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*COX, CASTLE & NICHOLSON LLP  
2049 Century Park East, 28<sup>th</sup> Floor  
Los Angeles, California 90067  
Attention: Paul J. Titcher, Esq.*

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DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AND PRESERVATION OF EASEMENTS  
FOR  
SADDLE CREEK

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DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR  
SADDLE CREEK

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**DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**AND RESERVATION OF EASEMENTS**  
**FOR**  
**SADDLE CREEK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR SADDLE CREEK (this "**Declaration**") is made this 31<sup>st</sup> day of January, 2000, by Castle & Cooke Saddle Creek, Inc., a California corporation (the "**Declarant**").

RECITALS

A. Declarant is the fee owner of the real property described in Exhibit "A" to this Declaration (the "**Initial Property**"), and may in the future, along with any "Merchant Builders" (as hereinafter defined), be the fee owner of certain other real property which may from time to time be annexed pursuant to this Declaration.

B. The Initial Property is a portion of a master planned development commonly known as Saddle Creek (the "**Development**") being developed by Declarant.

C. Declarant deems it desirable to establish covenants, conditions and restrictions upon the "Covered Property" (as hereinafter defined) 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.

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 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 Saddle Creek Homeowners Association, a California nonprofit mutual benefit corporation, has been or shall be incorporated under the laws of the State of California for the purpose of exercising the powers and functions aforesaid.

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

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NOW, THEREFORE, for the purposes above set forth, Declarant hereby declares that the Initial Property and each part thereof and such other real property as may hereafter be annexed as provided in the Article entitled "Integrated Nature of the Covered Property" of this Declaration, shall be held, sold and conveyed subject to the following easements, equitable servitudes, restrictions, covenants, and conditions 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 "Annexation Property" shall mean all of the real property described in Exhibit "B" to this Declaration.

Section 1.2 "Architectural Design Committee" or "ADC" shall mean and refer to the committee or committees provided for in the Article hereof entitled "Architectural and Design Control."

Section 1.3 "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 1.4 "Assessments" The following meanings shall be given to the Assessments hereinafter defined:

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

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

(c) "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.

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

Section 1.13 "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 1.14 "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 the Development.

Section 1.15 "Developer Lots" shall mean and refer to all of the separate residential interests proposed for the Development that have not yet been conveyed to Retail Purchasers and are owned by the Declarant or any Merchant Builder. For purposes of this Section only, and in no way limiting the rights of Declarant to modify the Development or the actual number of Lots within the Development, the total number of projected Developer Lots for the Development as of the date of this Declaration is One Thousand Six Hundred and Fifty (1,650).

Section 1.16 "Developer Party(ies)" shall mean Declarant, each additional Merchant Builder, and their respective directors, officers, members, partners, employees, contractors, subcontractors, consultants, agents, successors and assigns.

Section 1.17 "Development" shall mean and refer to the real property described on Exhibits "A" and "B" and commonly known as Saddle Creek.

Section 1.18 "Development Agreement" shall mean that certain Development Agreement by and between the County of Calaveras and Declarant, relative 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 1.19 "Directors" shall mean and refer to the members of the Board.

Section 1.20 "DRE" shall mean and refer to the California Department of Real Estate.

Section 1.21 "DRE Approved Budget" shall mean and refer to that certain budget or budgets which have been or will be submitted to and approved by the DRE by Declarant and/or a Merchant Builder.

Section 1.22 "Exhibit" shall mean and refer to those documents so designated herein and attached hereto (as such Exhibits may be amended pursuant to Section 14.19 herein) and each of such Exhibits is by this reference incorporated in this Declaration. As additional property is annexed pursuant to the Article entitled "Integrated Nature of the Covered Property" of this Declaration, exhibits similar to the Exhibits attached to this Declaration may be attached to such Supplemental Declarations pertaining to the annexed property, and each of such exhibits shall thereby be incorporated in this Declaration.

Section 1.23 "**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 1.24 "**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 1.25 "**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 1.26 "**Golf Course Lot**" shall mean any Lot that fronts or abuts the Golf Course.

Section 1.27 "**Initial Sale Date**" shall mean the date of the close of escrow of the first Lot in the Initial Property to a Retail Purchaser.

Section 1.28 "**Institutional Mortgagee**" shall mean and refer to a First Mortgagee which is a bank or savings and loan association or established mortgage company, or 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 1.29 "**Lot**" shall mean and refer to (i) a lot shown on any final map filed for record, and (ii) a parcel shown on any parcel map filed for record.

Section 1.30 "**Map**" shall mean, collectively, (i) that certain final subdivision map entitled "Saddle Creek Unit 2A, Tract 94-545," filed for record in the Official Records of Calaveras County on December 13, 1999, in Book 7 of Subdivision Maps, Page 47, (ii) that certain final subdivision map entitled "Saddle Creek Unit 2B, Tract 94-545" filed January 29, 1999, in Book 7 of Subdivision Maps, Page 42, and (iii) any final subdivision map filed for record with respect to any subsequent phase of the Development.

Section 1.31 "**Member**" shall mean and refer to every person or entity who qualifies for membership pursuant to the Article of this Declaration entitled "Membership," including Declarant so long as Declarant qualifies for membership pursuant to said Article.

Section 1.32 "**Merchant Builder**" shall mean and refer to any person or entity which has acquired or will acquire from Declarant a portion of the Covered Property for the

purpose of improving such property in accordance with certain development covenants, conditions, restrictions, and requirements imposed by Declarant.

Section 1.33 "**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 1.34 "**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 1.35 "**Open Space - Wildlife Habitat Easements**" shall mean those certain nonexclusive easements for open space - wildlife habitat, as designated on the Map, for preservation, management, and maintenance, including weed abatement and wildlife fuel control. Access to and use of said easements is limited as provided in the Map.

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, any Merchant Builder, 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 "**Phase of Development**" shall mean the Initial Property described in Exhibit "A" attached hereto and made a part hereof and/or any portion of the Development subject to a Final Subdivision Public Report issued by the DRE and annexed to this Declaration.

Section 1.40 "**Retail Purchaser**" shall mean any Owner of a Lot other than Declarant or a Merchant Builder.

Section 1.41 "**Specific Plan**" shall mean that certain Specific Plan of the Calaveras Country Club, as adopted by the Calaveras County Board of Supervisors per Resolution No. 93-440A dated December 6, 1993.

Section 1.42 "**Supplemental Declaration**" shall mean those certain declarations of covenants, conditions and restrictions or similar instruments, annexing additional property

extending the plan of this Declaration to such additional property as provided in the Article of this Declaration entitled "Integrated Nature of the Covered Property."

Section 1.43 "Wetland Preserve and Wildlife Habitat Easements" shall mean those exclusive easements for storm drainage and wetland preserve and wildlife habitat, as designated on the Map, containing all "avoidance, preservation and mitigation areas" for management, control, replacement, and maintenance purposes, in accordance with that certain U.S. Army Corps of Engineers Nationwide Permit No. 26-199100807 - with special conditions. Access to and use of said easements is limited as provided in the Map.

## 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" (as defined below), "Building Envelope" (as defined below), 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 may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Except for the Class B Member (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 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 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 and any Merchant Builder. 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. Class B membership shall cease and be converted to Class A membership on 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 most recent Final Subdivision Public Report with respect to any part of the Development (including the Annexation Property) (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 Development are sold, the Conversion Date shall be extended for consecutive two (2) year periods until seventy-five percent (75%) of the projected Lots for the Development are sold; or

(iii) twenty-five 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 elsewhere 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 ninety percent (90%) of the total number of Lots in the Development 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.

ARTICLE III

COVENANT FOR ASSESSMENTS

Section 3.1 - Personal Obligation of Assessments. Each Owner including the Declarant and any Merchant Builder to the extent Declarant or such Merchant Builder is an Owner as defined herein, or 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, and Remedial Assessments. Such Assessments shall be fixed, established and collected from time to time as provided in this Declaration. The Regular, Special, Reimbursement, and Remedial Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be the personal obligation of the Owner of such Lot at the time when 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 exempt himself from personal liability for Assessments duly levied by the Association by the abandonment of his 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 to promote 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. The Association shall not impose or collect an assessment, penalty or fee that exceeds the amount necessary 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. In the event the amount budgeted to meet Common Expenses for the then-current year proves to be excessive in light of the actual Common Expenses, the Board 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 to Class A Membership, Regular Assessments may not be reduced if such reduction would diminish the quantity or quality of services provided by the Association.

Section 3.4 - Uniform Assessment. Regular Assessments shall be fixed at an equal amount for each Lot and may be collected at intervals selected by the Board.

Section 3.5 - 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 not to exceed Fifteen Dollars (\$15.00) 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.

Section 3.6 - 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 3.7 - Special Assessment. Special Assessments may be levied by the Association to fund any budgetary shortfall. 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.

Section 3.8 - 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 3.9 - 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 3.10 - Date of Commencement of Regular Assessments. The Regular Assessments for a particular Phase of Development hereunder 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 or a Merchant Builder to a Retail Purchaser within a particular Phase of Development.

Section 3.11 - 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 the Association is not properly exercising its duties and powers as provided in this Declaration.

#### 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 (a) suspend the voting rights of any Owner, and/or (b) impose reasonable monetary penalties pursuant to a monetary penalty schedule established and posted by the Board.

(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 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.

###### Section 4.2 - Intentionally Omitted.

#### ARTICLE V

##### ARCHITECTURAL AND DESIGN CONTROL

Section 5.1 - Architectural Design Committee. Upon recordation of this Declaration, the Architectural Design Committee shall be formed and shall consist of between three (3) and five (5) members, as determined from time to time by Declarant (or by the Board after the notice referred to in Section 5.3 below has been recorded).

Section 5.2 - Purpose and Functions. The purpose of the ADC is to achieve and maintain the aesthetic goals of Declarant. The function of the ADC is to enforce the restrictions herein by the review of plans and specifications submitted for approval by Owners, and by inspection of actual construction and progress to ensure conformity with the plans and specifications as approved. It is not the intent of Declarant to deprive the individual Owner from

having a home of unique design, but to protect the Development as a whole, and the Owners comprising the same, from undesirable construction.

Section 5.3 - Appointment. Declarant shall appoint all of the original members of the ADC and all replacements. Declarant may at any time relieve itself of the obligation of appointing and maintaining the ADC by recording a notice in the Official Records of Calaveras County stating that Declarant has surrendered the power of appointment and maintenance of the ADC, and upon the recording of such notice, said powers and obligations shall immediately vest in the Board.

Section 5.4 - Term. The term of the initial appointees to the ADC shall be six (6) years and thereafter members will serve three (3) year terms. Notwithstanding the foregoing, all members of the ADC shall serve at the will of Declarant and may be removed by Declarant at any time with or without cause. In the event of the death, removal or resignation of any member of the ADC, the successor shall be appointed by the person or group then entitled to appoint such members (either Declarant or the Board).

Section 5.5 - Duties. The ADC shall perform the duties imposed on it by this Declaration and applicable laws and regulations. The members of the ADC shall not be entitled to any compensation for services performed pursuant hereto. Notwithstanding the foregoing, members of the ADC who are design professions and were appointed to the ADC to provide a technical review of the plans and specifications submitted by Owners may be entitled to receive a reasonable payment for their services performed in connection with such technical review. The ADC shall have the power, exercisable by the ADC when necessary in the best interests of the Development, to take the steps necessary to effect amendments to the Calaveras Country Club Zoning Code (Ordinance No. 2344), which Code is applicable to the Development.

Section 5.6 - Meetings. The ADC shall meet as often as it deems necessary to properly carry out the obligations imposed upon it, unless directed otherwise by Declarant and/or the Owners. The presence of a majority of the members of the ADC shall constitute a quorum. Decisions by the ADC shall be made by the affirmative vote of a majority of the ADC members present at a meeting, or the unanimous written consent of the ADC members.

Section 5.7 - Address. The address of the ADC shall be determined by resolution of the ADC. Such address shall be within Calaveras County and shall be the place for the submittal of plans and specifications and the place where current copies of the Design Guidelines shall be kept.

Section 5.8 - Architectural Approval. No grading, tree removal, demolition, buildings, structures, additions, walls, fences, painting of exterior surfaces, alterations, front, side or rear yard landscaping, or other improvement on any Lot (collectively, "Improvements") shall be begun, constructed, maintained, or permitted to remain on any Lot, until complete plans and specifications of the proposed work ("Plans") have been submitted to and approved by the ADC. The ADC shall review all such proposals to judge whether they are compatible with this Declaration, the Design Guidelines and the Building Envelope and, if they are not, to require that changes be made before approval. Notwithstanding the foregoing, no approval shall be required

for (1) Improvements constructed by, at the direction of, or with the approval of Declarant; (2) normal maintenance of Improvements; (3) repair or rebuilding of any Improvements which will merely restore and not alter the previous exterior appearance of the Improvements; (4) changes to the interior of any Improvements; and (5) work reasonably required to be performed in an emergency for the purpose of protecting any person or property from damage. The jurisdiction of the ADC over construction in the Development shall be in addition to that of any architectural committee established under any Supplemental Declaration and any work or Improvement in the Development may require the approval of both any such architectural committee and the ADC.

Section 5.9 - Standards for Approval. The ADC shall approve plans and specifications submitted for its approval only if it deems, in its reasonable discretion, that the construction, alterations or additions contemplated thereby, in the locations indicated, will not be detrimental to the appearance of the Development as a whole and that the appearance and location of any structure affected thereby will be in harmony with the surrounding property and structures and the Design Guidelines. The ADC may condition its approval of plans and specifications upon such changes therein as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted.

Section 5.10 - Decisions. Decisions of the ADC and the reasons therefor shall be transmitted by the ADC to the applicant within sixty (60) days after receipt by the ADC of all materials required by the ADC. Any application submitted pursuant to this Section shall be deemed approved unless written disapproval or a request for additional information or materials shall have been transmitted by the ADC to the applicant within sixty (60) days after the date of receipt by the ADC of the application. Decisions of the ADC shall be final.

Section 5.11 - Design Guidelines and Building Envelopes. As soon as practicable following the recordation of this Declaration (and, as applicable, any Supplemental Declaration), the Declarant shall adopt Architectural Control Design Guidelines ("Design Guidelines") and a map designating the "Building Envelope" for each Lot, both of which shall govern the development of the Initial Property (and, upon recordation of any Supplemental Declaration, any Annexation Property). The Design Guidelines shall be subject to amendment from time to time, at the sole discretion of Declarant and may be different for each Phase of Development. Said Design Guidelines shall interpret and implement the provisions of this Declaration by setting forth more specific standards and procedures for the ADC review. The Building Envelope for each Lot shall represent the buildable area within each Lot, as determined by the ADC, taking into account Lot placement, size, configuration, trees, views and other factors. Each Owner should refer to the Design Guidelines for specific requirements applicable to such Owner's Building Envelope.

Section 5.12 - Review of Preliminary Plans - Initial Construction. With respect to the initial construction of a dwelling on a Lot, within sixty (60) days after receipt of Owner's preliminary Plans, the ADC shall either approve or reject such Plans as provided in Section 5.10. The preliminary Plans shall consist of a plot plan, floor plan and elevation. Upon review, the ADC may request additional drawings for clarification.

Section 5.13 - Submission of Final Plans and Specifications. Following approval of the preliminary Plans, five (5) sets of final plans and specifications must be submitted to the ADC for final approval. These plans and specifications must describe in detail the floor plan arrangement, elevations, use of materials, heights and dimensions, site placement, fences, grading, drainage plans, access, landscape and patio plans, and any other pertinent data required to fully illustrate the intended design, construction, and use. Physical samples of the exterior materials and colors must be submitted for approval. Before giving final approval, the ADC may require that the plans and specifications comply with any requirement imposed by the ADC as to structural features, building materials used, or any characteristics not otherwise expressly covered by this Declaration or the Design Guidelines. Approval by the ADC of any plans and specifications is not a waiver by the ADC of its right to object to any of the features or elements embodied therein if and when the same features or elements are embodied in any subsequent plans and specifications submitted for approval on other building sites.

Section 5.14 - Fee for Plan Approval. The ADC may charge a fee that does not exceed the estimated cost of reviewing preliminary and final plans. If the CSD undertakes the responsibilities of the ADC, as provided in Section 5.19, below, it may also charge a reasonable fee.

Section 5.15 - Commencement; Completion of Approved Work. Upon receipt of the approval of the ADC, the applicant shall proceed to have the work commenced and diligently and continuously pursued to completion in substantial compliance with the approval of the ADC including all conditions imposed therewith. The approval of the ADC shall be effective for a period of one (1) year after the date of the approval, subject to the right of the ADC to provide for a shorter or longer period at the time of its approval, or subsequently to extend the period upon a showing of good cause, and if the approved work is not commenced within the effective period of the approval, then the applicant, before commencing any work, shall be required to resubmit his application for the approval of the ADC.

Section 5.16 - Governmental Approval. Before commencement of any Improvements or alterations approved by the ADC, the Owner shall comply with all applicable laws, ordinances, and governmental regulations including, but not limited to, obtaining all required permits and approvals. Approval by the ADC does not constitute any waiver of or entitlement to the various approvals that may be required by any governmental entity having jurisdiction over the Development. Approval by the ADC does not imply that the proposed Improvements are in conformity with any applicable building codes, ordinances, regulations, plans or specifications.

Section 5.17 - Waiver. The approval by the ADC of any plans, drawings or specifications for any Improvements or in connection with any other matter requiring the approval of the ADC shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter submitted for approval. When unusual circumstances warrant, the ADC may grant reasonable variances from the building and architectural standards hereof or from the Design Guidelines. Such variances shall be made on a case-by-case basis and shall not serve as precedent for the granting of any other variance.

Section 5.18 - Limited Liability. The actions or inactions of the Declarant, the ADC or their respective agents, when exercising their discretion in enforcing this Declaration in good faith, shall not be a basis for damages or equitable relief to any Owner or any other person. NEITHER DECLARANT, DECLARANT'S PARTNERS, OFFICERS, EMPLOYEES OR AGENTS, NOR THE ADC, NOR ANY MEMBER OR EMPLOYEE OR AGENT OF THE ADC, SHALL BE LIABLE TO ANY OWNER OR TO ANY THIRD PARTY FOR ANY DAMAGES, LOSS, OR PREJUDICE SUFFERED OR CLAIMED ON ACCOUNT OF (A) THE APPROVAL OR DISAPPROVAL OF PLANS, DRAWINGS AND SPECIFICATIONS, WHETHER OR NOT DEFECTIVE, (B) ANY ERRORS OR DEFECTS, WHETHER LATENT OR PATENT, IN THE PLANS AND SPECIFICATIONS SUBMITTED FOR APPROVAL, (C) THE CONSTRUCTION OR PERFORMANCE OF ANY WORK, WHETHER OR NOT PURSUANT TO APPROVED PLANS, DRAWINGS AND SPECIFICATIONS, OR (D) THE DEVELOPMENT OF ANY IMPROVEMENTS WITHIN THE SUBJECT PROPERTY. SPECIFICALLY, BUT NOT BY WAY OF LIMITATION, IT IS UNDERSTOOD THAT PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER DECLARANT, THE ADC, NOR ANY ADC MEMBER, ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, OR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS.

Section 5.19 - Substitution of CSD for the ADC. At any time, the members of the ADC may elect to assign the responsibilities of the ADC 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 ADC has 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, any Supplemental Declaration, the Articles, Bylaws and Association Rules, by appropriate means and carry out the obligations of the Association hereunder;

(b) maintain and otherwise manage all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association;

(c) pay any taxes and other charges assessed to or payable by the Association;  
and

(d) make available the books, records and financial statements of the Association for inspection by Owners and First Mortgagees during normal business hours.

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) 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;

(c) 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

(d) 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:

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

(i) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that

the term of the contract 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 contract which provides 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 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; and

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

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 Remedial Assessments, all as provided in the Bylaws. The Association Rules shall govern such matters in furtherance of the purposes of the Association; 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 ADC 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. 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 in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association unless covered by insurance carried by the Owner.

## ARTICLE VII

### REPAIR AND MAINTENANCE

Section 7.1 - Repair and Maintenance by Owner. Every Owner shall be responsible for the following maintenance and repair:

(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;

(b) every Owner shall install (to the extent not previously installed by the date such Owner acquires its Lot), and thereafter maintain, in good and attractive condition and repair, all yard and slope landscaping on such Owner's Lot in accordance with this Declaration and the Design Guidelines. Notwithstanding the foregoing, the Owners of those certain Lots depicted on Exhibit "C" attached hereto (the "Slope Lots") shall be obligated to maintain the slope portions of such Slope Lots as identified on Exhibit "C" hereto (the "Slope Areas") in conformity with any special slope maintenance provisions contained in the Design Guidelines; and

(c) in the event the Board shall determine that any Lot perimeter walls and 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 ADC 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.

Section 7.2 - Right of Association to Maintain and Install. In the event that an Owner fails to accomplish any maintenance, repair or installation required by this Section, including, without limitation, proper maintenance of any Slope Areas on any Slope Lots, or pay his or its 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.

(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

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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 the Board otherwise agree, such maintenance or installation shall take place only during daylight hours on any day, Monday through Friday, excluding holidays.

(f) If the Association pays for all or any portion of correcting such deficiency or if an Owner has not paid his or its share of the maintenance and repair expenses as set forth in Section 7.1 of this Article regardless of whether the Association has reimbursed the appropriate parties or Owner pursuant to this Section, such amount shall be a Reimbursement Assessment to the violating Owner and his Lot, as applicable.

Section 7.3 - 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 ADC.

(b) All portions of the yard and slopes of a Lot, including, without limitation, any Slope Areas, which are unimproved and visible from the street(s) on which said Lot fronts shall be landscaped by the Owner thereof in conformance with customary landscaping

material(s), primarily living plants, lawn (sod), trees and shrubs, as prescribed by the Design Guidelines (including, without limitation, any special slope maintenance provisions thereof). Subject to the Article hereof entitled "Architectural and Design Control," landscaping of the Lot shall be installed within one hundred eighty (180) days from the later to occur of (a) the date of the conveyance of such Lot from Declarant or a Merchant Builder to the Owner or (b) the date of the issuance of the certificate of occupancy (or the equivalent) for the residential structure constructed on the Lot. Thereafter, such landscaping shall be maintained by the Owner in an attractive condition and according to any rules promulgated by the Board.

Section 7.4 - 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. Any damage caused by such entry shall be repaired by the entering party to the extent that the damage caused was unnecessary under the circumstances to carry out the Association's rights and obligations.

Section 7.5 - 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 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.

## 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, 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 public liability insurance covering the CSD Areas with a limit of not less than Three Million Dollars (\$3,000,000) 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; and

(b) 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.

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 shall purchase and maintain workmen's 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, demolition insurance, flood insurance, earthquake insurance, plate-glass insurance, and officers' and directors' liability 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. 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 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 either 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

### 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 9.1 - 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, together with

customary ancillary structures, including a private garage for not more than four (4) vehicles, as permitted from time to time by applicable zoning ordinances.

Section 9.2 - Trades or Businesses. 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 9.3 - 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 9.4 - 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 of Calaveras. 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 construction. All Owners and Merchant Builders, 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, Merchant Builder, 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, Merchant Builder, and/or general contractor.

Section 9.5 - Landscaping Maintenance. All landscaping of every kind and character, including shrubs, trees, grass and other plantings shall be watered, weeded, neatly trimmed, properly cultivated and maintained continuously by the Owner thereof in a neat and orderly condition and in a manner to enhance its appearance. The foregoing provisions of this Section 9.5 shall not apply to any areas which are designated on the Map as being within the Open Space - Wildlife Habitat Easements or the Wetland Preserve and Wildlife Habitat Easements. Such areas shall be governed exclusively by the terms, restrictions and requirements contained herein and elsewhere relating to the Open Space - Wildlife Habitat Easement and the Wetland Preserve and Wildlife Habitat Easements.

Section 9.6 - 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 ADC, as described in Article 5 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 ADC.

Section 9.7 - 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 9.8 - Signs. Except for signs installed by Declarant or approved by the ADC, 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, lease 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 ADC establishes standards for the creation and posting of "for sale" signs within the Development, all signs shall conform with such standards.

Section 9.9 - 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 48 hours except: (i) if it is stored within an enclosed garage or area completely screened from adjoining Lots, the CSD Areas, and the Golf Course; (ii) where required temporarily for the construction, repair, refinishing, or maintenance of any part of the Covered Property; and (iii) for moving furnishings, equipment, or supplies into or out of the Covered Property.

Section 9.10 - 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 ADC. In deciding whether to grant

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approval, the ADC shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections.

Section 9.11 - Garages. No garage shall be converted to any use which impairs or prevents its use for the storage of motor vehicles. Each Owner shall keep his garage area in a neat and orderly condition with any storage areas completely enclosed. Garage doors shall be kept closed when not in use. Garages shall not be used for storing or parking campers, trailers, boats or recreational vehicles or any other purpose which would prevent the Owner from parking his passenger vehicles in his garage. Each Owner shall keep his driveway clean and free of debris.

Section 9.12 - 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 of Calaveras. Any Owner who changes the drainage of his Lot contrary to the terms of this Section 9.12 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 9.13 - 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 9.14 - 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 9.15 - 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, patio, porch or other exterior area, unless built into a structure and approved by the ADC.

Section 9.16 - Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot except that common household pets, including a total of not more than two (2) dogs and/or three (3) cats, 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 Development which result in an annoyance or nuisance to other Owners.

Section 9.17 - 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 9.18 - 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 9.19 - 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 ADC, 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 9.20 - 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 9.21 - 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 building envelope (house structure and immediate area surrounding house for landscaping as approved by the ADC). The Fire District and the CSD shall have the right to monitor and enforce the foregoing requirements.

Section 9.22 - 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 9.23 - Fires. Other than barbecues, in properly constructed barbecue pits or grills, or fireplaces, no fires shall be permitted on the Lots.

Section 9.24 - 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 9.25 - 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 9.26 - 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 Development.

Section 9.27 - Utility Lines. Except for high voltage electrical lines, temporary lines used during construction and for 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 9.28 - Mailboxes. The mailboxes in the Development 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 9.29 - Garage Sales. The use of yards, garages, or any CSD Areas for garage or yard sales is prohibited.

Section 9.30 - 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 enclosed parking area. The Board may promulgate and enforce rules regarding parking within the Covered Property.

Section 9.31 - 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 (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, (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 Government Code.

Section 9.32 - Noise. No power tools, speakers, horn, whistle, bell, 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: (i) 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 9.33 - Tree Removal. Any removal of trees within the Development, 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 9.34 - Exceptions. The restrictions set forth in Article V and in this Article IX 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 the exercise of any easement reserved to Declarant and any Merchant Builders 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 X

### RIGHTS OF ENJOYMENT

No Member may exempt himself from personal liability for Assessments levied by the Association by the abandonment of his Lot.

## ARTICLE XI

### EASEMENTS

Section 11.1 - Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written 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 11.2 - Nature of Easements. Unless otherwise set forth herein, any easement reserved to Declarant herein shall be nonexclusive.

#### Section 11.3 - 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.

(b) Cable Television. There is hereby reserved to Declarant 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 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 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 to Merchant Builders, Declarant's sales agents and representatives, and prospective purchasers of Lots, 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, 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 Merchant Builders and Declarant's sales agents and representatives 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 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 any Merchant Builder, 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; and (3) customer relations and providing post-sale customer service to Owners; 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 and administrative purposes, a fully staffed customer relations, customer service and sales office complex on the Covered Property; (e) to show the Covered Property, unsold Lots and any Lots which are offered for resale to, 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 a Developer Party) 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.

#### Section 11.4 - 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) 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.

(c) Streets. There is hereby reserved to Declarant, for the benefit of each and every Owner of a Lot, an easement on, over, along, and across all of the streets throughout the Development, including, without limitation, any such streets included as part of any Lot, and any streets to be maintained by the CSD.

Section 11.5 - Certain Easements for Association. 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.

Section 11.6 - Certain Easements for Districts.

(a) There is hereby reserved to Declarant easements over the Covered Property, which easements may hereafter be granted to the CSD, for the purpose of permitting the CSD 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.

Section 11.7 - 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 CSD Areas which Lot shall be the dominant tenement and the contiguous Lot or CSD Areas shall be the servient tenement;

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

(c) it is provided, however, that in the event CSD Areas are the dominant tenement in an easement described in this Section, Declarant shall have the right to transfer said easement to the CSD 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 11.8 - 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, a Merchant Builder, or any other party. To the extent that all or any part of the easements reserved to Declarant are granted or transferred to a Merchant Builder, such easements may be transferred by such Merchant Builder to Retail Purchasers.

## ARTICLE XII

### INTEGRATED NATURE OF THE COVERED PROPERTY

The Annexation Property and/or any other real property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article, as follows:

Section 12.1 - Development of the Covered Property. Declarant intends to sequentially develop the Annexation Property on a phased basis; provided, however, Declarant may elect not to develop all or any part of such real property, to annex such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order. Moreover, Declarant reserves the right to subject all or any portion of the Annexation Property to the plan of this Declaration or one or more separate declarations of covenants, conditions and restrictions which subjects said property to the jurisdiction and powers of a homeowners association or other entity with powers and obligations similar to the Association and which is not subject to the provisions of this Declaration. Although Declarant shall have the ability to annex the Annexation Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of such property, and such property shall not become subject to this Declaration unless and until a Supplemental Declaration shall have been so executed and recorded.

Section 12.2 - Supplemental Declarations. A Supplemental Declaration shall be a writing in recordable form which annexes real property to the plan of this Declaration and which incorporates by reference some or all of the covenants, conditions, restrictions, easements and other provisions of this Declaration and shall contain such other provisions as set forth in this Declaration relating to Supplemental Declarations. Such Supplemental Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration (i) as may be necessary to reflect the different character, if any, of the Annexation Property, including, without limitation, with respect to zoning, building minimum square footages, Lot coverage, surface features, or method of subdivision (including, without limitation, larger or smaller parcel size, zero lot lines "Z" lot line configurations, and/or varying product type (including attached housing)), (ii) as may be required by any governmental authorities, (iii) as deemed appropriate by Declarant, or (iv) as may be appropriate in the development of the Annexation Property; provided, however, any additions or modifications hereto contained in any Supplemental Declaration shall be consistent with the applicable zoning documents for the Development, as same may be amended from time to time and approved by the County. Notwithstanding the foregoing, in the event of any direct conflict between the terms of any Supplemental Declaration and the terms of this Declaration, the terms of this Declaration shall control.

Section 12.3 - Annexation Without Approval and Pursuant to General Plan. All or any part of the Annexation Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that a Supplemental Declaration covering the portion of

the Annexation Property to be annexed, shall be executed and recorded by Declarant in the Official Records of Calaveras County. The recordation of said Supplemental Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said annexed real property shall be part of the Covered Property and all of the Owners of Lots in said annexed real property shall automatically be Members.

Section 12.4 - Annexation Pursuant to Approval. Upon approval in writing of the Association, pursuant to a two-thirds (2/3) majority of the voting power of the Association residing in Members other than Declarant, any person who desires to add real property, other than the Annexation Property to the plan of this Declaration and to subject such property to the jurisdiction of the Association, may file of record a Supplemental Declaration. The provisions of this Section shall also apply to the Annexation Property subsequent to the expiration of the power of Declarant to annex such property without the approval of the Members as provided in this Article. The certificate of the President and the Secretary of the Association attached to any Supplemental Declaration recorded pursuant to this Section certifying that the required two-thirds (2/3) majority of the voting power of the Association residing in Members other than Declarant has approved the recordation of such Supplemental Declaration shall be deemed conclusive proof thereof.

Section 12.5 - Mergers or Consolidations. Upon a merger or consolidation of the Association with another association which merger or consolidation must be approved by two-thirds (2/3) of each class of Members, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of the law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Covered Property, together with the covenants, conditions and restrictions established upon any other property as one plan.

Section 12.6 - De-Annexation. Any property annexed to the Covered Property by the Declarant, in accordance with the provisions of this Declaration, may be removed by Declarant as a portion of the Covered Property and from the jurisdiction of this Declaration and the Association at any time by the recordation of an appropriate Declaration of Removal in the Official Records of the County, provided that such removal shall take place before any Lot in the annexed parcel has been sold by Declarant or a Merchant Builder to a Retail Purchaser. Any property which is removed by Declarant may be annexed, at a future date, to the Covered Property in accordance with the provisions of this Declaration.

Section 12.7 - Annexation by Merchant Builders. Declarant may assign the annexation rights set forth in this Article to any Merchant Builder provided such Merchant Builder shall be subject to the limitations on annexation set forth herein and any other restrictions upon annexation reasonably imposed by Declarant. No Merchant Builder may annex any property, including, without limitation, any Annexation Property, without the express written consent of Declarant.

ARTICLE XIII

RIGHTS OF LENDERS

Section 13.1 - 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 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 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 13.2 - Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained 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 13.3 - 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 13.4 - 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 13.5 - Intentionally Omitted.

Section 13.6 - 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;
- (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 Development was created (such as a change from residential use to a different use);
  - (ii) voting;
  - (iii) assessments, assessment liens, and subordination thereof;
  - (iv) property maintenance obligations;
  - (v) casualty, fidelity and liability insurance;
  - (vi) reconstruction in the event of damage or destruction;
  - (vii) annexation;
  - (viii) any provision, which by its terms, is specifically for the benefit of First Mortgagees, or specifically confers rights of First Mortgagees; or
  - (ix) restrictions on the leasing of Lots
- (c) Effectuate any decision to terminate professional management and assume self-management of the Covered Property.

Section 13.7 - 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 13.8 - Mortgagees Furnishing Information. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

Section 13.9 - 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 13.10 - 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.

Section 13.11 - 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.

#### ARTICLE XIV

##### GENERAL PROVISIONS

Section 14.1 - Enforcement. Subject to the provisions of Sections 14.20, 14.21, and 14.22 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 (i) such enforcement responsibility has been assigned to the CSD in accordance with this Declaration, or

(ii) 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.

Section 14.2 - 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 14.3 - 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 14.4 - 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 14.5 - 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 14.6 - 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, and (5) a statement from an authorized representative of the Association listing all unpaid Assessments and charges against the interest being sold. 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 14.7 - 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.

Section 14.8 - 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 14.9 - 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 14.10 - 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 14.11 - 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 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) If to a Merchant Builder, to the address furnished by such Merchant Builder in writing to the Association for the purpose of giving notice, or if no such address shall have been

furnished, to the address set forth in the California Secretary of State's Official Records as the business address of such Merchant Builder with a copy to such Merchant Builder's registered agent for service of process.

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 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 14.12 - Obligations of Declarant. So long as Declarant and/or any Merchant Builder owns any portion of the Development, Declarant and/or such Merchant Builder 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 (except to the extent of any agreement between Declarant and any Merchant Builder with respect to the design and construction of Improvements by such Merchant Builder for sale to Residential Purchasers).

Section 14.13 - 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 14.14 - 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 14.15 - Non-liability of Officials. To the fullest extent permitted by law, neither the Board, the ADC, 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 14.16 - Leases. Any agreement for the leasing or rental of a Lot (hereinafter in this Section referred to as a "Lease") shall provide that 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 Lot shall be leased for transient or hotel purposes, which shall be defined as any rental (a) irrespective of the period of such rental, if the occupants of the Lot are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service, or (b) for any period less than thirty (30) days (except in the case of any Lot(s) identified on Exhibit "D" attached hereto (or any similar exhibit attached to any Supplemental Declaration) as "Cottage Lots" or "Bungalow Lots" in which case same shall be deemed to be leased for transient or hotel purposes if rented for any period less than seven (7) days in the case of Cottage Lots, and two (2) days in the case of Bungalow Lots).

Section 14.17 - Construction by Declarant. Nothing in this Declaration shall limit the right of Declarant to alter the Lots, or to construct such additional Improvements as Declarant deems advisable prior to completion of Improvements upon and the sale of the entire Development. 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 Development. 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 Development, 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.

Section 14.18 - Right to Cure Alleged Defects. It is the Developer Parties' intent that 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 Development. 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 Developer Parties' responsibility therefor. It is the Developer Parties' 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 any Lot, and/or any Improvements constructed on the Covered Property are defective or that any of the Developer Parties were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), Declarant hereby reserves the right for itself and each of the Developer Parties to inspect, repair and/or replace such Alleged Defect as set forth herein.

(b) Notice. In the event that a Claimant discovers any Alleged Defect, Claimant shall notify the Developer Party which constructed the improvement with the Alleged Defect, in writing, within fifteen (15) days of discovery of the Alleged Defect, of the specific nature of such Alleged Defect and such other matter 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 a Developer Party of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by a Developer Party, as part of Declarant's reservation of rights, the Developer Party shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Lot, including any residential dwelling unit constructed thereon, and/or any Improvements for the purposes of inspecting and, if deemed necessary by such Developer Party, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement, the Developer Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(d) Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to this Section and Sections 14.20, 14.21, and 14.22 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 a legal action, cause of action, proceeding, reference or arbitration against a Developer Party. Thereafter, prior to initiating any such legal action, cause of action, proceeding, reference or arbitration against a Developer Party, such action must be approved by a majority of the Members. 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.

Section 14.19 - Amendments. Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees pursuant to the Articles hereof entitled "Insurance" and "Rights of Lenders," or otherwise, this Declaration may be amended as follows:

(a) 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. 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;

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

(c) 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;

(d) 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;

(e) 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.

(f) 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;

(g) notwithstanding the amendment procedures set forth above, Declarant reserves the right to unilaterally make certain amendments to this Declaration, including any exhibits attached hereto, to amend same to make technical corrections, correct errors or omissions, or more precisely describe the actual sizes and locations of areas or Improvements. Declarant shall effect such changes by preparing or causing to be prepared, and recording or causing to be recorded, a declaration in a form determined by Declarant or as part of any Supplemental Declaration;

(h) 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. Notwithstanding any other provisions of this Declaration, at any time prior to the second (2<sup>nd</sup>) anniversary of the recordation of a particular Supplemental Declaration, Declarant may unilaterally amend such Supplemental Declaration by recording a written instrument which effects the amendment and is signed and acknowledged by Declarant; and

(i) 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.

Section 14.20 - 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 Development (excluding disputes relating to the payment of any type of Assessments), the matter will be heard by a reference pursuant to the provisions of the California Code of Civil Procedure, Sections 638-645, inclusive.

Section 14.21 - 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 proceedings, 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 (i) enforce the restrictions contained in Article XI hereof, (ii) enforce the architectural control provisions contained in Article V hereof, or (iii) collect any unpaid Assessments levied pursuant to this Declaration.

Section 14.22 - Limitation on Damages. Any judgment for money damages entered pursuant to this Declaration, including, without limitation Sections 14.1, 14.18, and/or 14.20 of this Article XVII, 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 14.23 - 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.

Section 14.24 - Interstate Land Sale Act. No Merchant Builder shall sell any Lots or other interests within the Development 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.

Section 14.25 - Enforcement of Bonded Obligations. Declarant has committed to complete certain recreational facilities (the "Sports Facilities") to be utilized by the Owners and others pursuant to specific policies established or to be established by Declarant. The Sports Facilities will be owned and operated solely by Declarant or an affiliate of Declarant (and its successors or assigns), and will not be conveyed to, nor operated or maintained by, the Association or the Owners. Declarant has posted a bond (the "Bond") to assure the completion of the Sports Facilities. In the event that the Sports Facilities have not been completed prior to the completion date set forth in the Planned Construction Statement appended to the Bond, the Owners other than Declarant (through the Association) as obligees under a Bond, have the right to consider and vote on the question of action to enforce the obligations under the Bond with respect to any portion of the Sports Facilities 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 Owners have given an extension in writing for the completion of any portion of the Sports Facilities, the Owners 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. While the Association shall assist the Owners to enforce the Bond, such right shall only exist as an accommodation to the Owners, and nothing herein shall act to provide the Association with any additional rights hereunder or otherwise. Under no circumstances shall the Sports Facilities be deemed common facilities or common areas of any kind, and neither the Owners nor the Association shall own, nor be deemed to own, any such facilities, it being understood that such facilities will be owned at all times by Declarant or an affiliate of Declarant, and shall be utilized by Owners only upon the payment of separate use fees, and pursuant to specific rules and regulations as may be promulgated by Declarant or an affiliate of Declarant from time to time.

## ARTICLE XV

### DECLARANT RIGHTS

Section 15.1 - 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 (its) Attorney-in-Fact to do the following:

(a) 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 Development 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.

(b) 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 Development 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.

(c) 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 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.

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

(e) 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.

(f) 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 Development.

(g) 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.

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

Section 15.2 - 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 15.3 - 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 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 15.4 - Assignment of Powers. Declarant shall have the right, without obligation, to assign to Merchant Builders 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 shall prevent Declarant from exercising any such powers or assigning such powers to other Merchant Builders.

## ARTICLE XVI

### GOLF COURSE

Section 16.1 - Owner's Acknowledgements. Each Owner, by acceptance of a deed to a Lot, acknowledges that:

16.1.1 No Golf Course Membership. The Golf Course is privately owned and is not subject to this Declaration. Ownership of a Lot within the Development 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.

16.1.2 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.

16.1.3 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 Development, 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 PERSON ON THEIR LOT, AND AGREES TO HOLD DECLARANT, THE COUNTY OF CALAVERAS, 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 OF CALAVERAS, 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 OF CALAVERAS, 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 OF CALAVERAS, 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 16.2 - 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 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: (i) 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; (ii) 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; (iii) the noises from the maintenance, repair, and mowing of the Golf Course; (iv) overspray in connection with the watering of the Golf Course; and (v) 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 16.3 - 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 XVI 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 XVI 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.

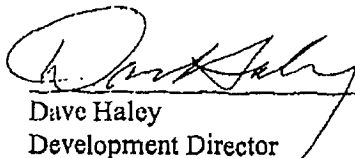
(Signature on Following Page)

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  
Development Director

By:

  
Billie B Kane  
Administration Manager

Exhibit "A"

Initial Property

**PARCEL ONE:**

Lots 114 through 148, inclusive, as shown on that certain Map entitled "Amended Final Map of Saddle Creek Unit 2A, Tract No. 94-545," filed in the Office of the Recorder of the County of Calaveras, State of California, on December 13, 1999, in Book 7 of Subdivisions, at Page 47, et seq., Document No. 1999 18843.

**PARCEL TWO:**

Lots 149 through 156, inclusive, Lots 159 through 213, inclusive, and Lots 216 through 223, inclusive, as shown on that certain Map entitled "Final Map of Saddle Creek Unit 2B, Tract No. 94-545," filed in the Office of the Recorder of the County of Calaveras, State of California, on January 29, 1999, in Book 7 of Subdivisions, at Page 42, et. seq., Document No. 1999 1438.

**Exhibit "B"**

**Annexation Property**

**PARCEL ONE:**

Parcel 6, 9 and 13, as said Parcels are shown on that certain Map entitled "Large Lot Parcel Map of Saddle Creek," filed for record in the Office of the Recorder of the County of Calaveras, State of California on September 11, 1995 in Book 9 of Parcel Maps, at Page 43, et seq; Document No. 1995 11307 and as shown on that Certificate of Correction, recorded April 10, 1997, as Document No. 1997 3207, Calaveras County Records.

**PARCEL TWO:**

Parcels A, B, C, D, F, G, I, K, L, M, P, U, V and W, as said Parcels are shown on that certain Map entitled, "Re-Subdivision Large Lot Parcel Map of Saddle Creek," filed for record in the Office of the Recorder of the County of Calaveras, State of California on January 29, 1999 in Book 9 of Parcel Maps, at Page 186, Document No. 1999 1435.

**PARCEL THREE:**

Adjusted Parcels E, H, J, N, O, Q, AND T, as said Parcels are shown on that certain Map entitled, "Lot Line Adjustment Parcel Map of portions of the Large Lot Parcel Map and the Re-Subdivision Large Lot Parcel Map of Saddle Creek," filed for record in the Office of the Recorder of the County of Calaveras, State of California on January 29, 1999 in Book 9 of Parcel Maps, at Page 187, Document No. 1999 1436.

**PARCEL FOUR:**

Adjusted Parcel 1 as such Parcel is shown on the Map entitled "Lot Line Adjustment Parcel Map of Portions of the Large Lot Parcel Map and the Re-Subdivision Large Lot Parcel Map of Saddle Creek," filed in the Office of the Recorder of the County of Calaveras, State of California on January 29, 1999 in Book 9 of Parcel Maps, at Page 187, Document No. 1999 1436.

**PARCEL FIVE:**

Lots 1 through 113, inclusive, as the same are shown on that certain Map entitled "Saddle Creek Unit 1, Tract 94-545," filed for record on November 30, 1995, in Book 7 of Subdivisions at Page 22, et seq., Document No. 1995 15335, in the Office of the Calaveras County, California, Recorder.

**PARCEL SIX:**

Lots 157, 158, 214 and 215 as shown on that certain map entitled "Final Map of Saddle Creek Unit 2B, Tract No. 94-545," filed in the Office of the Recorder of the County of Calaveras, State of California, on January 29, 1999, in Book 7 of Subdivisions. at Page 42, et. seq., Document No. 1999 1438.

**PARCEL SEVEN:**

Lots 27, 28, 29, 30, 31, 34 and 35 as the same are shown on that certain Map entitled "Copper Cove Subdivision at Lake Tulloch, Units No. 1 and 2, Tract No. 208", filed for Record on May 19, 1969, in Book 3 of Subdivision Maps at Page 34, et seq. in the Office of the Calaveras County Recorder, and as shown on that certain Certificate of Correction filed for Record on June 20, 1969, in Book 280 of Official Records, at Page 528, et seq., Calaveras County Records.

**PARCEL EIGHT:**

All that certain parcel of land lying within portions of Section 26 and Section 27, T.1 N., R.12 E., M.D.M., Calaveras County, California, and being a portion of that certain "252.548 Acre Waste Disposal Parcel", as the same is described in that certain Grant Deed to the Calaveras County Water District filed for record on November 21, 1985, in Book 743 of Official Records at Page 25, et seq., in the Office of the Calaveras County Recorder and being more particularly described as follows.

Commencing at a 2 1/2 inch brass cap monumenting the closing corner on the "Rancheria Del Rio Estanislao" between Sections 27 and 28, T.1 N., R.12 E., M.D.M., as the same is shown on that certain "Large Lot Parcel Map of Saddle Creek" filed for record on September 11, 1995, in Book 9 of Parcel Maps at Page 43, et seq., Document No. 1995 11307, and as shown on that Certificate of Correction, recorded April 10, 1997, as Document No. 1997 3207, in the Office of the Calaveras County Recorder; thence, with bearings and distances based upon said Large Lot Parcel Map 9-43, N 70°58'19"E, 4,985.26 feet to a 3/4 inch diameter rebar tagged L.S. 2716 as the same is shown on said Large Lot Parcel Map 9-43, and being the true point of beginning of the herein described parcel; thence, S 89°59'05"E, 793.45 feet to a 3/4 inch diameter rebar tagged L.S. 2716 as the same is shown on said Large Lot Parcel Map 9-43; thence, N 00°00'52"E, 1,309.99 feet to a 3/4 inch diameter rebar tagged L.S. 2716 as the same is shown on said Large Lot Parcel Map 9-43; thence, S 89°59'44"E, 1,400.04 feet to a 3/4 inch diameter rebar tagged L.S. 2716 as the same is shown on said Large Lot Parcel Map 9-43, said point being an intersection with a non-tangent curve from which a radial line bears N 01°30'32"E; thence, Easterly along a non-tangent curve to the left having a radius of 232.39 feet, through a central angle of 45°24'00", a distance of 184.14 feet to a 3/4 inch

diameter rebar tagged L.S. 3482 as the same is shown on said Large Lot Parcel Map 9-43, said point being the intersection with a non-tangent line from which a radial line bears N 43°53'28"W; thence, S 45°25'47"E, 189.96 feet to a ¼ inch diameter rebar tagged L.S. 3482 as the same is shown on said Large Lot Parcel Map 9-43; thence, S 45°22'09"E, 100.04 feet (cited as N 45°24'00"W on that certain map entitled "Copper Cove Subdivision at Lake Tulloch, Units No. 1 and 2, Tract No. 208", filed for Record on May 19, 1969, in Book 3 of Subdivision Maps at Page 34, et seq., in the Office of the Calaveras County Recorder and as shown on that certain Certificate of Correction, filed for Record on June 20, 1969, in Book 280 of Official Records at Page 528, et seq., in the Office of the Calaveras County Recorder); thence, South 855.00 feet; thence, S 48°10'00"W, 645.00 feet; thence, S 28°00'00"E, 342.00 feet; thence, S 21°10'00"W, 554.00 feet; thence South, 778.76 feet to a point on the north boundary of the "Rancheria Del Rio Estanislao"; thence, Easterly along said north boundary of said Rancheria Del Rio Estanislao the following two courses: N 89°37'46"W, 1,503.78 feet; 2.) N 89°16'30"W, 543.70 feet to a point from which a ¼ inch diameter rebar tagged L.S. 2716 bears S 00°00'12"E, 0.83 feet as the same is shown on said Large Lot Parcel Map 9-43; thence, leaving said north boundary of said Rancheria, N 00°00'12"W, 1,695.02 feet to the point of beginning and containing 134.363 acres.

EXHIBIT "C"  
"SLOPE LOTS" CONTAINING "SLOPE AREAS" LYING WITHIN SADDLE CREEK AMENDED UNIT 2A  
TRACT No. 94-545, 7 SUB. 47

MIRRA ENGINEERING ASSOC. LTD

SCALE : IN FEET

"SLOPE LOTS" CONTAINING  
"SLOPE AREAS" SUBJECT TO  
SPECIAL SLOPE MAINTENANCE  
PROVISIONS

PAGE #: 0063 OF 0066  
INST#: 2000 1308

RECORDED: 02/01/2000 FILE TIME: 01:45  
CALAVERAS COUNTY, KAREN VARNI - CLERK-RECORDER

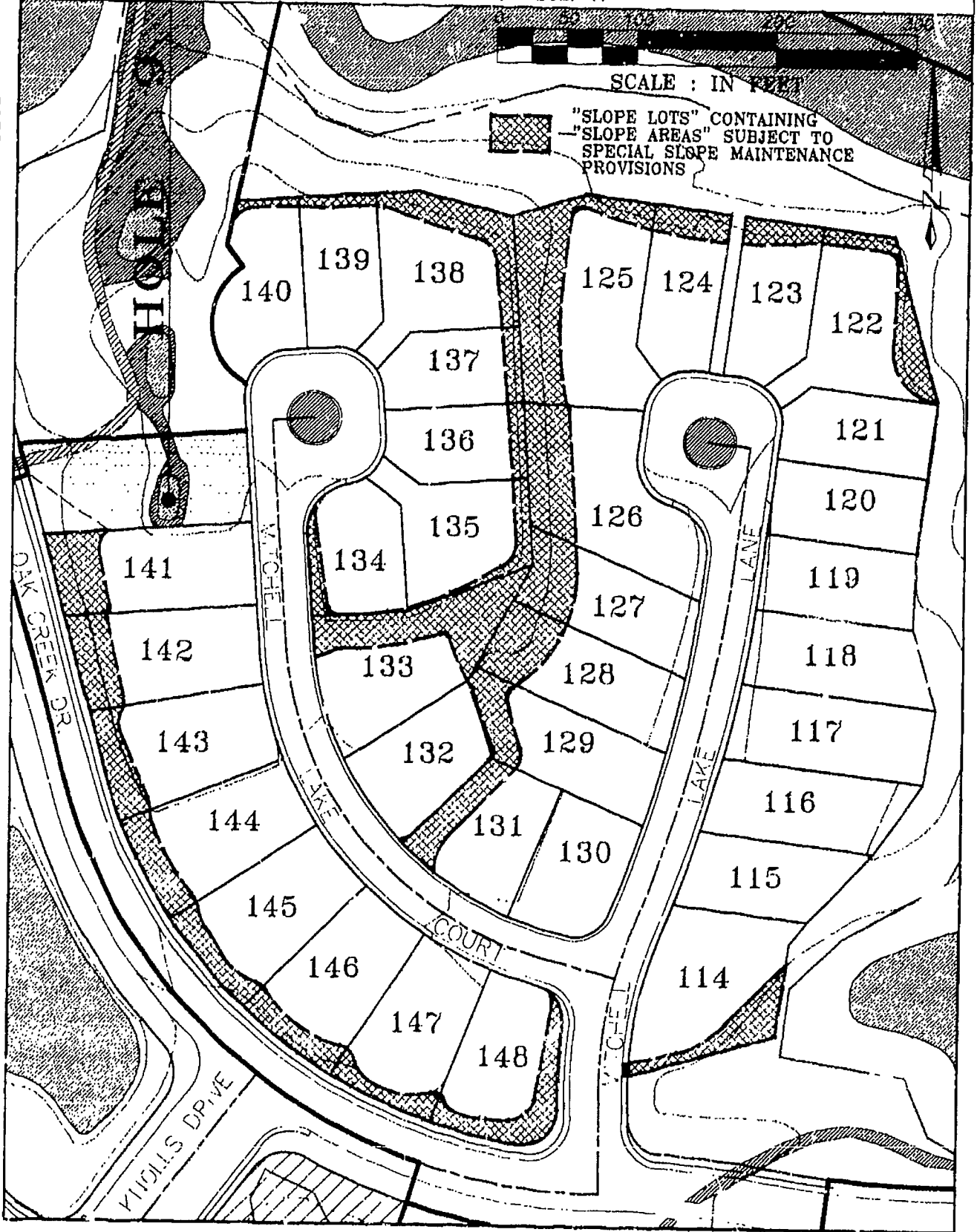


Exhibit "D"

"Cottage Lots"

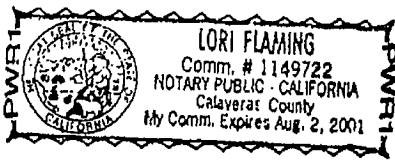
**PARCEL ONE:**

Lots 114 through 148, inclusive, as shown on that certain Map entitled "Amended Final Map of Saddle Creek Unit 2A, Tract No. 94-545," filed in the Office of the Recorder of the County of Calaveras, State of California on December 13, 1999, in Book 7 of Subdivision Maps, at Page 47 et seq.; Document No. 1999 18843.

STATE OF CALIFORNIA     )  
  ) ss.  
COUNTY OF Calaveras     )

On 2-1, 2000, before me, the undersigned, a Notary Public in and for said County and State, personally appeared DAVID 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 within instrument.

WITNESS my hand and official seal.



Lori Flaming  
Notary Public

33909/817745v6

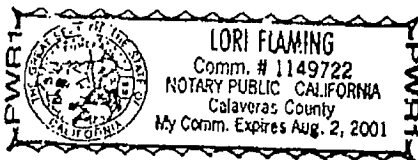
State of California

County of Calaveras

On 2-1-2000 before me, Lori Flaming  
SS personally appeared Billie S. Kane

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 - official notarial seal)



WITNESS my hand and official seal.

Lori Flaming  
Notary's Signature

OPTIONAL SECTION

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

Though the data requested here is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

TITLE OR TYPE OF DOCUMENT \_\_\_\_\_

NUMBER OF PAGES \_\_\_\_\_ DATE OF DOCUMENT \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
SS personally appeared \_\_\_\_\_

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.

\_\_\_\_\_  
Notary's Signature

OPTIONAL SECTION

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

Though the data requested here is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

TITLE OR TYPE OF DOCUMENT \_\_\_\_\_

NUMBER OF PAGES \_\_\_\_\_ DATE OF DOCUMENT \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

RECORDING REQUESTED BY

STERLING TITLE COMPANY

WHEN RECORDED MAIL TO

NAME: COX, CASTLE & NICHOLSON LLP  
MAILING ADDRESS: 2039 Century Park East  
28th Floor  
CITY, STATE ZIP CODE: Los Angeles, CA 90067  
Attention: Paul J. Titcher, Esq.

THE STERLING TITLE CO.

4

8-1-4-3

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR SADDLE CREEK**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR SADDLE CREEK (this "Amendment") is made this 18 day of February, 2000 by Castle & Cooke Saddle Creek, Inc., a California corporation ("Declarant"), as follows:

**WITNESSETH:**

WHEREAS, on February 1, 2000, Declarant recorded that certain Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Saddle Creek as Document No. 2000-1308 of Calaveras County Official Records (the "Declaration"); and

WHEREAS, the Declaration presently affects that certain real property located in the County of Calaveras, State of California (the "Property"), which is more particularly described in the Declaration; and

WHEREAS, Declarant is the record owner of the Property; and

WHEREAS, pursuant to its right under Article XIV, Section 14.19 of the Declaration, Declarant desires to modify and amend the Declaration to reflect certain changes, as more particularly set forth hereinbelow.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

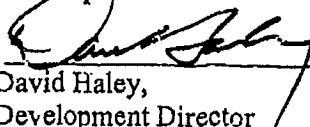
- 1) Article XIV, Section 14.25 - Enforcement of Bonded Obligations is hereby deleted in its entirety.
- 2) Except as hereinabove modified and amended, all other terms and conditions of the Declaration remain unchanged and in full force and effect.

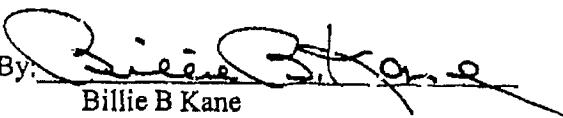
20302/826726v1

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

"DECLARANT"

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

By:   
David Haley,  
Development Director

By:   
Billie B Kane  
Administration Manager







**WHEREAS**, the Annexed Property constitutes a portion of the Annexation Property;  
and,

**WHEREAS**, Declarant desires and intends that the Annexed Property shall be annexed pursuant to Article XII of the Declaration and that all owners, mortgagees, occupants, and other persons hereinafter acquiring any interest in the Annexed Property, or any part thereof, shall at all times enjoy the benefits of and shall hold their interest subject to the rights, easements, covenants, conditions, restrictions and obligations set forth in the Declaration and this Supplementary Declaration.

**NOW, THEREFORE**, Declarant, as the record owner of the Annexed Property, for the purposes set forth above, hereby declares that all of the Annexed Property is annexed pursuant to the Declaration and shall be held, sold and conveyed subject to the rights, easements, covenants, conditions and restrictions and obligations set forth therein and hereinafter set forth, all of which are for the purpose of protecting the value and desirability of, and which shall run with, the Annexed Property and be binding on all parties having any right, title or interest therein, or in any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner of any portion thereof.

#### **ARTICLE I**

##### **SUBMISSION TO DECLARATION**

Declarant hereby submits the Annexed Property to the Declaration and further submits to Annexed Property to the control of the Architectural Design Committee established pursuant to Article V of the Declaration. The Annexed Property shall be subject to, and shall benefit from all covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth in the Declaration and this Supplementary Declaration. The definitions and terms with initial capitalization, set forth in the Declaration, shall apply to this Supplementary Declaration.

#### **ARTICLE II**

##### **MINIMUM DWELLING SIZE; FOR SADDLE CREEK UNIT 6**

With respect to the Annexed Property, no Dwelling may be constructed or maintained unless the interior floor area of such Dwelling (excluding garage) contains the minimum interior floor area required by the Architectural Standards and/or as otherwise approved by the Architectural Design Committee. Such requirements may vary for different portions of the Development. Notwithstanding the foregoing, the Architectural Design Committee may approve a Dwelling that exceeds the stated maximum square footage limitations. For purposes of determining compliance with such standards, only the interior, habitable portions of the Dwelling shall be considered. Garage areas are excluded. The Architectural Design Committee may establish guidelines for the calculation of Dwelling sizes and shall have the authority to resolve any dispute as to the actual size of a Dwelling.

#### **ARTICLE III**

##### **FURTHER DECLARATIONS**

Declarant certifies and declares that:

- A. This Supplementary Declaration is in accordance with the terms of the Declaration;

B. All covenants, conditions, restrictions and easements contained in the Declaration shall apply to the Annexed Property; and

C. The name and address of the record owner of the Annexed Property is as follows:

Castle & Cooke Saddle Creek, Inc.  
3840 Little John Road  
Copperopolis, California 95228

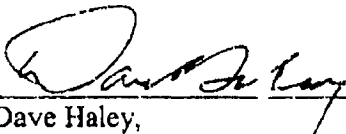
**ARTICLE IV  
AMENDMENTS**

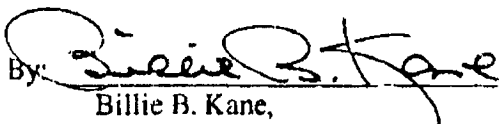
Declarant may unilaterally amend this Supplemental Declaration by recording a written instrument signed by Declarant within one (1) year from the date of recordation. Notwithstanding the foregoing, Declarant may unilaterally amend this Supplemental Declaration at any time by recording a written instrument signed by Declarant in order to conform this Supplemental Declaration to the requirements of the VA (Department of Veterans Affairs), FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal National Mortgage Association), GNMA (Governmental National Mortgage Association) and/or the requirements of any federal, state, county, city or any other governmental agency then in effect.

IN WITNESS WHEREOF, this Supplementary Declaration is made by Declarant on October 2, 2006.

"Declarant"

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

By:   
Dave Haley,  
Its Vice President and Division Manager

By:   
Billie B. Kane,  
Its Administration Manager

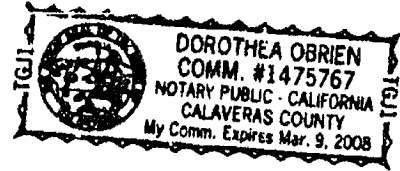
STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF CALAVERAS )

*Dorothea OBRIEN*

On October 2, 2006, 2006, 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 whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

*Dorothea OBrien*  
\_\_\_\_\_  
Notary Public



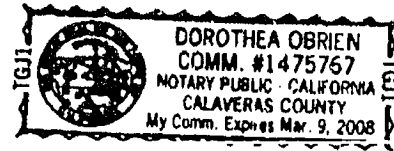
STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF CALAVERAS )

*Dorothea OBrien*

On October 2, 2006, 2006, before me, ~~the undersigned~~, a Notary Public in and for said County and State, personally appeared **BILLIE B. KANE**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

*Dorothea OBrien*  
\_\_\_\_\_  
Notary Public



**EXHIBIT "A"**

Annexed Property - Saddle Creek Unit 6

ALL THOSE CERTAIN LOTS AS SHOWN ON SADDLE CREEK UNIT 6, TRACT  
94-545, RECORDED ON JULY 27, 2006 IN BOOK 8 OF SUBDIVISIONS AT  
PAGE 36, et. seq., DOCUMENT NO. 2006 - 14408, IN THE OFFICE OF THE  
CALAVERAS COUNTY RECORDER.

Exhibit A

Order Number: 1106-2105  
Lender Policy:  
Owner Policy:  
Underwriter:

**TITLE NOTES . . . .**

**FOR INTERNAL USE OF Amador/Calaveras Title Plant**

<u>Step</u>	<u>Dash</u>	<u>Start Date</u>	<u>St Time</u>	<u>Start User</u>	<u>Stop Date</u>	<u>Stop Tm</u>	<u>Stop User</u>
Examine	8	11-21-2014	02:36PM	mgideon			
Examine	7	10-14-2014	02:26PM	mgideon			
Examine	6	08-19-2013	10:16AM	mgideon			
Examine	5	08-16-2013	04:35PM	mgideon			
Examine	4	06-20-2013	08:35AM	mgideon			
Examine	3	03-04-2013	09:11AM	mgideon			
Examine	2	04-24-2012	08:16AM	mgideon			
Prelim Delivery					04-11-2012	08:15AM	mgideon
Examine		04-09-2012	02:09PM	mgideon	04-11-2012	08:15AM	mgideon
Order Received		03-02-2012	03:39PM	mgideon			