonment of Replacement Cost Insurance. Unless at least seventy-five percent (75%) of the Institutional Mortgagees, based on one (1) vote for each First Mortgage held, have given their prior written approval, the Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent (100%) current replacement cost basis.

Section 8.7 - Notice of Expiration Requirements. If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without ten (10) days prior written notice to the Board and Declarant, and to each owner and mortgagee, insurer and guarantor of a First Mortgage who has filed a written request with the carrier for such notice and every other person in interest who requests such notice of the insurer. In addition, fidelity bonds shall provide that they may not be canceled or substantially modified without ten (10) days prior written notice to the Association and to each FNMA servicer who has filed a written request with the carrier for such notice.

Section 8.8 - Federal Requirements. Notwithstanding the foregoing provisions of this Article, the Association shall continuously maintain in effect such casualty, flood and

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0038 OF 0080  
INST#: 2001 3372

liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by any of the Federal Agencies, so long as any Federal Agency is a Mortgagee, Owner, or insures or guarantees a Mortgage within the Covered Property, except to the extent such coverage is not available or has been waived in writing by the foregoing entities.

## ARTICLE IX

### DESTRUCTION OF IMPROVEMENTS

Section 9.1 - Duty of Association. In the event of partial or total destruction of improvements upon the Common Areas, it shall be the duty of the Association to restore and repair same as promptly as practical pursuant to this Article. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

Section 9.2 - Automatic Reconstruction. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be at least eighty-five percent (85%) of the estimated cost of restoration and repair, a Reconstruction Assessment, with each Owner contributing a like sum, may be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose, and the Board shall cause the damaged or destroyed Common Areas to be restored as closely as practical to its condition prior to the destruction or damage.

Section 9.3 - Vote of Members. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than eighty-five percent (85%) of the estimated cost of restoration and repair, the improvements shall be replaced or restored unless twenty-five percent (25%) of the voting power of the Association objects in writing to such replacement or restoration or votes against the same at a meeting duly called therefor. Such written objections or vote must include at least twenty-five percent (25%) of the Class A Members. If the Members do not disapprove such replacement or restoration, the Board shall levy a Reconstruction Assessment, with each Owner contributing a like sum, in order to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose, and the Board shall cause the damaged or destroyed Common Areas to be restored as closely as practical to its former condition prior to the destruction or damage. In the event of a determination, as provided above, not to replace or restore the improvements on the Common Areas, the Common Areas shall be cleared and landscaped for community park use and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by Reconstruction Assessments in an amount determined by the Board.

Section 9.4 - Excess Insurance Proceeds. In the event any excess insurance proceeds remain, after any reconstruction by the Association pursuant to this Article, the Board, in its sole discretion, shall distribute such sums pro-rata equally to the Owners subject to the

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0039 OF 0080  
INST#: 2001 3372

prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Association. In the absence of such prior rights, the rights of an Owner and the Mortgagee of his Lot as to such pro-rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

Section 9.5 - Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Article and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members. Any excess amounts which are so collected shall be treated in the same manner as set forth in Section 9.4 above.

Section 9.6 - Reconstruction of Condominiums and Similar Structures. In the event of the total or partial destruction of adjoining Condominiums (or similar structures wherein more than one (1) Owner resides in an adjoined dwelling structure), the reconstruction thereof shall be carried out in accordance with the provisions of Section 7.2(d) of the Article hereof entitled "Repair and Maintenance."

## ARTICLE X

### EMINENT DOMAIN

Section 10.1 - Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

Section 10.2 - Representation by Board in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Common Areas, the Members hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

Section 10.3 - Inverse Condemnation. The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

Section 10.4 - Award for Common Areas. Any awards received on account of the taking of Common Areas shall be paid to the Association. The Board may in its sole discretion retain any award in the general funds of the Association or distribute pro-rata all or a portion thereof to the Members. The rights of an Owner and the Mortgagee of his Lot as to any pro-rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0040 OF 0080  
INST#: 2001 3372

ARTICLE XI

USE RESTRICTIONS

In addition to the limitations, restrictions and standards imposed upon the use of the Covered Property by the Development Agreement and the Specific Plan, the Covered Property shall be held, used and enjoyed subject to the following additional limitations and restrictions, subject to the exemption of Declarant set forth herein. If there is a conflict between the terms of the Development Agreement or the Specific Plan and the limitations and restrictions set forth herein, the more restrictive condition, limitation or restriction shall control. The application of the following limitations and restrictions shall be interpreted by the Board. The Board may waive in whole or in part any of such limitations and restrictions if the strict application thereof could be unreasonably or unduly harsh under the circumstances. Any such interpretation or waiver shall be in writing or shall be contained in written guidelines or rules promulgated from time to time by the Board.

Section 11.1 - Residential Use Only. No Lot, or any portion thereof, shall be developed or used except in conformance with the Development Agreement, the Specific Plan, this Declaration, and the Association Rules, each as may be amended from time to time. Specifically, but without limiting the foregoing, each of the Lots shall be used for single-family residential purposes only, and no building or buildings shall be erected, constructed altered or maintained on any Lot other than one (1) detached single-family dwelling. Notwithstanding the foregoing, the renting of any Lot, and the use thereof by any Program Guest under the Rental Pool Program shall not be deemed a violation of the foregoing provisions of this Section.

Section 11.2 - Trades or Businesses. Except for the inclusion of each Lot in the Rental Pool Program, the conducting of any trade or business is prohibited, except those trades or businesses that are permitted by and comply with zoning and other laws or ordinances which do not: (i) change the overall residential use of the Lot; (ii) involve in-person calls by customers, employees, or deliverymen except on an infrequent basis; (iii) require signs or other promotional advertisements; (iv) require the storage of large amounts of bulky goods or inventory; or (v) require parking on roads and drives. Subject to state law, no daycare facilities, community care facilities, or health care facilities operating a business or charity of any kind shall be permitted.

Section 11.3 - Use of Name. Use of the name "Saddle Creek," except as necessary for a postal address, and use of pictures of the Covered Property in advertising or publicity, except for the use of pictures of improvements by the Owner of such improvements, without the written consent of Declarant or the Board is prohibited.

Section 11.4 - Construction and Completion of Dwellings. The construction of all improvements shall be prosecuted diligently and completed within a reasonable time. The exterior finish, including finish painting of any dwelling, shall be in any event completed within one (1) year after the commencement of construction. No dwelling shall be occupied prior to its completion, as evidenced by the issuance of a certificate of occupancy by the County. No machinery, building materials or articles of similar nature shall be allowed to remain on any Lot exposed to view from any other Lot, the CSD Areas, or the Golf Course except during authorized



RECORDED: 03/06/2001 FILE TIME: 12:00  
 CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0041 OF 0080  
 INST#: 2001 3372

construction. All Owners, and their respective contractors, are to maintain their construction sites in a neat and orderly fashion, and shall clean up and remove all debris. The Owner and general contractor shall be responsible for maintenance of such neatness and removal of debris by subcontractors employed on the construction site and shall be responsible to clean the street, curb and gutter in front of their construction site when they have completed construction. Any damage caused by the construction, including but not limited to damage to utility lines, the street, curbs or gutters shall be repaired by the applicable Owner and/or general contractor.

**Section 11.5 - Structural Interference.** No improvement shall be constructed, erected, altered, placed, or permitted to remain on any Lot in such location or manner which exceeds the height limit allowed by applicable local ordinances and this Declaration or which does not conform with the building envelope for the Lot or the building setback distance requirements as specified by the Map, applicable local ordinances, and/or the Specific Plan. Unless approved by the Architectural Committee, as described in Article V above, no projection of any type shall be placed or permitted to remain above the roof of any residential building, with the exception of one or more chimneys, one or more vent stacks, one or more dormers, one or more widow walks, or other architectural features which are in compliance with the Design Guidelines. All solar collection devices shall be integrated aesthetically and screened as much as possible from adjacent portions of the Covered Property. Subject to the provisions of California Civil Code Section 1376 and applicable Federal regulations, no television, radio or similar towers, poles or antenna or other external radio, television, or microwave equipment, satellite dish or other electronic device shall be constructed, erected, or maintained on any building or on any Lot, unless such device is (1) not visible from any adjoining Lot, the CSD Areas, or the Golf Course and (2) approved by the Architectural Committee.

**Section 11.6 - Structure Repair.** All Lots and improvements within the Covered Property and each portion thereof shall at all times be maintained in good condition and repair and well and properly painted or otherwise finished.

**Section 11.7 - Signs.** Except for signs installed by Declarant or approved by the Architectural Committee, or except as otherwise provided below, no sign shall be erected, posted, hung, pasted, painted or displayed upon any Lot or upon any building or other structure thereon. Notwithstanding the foregoing, an Owner or his or her agent shall be permitted to display or have displayed on such Owner's Lot, or on property owned by others with their consent, or both, signs which advertise the Lot for sale or exchange, or advertise directions to the Lot, provided that such signs are reasonably located, in plain view of the public, are of reasonable dimensions and design, do not adversely affect public safety, including traffic safety, and are in conformity with applicable local ordinances. Notwithstanding the foregoing, in the event the Architectural Committee establishes standards for the creation and posting of "for sale" signs within the Covered Property, all signs shall conform with such standards.

**Section 11.8 - Nonstandard Vehicles: Mobile Homes.** No mobile homes, motor homes, campers, boats, trailers, or commercial trucks or vans, other than a standard size or smaller pick-up truck or van, shall be kept or stored on any street or on any Lot for any continuous periods longer than forty-eight (48) hours except: (i) where required temporarily for

33909/842796v9

-35-

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0042 OF 0080  
INST#: 2001 3372

the construction, repair, refinishing, or maintenance of any part of the Covered Property; and/or (ii) for moving furnishings, equipment, or supplies into or out of the Covered Property.

Section 11.9 - Equipment Repair: Power Equipment. No automobile, truck, boat or other equipment may be dismantled, repaired or serviced on any Lot in any area visible from adjoining property or public street. No power equipment, work shops or vehicle maintenance of any nature (other than emergency repairs within an Owner's enclosed garage) shall be permitted on any Lot without the prior written approval of the Architectural Committee. In deciding whether to grant approval, the Architectural Committee shall consider the effects of noise, air pollution, dirt or grease, fire hazard, inference with radio or television reception and similar objections.

Section 11.10 - Parking Areas. Parking Areas serving the Lots are included as areas within the private street serving the Lots. No parking area shall be used in any way which impairs or prevents its use for the parking of motor vehicles.

Section 11.11 - Drainage. No Owner shall do any act or construct any Improvement which would in any way interfere with the natural or established drainage systems or patterns over his Lot or other Lots. No Lot shall be regraded by any Owner in any manner which increases water runoff on any other Lot. For purposes hereof, "established drainage" is defined as the drainage which occurred at the time the overall grading of the Lots was originally completed. Any modifications to drainage must be based upon plans prepared by a licensed engineer, and approved by the County. Any Owner who changes the drainage of his Lot contrary to the terms of this Section shall be responsible for any damages which might result to his dwelling or to the property of any second party, including any other Owner.

Section 11.12 - Weeds and Debris. No weeds, rubbish, debris, objects, or materials of any kind shall be placed or permitted to accumulate upon any portion of any Lot which render such portion unsanitary, unsightly, offensive, or detrimental to any Lot in the vicinity thereof or to the occupants of any Lot in the vicinity. All garbage and trash shall be regularly removed from each Lot, and shall be placed and kept in covered sanitary containers where it is not visible from any neighboring Lot except for a reasonable time prior to or after collection. All woodpiles or storage piles shall be kept screened and concealed from view of other Lots, CSD Areas, and the Golf Course. No plants or seeds infected with noxious insects or plant diseases shall be brought upon, grown, or maintained upon any portion of any Lot.

Section 11.13 - Window Coverings. Windows shall be covered only by drapes, shades or shutters and shall not be painted or covered by foil, cardboard or similar materials. All window coverings visible from any Lot, the Golf Course, or any CSD Areas, shall be of a material, design and color which is consistent with the Design Guidelines.

Section 11.14 - Clotheslines; Appliances. No exterior clotheslines or other outside clothes drying or airing facility shall be erected or maintained on the Lots in any location where the same would be visible from any Lot, the Golf Course, or CSD Areas. No clothes washers, clothes dryers, refrigerators, or freezers may be kept, stored or operated on any balcony,

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0043 OF 0080  
INST#: 2001 3372

patio, porch or other exterior area, unless built into a structure and approved by the Architectural Committee.

**Section 11.15 - Animals.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot except that a reasonable number of common household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. All permitted animals, when not within a dwelling unit, shall be kept in a fenced yard or, except for cats, restrained by a leash. No pets may be kept on any Lot or within the Covered Property which result in an annoyance or nuisance to other Owners.

**Section 11.16 - Nuisance.** No noxious or offensive trade or activity shall be carried on upon any portion of the Covered Property, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or which may injure the reputation of the neighborhood or be unsafe or hazardous to any person or property. Nothing shall be kept or done on the Covered Property which would be a nuisance or in violation of any law, statute, regulation or ordinance. As examples, but without limiting the foregoing, no external speakers, bells or horns shall be permitted on any Lot other than usual and customary burglar alarm systems and no basketball playing shall be permitted between the hours of 8:00 p.m. and 9:00 a.m. Each Owner shall take appropriate steps to prevent the accidental tripping of any alarm system. Ordinary and usual techniques of construction of improvements permitted hereunder shall not be deemed a nuisance.

**Section 11.17 - Bars on Windows.** No windows in any dwelling or structure shall be covered with wrought iron or other metallic bars, whether decorative or installed for security purposes.

**Section 11.18 - Lighting.** The installation of any exterior lighting whose source is visible from neighboring Lots or the Golf Course, without the prior written approval of the Architectural Committee, is prohibited. This provision does not prohibit holiday lighting decorations temporarily installed for the holiday season. All holiday lighting displays shall be removed within two (2) weeks after the end of the holiday event.

**Section 11.19 - Hazardous Materials.** No Owner may store or keep any flammable, explosive, radioactive, toxic or hazardous materials, including, without limitation, oil, gasoline, pesticides, fertilizers, herbicides and other similar materials, or items that endanger the safety of improvements on his Lot, except as specifically authorized under federal, state, or local law for possession in a single-family residence for personal use.

**Section 11.20 - Fire Management.** Each Owner of any Lot, a portion of which is depicted on the Map as contained within a "Fire Management Zone," shall control the accumulation of grass and brush material and shall trim tree limbs and remove dead branches according to such requirements as may be determined by the Copperopolis Fire Protection District (the "**Fire District**") and/or the CSD. Each Lot in excess of one acre (gross) shall include "Defensible Space" areas around each structure which areas shall measure no less than thirty (30) feet in width on all sides, and within which fire-resistant landscaping shall be installed and maintained; provided, however, such Defensible Space shall not encroach within the

33909/842796v9

-37-

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0044 OF 0080  
INST#: 2001 3372

building envelope. The Fire District and the CSD shall have the right to monitor and enforce the foregoing requirements.

Section 11.21 - Mining. No portion of any Lot shall be used in any manner to explore for or remove any water, oil, gas, other hydrocarbons, minerals or other substances of any kind. Surface entry for mining, quarrying, drilling, boring, or exploring for or removing natural subsurface materials is prohibited.

Section 11.22 - Fires. Other than barbecues, in properly constructed barbecue pits or grills, or fireplaces, no fires shall be permitted on the Lots.

Section 11.23 - Bicycle Paths. Any bicycle paths shall be used only by pedestrians and persons riding bicycles. No motor vehicles or horses shall use such paths.

Section 11.24 - Shortwave or Other Electronic Interference. The operation of any shortwave or any other kind of electronic device within the Covered Property that in any way interferes with radio, television, or other electronic signal reception within the Covered Property is prohibited.

Section 11.25 - Temporary Structures. No shed, tent, or temporary building shall be erected, maintained, or used on any Lot; provided, however, temporary buildings for use and used only for purposes incidental to the initial construction of improvements on any Lot may be constructed and maintained provided that said temporary buildings shall be promptly removed upon the completion of such construction work. Nothing in this Section shall limit Declarant's right to use tents or other temporary structures in connection with the sale of Lots or promotion of the Covered Property.

Section 11.26 - Utility Lines. Except for high voltage electrical lines, temporary lines used during construction and pre-existing electrical lines installed prior to the date of this Declaration, all utility lines, including, but not limited to, electrical, gas, telephone, cable television, and other communication shall be underground, except for access ports and above-ground transformers.

Section 11.27 - Mailboxes. The mailboxes in the Covered Property shall be "cluster" type boxes of such size, type and location as shall conform to the Design Guidelines and the requirements of the United States Postal Service.

Section 11.28 - Yard Sales. The use of yards, Common Areas or any CSD Areas for yard, rummage, or similar sales is prohibited.

Section 11.29 - Parking. Unless otherwise permitted by the Board, no motor vehicles shall be parked or left on any portion of the Covered Property other than within a Lot's designated parking stall (as indicated on Exhibit "C" hereto). The Board may promulgate and enforce rules regarding parking within the Covered Property.

Section 11.30 - No Further Subdivision. No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0045 OF 0080  
INST#: 2001 3372

(excluding Declarant) without the prior written approval of the Board and appropriate governmental authorities. Nothing in this Section shall be deemed to prevent an Owner from, or require the approval from the Board for: (1) selling or leasing of entire Lots, including, without limitation, in connection with the implementation of the Rental Pool Program; (2) transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property; or (3) completing a lot line adjustment in accordance with Section 66412(d) of the California Government Code.

Section 11.31 - Noise. No power tools, speakers, horns, whistles, bells, drums, or other similar sound facility or equipment shall be used upon any Lot which is capable of producing any sound in excess of sixty-five (65) decibels measured at a point fifty (50) feet from (1) the outside of the dwelling from within which the sound emanates, or (2) the speaker or other equipment from which the sound emanates. No activity shall be undertaken or permitted upon any Lot which causes any sound, whether intermittent, recurrent, or continuous, in excess of forty-five (45) decibels measured at any point on the boundary line of the Lot. Decibel measurements shall be the average of at least three (3) and at most five (5) decibel readings by a qualified engineer. The foregoing provisions shall not prohibit the installation or use of alarm devices designed and used solely for security purposes or prohibit the construction work of any improvement.

Section 11.32 - Tree Removal. Any removal of trees within the Covered Property, including, without limitation, removal of mature oak trees or significant loss of blue oak savanna habitat, shall be subject to the guidelines of the Calaveras County Tree Removal Programs as same may exist and/or be modified from time to time.

Section 11.33 - Exceptions. The restrictions set forth in Article V and in this Article XI shall not and do not apply to any of the following:

- (a) any part of the Covered Property which is owned by any public body, including, but not limited to, a school district;
- (b) any act done or proposed to be done upon the Covered Property, or any condition created thereon, by any governmental agency or entity, or the agents or employees of any governmental entity acting in the scope of their authority as such agents or employees;
- (c) any act done or proposed to be done upon the Covered Property, or any condition created thereon, by any utility company (including, but not limited to, companies furnishing electric, gas, water, telephone, cable television and/or sewer service to all or parts of the Covered Property), or the agents or employees of any such company, which act could be done by such company were this Declaration not made;
- (d) any act done or proposed to be done upon the Covered Property, or any condition created thereon, by the Developer Parties, in connection with the marketing and sales by the Developer Parties of the Lots, or in the course of planning for, preparing the Covered Property for and/or construction upon the Covered Property or any Lot of streets, utilities, recreational and residential buildings, and all other original improvements, or in connection with

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0046 OF 0080  
INST#: 2001 3372

the exercise of any easement reserved to Declarant in the Article entitled "Easements" of this Declaration or in any conveyance document; or

(e) any act done or proposed to be done upon the Covered Property, or any condition created thereon, by any person pursuant to court order, or the order of any public officer or public agency; provided, however, that the orders contemplated in this subparagraph are only those which are the result of action initiated by public officers or agencies and which embody mandatory requirements with penalties for non-performance, and are not those orders which result from the application of private parties or are merely permissive.

## ARTICLE XII

### RIGHTS OF ENJOYMENT

Section 12.1 - Members' Right of Enjoyment. Every Member shall have a nonexclusive easement for use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the interest of every Lot, subject to all of the easements, covenants, conditions, restrictions and other provisions of record or contained in this Declaration, including, without limitation, the following provisions:

(a) the right of the Association to limit the number of guests of Members and to limit the use of the Common Areas by persons not in possession of a Lot, but owning a portion of the interest in a Lot required for Membership, including limits on the rights of any Owner to use the Common Areas during a period when such Owner has rented his or her Lot (whether under the Rental Pool Program or otherwise);

(b) the right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Areas;

(c) the right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas and in aid thereof, to mortgage said property, provided that the prior affirmative vote or written approval of a majority of each of the Class A and the Class B Members has been obtained to mortgage said property, and provided further that the rights of the lender thereunder shall be subordinated to the rights of the Members. In the event of a default upon any such mortgage of the Common Areas, the lender's rights thereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of the Common Areas to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;

(d) the rights of the Association to suspend the right of a Member to use the Common Areas or any portion thereof designated by the Board during any time in which any Assessment against his Lot remains unpaid and delinquent for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association; provided, that any

33909/842796v9

-40-

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0047 OF 0080  
INST#: 2001 3372

suspension of such right to use such Common Areas, except for failure to pay Assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws. Notwithstanding the foregoing, the Association shall not have the right hereunder to suspend any Member's right to use any portion of the Covered Property necessary for such Member to gain access to his Lot;

(e) the right of the Association subject to the approval rights of Institutional Mortgagees pursuant to the Article hereof entitled "Rights of Lenders," to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility or other entity. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Common Areas to a special tax assessment district or to the County, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the voting power of the membership has been recorded, agreeing to such dedication or transfer. The certificate of the President and the Secretary of the Association attached to such instrument certifying that the Members signing such instrument represent two-thirds (2/3) of the voting power of the Association shall be deemed conclusive proof thereof;

(f) the right of the Association to establish, in cooperation with the County (or other appropriate governmental authority), a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of this Section, all or any portion of the Common Areas to said District; and

(g) the rights of Declarant set forth herein.

Section 12.2 - Delegation of Use. Any Member may delegate his right of enjoyment to the Common Areas to the members of his family or his tenants who reside on his Lot, or to his guests (including, without limitation, Program Guests), subject to this Declaration and to the Association Rules. In the event and for so long as an Owner delegates said rights of enjoyment to his tenants, said Owner shall not be entitled to said rights. Owner shall indemnify and hold harmless the Association for any claim or injury suffered by the Owner's delegate pursuant to this Section.

Section 12.3 - Waiver of Use. No Member may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot owned by him from the liens, charges or other provisions of this Declaration, the Articles, Bylaws and Association Rules, by waiver of the use and enjoyment of the Common Areas, or the abandonment of his Lot.

ARTICLE XIII

EASEMENTS

Section 13.1 - Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0048 OF 0080  
INST#: 2001 3372

approval of Declarant and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant.

Section 13.2 - Nature of Easements. Unless otherwise set forth herein, any easement reserved to Declarant herein shall be nonexclusive.

Section 13.3 - Certain Rights and Easements Reserved to Declarant.

(a) Utilities. Easements over the Covered Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as are needed to service the Covered Property are hereby reserved by Declarant, together with the right to grant and transfer the same; provided, however, such easements shall not unreasonably interfere with the use and enjoyment by the Members of their Lots or the Common Areas.

(b) Cable Television. There is hereby reserved to Declarant and Builder over the Covered Property, together with the right to grant and transfer the same, the right to place on, under or across the Covered Property, transmission lines and other facilities for a community antenna television system or similar television system as technological changes may permit, and thereafter to own and convey such lines and facilities and the right to enter upon the Covered Property to service, maintain, repair, reconstruct and replace said lines or facilities; provided, however, the exercise of such rights shall not unreasonably interfere with any Owner's reasonable use and enjoyment of his Lot.

(c) Water Rights. There is hereby reserved to Declarant with the full right and power, among others, to transfer or assign to others or to use or utilize on any other property owned or leased by Declarant, any and all water rights or interests in water rights no matter how acquired by Declarant, and owned or used by Declarant in connection with or with respect to the Covered Property, whether such water rights shall be riparian, overlying, appropriative, percolating, prescriptive or contractual, provided, however, the reservation made herein shall not reserve to or for the benefit of Declarant any right to enter upon the surface of the Covered Property in the exercise of such rights.

(d) Rain Water Drainage Easements. There is hereby reserved to Declarant, together with the right to grant and transfer same, easements in and over portions of Lots for the purpose of the installation and placement of drainage devices in order to drain rain water from Lots, including roofs of Lots. No Owner shall interfere with the operation of such drainage devices.

(e) Construction and Sales. For a period of time extending until all improvements have been completed within the Covered Property, and thereafter as necessary to operate the Rental Pool Program, a non-exclusive easement in, over, under and through the Covered Property is hereby reserved to Declarant, together with the right to grant and transfer same to Declarant's sales agents and representatives and the Program Administrator, for ingress and egress and for the purpose of: (1) completing the development of the Covered Property, including without limitation the transportation of development and construction related materials



RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0049 OF 0080  
INST#: 2001 3372

over the private streets, constructing, maintaining, retaining and relocating all improvements on the Covered Property now or hereafter planned to be constructed on the Covered Property by Declarant, or required to be constructed on the Covered Property by any municipal or governmental agency; (2) marketing, leasing, selling and re-selling the Lots therein; (3) customer relations and providing post-sale customer service to Owners; and (4) operation and promotion of the Rental Pool Program; and in connection with such easement the right, but not the obligation: (a) to perform any and all architectural, engineering, grading, construction, excavation, landscaping and related work and activities; (b) to erect, maintain and relocate upon the Covered Property storage buildings, storage areas, temporary sewage disposal facilities, water wells and other related facilities; (c) to store and use materials, equipment, vehicles, tools and machines which may be necessary or desirable in connection with such construction; (d) to display signs and erect, maintain and operate, for sales, resales, and administrative purposes, a fully staffed customer relations, customer service, sales, and resales office complex on the Covered Property; (e) to show the Covered Property, unsold Lots and any Lots which are offered for resale to, and to arrange for the use of the Common Areas by, prospective purchasers, (f) to perform maintenance, repair and replacement work on, and to make custom improvements, alterations and additions to improvements, and (g) to construct improvements on any Lot. No such activities shall be deemed to be a nuisance. No Owner (other than Declarant) shall enter any construction area or cross any fence or other barricade constructed to prevent such entry or otherwise impede or interfere with such development and construction.

(f) General Use and Enjoyment. There is hereby reserved to Declarant, together with the right to grant and transfer same, easements in, on, over and across all Common Areas and Special Maintenance Areas as necessary or appropriate for the completion, use, and enjoyment of the Covered Property.

#### Section 13.4 - Certain Easements for Owners

(a) Rights and Duties: Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, the Owners of any Lot served by said connections, lines or facilities shall have the right and there is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service his Lot, and to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

(b) Ingress, Egress and Recreational Rights. Declarant hereby reserves to itself, its successors and assigns, and hereby grants to all Owners nonexclusive easements for ingress, egress, pedestrian walkway and general recreational purposes over and upon the Common Areas and Special Maintenance Areas. Such easements shall be subject to the rights of the Association as set forth in the Article hereof entitled "Rights of Enjoyment."

33909/842796v9

-43-

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0050 OF 0080  
INST#: 2001 3372

(c) Exclusive Use Common Areas. The Common Areas, both before and after transfer to the Association, are subject to the unilateral right of Declarant to establish easements in, over, upon, under and through the Common Areas in favor of an individual Owner or Owners. Declarant or the Association has the right, from time to time, to grant to any Owner a nonexclusive or an exclusive easement in, over, upon, under and through portions of the Common Areas consisting of unimproved areas adjacent to the specific Owner's Lot for use and enjoyment in connection with such Lot. Declarant or the Association shall have the sole discretion to establish the size and shape of such Exclusive Use Common Areas. The conveyance of the portion of the Common Areas to an Owner shall be subject to this Declaration and the Association's rights herein, and the Owner in each case, shall be responsible for maintenance and all liability associated with the use of such easement. Initially, each Owner shall be designated two (2) parking stalls for the benefit of such Owner's Lot, which parking stalls shall constitute Exclusive Use Common Areas. The specific parking stalls designated to each Owner shall be those identified in the grant deed by which the Owner acquires title to his or her Lot.

(d) Solar Easements. There is hereby reserved to Declarant, for the benefit of each and every Owner of a Lot, a solar easement in and through all air space over the Covered Property for the purpose of preserving access to natural sunlight for any solar energy collector which is originally constructed by Declarant. No Owner of a Lot, or person in control of a Lot, shall allow a tree or shrub to be placed, or if placed, to grow on such property, subsequent to the installation of a solar collector on the property of another so as to cast a shadow greater than ten percent (10%) of the collector absorption area upon that solar collector on the property of another at any one time between the hours of 10:00 a.m. and 2:00 p.m., provided that this Section shall not apply to specific trees and shrubs which at the time of installation of a solar collector or during the remainder of that annual solar cycle cast a shadow upon that solar collector. Notwithstanding any other provisions of this Declaration, no structure, vegetation or land use shall penetrate the air space which is subject to the solar easement, unless express written permission is obtained from (1) the Board and (2) all Owners of Lots adjoining the Lot containing such structure or vegetation, or subject to such land use. This easement shall not preclude utility lines, antennae, wires and poles that are not otherwise prohibited by this Declaration, which penetrate the airspace covered by this solar easement.

(e) Corrections. Throughout the Covered Property, it is anticipated that over the course of time certain properties may be sold which contain errors in descriptions and/or actual use exceeds boundary lines. To accommodate such situations, Declarant hereby reserves easements over the Common Areas to allow for encroachment, and easements over Lots solely for corrective purposes.

#### Section 13.5 - Certain Easements for Association

(a) Association Rights. There is hereby reserved to Declarant easements over the Covered Property, which easements are hereby granted to the Association, for the purpose of permitting the Association to discharge its obligations and powers as described in this Declaration.

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0051 OF 0080  
INST#: 2001 3372

(b) Rights and Duties: Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, and said connections, lines or facilities serve the Common Areas, the Association shall have the right and there is hereby reserved to Declarant, together with the right to grant and transfer the same to the Association an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service the Common Areas and to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided the Association or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

Section 13.6 - Certain Easements for Districts.

(a) Generally. There is hereby reserved to Declarant easements over the Covered Property, which easements may hereafter be granted to a District, for the purpose of permitting such District to discharge its obligations and powers as described in this Declaration.

(b) Rights and Duties: Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, and said connections, lines or facilities serve the CSD Areas, the CSD shall have the right and there is hereby reserved to Declarant, together with the right to grant and transfer the same to the CSD an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service the CSD Areas and to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided the CSD or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

(c) Pedestrian Paths and Trails. As identified on the Map, an easement has been dedicated over and across portions of the Covered Property (including portions of Lots to be conveyed to individual Owners) and the Common Area for the benefit of the District for the use by the public as paths and/or trails, which paths and/or trails may be utilized to access the private street commonly known as "Quail Hollow Lane."

Section 13.7 - Support, Settlement and Encroachment. There is hereby reserved to Declarant and its assigns the following reciprocal easements, which easements are hereby granted to the Owners, for the purposes set forth below:

(a) an easement appurtenant to each Lot which is contiguous to another Lot or Common Areas which Lot shall be the dominant tenement and the contiguous Lot or Common Areas shall be the servient tenement;

RECORDED: 03/06/2001 FILE TIME: 12:00  
 CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0052 OF 0080  
 INST#: 2001 3372

(b) an easement appurtenant to the Common Areas contiguous to a Lot, which Common Areas shall be the dominant tenement and which contiguous Lot shall be the servient tenement;

(c) it is provided, however, that in the event Common Areas are the dominant tenement in an easement described in this Section, Declarant shall have the right to transfer said easement to the Association and not to Owners;

(d) said easements shall be for the purposes of:

(i) engineering errors, errors in original construction and support and accommodation of the natural settlement or shifting of structures;

(ii) encroachment by reason of a roof or eave overhang from a Lot and for the maintenance of such roof or eave overhang by the Owner of the dominant tenement; and

(iii) encroachment of fireplaces, doorsteps, foundation footings, garage doors, utilities and other appurtenances or fixtures and the maintenance thereof by the Owner of the dominant tenement, which, in the construction of the structures upon the dominant tenement or from any reconstruction or modifications of such structures, project beyond the external surface of the outer walls of such structures.

Section 13.8 – Right to Grant and Transfer Easements. All or any part of each easement reserved to Declarant herein may be granted or transferred by Declarant to an Owner, the Association or any other party.

Section 13.9 – Neighbors. Notwithstanding any other provisions herein, Declarant shall have the unilateral right to grant easements over, and/or other rights concerning, the Common Areas, to owners of properties adjacent to the Covered Property, including, without limitation, to use streets, roadways, or infrastructure, and/or to accommodate the provisions of agreements of record between Declarant and neighboring owners. Nothing herein is intended or shall be applied to reduce or materially affect any Owner's use or enjoyment of such Owner's Lot.

#### ARTICLE XIV

##### RIGHTS OF LENDERS

Section 14.1 - Filing Notice; Notices and Approvals. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Covered Property. Such notice need not state which Lot or Lots are encumbered by such Mortgage, but shall state whether such Mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0053 OF 0080  
INST#: 2001 3372

of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

Section 14.2 - Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any First Mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot except as otherwise provided in this Article.

Section 14.3 - Curing Defaults. A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all Mortgagees.

Section 14.4 - Resale. It is intended that any loan to facilitate the resale of any Lot after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

Section 14.5 - Relationship with Assessment Liens.

(a) The lien provided for in the Article hereof entitled "Nonpayment of Assessments" for the payment of Assessments (excepting Remedial Assessments) shall be subordinate to the lien or any First Mortgage which was recorded prior to the date any such Assessment becomes due.

(b) If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a First Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such First Mortgage; and (2) the foreclosure of the lien of said First Mortgage or the acceptance of a deed in lieu thereof (such events being hereinafter referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0054 OF 0080  
INST#: 2001 3372

of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

(c) Any Mortgagee who obtains title to a Lot by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrue prior to the time such Mortgagee or purchaser takes title to such Lot, except for liens or claims for a share of such Assessments resulting from a pro-rata reallocation of such Assessments to all Lots within the Covered Property.

(d) Nothing in this Section shall be construed to release any Owner from his obligations to pay for any Assessment levied pursuant to this Declaration.

Section 14.6 - Seventy-Five Percent (75%) Vote of Institutional Mortgagees.  
Except upon the prior written approval of at least seventy-five percent (75%) of Institutional Mortgagees, based on one (1) vote for each First Mortgage held, neither the Association nor the Members shall be entitled to do any of the following:

(a) dissolve the Association or abandon or terminate the maintenance of the Common Areas by the Association;

(b) amend a material provision of this Declaration or of the Bylaws, provided "material amendment" shall mean amendments governing the following subjects:

(i) the fundamental purpose for which the Covered Property was created (such as a change from residential use to a different use);

(ii) voting;

(iii) assessments, assessment liens, and subordination thereof;

(iv) the reserve for repair and replacement of the Common Areas;

(v) property maintenance obligations;

(vi) casualty, fidelity and liability insurance;

(vii) reconstruction in the event of damage or destruction;

(viii) rights to use the Common Areas;

(ix) annexation;

(x) any provision, which by its terms, is specifically for the benefit of First Mortgagees, or specifically confers rights of First Mortgagees;

(xi) restrictions on the leasing of Lots;

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0055 OF 0080  
INST#: 2001 3372

(c) Effectuate any decision to terminate professional management and assume self-management of the Covered Property; or

(d) Abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Areas; provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas shall not require such approval.

Section 14.7 - Other Rights of Institutional Mortgagees. Any Institutional Mortgagee or its mortgage servicing contractor, shall, upon written request to the Association, be entitled to:

(a) inspect the books and records of the Association during normal business hours;

(b) receive the annual audited financial statement of the Association one hundred and twenty (120) days following the end of the Association's fiscal year;

(c) receive written notice of all annual and special meetings of the Members of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting; and

(d) receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Institutional Mortgagee's Mortgage, which default has not been cured within sixty (60) days of a request therefor by the Association; provided, however, the Association shall only be obligated to provide such notice to Institutional Mortgagees who have delivered a written request therefor to the Association specifying the Lot or Lots to which such request relates.

Section 14.8 - Mortgagees Furnishing Information. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

Section 14.9 - Right of First Refusal. In the event this Declaration is amended to provide for any right of first refusal to purchase or lease a Lot in the Association, a Mortgagee who comes into possession of a Lot pursuant to a judicial foreclosure, a deed in lieu of foreclosure or a trustee's sale shall be exempt therefrom. In addition, conveyances to and from third party foreclosure purchasers and mortgage insurers and guarantors shall also be exempt.

Section 14.10 - Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0056 OF 0080  
INST#: 2001 3372

Section 14.11 - Voting Rights of Institutional Mortgagees. In the event of a default by an Owner in any payment due under the terms of any Institutional Mortgage held by an Institutional Mortgagee or the promissory note secured thereby, the Institutional Mortgagee or its representative shall have the right, upon giving written notice to such defaulting Owner and the Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him at such time as such default is cured.

Section 14.12 - Notice of Destruction or Taking. In the event that any Common Areas, or any portion thereof, is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" or "taking" shall mean damage or taking exceeding Ten Thousand Dollars (\$10,000). If requested in writing by an Institutional Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such Institutional Mortgagee.

Section 14.13 - Payment of Taxes or Premiums by Institutional Mortgagees. Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Institutional Mortgagees shall be governed by the provisions of their Mortgages. Institutional Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas and Institutional Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Institutional Mortgagee which requests the same to be executed by the Association.

## ARTICLE XV

### GENERAL PROVISIONS

Section 15.1 - Enforcement. Subject to the provisions of Sections 15.21, 15.22, and 15.23 below, the Association, or any Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or Assessments for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto. With respect to architectural control and Association Rules, the Association shall have the exclusive right to the enforcement thereof unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. With respect to Assessment liens, the Association shall have the exclusive right to the enforcement thereof.



RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0057 OF 0080  
INST#: 2001 3372

**Section 15.2 - No Waiver.** Failure by the Association or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles, Bylaws or Association Rules, in any certain instance or on any particular occasion, shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

**Section 15.3 - Cumulative Remedies.** All rights, options and remedies of Declarant, the Association, Owners, or Mortgagees under this Declaration are cumulative, and not one of them shall be exclusive of any other, and Declarant, the Association, Owners, and Mortgagees shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

**Section 15.4 - Severability.** Invalidation of any one or a portion of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 15.5 - Covenants to Run with the Land; Term.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners and seventy-five percent (75%) of the Institutional Mortgagees, based on one (1) vote for each First Mortgage held, has been recorded at least one (1) year prior to the end of any such period, agreeing to terminate said covenants, conditions and restrictions in whole or in part.

**Section 15.6 - Sale or Title Transfer.** Any Owner, prior to the sale or transfer of his interest, must provide the prospective purchaser with a copy of (1) this Declaration, (2) the Bylaws, (3) the Articles, (4) the most recent financial statements, (5) a statement from an authorized representative of the Association listing all unpaid Assessments and charges against the interest being sold, and (6) all other items listed in California Civil Code Section 1368. The Association shall provide any Owner with a copy of the items listed in the preceding sentence within ten (10) days of receiving a written request. The Association's fee for this service shall not exceed the cost of providing these items. The Association shall not collect any fee in connection with any transfer of title except the Association's actual costs to change records.

**Section 15.7 - Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community or tract and for the maintenance of the Covered Property. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0058 OF 0080  
INST#: 2001 3372

**Section 15.8 - Singular Includes Plural.** Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and the neuter.

**Section 15.9 - Nuisance.** The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

**Section 15.10 - Attorneys' Fees.** In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit (including post-judgment attorneys' fees and costs).

**Section 15.11 - Notices.** Any notice to be given to an Owner, the Association, or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) one (1) Business Day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, (iii) upon facsimile transmission (except that if the date of such transmission is not a Business Day, then such notice shall be deemed to be given on the first Business Day following such transmission), or (iv) two (2) Business Days after being deposited in the United States mail, registered or certified mail, postage prepaid, return-receipt requested, and addressed as follows:

(a) If to an Owner: to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. In the case of co-Owners, any such notice may be delivered or sent to any one (1) of the co-Owners on behalf of all co-Owners and shall be deemed delivery on all such co-Owners;

(b) If to the Association: to the address furnished by the Association or the address of its principal place of business;

(c) If to a Mortgagee or its mortgage servicing contractor: to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice or, if no such address is furnished, to any office of the Mortgagee in the County, or if no such office is located in the County, to any office of such Mortgagee;

(d) If to Declarant: to Castle & Cooke Saddle Creek, Inc., c/o Castle & Cooke California, Inc., 10000 Stockdale Highway, Bakersfield, California, 93311, Attention: President, or to such other address furnished by Declarant in writing to the Association for the purpose of giving notice; and

(e) The affidavit of an Officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, to any Mortgagee

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0059 OF 0080  
INST#: 2001 3372

or Mortgagees shown on the records of the Association, shall be deemed conclusive proof of such mailing, whether or not such notices are actually received.

**Section 15.12 - Obligations of Declarant.** So long as Declarant owns any portion of the Covered Property, Declarant shall not be subject to the provisions of the Article entitled "Architectural Control" or the provisions of the Article entitled "Use Restrictions" to the extent necessary to exercise Declarant's rights and fulfill Declarant's duties with regard to the development and disposal of the Covered Property.

**Section 15.13 - Effect of Declaration.** This Declaration is made for the purposes set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

**Section 15.14 - Personal Covenant.** To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

**Section 15.15 - Non-liability of Officials.** To the fullest extent permitted by law, neither the Board, the Architectural Committee, any other committees of the Association, or any member of such Board or committee, shall be liable to any Member of the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like, made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

**Section 15.16 - Enforcement of Bonded Obligations.** In the event that the improvements to the Common Areas have not been completed prior to the issuance of a Final Subdivision Public Report covering the Covered Property, and the Association is obligee under a bond or other arrangement (hereinafter the "**Bond**") to secure performance of the commitment of Declarant to complete such improvements, the following provisions shall apply:

(a) the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a notice of completion has not been filed within sixty (60) days after the completion date specified for such improvements in the "Planned Construction Statement" appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of such extension;

(b) in the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of

33909/842796v9

-53-

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0060 OF 0080  
INST#: 2001 3372

voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the Bylaws dealing with meetings of the Members, but in any event such meeting shall be held not less than thirty-five (35) days nor more than ninety (90) days after receipt by the Board of a petition for such meeting signed by Members representing five percent (5%) of the total voting power of the Association; and

(c) the only Members entitled to vote at such meeting of Members shall be the Owners other than Declarant. A vote at such meeting of a majority of the voting power of such Members other than Declarant to take such action to enforce the obligations under the Bond shall be deemed to be the decision by initiating and pursuing appropriate action in the name of the Association.

Section 15.17 - Leases. It is anticipated that all leasing of Lots shall be conducted through the Rental Pool Program. Consequently, except for "Rental Pool Leases" (as defined below) entered into with respect to the Rental Pool Program as more fully described in Article XIX hereof, any agreement for the leasing or rental of a Lot (hereinafter in this Section referred to as a "Lease") shall be subject to the approval of Declarant. If the leasing of any such Lot by an Owner is approved by Declarant, the terms of such Lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws, the Association Rules and any applicable agreements between the Association and any of the Federal Agencies. Said Lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the Lease. All Leases shall be in writing. Any Owner who shall lease his Lot shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, the Bylaws and the Association Rules. No Lease entered into directly by any Owner shall permit the leasing of the Lot for transient or hotel purposes, which shall be defined as any rental for any period of less than thirty (30) days.

Section 15.18 - Construction by Declarant. Nothing in this Declaration shall limit the right of Declarant to alter the Common Areas or Lots, or to construct such additional improvements as Declarant deems advisable prior to completion of improvements upon and the sale of the entire Covered Property. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Covered Property such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on the Covered Property additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Covered Property. Declarant reserves the right to alter its construction plans and designs as it deems appropriate. The rights of Declarant hereunder may be assigned to any successor or successors to all or part of said entity's respective interest in the Covered Property, by an express assignment incorporated in a recorded deed, lease, or other instrument, as the case may be, transferring such interest to such successor. Declarant shall exercise its rights contained in this provision in such a way as not to unreasonably interfere with the Members' rights to use and enjoy the Covered Property.

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0061 OF 0080  
INST#: 2001 3372

**Section 15.19 - Right to Cure Alleged Defects.** It is the Declarant's intent that the Common Area, each Lot, and all improvements constructed on the Covered Property, be built in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction and development practices for production housing of the type contemplated for the Covered Property. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the Declarant's responsibility therefor. It is the Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time consuming and costly litigation. Accordingly, the Association, the Board and all Owners shall be bound by the following claim resolution procedure:

(a) **Right to Cure.** In the event that the Association, Board or any Owner or Owners (collectively, "**Claimant**") claims, contends or alleges that any portion of the Common Area, any Lot, and/or any improvements constructed on the Covered Property are defective or that Declarant was negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "**Alleged Defect**"), Declarant hereby reserves the right to inspect, repair and/or replace such Alleged Defect as set forth herein; provided, however, nothing herein is intended nor shall be applied to create any obligation of Declarant.

(b) **Notice.** In the event that a Claimant discovers any Alleged Defect, Claimant shall notify Declarant in writing, within fifteen (15) days of discovery of the Alleged Defect, of the specific nature of such Alleged Defect and such other matters as required by applicable law ("**Notice of Alleged Defect**").

(c) **Right to Enter, Inspect, Repair, and/or Replace.** Within a reasonable time after the receipt by Declarant Notice of Alleged Defect or the independent discovery of any Alleged Defect by Declarant, as part of Declarant's reservation of rights, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any residential dwelling unit constructed thereon, and/or any improvements for the purposes of inspecting and, if deemed necessary by such Declarant, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. In the event Declarant elects to repair or replace such Alleged Defect, such shall serve as the Claimant's sole and exclusive remedy for such Alleged Defect.

(d) **Legal Actions.** All legal actions initiated by a Claimant shall be brought in accordance with and subject to Sections 15.21, 15.22, and 15.23 herein. In the event a Claimant initiates any legal action, cause of action, proceeding, reference or arbitration against a Developer Party alleging damages (1) for the costs of repairing or the replacement of any Alleged Defect, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Claimant is the Association, the Association must provide written notice to all Members of its intent to pursue any legal action,

13909/842796v9

-55-

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0062 OF 0080  
INST#: 2001 3372

cause of action, proceeding, reference or arbitration against a Developer Party. Thereafter, prior to initiating any legal action, cause of action, proceeding, reference or arbitration against a Developer Party, such action must be approved by a majority of the voting power of the Association. The foregoing notice shall, at a minimum, include (1) a description of the Alleged Defect, (2) a description of the attempts of the Developer Party to correct such Alleged Defect and the opportunities provided to the Developer Party to correct such Alleged Defect, (3) a certification from an engineer licensed in the State of California that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer, (4) the estimated cost to repair such Alleged Defect, (5) the name and professional background of the attorney retained by the Association to pursue the claim against the Developer Party and a description of the relationship between such attorney and any members of the Board (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Developer Party and the source of the funds which will be used to pay such fees and expenses, (8) the estimated time necessary to conclude the action against the Developer Party, and (9) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. In the event the Association recovers any funds from the Developer Party (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

(e) No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section shall be construed to impose any obligation on the Developer Parties to inspect, repair or replace any item or Alleged Defect for which the Developer Parties are not otherwise obligated to do under applicable law or any limited warranty provided by the Developer Parties in connection with the sale of the Lots and/or the improvements constructed thereon. The right of the Developer Parties reserved hereby to enter, inspect, repair, and/or replace, shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Developer Parties in the Official Records of the County.

(f) Scope of Duties. The duties of the Owners and the Association set forth in this Section shall be in addition to all duties imposed by California Civil Code Sections 1368.4 and 1375, as the same may be amended from time to time.

Section 15.20 - Amendments. This Declaration may be amended as follows:

(a) notwithstanding any other provisions of this Declaration, Declarant reserves the right at any time to unilaterally make certain amendments to this Declaration, including any exhibits attached hereto, to amend same to add any necessary easements and/or use rights consistent with the overall development of the Covered Property, and to make technical corrections, correct errors or omissions, or more precisely describe the actual sizes and locations of the areas or improvements described herein including, without limitation, such adjustments to Lot lines, Common Area boundaries and/or any other matters as necessary to accommodate minor encroachments of improvements in, to, over, or across any Lot or Common Area, and each Owner by acceptance of a grant deed to its Lot, acknowledges, accepts, and takes subject to the possibility of such possible adjustments. Declarant shall effect such changes by preparing or

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0063 OF 0080  
INST#: 2001 3372

causing to be prepared, and recording or causing to be recorded, a declaration in a form determined by Declarant;

(b) notwithstanding any other provisions of this Declaration, at any time prior to the first (1<sup>st</sup>) anniversary of the Initial Sale Date, Declarant may unilaterally amend this Declaration by recording a written instrument which effects the amendment and is signed and acknowledged by Declarant;

(c) notwithstanding any other provisions of this Section, for so long as Declarant owns any portion of the Covered Property, Declarant may unilaterally amend this Declaration by recording a written instrument signed by Declarant in order to conform this Declaration to the requirements of VA, DRE, FNMA, GNMA or FHLMC then in effect.

(d) until such time as there is a Class A membership pursuant to this Declaration, amendments or modifications shall be effective when executed by Declarant and when recorded in the Official Records of the County. Thereafter as long as there is a Class B membership, any amendments shall require the affirmative written consent or vote of a majority of a quorum of the voting power of the Association subject to the provisions herein regarding Declarant's rights and subject to the limitations herein. After the Class B membership has been converted to Class A membership, amendments to this Declaration may be enacted only by the vote or written assent of Members representing both a majority of a quorum of the voting power of the Association and a majority of a quorum of the voting power of the Association residing in Members other than the Declarant;

(e) in addition to the foregoing, any amendment or modification of the Articles hereof entitled "Covenant for Maintenance Assessments," "Nonpayment of Assessments," "Architectural Control," "Repair and Maintenance," "Destruction of Improvements" and "Eminent Domain" shall additionally require the prior written approval of not less than sixty-seven percent (67%) of a quorum of the Class A Members;

(f) an amendment or modification that requires the vote and written assent of the Members as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and when recorded in the Official Records of the County. The notarized signature of the Members shall not be required to effectuate an amendment of this Declaration;

(g) notwithstanding the foregoing, any provisions of this Declaration, or the Articles, Bylaws or Association Rules which expressly requires the approval of a specified percentage of the voting power of the Association for action to be taken under said provision can be amended only with the affirmative vote or written assent of not less than the same percentage of the voting power of the Association;

(h) notwithstanding the foregoing, any amendment or modification which impacts any of the rights of the Developer Parties contained herein shall not be effective unless approved by Declarant; and

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0064 OF 0080  
INST#: 2001 3372

(i) the Association, or any Owner, may petition the County superior court for an order reducing the percentage of the affirmative votes necessary to amend this Declaration. The petition shall describe the effort that has been made to solicit approval of the Association members in the manner provided in this Declaration. The Petition shall also describe the number of affirmative and negative votes actually received, the percentage of affirmative votes required to effect the amendment in accordance with this Declaration, and other matters the petitioner considers relevant to the court's determination. The petition shall also contain as exhibits thereto, copies of all of the following: (1) the governing documents, (2) a complete text of the amendment, (3) copies of solicitation and notice materials utilized in the solicitation of owner approvals, (4) a short explanation of the reason for the amendment, and (5) any other documentation relevant to the court's determination.

Section 15.21 - Alternative Dispute Resolution. In the event of a dispute between or among (a) any Developer Party(ies), on the one hand, and any Owner(s) or the Association on the other hand, or (b) any Owner and another Owner, or (c) the Association and any Owner, regarding any controversy or claim between the parties, including, without limitation, any claim based on contract, tort, or statute, arising out of or relating to the rights or duties of the parties under this Declaration or the design or construction of the Covered Property (excluding disputes relating to the payment of any type of Assessment), the matter will be heard by a reference pursuant to the provisions of the California Code of Civil Procedure, Sections 638-645, inclusive.

Section 15.22 - Limitation on Expenditures. The Association shall not incur litigation expenses, including, without limitation, attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceeding, without the approval of a majority of the voting power of the Association, excluding the voting power of any Owner who would be a defendant in such proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (a) enforce the restrictions contained in Article XI hereof, (b) enforce the architectural control provisions contained in Article V hereof, or (c) collect any unpaid Assessments levied pursuant to this Declaration.

Section 15.23 - Limitation on Damages. Any judgment for money damages entered pursuant to this Declaration, including, without limitation Sections 15.1, 15.19, and/or 15.21 of this Article XV, shall be strictly limited to compensatory damages for injury to Persons and property, which compensatory damages shall exclude all damages for pain, suffering, and other non-economic damages; in addition, under no circumstances shall punitive damages be permitted. Any provision of this Declaration to the contrary notwithstanding, no portion of this Section may be amended or deleted at any time without Declarant's prior written consent.

Section 15.24 - No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by any Developer Party in connection with the Covered Property, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, or taxes or regulation thereof, except as expressly set forth in this Declaration.



RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0065 OF 0080  
INST#: 2001 3372

**Section 15.25 - Interstate Land Sales Act.** No person shall sell any Lot or other interests in the Covered Property in violation of the Federal Interstate Land Sale Full Disclosure Act (15 U.S.C. 1701, et seq.) or sell Lots or other interests in such manner as to put Declarant in violation of such act.

## **ARTICLE XVI**

### **ANNUAL INSPECTION**

**Section 16.1 - Duty to Inspect.** It shall be the duty of the Board to have the Common Areas inspected at least once each year.

**Section 16.2 - Purpose of Inspection.** The purpose of the inspection shall be to (a) determine whether the Common Areas are being maintained adequately in accordance with the standards of maintenance established in Sections 6.2 and 7.1 hereof, (b) identify the condition of the Common Areas and any improvements thereon including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future.

**Section 16.3 - Scope of Inspection.** All of the Common Areas and improvements thereon including, but not limited to, the exterior and structural integrity of all structures, gates, walls, walkways, irrigation systems, landscaping, and drainage devices shall be inspected.

**Section 16.4 - Experts and Consultants.** The Board may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Article.

**Section 16.5 - Report to Owners.** The Board shall have a report of the results of the inspection of the Common Areas required by this Article prepared. The report shall be furnished to Owners within the time set forth for furnishing Owners with the budget described in California Civil Code Section 1365.5. The report shall, at a minimum, include the following:

- (a) a description of the condition of the Common Areas, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;
- (b) a description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the DRE Approved Budget;
- (c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;
- (d) a summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0066 OF 0080  
INST#: 2001 3372

- (e) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and
- (f) such other matters as the Board deems appropriate.

ARTICLE XVII

DECLARANT RIGHTS

Section 17.1 - Power of Attorney. Each Owner (including the Association), by accepting a deed to any Lot, shall be deemed to have constituted and irrevocably appointed, for himself (itself) and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, for a period of ten (10) years from the date of the recording of this Declaration, Declarant as his Attorney-in-Fact and thereby to have conveyed a Power of Attorney coupled with an interest to Declarant as his or her Attorney-in-Fact to do the following:

- (a) To (i) form and establish any District(s), and (ii) consent by vote or any other means to the formation, establishment, and/or operation of any such District(s) for the acquisition, maintenance, repair and/or ownership of all or any portion of the Common Areas.
- (b) To take the following actions with respect to such District(s):
  - (i) The adoption of additional purposes or powers for such District(s);
  - (ii) The designation and/or redesignation of members of the Board of Directors of such District(s) upon such an office becoming vacant and an increase in the number of members of said Board of Directors;
  - (iii) The incurring of bonded indebtedness by the District(s) (subject to maximum limitations imposed by any lender), including, without limitation, the type of bonds, amount of bonded indebtedness, area of property taxed to repay such bonded indebtedness, and the issuance of new bonds to refund any or all outstanding District bonds;
  - (iv) The formation of improvement districts within such District(s) and the issuance of improvement bonds therefor;
  - (v) Any annexation of territory to, or exclusion of territory from, an established improvement district within such District(s) where confirmation is required;
  - (vi) The establishment and determination of water standby or availability assessments, and delinquency charges for non-payment of such assessments or charges; and

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0067 OF 0080  
INST#: 2001 3372

(vii) The establishment and determination of zones within such District(s) of varying benefit (subject to maximum limitations imposed by any lender), including the establishment of different levels of taxation for properties within such zones, the issuance of bonded indebtedness on behalf of such zones, and the annexation to or exclusion from such zones of territories within such District(s).

(c) To (i) convey or cause the conveyance of any Common Areas (including any Common Areas previously conveyed to the Association) to a District, (ii) negotiate for the option, sale, lease, transfer, or other disposition of all or any portion of any Common Areas, (iii) consummate agreements and execute and acknowledge any and all other documentation necessary or convenient to effect such transfer of disposition, (v) add and/or modify any reserved rights, easements, and/or other interests affecting any conveyed Common Areas, and (v) receive and retain any and all direct and/or indirect consideration for such Common Areas.

(d) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and file or record or cause to be filed or recorded any map, certificate or record of survey or amendment to an existing map, certificate or record of survey required or permitted by the provisions of the Subdivision Map Act of the State of California in effect on the date of recordation of this Declaration and as thereafter amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Covered Property in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(e) To prepare or cause to be prepared, execute, acknowledge and file or cause to be filed for approval, any application for zoning or setback changes or variance or special use permits or any other permits and/or reports required or permitted by laws of the State of California in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Covered Property in effect on the date of recordation of this Declaration and as thereafter enacted or amended and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(f) To make application for any property reports or public reports or amendments thereto or exceptions from the requirements therefor required or permitted in order to comply with federal and state statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands to the public and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or

33909/842796v9

-61-

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0068 OF 0080  
INST#: 2001 3372

permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any agreements and bonds securing the performance of the obligations contained therein.

(g) To deliver any public reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law.

(h) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval, any registration or any application for any permit, approval, exemption, ruling or entitlement required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration and as thereafter enacted or amended by any federal, state and local governmental entities and authorities, and in connection therewith to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such governmental body and by any such laws and regulations; to appear before any such governmental bodies and to execute and deliver any agreement and bonds and post deposits securing the performance of any such conditions and obligations; and do all other things now or hereafter permitted or required by any such governmental body and any such laws and regulations.

(i) To prepare or cause to be prepared, execute, acknowledge and record or cause to be recorded any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any Lots in the Covered Property.

(j) To prepare or cause to be prepared, execute, acknowledge and record or cause to be recorded any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any property conveyed as provided herein, including, without limitation, to correct any errors or omissions in any deed or other instrument the purpose of which is to convey property as Common Area to the Association, or as District Areas to any District.

(k) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article.

Section 17.2 - Mortgage Interests to Take Subject to Power of Attorney. The acceptance or creation of any Mortgage whether voluntarily or involuntarily, and whether or not created in good faith and whether or not given for value, shall be deemed to be accepted and/or created subject to each of the terms and conditions of the Power of Attorney described in this Article.

Section 17.3 - Power of Attorney Binding on Successors in Interest. Each and all Owners and each of their respective mortgagees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, shall be deemed to have expressly agreed, assented and consented to each and all of the provisions of this Declaration and shall be deemed to have constituted and irrevocably appointed Declarant as his

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0069 OF 0080  
INST#: 2001 3372

Attorney-in-Fact to carry out the powers described herein, and such Power of Attorney shall be deemed to continue to be coupled with an interest.

Section 17.4 – Assignment of Powers. Declarant shall have the right, without obligation, to assign the non-exclusive rights to use all or any of the powers and privileges granted to Declarant hereunder. Such assignment shall be in writing, and may be on such terms and conditions as Declarant determines as to the powers and privileges assigned, their duration, and any other limitations on their use. In any event, no such assignment to any single party shall prevent Declarant from exercising any such powers or assigning such powers to other parties.

## ARTICLE XVIII

### GOLF COURSE

Section 18.1 – Owner's Acknowledgements. Each Owner, by acceptance of a deed to a Lot, acknowledges that:

18.1.1 No Golf Course Membership. The Golf Course is privately owned and is not subject to this Declaration. Ownership of a Lot within the Covered Property does not confer membership in the Golf Course or any rights to use the Golf Course or any of its facilities. The right to be a member of the Golf Course or to use the Golf Course facilities is a matter to be determined solely by the Operator from time to time. By way of example, but not limitation, the Operator shall have the right to approve users and determine eligibility for use, to reserve use rights, to transfer any or all of the Golf Course facilities or operation thereof to anyone on any terms, to limit availability of use privileges, and to require the payment of a purchase price, a membership contribution, in initiation fee, a membership deposit, dues, and/or use charges.

18.1.2 Golf Course is Not CSD Area. Owners of Golf Course Lots and other Owners have no right, by virtue of their status as Owners, to use the Golf Course or any property belonging to or comprising the Golf Course. No Owner shall use the property comprising the Golf Course without the express consent of the Operator. No Owner shall allow any dog or other pet or animal to go upon the Golf Course or any other property of the Operator.

18.1.3 Assumption of Risk. Each Owner, for itself and its successors and assigns, acknowledges that the Golf Course currently exists or is being constructed adjacent to or in the vicinity of the Covered Property, that golf holes currently exist or are being constructed on such Golf Course, and that as the holes are presently designed and played, it is foreseeable and probable that golf balls will be hit onto the Lots from time to time. In some cases, golf balls will have sufficient force and velocity to do serious harm to a person or to improvements or to personal property. EACH OWNER, BY ACCEPTANCE OF THE DEED TO A LOT, AND EACH SUCCESSOR AND ASSIGN OF SUCH OWNER, ASSUMES THE RISKS WHICH ARE ASSOCIATED WITH THE GAME OF GOLF AND THE FLIGHT OF GOLF BALLS OVER AND UPON THEIR LOT, INCLUDING, WITHOUT LIMITATION, THE POSSIBILITY OF DAMAGE TO THEIR PROPERTY, REAL OR PERSONAL, AND INJURY TO THEMSELVES, THEIR FAMILY, EMPLOYEES, GUESTS, VISITORS OR ANY OTHER

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNT - CLERK-RECORDER

PAGE #: 0070 OF 0080  
INST#: 2001 3372

PERSON ON THEIR LOT, AND AGREES TO HOLD DECLARANT, THE COUNTY, THE DESIGNER OF THE GOLF COURSE, THE GOLF COURSE OPERATOR, AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, AND CONTRACTORS HARMLESS AND FREE FROM CLAIMS AND LIABILITY ARISING FROM ANY SUCH ASSUMED RISK. EACH OWNER, FOR SUCH OWNER AND SUCH OWNER'S SUCCESSORS AND ASSIGNS, WAIVES ANY RIGHT SUCH PERSON MAY HAVE AGAINST DECLARANT THE COUNTY, THE DESIGNER OF THE GOLF COURSE, AND THE GOLF COURSE OPERATOR, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, FOR ANY INJURY RESULTING FROM THE DESIGN OF SUCH GOLF COURSE, THE MAINTENANCE AND OPERATION OF SUCH GOLF COURSE, OR THE LOCATION OF THE LOT IN RELATION TO THE GOLF COURSE, AND AGREES TO HOLD DECLARANT, THE COUNTY, THE DESIGNER OF THE GOLF COURSE, AND THE GOLF COURSE OPERATOR HARMLESS IN THE EVENT ANY PERSON, WHILE ON A LOT, RECEIVES AN INJURY, OR SUFFERS PROPERTY DAMAGE AND THEREAFTER SEEKS RECOVERY AGAINST DECLARANT, THE COUNTY, THE GOLF COURSE DESIGNER, OR THE GOLF COURSE OPERATOR FOR COMPENSATION FOR SUCH INJURY OR DAMAGE WHETHER DIRECTLY OR INDIRECTLY, OR AS THE RESULT OF A THIRD PARTY CLAIM OR CROSS-CLAIM. EACH OWNER, AND SUCH OWNER'S SUCCESSORS AND ASSIGNS, WAIVES ANY CLAIM OR RIGHT IT MAY HAVE TO CLAIM THAT NORMAL AND CUSTOMARY OPERATION OF THE GOLF COURSE CONSTITUTES A NUISANCE, OR THAT ANY ASPECT OF THE GOLF COURSE OPERATION SHOULD BE LIMITED TO ANY SPECIFIC HOURS OF THE DAY OR TO ANY SPECIFIC DAYS OF THE WEEK.

Each Owner further expressly assumes the risk of noise, personal injury or property damage or any other condition caused by the existence, maintenance and operation of the Golf Course including, but not limited to (a) noise from maintenance equipment, (b) noise caused by golfers and spectators, (c) use of pesticides, herbicides, fertilizers, reclaimed water and effluent, (d) view restrictions caused by maturation of trees and shrubbery, (e) reduction in privacy caused by traffic on the Golf Course or the removal or pruning of shrubbery or trees on the Golf Course, (f) design of the Golf Course, and (g) the possibility of golf balls entering the property adjacent to the Golf Course and causing damage to property and injury to persons. Each Owner agrees that neither Declarant, nor any agents of Declarant, nor any other entity owning or managing the Golf Course or supplying equipment, materials or services to the Golf Course shall be liable to Owner or any other person claiming any loss or damage including, without limitation, indirect, special or consequential loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, or arising from or otherwise related to the proximity of Owner's Lot to the Golf Course facilities, including, but not limited to, any claim in whole or in part from the negligence of Declarant or the Operator. Each Owner acknowledges that reclaimed water may be used in connection with the irrigation of the Golf Course.

Section 18.2 - Golf Easement. Upon the conveyance of each of the Lots, Declarant shall reserve unto itself, for the benefit of the Golf Course, a non-exclusive easement over the Lot, including the airspace above such Lot, to permit the doing of every act necessary and proper to the playing of golf on the Golf Course, and the construction, reconstruction, and

33909/842796v9

-64-

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0071 OF 0080  
INST#: 2001 3372

maintenance of the Golf Course and its improvements. This easement shall not in any manner prohibit or control the construction, reconstruction, or maintenance of Improvements on the Golf Course Lots. The uses permitted by the easement shall include, without limitation: (a) the flight of golf balls through the air over Lots and the entry of golf balls upon or across Lots, and any Improvements located on Lots, as an incident to the reasonable use of the Golf Course; (b) the usual and common noise level created by the playing of the game of golf, including tournament play in which spectators and news media may be on or near the field of play, and in which amplified sound systems may be used; (c) the noises from the maintenance, repair, and mowing of the Golf Course; (d) overspray in connection with the watering of the Golf Course; and (e) all other common and usual activities associated with the game of golf and with all the normal and usual activities associated with the operation of the Golf Course.

Section 18.3 - Third Party Beneficiary. Neither the Golf Course nor the Operator are subject to the covenants, conditions or restrictions of this Declaration. Nevertheless, the provisions of this Article XVIII and those provisions of Article IX relating to the Golf Course are intended to and shall constitute equitable servitudes for the benefit the Golf Course and the Operator. It is hereby declared that the Operator, its successor and assigns shall be deemed third party beneficiaries of this Article XVIII and said provisions of Article IX relating to the Golf Course, and shall have the right to enforce those provisions in the manner described herein.

## ARTICLE XIX

### RENTAL POOL PROGRAM

Section 19.1 - In General. Each Owner, by acceptance of a deed to a Lot, acknowledges that in order to comply with certain zoning requirements and/or other requirements of the County, the Covered Property has been created, in part, to serve as a commercial recreational development to be utilized by short-term renters of Lots (each a "Program Guest") as part of a rental program (the "Rental Pool Program" or "Program") to be administered by Declarant, a designee of Declarant, or a property management company to be selected by the Association (the "Program Administrator"). The Program will initially be administered by Declarant for a period of one (1) year. Thereafter, the Association shall determine, by a vote of a majority of the voting power of the Association, the identity of the property management company to administer the Rental Pool Program for each calendar year. In any event, all of the Lots in the Covered Property shall be administered by the same Program Administrator. Notwithstanding any other provision herein, under no circumstances shall the Rental Pool Program be terminated, nor shall the provisions of this Declaration with respect thereo be amended, without Declarant's written consent and the approval of the County.

Section 19.2 - Rental Pool Participation. Participation in the Rental Pool Program is required by all Owners. As a participant in the Rental Pool Program, each Owner acknowledges that such Owner and such Owner's Lot shall be subject to the terms and conditions established by the Program Administrator for the Rental Pool Program, including, without limitation, the minimum period of time each calendar year that such Owner's Lot shall be made available to Program Guests, and the Owner's right to share in income derived from rental

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0072 OF 0080  
INST#: 2001 3372

payments received from Program Guests. The initial Program terms and conditions shall be provided by Declarant to each Owner prior to the Close of Escrow for the sale to such Owner of such Owner's Lot. The Program terms, conditions and participation requirement are subject to change from time to time in the Program Administrator's reasonable discretion (provided, however, any material changes to the Rental Pool Program, if objected to, in writing, by a majority of the Owners, may be overturned by a vote of the majority of the voting power of the Association). Upon request by a prospective purchaser of any Owner's Lot, such Owner shall be obligated to provide to such prospective purchaser a copy of the then-effective Program terms, rules and/or guidelines.

Section 19.3 – Rental Pool Agreements. Leases or any other occupancy arrangements entered into by any Program Guests under the Rental Pool Program (each a "Rental Pool Agreement") shall provide that the terms of such Rental Pool Agreement shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws, the Association Rules and any applicable agreements between the Association and any of the Federal Agencies. Said Rental Pool Agreement shall further provide that any failure by the Program Guest thereunder to comply with the terms of the foregoing documents shall be a default under the Rental Pool Agreement. All Rental Pool Agreements shall be in writing. Rental Pool Agreements may be for transient or hotel purposes, including customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen. The additional terms and requirements for any Rental Pool Agreement shall be established by Declarant in its sole discretion.



RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0073 OF 0080  
INST#: 2001 3372

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first hereinabove written.

"DECLARANT"

CASTLE & COOKE SADDLE CREEK, INC., a  
California corporation

By: *Dave Haley*  
Name: DAVE HALEY  
Its: Development Director

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0074 OF 0080  
INST#: 2001 3372

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF Calaveras )

On February 27, 2001, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Dave Haley

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

WITNESS my hand and official seal.

Kelly J. Stefanick  
Notary Public



ILLEGIBLE NOTARY SEAL DECLARATION  
GOVERNMENT CODE SECTION 27361.7  
I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows: Commission # 1227089  
Name of Notary Kelly J. Stefanick  
Date Commission Expires 7-01-03  
Executed At: San Andreas Date: 3-6-01  
Signature [Signature]  
Firm Name (if any) Exclusive Title Company

33909/842796v9



RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0075 OF 0080  
INST#: 2001 3372

**LIST OF EXHIBITS**

- A Legal Description of Property
- B Legal Description and Depiction of Common Areas
- C Exclusive Use Common Areas
- D Special Maintenance Areas

33909/842796v9

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0076 OF 0080  
INST#: 2001 3372

**Exhibit "A"**

**Legal Description of Property**

Lots B-1 through B-17 and Quail Hollow Lane (Road Lot "A") as said lots are shown and depicted on that certain "Final Map for the Garden Bungalows of Saddle Creek, Tract No. 580" filed for Record on September 19, 2000, in Book 7 of Subdivisions at Page 54, et seq. Document No. 2000 12445, in the Office of the Calaveras County, California Recorder.

33909/842796v9

RECORDED: 03/06/2001 FILE TIME: 12:00  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

PAGE #: 0077 OF 0080  
INST#: 2001 3372

**Exhibit "B"**

**Legal Description and Depiction of Common Areas**

Quail Hollow Lane (Road Lot "A") as shown and depicted on that certain "Final Map or Garden Bungalows of Saddle Creek, Tract No. 580" filed for Record on September 19, 2000, in Book 7 of Subdivisions at Page 54, et seq. Document No. 2000 12445, in the Office of the Calaveras County, California Recorder.

33909/842796v9