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RECORDING REQUESTED BY

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MR Robert Harmon
431 Taylor Street
Alameda, Calif. 94501

Recorded in Official Records, County of Nevada, Bruce C. Bolinger, Clerk/Recorder



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TITLE(S)

DECLARATION FOR DONNER VILLAGE
TOWNHOMES, A PLANNED DEVELOPMENT

This Declaration is re-recording for the purpose of inclusion of the correct map, hereinto referred as Exhibit "A".

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Recording Requested By
ROBERT HARMON

When Recorded Mail to:
Robert Harmon
431 Taylor Street
nlameda, CA 94501

Recorded in Official Records, County of
Nevada, Bruce C. Bolinger, Clerk/Recorder



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DECLARATION FOR
DONNER VILLAGE TOWNHOMES
A PLANNED DEVELOPMENT

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THIS DECLARATION is made this 22nd day of May
1998, by Robert M. Harmon ("Declarant"), Sally S. Harmon

RECITALS

A. Declarant is **the** owner of that **certain** real property located **in the Town of Truckee**, County of Nevada, State of California, and more particularly **described** as Lots 310 through 311 of Tahoe Donner Unit **2**, on the subdivision **Map** recorded in the Office of the Recorder of Nevada County, State of California, on **May 26**, 1971, in Book **4** of Subdivisions at Page 23;

B. Pursuant to **the** general plan set forth in **this** Declaration, Declarant intends to subdivide the Property into **Lots** and parcels, as described and designated in the final map of "Donner Village

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Townhomes, a planned development," filed **and** recorded in the Office of the Recorder of Nevada County, State of California, on 12-30-97, in book 8 of Maps at page 56, to improve the Lots and **parcels**, and to create a planned development subject to the provisions of the Davis-Stirling Common Interest Development Act contained in Division II, Part 4, Title 6 of the California Civil Code.

C. In furtherance of this intent, Declarant hereby declares that all of the **Property is and shall** continue to be held conveyed, **hypothecated, encumbered,** leased, rented, **used,** occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, **and** easements set forth in this Declaration, as this Declaration may be amended from time to time, all of which are **declared and** agreed to be in furtherance of a general plan established for the purpose of enhancing a perfecting the **value, desirability,** and attractiveness of the Property. All covenants and restrictions Set forth in **this** Declaration shall constitute covenants running with the land and enforceable equitable **servitudes** upon the Property, and **shall** be binding on and for the benefit of **all** the Property and all parties **having** or acquiring any right, title, or interest in all or any part of the Property, **including** the **heirs, executors,** administrators, and assigns of these parties and all **subsequent:** owners **and** lessees of **all** or any part **of any** Lot in the Development.

ARTICLE I. DEFINITIONS

"Articles"

Section 1.01. "Articles" means the Articles of Incorporation of DONNER VILLAGE TOWNHOMES ASSOCIATION and any amendments to the Articles that **are** or **shall be** filed in the Office of the Secretary of State of the State of California.

"Association"

Section 1.02. "**Association**" means DONNER VILLAGE TOWNHOMES ASSOCIATION, a California nonprofit mutual benefit Association.

"Board"

Section 1.03. "Board" means the Board of Directors of the

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Association

"Bylaws"

Section 1.04. **"Bylaws"** means the Bylaws of the Association and any amendments to the *Bylaws* that are or shall be adopted by the Board.

"Common Area"

Section 1.05. **"Common Area"** means those portions of the Development owned by the Association for the common use and enjoyment of the Owners. This Common Area includes those portions of the lot6 described in the maps as "common area" which maps are attached hereto and made a part hereof by this reference. The portions of the lots on the Subdivision Map and any other parcels designated as **"Common Area"** in any Supplemental Declaration recorded pursuant to the annexation provisions of Article XI of this Declaration.

"Declarant"

Section 1.06. **"Declarant"** means Robert M. Harmon and _____ and it6 successors and assigns. Sally S. Harmon

"Declaration"

Section 1.07. **"Declaration"** means this Declaration and any amendments thereto.

"Development"

Section 1.08. **"Development"** means the Property, described and designated in the final map of "Donner Village Townhomes, a planned development," filed and recorded in the Office of the Recorder of Nevada County, State of California, on 12-30-97, in book 8 of Maps at page 56, a copy of which is attached hereto labeled exhibit "A," and made a part hereof by this reference, as and all improvements on the Property.

"Exclusive Use Common Area"

Section 1.09. **"Exclusive Use Common Area"** means those portions of the Common Area reserved for the exclusive use of one or more of the Owners pursuant to Section 2.04 of this Declaration.

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"Governing Instruments"

Section 1.10. "Governing Instruments" means this Declaration, the Articles and Bylaws of the Association, and any Rules and Regulations of the Development, and the covenants and restrictions, by laws and the environmental control rules...of the Tahoe Donner Association, which are applicable to the development.

"Lot"

Section 1.11. "Lot" means any plot of land or parcel in the Development that is not a part of the Common Area, as shown on any recorded Subdivision Map for the Development.

"Manager"

Section 1.12. "Manager" means any person or entity appointed by the Board to manage the Development.

"Member"

Section 1.13. "Member" means every person or entity entitled to membership in the Association as provided in this Declaration.

"Mortgage" and "First Mortgage"

Section 1.14. "Mortgage" means a mortgage or deed of trust encumbering a Lot or any other portion of the Development. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Lot or other portion of the Development.

"Mortgagee," "Institutional Mortgagee," and "First Mortgagee"

Section 1.15. "Mortgagee" means a Person whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage that is a financial intermediary or depository, such as a bank, savings and loan, or a mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). "First Mortgagee" means a Mortgagee that has priority over all

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other mortgages or holders of mortgages encumbering the *same* Lot or other portion of the Development, The term "Beneficiary" shall be synonymous with the term "Mortgagee."

"Mortgagor"

Section 1.16. "Mortgagor" mans a Person who mortgagee his, her, or its property co another (i.e., the maker of a mortgage), and shall include the trustor of a deed of trust. The term "Trustor" shall be synonymous with the term "Mortgagor."

"Owner"

Section 1.17, "Owner" means the record holder or holders of record fee title to a Lot, including Declarant, and any contract sellers under recorded contracts of sale, "Owner" shall not include any persons or entities who hold an interest in a Lot merely as security for performance of an obligation.

"Party Wall"

Section 1.18. "Party Wall" means the common wall dividing and separating the improvements at the development on Lots 1 and 2, Lots 3 and 4, Lots 5 and 6, Lots 7 and 8, and Lots 9 and 10, respectively.

"Pereon"

Section 1.19. "Person" means a natural. individual, a corporation, or any other entity with the legal right to hold title to real property.

"Property"

Section 1.20. "Property" means the real property described in the Recitals.

"Restricted Common Areas"

Section 1.21. "Restricted Common Areas" means the areas which are used for ingress and egress from each Unit, including the usual easements therefore, and includes the driveways and the walkways serving each Unit and each Lot within the property. All "Restricted Common Areas are more full described and identified on the Map attached hereto as Exhibit "A."

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"Rules and Regulations"

Section 1.22. "Rules and Regulations" means any Rules and Regulations for DONNER VILLAGE TOWNHOMES ASSOCIATION and such Rules and Regulations which **have** been, or will be, adopted by the **TAHOE DONNER SUBDIVISION** and the relevant Association for such Subdivision, regulating the **use** of the Common Area and this project and adopted by the Association pursuant to Section 3.06(b) of this Declaration.

"Subdivision Map"

Section 1.23. "Subdivision Map" means the recorded **map described** in Exhibit 'A.'

ARTICLE II. THE PROPERTY

Property **Subject** to Declaration

Section 2.01. All **the** property in the Development shall be subject to this Declaration.

Title to **Common** Areas

Section 2.02. Prior to the **final** closing of the first sale of **a** Lot in the Development, Declarant or its successors or assigns shall convey to the Association title and control of **the** Common Area, free of all liens and encumbrances, except current real property taxes **and** any reservations, easements, covenants, conditions, and restrictions of record, including those contained in this Declaration.

Use **and** Enjoyment of Common Area

Section 2.03. The following provisions govern **the use** and enjoyment of **the Common Area**:

(a) Subject to the provisions of **this** Declaration, **there** is an easement for **ingress**, egress, and **support** through the **Common Area** appurtenant to each Lot,

(b) The Owners' **easements** over, and rights of **use** and enjoyment of, the **Common Area** shall be **subject** to the restrictions set forth in the Governing Instruments, including the following:

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- (1) The right of the Association to adopt and enforce Rules and Regulations for the **use** of the Common Area.
- (2) The right of the **Association** to reasonably limit the number of guests **and** tenants using the Common Area.
- (3) **The** right **of** the Association to assign or otherwise control the use of any unassigned parking spaces within the Common Area.
- (4) The right of the Association to suspend the right of any Owner, **and** the Persons deriving rights from any Owner, to **use and enjoy** the Common Area **for** any period during which the Owner is delinquent in the payment **of** any assessment.
- (5) The right of the Association to cause the construction of additional improvements in the Common Area, or to cause the alteration or removal of existing improvements in the Common Area.
- (6) The right of the Association to grant, consent to, or join in the grant or conveyance of easements, licenses, or right-of-way in, on, or over **the** Common Area.
- (7) **The** right of each Owner to the exclusive use of any Exclusive **Use Common Area** appurtenant to the Owner's Lot.
- (8) The rights of Declarant as described in this Declaration.
- (9) The right of the Association to reasonably restrict access to roofs, maintenance facilities or areas, landscaped areas, and similar area of the Development.
- (10) The right **of** the Architectural Control Committee to approve any proposed alteration or modification to the Common Area or any Lot.

(c) Declarant hereby reserves easements for common driveway purposes, for drainage **and** encroachment purposes, **and** for ingress to and egress from the Common Area. These easements may be used to **complete** improvements on the Common Area and to perform necessary repair work. These easements shall remain in effect for **ten** (10) years from the date of the closing of the **first** sale of a Lot in the Development.

(d) The Association may grant to third parties easements in, on, and over the Common Area for the **purpose** of constructing, installing, or maintaining necessary utilities and services, and each Owner, in accepting his or her deed to services, and each Owner, in accepting his or her deed to the Lot, expressly consents to **these** easements. However, no such easement can be granted if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot or any Exclusive Use Common Area appurtenant to the Lot.

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(e) A **Class A** owner who has sold his or her Lot to a contract purchaser or who has leased or rented the Lot shall be entitled to delegate his or her rights to **use** and enjoy the **Common Area** to any contract purchaser, tenant, or subtenant who resides in the Owner's Lot, subject to reasonable regulation by the Board. If the owner makes such a delegation of rights, the **Owner** and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy **Common Area** for so long as the delegation remains effective.

(f) Each Owner shall be liable to the Association for any damage to the **Common Area** or to Association-owned property, to the extent that the damage is not covered by insurance, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, tenants, or invitees. In the case of joint ownership of a Lot, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

(g) each **Owner** shall be responsible for any costs associated with any work or repair in or upon any utility trench or any utility services therein or thereon, within the Project which costs, or any portion thereof, are neither borne by, nor are the responsibility of, any utility company or service provider. Such costs shall be shared equally by all Owners and shall be paid either directly by the **Owners** or may be made part of any general or special assessment by the Association.

Parking Spaces to Be Exclusive Use Common Area

Section 2.04. Each **Owner** shall have the exclusive right to use. For parking purposes only, any parking space or spaces that have been allocated to the Owner's Lot on Exhibit "A" attached to this Declaration or will be allocated to the Owner's Lot in the future. Each parking space shall be an **Exclusive Use Common Area**. Additional **Exclusive Use Common Areas** may be designated in the future by the Association, provided that the designation is not inconsistent with the rights of any Owner. The parking Lots and any other **Exclusive Use Common Area** shall be for the exclusive use of the Owner of the designated Lot and shall be appurtenant to that Lot. An **Exclusive Use Common Area** may not be transferred independently of any other interest of the Owner. Each Owner shall be obligated to pay as assessed by the Association their share of any and all **Common Area** parking area,

landscaping and building

Maintenance by Owners

Section 2.05. Each **Owner** shall maintain his or her Unit and the improvements located on it in a clean, sanitary, and attractive condition. This duty to maintain and includes a responsibility to repair *any* damage to the improvements located on the Owner's Lot occasioned by the presence of wood-destroying pests or organisms, provided that a majority of the Owners do not vote to have the Association:

(a) Arrange for the necessary repairs; and

(b) Levy a special assessment to recover the resulting costs.

In addition, each owner shall maintain those portions of any heating and cooling equipment and all plumbing, electrical, and gas lines, apparatus, and other equipment that are located within or that exclusively serve his or her Lot and the exterior lighting, steps, railings, walkways and decks which are part of, or are connected to, each Unit and upon each Owner's Lot. Additionally, each owner shall maintain and keep in good condition and repair at the Owner's sole cost the "Restricted Common Areas" described herein which serve each Owner's Lot and/or Unit; except, however, the Association shall be solely responsible for snow removal from, and any asphalt repair of, all such "Restricted Common Areas." This maintenance shall be at the Owner's sole expense. However, the Owner shall not take any actions that would impair or otherwise alter the structural integrity or mechanical systems or lessen the support of any structural member, without the prior written approval of the Architectural Control Committee, as provided in Article VI of this Declaration. The Association rather than the Owner shall be responsible for maintaining any Exclusive Use Common Area appurtenant to the Owner's Lot or The Owner shall also, at his or her sole expense, maintain and keep in a reasonably good state of repair any Exclusive Use Common Area appurtenant to the Owner's Lot. Association shall provide, or have provided for it, maintenance of all Common Area parking areas, and Common Area landscaping. Each Owner shall be responsible for any and all assessments made by the Association for all such maintenance by Association.

Easements for Maintenance of Encroachments

Section 2.06. None of the rights and obligations of the Owners described in this Declaration or created by deed shall be altered in any way by encroachments due to settlement or shifting of Structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as the encroachments exist. However, in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if the encroachment occurred due to the willful conduct of the Owner or Owners.

Prohibition Against Severance of Elements of Lot

Section 2.07. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's Membership interest in the Association, as provided in Section 3.02 of this Declaration. Any transfer that attempts to sever those component interests shall be void.

ARTICLE III. OWNERS' ASSOCIATION

Organization of the Association

Section 3.01. The Association is or shall be and unincorporated association under the Laws of the State of California. From the closing of the escrow for the first sale of a Lot, the Association shall be charged with the duties and invested with the powers prescribed by law and set forth in this Declaration, the Articles of Association and the Bylaws.

Membership

Section 3.02. Every Owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Lot is the sole qualification for membership. Each member shall have the rights, duties, privileges, and obligations set forth in the Governing Instruments. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Lot. All memberships shall be appurtenant to the Lot conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged.

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or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. **Any** transfer of the Owner's title to his or **her** Lot shall automatically transfer the appurtenant membership to the transferee.

classes of Membership

Section 3.03. The Association shall have two classes of voting membership, **a6** follows:

(a) All Owners, other than the Declarant, shall be Class A **members**. Class A membership entitles the holder to one vote for **each** Lot owned. When a Lot is owned by more than one person, **only** one vote may **be** cast for the Lot, **as** provided in section 3.04(b) of **this** Declaration.

(b) The Declarant shall be the sole Class B member. The Class B member shall be entitled to three votes for each Lot owned. Class B membership shall cease and be converted to Class A membership upon the occurrence of whichever of the following is first in time:

- (1) The total outstanding votes of **the** Class A Owners equals or exceeds the total outstanding votes of the **Class** B member;
- (2) The second anniversary of the first conveyance of a subdivision interest in the development.

Voting Rights

Section 3.04. All voting rights of the Owners shall be subject to the following restriction, limitations, and requirements:

(a) Except as provided in this Article, on each matter submitted to a vote of the Owners, each Owner **shall** be entitled to cast one vote for each Lot **owned**.

(b) Fractional voter⁶ shall not be allowed. When there is more than one record Owner of a Lot ("co-owners"), all of the co-owners shall be Members, but **only** one of them shall be entitled to cast the single vote attributable to the Lot. Co-owners should designate in writing one of their number to vote. If no such designation is made or if it is revoked, the co-owner⁶ shall decide **among** themselves, by majority vote, how that Lot's vote

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is to be cast. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No **vote** shall be cast for the Lot on a particular matter if a majority of the co-owners present in person or by proxy cannot agree on a vote.

(c) Except as provided in Section 3.07(c) of this Declaration, governing the enforcement of certain **bonded** obligations, and Section 3.06 of the Bylaws, governing the removal of directors, as long as two classes of voting **memberships** exist, any provision of this Declaration, the Articles, or the **Bylaws** that requires **the** approval of a specified percentage of the voting power of the Association (rather than simply requiring the vote or written consent of a majority of a quorum) shall require **the** approval of the specified percentage of the voting power of each class of membership. Except as **provided** in Section 3.07(c) of this Declaration and Section 3.06 of the **Bylaws**, when the **Class B** membership has terminated, any provision of **this** Declaration, the Articles, or the Bylaws, that requires the approval of a specified percentage of the voting power of the Association shall require the vote or written consent of Owners representing the specified percentage of both the total voting power of the Association and the voting power of the Association residing in Owners other than Declarant.

(d) The Board shall **fix**, in advance, a record date or dates for the purpose of determining the Owners entitled to notice of and to vote at any meeting of Members. The **record date** for notice of a meeting of **Members**. The **record date** for **notice** of a meeting shall not be more than 90 nor **less than 10 days** before the **date** of the meeting. The record date for voting shall not be more than 60 days before the date of the meeting or before the date on which the first written ballot is mailed or solicited. The Board may also fix in advance, a **record date** for the purpose of determining the Owners entitled to exercise any rights in connection with any other action. **Any** such date shall not be more than 60 days prior to the action.

(e) Every Owner entitled to vote at any election of the **Directors** may cumulate the Owner's votes **and** give one candidate a number of **votes** equal to the number of Directors to be elected multiplied by the number of votes to which the Owner is entitled, or distribute the Owner's votes on the same principle among as many candidates as the Owner thinks **fit**. No Owner shall be entitled to cumulate votes for a candidate or candidates unless the candidate's name or candidates' names have been placed in nomination prior to voting and an Owner has given notice at the

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meeting prior to the voting of the Owner's intention to cumulate votes. If any one Owner has given this notice, all Owners may cumulate their vote6 for candidates in nomination.

Membership Meetings

section 3.05. Article II of the Bylaws governing meetings of the Members is hereby incorporated by reference.

General Powers and Authority

section 3.06. The Association shall have all the power6 of a nonprofit mutual benefit organization organized **tinder the** California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in **this** Declaration or in the Articles and Bylaws of the Association. It may perform all acts that **may be** necessary for or incidental to the performance Of the cbligations and duties imposed upon it by **this** Declaration or the other Governing Instruments. Its powers shall include, but are not limited to, the following:

(a) The Association shall have the power to establish, **fix**, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set out in Article IV of this Declaration.

(b) The Association shall have the power to adopt reasonable Rules and Regulations governing the **use** of the Common Area and its facilities, and of any other Association property. These Rules and Regulations may include, but are not limited to: **reasonable** restrictions on use by the Owners and their family, guests, employees, tenants, and invitees; rules of conduct; and the setting of reasonable fees for the use of recreational facilities. A copy of the current Rules and Regulations, **if** any, shall be **given** to each Owner and shall be posted at conspicuous places in the Common Area. If any provision of the Rules and Regulations conflicts with any provision of this Declaration, the Articles, or the Bylaws, the Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

(c) The Association shall have the right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in **interest** and without joining with it the Owners, in matters pertaining to the following:

- (1) Enforcement of this Declaration, the Articles, Bylaws, and Rules and Regulations.

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- (2) Damage to the Common Area.
- (3) Damage to the *Lots* that the Association is obligated ~~to~~ maintain **or** repair.
- (4) Damage to the *Lots* that arises out of, or is integrally related to, damage to the Common **Area** or *Lots* that the Association **is** obligated to maintain *or* repair.

The Association shall enforce payment of assessments in accordance with *the* provisions of Article IV of this Declaration.

(d) In addition to the general **power** of enforcement described above, the Association may discipline its **Owners** for violation of any of the provisions of the Governing Instruments or Rules and Regulations by suspending the violator's **voting rights and** privileges for use of the Common **Area**, or by imposing monetary penalties, subject to the following limitations:

- (1) The accused Owner shall **be** given notice and **an** opportunity to be heard **with** respect to the alleged violation in accordance with the provisions of Section 7341 of the California Corporations Code.
- (2) Any suspension of an Owner's association privileges shall not exceed 60 days for **each** violation.
- (3) Any monetary penalty shall not exceed \$100.00 for each violation.
- (4) Except as provided in **Article IV** of this Declaration, relating to foreclosure **for** failure to **pay** assessments, or as a result of the judgment of a court or **a** decision arising out of arbitration, **the** Association shall in no way abridge the right of any Owner ~~to~~ the full use **and** enjoyment of **his** or her Lot.

(e) The Association, acting through the Board, shall have the power ~~to~~ delegate its authority, duties, and responsibilities to its officers, employees, committees, **or** agents, including **a** professional management agent. **The** term of any agreement with a manager ~~or~~ the Declarant for the furnishing of maintenance, repair, and related services shall not exceed **one year**, renewable **by** agreement of the parties **For** successive one-year periods.

Such an agreement shall **be** terminable by either party (1) for cause on 30 days written notice and (2) without cause or the payment of a termination fee on 90 days written notice.

(f) The Association's agents or employees **shall** have the right

to enter any Lot when necessary in connection with any maintenance, landscaping, or construction work for which the Association is responsible. This entry shall be made only upon notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable, and the Association shall repair any resulting damage at its own expense.

Duties of the Association

section 3.07. In addition to the duties delegated to the Association or its agents and employees elsewhere in these Governing Instruments, the Association shall be responsible for the following:

(a) The Association, acting through the Board, shall operate, maintain, repair, and replace the Common Area and its improvements, including common area landscaping, and the metal roofs on each Unit, or contract for the performance of that work, subject to the provisions of Article VIII of this Declaration relating to destruction of improvements, Article IX of this Declaration pertaining to eminent domain, Section 2.06 of this Declaration governing damages caused by wood-destroying pests or organisms, and Section 2.04 (f) of this Declaration relating to damage caused by Owners. The foregoing areas and improvements shall be kept in a clean, sanitary, and attractive condition. The Association shall not be responsible for maintaining Exclusive Use Common Areas. The Association shall also have the exclusive right and duty to acquire and maintain any furnishings and equipment for the Common Area that it determines are necessary and proper. As a general rule, maintenance costs shall be included in the regular assessments. However, if additional work is required for a particular Lot, the expenses of that additional work shall be charged solely to the Owner of the Lot in the month in which the work is performed. Further, the Owner of a Unit shall pay the costs of any temporary relocation of any occupant of the Unit occasioned by the presence of wood-destroying pests or organisms. If the Owner does not pay for the additional work within 20 calendar days after receiving the bill, the Association shall institute appropriate collection actions and shall recover the reasonable costs of collection, including attorneys' fees and interest from the due date until paid at the rate of 10 percent per annum.

(b) The Association shall use the maintenance fund described in Section 4.01 of this Declaration to, among other things, acquire and pay for the following:

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- (1) Water, sewer, garbage, electrical, telephone, gas, elevator, and other necessary utility service for the Common Area and, to the extent **not** separately metered and charged, for the Lots;
- (2) The insurance policies described in Article VII of this Declaration;
- (3) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area; **and**
- (4) Legal and accounting services necessary or proper in the operation of the Common Area *or* the enforcement of this Declaration.

(c) If the Association is obligee under a bond or other arrangement to secure the performance of Declarant **a6** to any Common **Area** improvements that were not completed prior to the issuance of the final public report on the Development, the following procedures shall govern the initiation of action to enforce the bond:

- (1) The Board of Directors of the Association shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a Notice of Completion has not been filed within 60 **days** after the completion date specified for the improvement in the Planned Construction Statement appended to the bond. If the Association has given an extension in writing for the completion of **any** Common **Area** improvements, the Board shall consider and vote on **the** above question if a Notice of Completion has not been filed within 30 days after the expiration of the **extension**
- (2) If the Board votes not to initiate action to enforce the obligations **under** the **bond**, or if it fails to consider and vote on the matter as required, a special meeting of the Owners of the Association shall be called for the purpose of overriding the Board's decision or for taking action on the matter, upon receipt of a petition calling *for* such a **meeting** signed by Owners representing at least **5** percent **of the** total voting **power** of the Association. **The meeting** shall be held not less than 35 days nor more than 45 days after the receipt of the petition by the Board. At the special meeting, only the Owners other than Declarant shall be allowed to vote on

the matter. A vote by a majority of the voting power of the Association residing in Owners other than Declarant to **take** action to enforce the obligations under the bond deemed to be the decision of the Association, **and** the Board **shall** implement this decision by initiating and pursuing appropriate action in the name of the Association.

(d) The Association shall prepare a pro forma operating budget for **each** fiscal year and distribute a copy to each Owner not less than 45 **and** not more than 60 **days** prior to the beginning of the fiscal year. This budget shall contain at least the following:

- (1) The estimated revenue and expenses on an accrual basis;
- (2) The amount of the total cash reserves currently available for replacement or major repair of common facilities and for contingencies; and
- (3) Concerning any major components of the common area and facilities for which the Association is responsible, the following information: (i) an itemized estimate of the remaining life; (ii) the methods of funding to defray the costs of repair, replacement, or additions; and (iii) a general statement of procedures used to calculate and establish reserves for the expenses set forth in (2), supra.

(e) Within 120 days after the close of each fiscal year, the Association shall prepare and distribute to the Owners an annual report consisting of the following:

- (1) A balance sheet as of the **end** of the fiscal year.
- (2) An operating (income) statement for the fiscal year.
- (3) A Statement of changes in financial position for the **fiscal** year.
- (4) For any fiscal year in which the gross income to the Association exceeds \$75,000, a copy of the **review** of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. If this report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized **offices** of the Association that the statement was prepared without independent audit or review from

the books and records of the Association.

(f) Within 60 **days** prior to the beginning of each fiscal year, the Association shall prepare and distribute to the Owners, a statement describing the Association's policies **and** practices in enforcing lien rights or other legal remedies for default in payment of assessments against *Owners*.

(g) The **Association** shall prepare a balance sheet, **a6** of an accounting date that is the last day of the month closest in time to six months from the date of closing of the first sale of a Lot in the Development, and an operating statement for the period from the date of the first closing to the foregoing accounting date. The Association **shall** distribute this Statement to the Owners within 60 days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by **the number** of the Lot and the name of the Owner **assessed**.

(h) The Association shall provide any Owner with the following documents within 10 days of the mailing or delivery of a written request therefor:

- (1) A copy of the Governing Instruments.
- (2) A copy of the most recent financial statement distributed pursuant to Section 3.07(d) of this Declaration.
- (3) A written statement from an authorized representative of the Association specifying
 - (i) the amount of any assessments levied on the Owner's Lot **that** are unpaid on the date of the statement; and (ii) the amount of **late charges**, interest, and costs of collection that, as of the date of the statement, are or may be made a lien on the Owner's Lot **pursuant to Section 4.09** of this Declaration. The Association may charge the Owner a reasonable fee to cover its cost to prepare and reproduce those **requested** items.

(i) **The** Association shall pay all real **and personal** property taxes and assessments levied against it, its personal property, the **Common** Area, and Exclusive Use **Common** Areas.

Board of Directors

Section 3.08. The affairs of the Association Shall be managed and its duties and obligations performed by an elected Board of

Directors, **as provided in Article III of the Bylaws, which is hereby incorporated by reference.**

Inspection of Books and Records

Section 3.09. Article XI of the Declaration, governing the duty of the Association to maintain certain books and records and the rights of Owners and Directors to obtain and inspect those books and records, is hereby incorporated by reference.

ARTICLE IV. ASSESSMENTS AND COLLECTION PROCEDURES

Covenant to Pay

section 4.01. The Declarant covenants and agrees, for each Lot owned by it in the Development, and each Owner by acceptance of the deed to the Owner's Lot is deemed to covenant and agree, to pay to the Association the regular and special assessments levied pursuant to the provisions of this Declaration. A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall be debt of the Owner of the Lot at the time the assessment or other sums are levied. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the common Area or abandonment of the Owner's Lot.

Exemptions From Assessments

Section 4.02. The obligation to pay assessments shall be subject to the following exemptions:

(a) Any Owner (including Declarant) of a Lot in the Development that does not include a structural improvement for human occupancy shall be exempted from that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of those structural improvements. The exemption shall include, but is not limited to, the following:

- (1) Roof replacement;**
- (2) Exterior maintenance;**

Any such exemption shall be in effect only until the occurrence of the earliest of the following events: (i) the recordation of a

notice of completion of the structural improvement; (ii) the occupation or use of the structural improvement; or (iii) completion of all elements of the residential **structures** that the Association is obliged to maintain.

(b) Any owner (including Declarant) of a Lot in the Development shall be exempted from that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time the assessment commences. This exemption shall be in effect only until a notice of completion of the common facility is recorded or the common facility is placed into use, whichever occurs first.

Purpose of Assessments

Section 4.03. The assessments Levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners, for the operation, replacement, improvement, and maintenance of the Property, and to discharge any other obligations of the Association under this Declaration. All assessment payments shall be put into a maintenance fund to be used for the foregoing purposes.

Regular Assessments

Section 4.04. Within 60 days prior to the beginning of each calendar year, the Board shall estimate the net charges to be paid during that year, including a reasonable provision for contingencies and replacements, with adjustments made for any expected income and surplus from the prior year's fund. The estimated cash requirement shall be shared equally by each Owner irrespective of the total living area owned by such owner; provided, however, that the assessments for tire insurance coverage for the structures and for roof repair and maintenance shall be assessed to each Owner according to the ratio of the living area (square footage) owned by an Owner divided by the area of all units on which construction has been completed. For purposes of this section the term "structure" shall mean all areas, including, but not limited to living areas, garage areas, decks, balconies and stairways, which are constructed upon the Project property. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Board in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method

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for payment. Declarant shall pay its full prorated share of the regular assessments on any unsold Lots subject to regular assessments upon which construction has been completed.

Special Assessments

Section 4.05. If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to **the cost of** any construction, unexpected repairs or replacements of capital improvements upon the Common Area, or any other reason, it shall make a special assessment for the additional amount needed. The Board shall also levy a special assessment for any pest-control work necessary to repair any **damage to** improvements located on a Lot in the Development occasioned by the presence on that Lot of wood-destroying organisms, as provided in Section 2.06 of this Declaration. **Special assessments shall be levied and collected** in the same manner as regular assessments.

Limitations on Assessments

section 4.06. Except in emergency situations, the Board **may** not, without the approval of Owners constituting a majority of the Owners of the Association and casting a majority of the vote at a meeting or election of the Association conducted in accordance **with** Section 7510-7527 and 7613 of the California Corporations Code, impose a regular annual assessment per Lot that is more than 20 percent greater **than** the regular annual assessment for the **preceding** year, or levy special assessments that in the aggregate **exceed** 5 percent of the budgeted gross expenses of the Association for that year. These limitations shall not apply to assessment increased that are necessary for emergency situations. An emergency situation is an extraordinary **expense** that is;

- (a) Required by a court order;
- (b) Necessary to repair or maintain the Development or **any** part of it for which the Association is **responsible** when a threat to personal safety in the Development is discovered; or
- (c) **Necessary** to repair or **maintain** the Development or any part of it for which the Association is responsible that could not have **been** reasonably foreseen by the Board in preparing and distributing the **pro forma** operating budget pursuant to Section 3.07 (d).

Before **the** Board may impose or collect an assessment in an

emergency situation, it shall **pass** a resolution containing written findings **as** to the necessity of the extraordinary expense and **why the** expense **was** not or could not have been reasonably **foreseen** in the budgeting process, **and** shall distribute the resolution **to the Owners** with the notice of assessment.

Commencement of Assessments

Section 4.07. Regular assessments shall commence on all **lots** in the Development on the **first day of** the month following the first conveyance of a Lot in the Development.

Late Charges

Section 4.08. Late charges may be levied by the Association against an Owner **for the delinquent payment of** regular or special assessments. An assessment is delinquent 15 days **after** its due **date**. If an assessment is delinquent **the Association may recover all of the** following from the Owner:

(a) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees.

(b) A late charge not **exceeding 10 percent** of the delinquent assessment **of** \$10, whichever is greater.

(c) Interest on the foregoing sums, **at an annual** percentage rate of **12** percent, commencing 30 days after the assessment becomes due.

No late charge may be imposed more than **Once** for the delinquency **of** the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments.

Enforcement of Assessments and Late Charges

Section 4.09. A delinquent **regular** or special **assessment** and any related late charges, **reasonable** costs of collection, and interest **assessed** in accordance with **Section 4.08** of this Declaration, shall become a lien upon the Lot when a notice of delinquent **assessment** is duly **recorded as** provided in Section 1367 of the California Civil Code.

Any **such lien** may be enforced in any manner **permitted** by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall **be** conducted by the trustee named

in the notice of delinquent assessment or by a trustee substituted pursuant to Section 2934a of the California Civil Code, in accordance with the provisions of Sections 2934, 2924b, and 2924c of the California Civil Code.

If the sums specified in the notice of delinquent assessment are paid before the completion of any judicial or nonjudicial foreclosure, the Association shall record a notice of satisfaction and release of the lien. Upon receipt of a written request by the Owner, the Association shall also record a notice of rescission of any declaration of default and demand for sale.

Statement of Delinquent Assessment

section 4.10. The Association shall provide any Owner, upon written request, with a statement specifying the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Lot, as provided in Section 4.08 of this Declaration.

ARTICLE V. USE RESTRICTIONS AND COVENANTS

Incorporation of Tahoe Donner Covenants and Restrictions

Section 5.01. Each and every provision of those certain covenants and restrictions of the Tahoe Donner Association, initially filed with the Recorder, County of Nevada, California, on May 18, 1971, in Book 553, page 343, Official records, as amended on several occasions and as restated in an instrument recorded on January 17, 1992, Series No. 92-01670, official records, and as such provisions may have been subsequently modified thereafter, hereinafter referred to herein as the "Tahoe Donner Covenants and Restrictions," are incorporated herein by this reference as if set forth in full at this point. Each and every provision of the Tahoe Donner Covenants and Restrictions as they exist at the time of the filing of the within Declaration, or as the Tahoe Donner Association Covenants and Restrictions may thereafter be modified, shall be deemed a part of this Declaration. In the event any provision of this Declaration contradicts or varies any specific provision of the Tahoe Donner Covenants and Restrictions, the provisions of the Tahoe Donner Covenants and Restrictions shall prevail, except as otherwise provided herein. Furthermore, each and every owner agrees to be bound by all of the terms and conditions of the Tahoe Donner Covenants and Restrictions now, or as they may be hereafter

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modified. The Owners further understand and agree that the within development is covered, primarily, by the provisions of the Tahoe Donner Covenants and Restrictions, and secondarily, by the within Declaration. As used in the Tahoe Donner Covenants and Restrictions, the term "Owner," shall mean the owners of the individual Lots or Units herein, covered by this Declaration. Furthermore, and to the extent necessary, the Association referred to in this Declaration may take all necessary and proper action to assure that all of the terms and conditions of the Tahoe Donner covenants and Restrictions are followed, and that no owner is in violation thereof.

General Restrictions on Use

Section 5.02. In exercising the right to occupy or use a Lot or the Common Area and its improvements, the Owner and the Owner's family, guests, employees, tenants, and invitees shall not do any of the following:

(a) Attempt to further subdivide a Lot without obtaining the prior approval of the Association.

(b) Occupy or use a Lot, or permit all or part of a Lot to be occupied or used, for any purpose other than as private residence. Nothing in this Declaration shall prevent an Owner from leasing or renting out his or her Lot, provided that it is not for transient or hotel purposes, is for a period of at least 60 days and is subject to the Governing Instruments.

(c) Permit anything to obstruct the Common Area or store anything in the Common Area without the prior consent of the Board, except as otherwise provided in the Governing Instruments

(d) Perform any act or keep anything on or in any Lot or Exclusive use Common Area or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his or her Lot, in any Exclusive Use Common Area appurtenant to the Lot, or in the Common Area that would result in the cancellation of insurance on any Lot or Exclusive Use Common Area or on any part of the Common Area or that would violate any law,

(e) Store gasoline, kerosene, cleaning solvents, or other flammable liquids in the Common Area or on any Lot; provided, however, that reasonable amounts of these liquids may be placed in metal containers and stored in the storage spaces.

(f) Display any sign to the public view on or from any Lot or the Common Area without the prior written consent of the Board, except a sign advertising the property for sale, lease, or

exchange as provided in Section 712 of the California Civil Code.

(g) Raise, breed, or keep animals, livestock, or poultry of any kind on a Lot or in the Common Area, except dogs, cats, or other household pets, which may be kept on Lots, subject to the Rules and Regulation.

(h) Engage in any noxious or offensive activity in any part of the Development.

(i) Alter or modify the exterior of any improvements located on a Lot without first obtaining the written consent of the Architectural Control Committee.

(j) Alter, Construct, or remove, anything on or from the Common Area. except upon the written consent of the Board.

(k) Park any automobile or other motor vehicle in the Common Area or in any Exclusive Use Common Area except in a space designated for the Owner by the Board or the Governing Instruments.

Damage Liability

Section 5.03, Each Owner shall be liable to the Association for all damage to the Common Area or other Association property that is sustained by reason of the negligence or willful misconduct of that Owner or his or her family, guests, employees, tenants, and invitees, to the extent that the damage is not covered by the casualty insurance obtained and maintained by the Association pursuant to Section 7.01 of this Declaration. Each Owner, by accepting his or her deed, agrees to provide insurance to the extent required by section 7.04 of this Declaration.

Exemption

Section 5.04.. Declarant shall be exempt from the restrictions of Section 5.02 to the extent necessary to complete any construction work, sales activities, or additions to or affecting the Development. This exemption includes, but is not limited to, maintaining Lots as model homes, placing advertising signs on Development property, and generally using Lots and the Common Area to carry on construction activity. This exemption shall expire three years from the date of the First sale of any lot in Development.

Equitable Servitudes

Section 5.05. The covenants and restrictions set forth in this Declaration shall be enforceable equitable servitudes and shall

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inure to *the* benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association.

Party Walls

Section 5.06. The rights and duties of the Owners of Lots with respect to party walls shall be governed by the following:

(a) **Each wall or fence which is** constructed and which is placed on the dividing line between separate Lots, shall constitute a party wall, and with respect to such wall, each of the adjoining Owners shall assume the burdens and be subject to an easement ~~for that portion of~~ a party wall on his land, and be entitled to **the** benefits of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls and of liability **for property damage due** to negligence or willful acts or omissions, **shall** apply thereto.

(b) If any such party wall is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, his agents, or family (including ordinary wear and tear and deterioration from lapse of time, then, in such event, both such adjoining Owners **shall** proceed forthwith to rebuild or **repair** the same to as good condition as formerly, in proportion to their respective **use** of the party wall.

(c) If any such party wall **is** damaged or destroyed through the **act** of one adjoining Owner or any of his agents or guests or **members** of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners **shall forthwith** proceed to **rebuild** and repair the same to **as good** condition as formerly, without cost to the adjoining Owner.

(d) In addition to meeting **the** other requirements of these restrictive covenants and of any building code or **similar** regulations or ordinances, any Owner proposing to utilize, modify, make additions to or rebuild the party wall in **any manner which requires the** extension or **other** alteration thereof, shall first **obtain** the written consent of the adjoining Owner.

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(e) ~~the right of~~ any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such other Owner's successors in title.

(f) In the event of a dispute between Owners with respect to the use, repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to its Board of Directors who shall decide the dispute, and the decision of such Board of Directors shall be final and conclusive upon the parties.

(g) Anything herein to the contrary notwithstanding, if the party wall is one which the Association is obligated to maintain pursuant to Article III, this section 5.06, et seq., shall be inapplicable and the provisions of Article III shall control.

ARTICLE VI. ARCHITECTURAL AND DESIGN CONTROL

Architectural and Design Approval

Section 6.01. No building, addition, wall, fence, or alteration shall be begun, constructed, maintained, or permitted to remain on any lot, or on the Common Area, until complete plans and specifications of the proposed work have been submitted to and approved by the Architectural Control Committee. The Committee shall review the plans and specifications to determine whether they are compatible with the standards of design, construction, and quality of the Development and, if they are not, shall require that changes be made before approval.

Architectural Control Committee

Section 6.02. The Architectural Control Committee shall consist of three members, formed as follows:

(a) The Declarant shall appoint all of the original members and all replacements until the first anniversary of the issuance of the original final public report for the Development. Further, Declarant may reserve the power to appoint a majority of the Committee until 90 percent of all Lots have been sold or until the fifth anniversary date of the original issuance of the

final public report for the Development, whichever **occurs** first. After one year from the date of the issuance of the final public report for the Development, the Board shall **have** the right to appoint one **member** to the Committee, until 90 percent of **the** Lots have been sold or until the fifth anniversary daec of the original issuance of the final public report for the Development, whichever occurs first. Thereafter, the Board shall have the right to appoint all **of** the members of the Committee.

(b) Members appointed to the Committee by the Board shall be Members of the Association. Members appointed to the Committee by the Declarant need not be **Members** of the association.

(c) The term of the initial appointees shall be one year. Thereafter, members shall serve two-year **terms** unless it becomes necessary to remove members appointed by Declarant in order to comply with Section 6.02(a), in which case the **terms** of all members shall end at that time, **and** the Board shall appoint a new Committee. Notwithstanding the foregoing, all members of the Committee shall serve at the **will** of the party that appointed them, and may be removed by that party at any time with or without cause.

(d) The Committee shall **meet** as often as it deems necessary to carry out the obligations imposed upon **it** properly, unless otherwise directed by the Board.

The Board of Directors

Section 6.03. All decisions of the Architectural Control Committee are subject to review by the Board of Directors and may be appealed to the Board. The Committee shall notify the Board of all violations of this Article and of **any** noncompliance with its rulings or with the plans **and** specifications submitted to and approved by it. Thereafter, the Board shall take any actions it deems necessary, in accordance with the provisions of this Declaration.

Environmental Control Rules, Procedures and Restrictions

Section 6.04. Notwithstanding the provisions in **this** Article VI to the **contrary**, each Owner shall be **required** to comply with all **terms** and conditions of the Environmental Control Rules, Procedures and Restrictions for building and land use in Tahoe Donner, as stated July, 1992, or **as may thereafter be amended**. To the extent any provisions of this Article VI in any way conflict with any of the terms, conditions, or provisions of the Environmental Control Rules, Frocedures **and** Restrictions for

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building and land use in Tahoe Donner, the provisions of the Environmental Control Rules, shall prevail.

ARTICLE VII, INSURANCE

Fire and Casualty Insurance

Section 7.01. The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an **extended coverage endorsement** for the full insurable replacement value of the improvements in the **Common Area**. The amount of coverage shall be determined by the **Board**. This insurance shall be maintained for the benefit of the Association, the **Owners**, and their Mortgagees, as their interests may appear as named insured, subject, however, to any **loss** payment requirements set forth in this Declaration.

General Liability and Individual Liability Insurance

Section 7.02. The Association shall obtain and maintain one or **more** policies of insurance that must include coverage for (1) general liability of the Association **and** (2) individual liability of Officers and Directors of the Association for negligent acts or omissions in that capacity. Both of the **above** types of coverage shall not be less than \$1,000,000 covering all claims for death, personal injury, and property damage arising out of a single occurrence. The limits and coverage shall be reviewed at **least** annually by the Board and **increased** in its discretion.

Other Association Insurance

Section 7.03. The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with **any** applicable laws. The Association also shall purchase and maintain fidelity bond coverage that names the Association as an obligee, for any person or entity handling funds of the Association, whether or **not** such persons or entities are compensated for their services. This coverage shall be in an amount that is at least equal to the estimated maximum of funds, including reserve funds, in the custody of the Association, or the **Manager**, at any given time during the term of each bond. However, the aggregate amount of these bonds must not be less than 150 percent of each year's estimated annual operating expenses and reserves. The Association also may purchase and maintain a blanket policy of flood insurance, and demolition insurance in an amount

that is sufficient to cover any demolition that occurs following the **total** or partial destruction of the Development and a **decision not to rebuild**.

Trustee for Policies

Section 7.04. The Association, acting through its Board, is hereby appointed **and** shall be deemed trustee of the interests of all named insureds under **all** insurance policies purchased and maintained by the Association. All **insurance proceeds** under all of those policies shall be paid to the Board as trustee. The Board shall use the proceeds **for** any of the purposes specified in Article VIII of this Declaration. The Board also **is** authorized to negotiate loss settlements **with** the appropriate **insurance** carriers, to **compromise** and settle **any claim** or **enforce any claim** by **any lawful** action, and to **execute** loss claim **forms** and release forms in connection with **such** settlements.

Individual Insurance

Section 7.05. Each Owner **shall** provide **Eire and** casualty insurance **for** the improvements on his or her Lot. **An** Owner may separately insure his or her personal **property**, and **may** obtain **and** maintain personal liability and property **damage** liability insurance for his or **her** Lot, **provided** that the insurance contains a waiver of subrogation rights by the **carrier** as to the other Owners, the Association, Declarant, **and** the institutional First Mortgagees of the Owner's Lot.

Insurance Premiums

Section 7.06. Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular assessments. That portion of the **regular** assessments necessary for the required insurance premiums shall be used solely **for the** payment **of** the premiums when due.

ARTICLE VIII. DAMAGE OR DESTRUCTION

Duty to Restore and Replace

Section 8.01. If any of the improvements in the Common Area are **destroyed** or **damaged**, the Association **shall** restore **and** replace

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the improvements, using the proceeds of insurance maintained pursuant to Article VIII of this Declaration, subject to the provisions of this Article.

Proceeds Justifying Automatic Restoration, and Repair

Section 8.02. If the proceeds of **any** insurance maintained pursuant to Article VII of this Declaration for reconstruction or repair of the Property are equal to at least 85 percent of the estimated cost of restoration **and** repair, the Board shall use the insurance proceeds for that **purpose**, shall **levy** a special assessment to provide the necessary additional **funds**, and shall have the improvements promptly rebuilt, **unless** the Owners by the vote or written consent of not less than 75 percent of the total voting power of each class of Owners object to **the** restoration or repair work within 60 days of **the** damage or destruction.

Approval by Owners of Special Assessment for Certain Restoration and Repairs

Section 8.03. If the proceeds of any insurance maintained pursuant to Article VII of **this** Declaration for **reconstruction** or repair of **the** Property are less than 85 percent of the estimated cost of restoration and **repair**, any restoration and repair work must be authorized by the vote or written consent of **Owners** representing at least 75 percent of **the** total voting power of each class of Owners and beneficiaries of at **least 75** percent of the **First** Mortgages on Lots in the Development. This authorization must be **given** within 60 days of the damage or destruction and must authorize the board to levy special **assessment** to provide the necessary funds over **and** above **the** amount of any insurance proceeds available for the work.

Ordering Reconstruction or Repair

Section 8.04. If reconstruction or **repair** work is to take place pursuant to this Article, the Board shall take the following steps:

(a) Prepare the necessary documents, including an executed and acknowledged certificate stating that damage has occurred, describing it, identifying the improvement suffering the damage, the name of any insurer against whom claim is made, and the name of any insurer against whom the claim is made, and the name of any insurance **trustee**, stating (if applicable) that the consent

described in Section 8.03 has been obtained, and reciting that the certificate is recorded pursuant to this paragraph. That declaration shall be recorded with the Recorder of Nevada County within 90 days from the date of the damage or destruction.

(b) Obtain **firm** bids (including the obligation to obtain a performance bond) from two or **more** responsible **contractors** to rebuild the Development in accordance with **its** original plans and specifications and, as **soon** as possible thereafter, call a special meeting of the voting Owners to consider the bids. If the Board fails to do so within 60 days after the casualty occurs, any Owner may obtain the bids and call and conduct the special meeting in the manner required by this paragraph. At the meeting in the manner required by this paragraph. At the meeting, Owners representing at least 67 percent of the total voting power may elect to reject all of the bids and thus not to rebuild, or Owners representing at **least** 51 percent of the total voting power may elect to reject **all bids** requiring amounts exceeding the available insurance proceeds by more than \$500. Failure to reject all bids shall authorize the Board to accept the unrejected **bid** it considers most favorable. Failure to call the special meeting or to repair the casualty damage within 12 months from the date the damage occurred shall be deemed for all purposes to be a decision not to rebuild.

(c) If a bid is accepted, the Board shall let the contract to the **successful** bidder and distribute the insurance proceeds to the contractor as required by the contract.

(d) Levy a **special assessment** to make up any deficiency between the total insurance proceeds and the contract price for the repair or rebuilding, with the assessment and **all** insurance proceeds, whether or not subject to liens of mortgagees, to be used solely for the rebuilding. **This assessment shall be** apportioned equally to each Lot. If any Owner fails to **pay** the special assessment within 15 days after it is levied, the Board shall enforce the assessment *in* the manner described in Section 4.09 of this Declaration.

Election Not to Rebuild

Section 8.05. Upon an election not to rebuild, the Board, as soon as **reasonably** possible and as agent for the **Owners**, shall execute and record a certificate stating that **the** Association shall not rebuild. The Board shall also sell the entire Development on **terms** acceptable to the Board and free from the effect of this Declaration, which shall terminate upon the sale. The net proceeds shall then be distributed to *the* Owners and their

respective Mortgagees proportionately according to the respective fair market values of the Lots at the time of the destruction as determined by an independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Association and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization,

All insurance proceeds available for restoration or repair shall be distributed to the Owners equally.

Minor Restoration and Repair Work

Section 8.06. The Association shall order restoration or repair work without complying with the other provisions of this Article whenever the estimated cost of the work does not exceed \$20,000.00. If insurance proceeds are unavailable or insufficient, the Association shall levy a special assessment for the cost of the work. The Assessment shall be levied in the manner described in Section 4.05 of this Declaration.

ARTICLE IX. EMINENT DOMAIN

Sale to Condemning kuthority

Section 9.01. If a governmental agency proposes to condemn all or a portion of the Common Area, the Association may sell all or any portion of the Common Area to the condemning authority if 51 percent of the Owners and 51 percent of all institutional First Mortgagees approve the sale in advance. Any such sale shall be made by the Asaociation in the capacity of attorney-in-fact for the Owners, acting under an irrevocable power of attorney which each Owner grants to the Association by accepting a deed to a Lot. The sales price shall be any amount deemed reasonable by the Board.

Distribution of Sales Proceeds

Section 9.02. The proceede of a sale conducted pursuant to Section 9.01 shall be distributed equally to the Owners and their Mortgagees, as their interests may appear.

Taking and Condemnation Awards

Section 9.03. If there is a taking by a governmental agency of all or any portion of the Common Areas, the condemnation award shall be distributed to all Owners and their respective Mortgagees

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in accordance with the court **judgment**, **if any** such judgment exists. **In all** other cases, the proceeds **shall be** distributed among the Owners and their respective Mortgagees **as** their interests **may** appear.

ARTICLE X. RIGHTS OF MORTGAGEES

Warranty

Section 10.01. Declarant **hereby warrants** that **Mortgagees of** Lots in the Development **shall be** entitled to **the** rights and guaranties **set forth in this** Article. No **amendment of this Article** shall affect the rights of the holder of **any First Mortgage** recorded prior to the **recordation of the amendment** who does not join in the execution of **the amendment**.

Subordination

Section 10.02. Notwithstanding any other provision of this Declaration, **liens** created under **Section 4.09 of this** Declaration upon any Lot shall be subject and subordinate to, **and** shall not **affect the** rights of **the holder of**, the indebtedness secured by **any** recorded First Mortgage upon such **an** interest **made in good faith and for value**, provided that any transfer of a tot as the result of a **foreclosure or exercise of** a power of sale shall not relieve the new **Owner** from liability for assessments that become due **after the** transfer. Such a **transfer** shall extinguish the **lien of assessments that were due and payable** prior to the transfer of the **Lot**.

Inapplicability of Right of First Refusal

Section 10.03. Should any of the **Association's Governing Instruments** provide for a "right of first **refusal**," this right shall not impair the rights of a **First Mortgagee** to:

- (a) **Foreclose or take title** to a Lot pursuant to the remedies provided in the **Mortgage**;
- (b) **Accept a deed (or assignment)** in lieu of foreclosure in the event of default by a **Mortgagor**; or
- (c) **Interfere** with a subsequent sale or lease of a Lot **so** acquired by the **Mortgagee**

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Notice of Default

section 10.04. A First Mortgagee, upon **request**, shall be entitled to written notification from the Association Of any default in the performance by the Mortgagor of any obligation under the Association's Governing Instruments that is not cured **within** 60 days.

Unpaid Assessments

Section 10.05 Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage shall not be liable for the Lot's unpaid assessments that accrue prior to the acquisition of title to the Lot by the Mortgagee.

Mortgagee Approval of Material Amendments

Section 10.06. Notwithstanding Article XII of this Declaration, any amendments **governing** any of the following shall require the prior written **approval** of a least 51 percent of the First Mortgagees **and at** least 67 percent of the total voting power of the Owners:

- (a) voting;
- (b) Rights to **use** the Common Area;
- (c) **Reserves** and responsibility **for** maintenance, **repair**, and replacement of the Common Area;
- (d) Boundaries of any Lot;
- (e) Owners' interest in the Common Area;
- (f) Convertibility of Lots into Common Area or Common Area into Lots;
- (g) Leasing of Lots;
- (h) Establishment of self-managemant by the Association, when professional management has been previously required by any First Mortgagee or **any insurer** or governmental guarantor of a First Mortgage;
- (i) **Annexation**, addition, or withdrawal of **real** property to or from **the** Development;
- (j) **Assessments**, assessment liens, or the subordination of **these** liens;
- (k) Casualty **and** liability insurance or fidelity bonds; or
- (l) Any provisions expressly benefitting **First Mortgagees** or insurers or governmental guarantors of First Mortgages.

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Notwithstanding the foregoing, any First Mortgagee who receives a written request from the Board to approve a proposed amendment or amendments requiring consent under this Section who does not deliver a negative response to the Board within 30 days of the receipt of the request shall be deemed to have approved the proposed amendment or amendments.

Mortgagee Approval of Other Actions

Section 10.07. Unless at least 67 percent of the First Mortgagees (based upon one vote for each First Mortgage owned), or 67 percent of the Lot Owners other than Declarant, have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission, seek to abandon or terminate the Development;

(b) Change the pro rata interest or obligations of any individual Lot for either of the following purposes, unless the change is due to an annexation pursuant to Article XI of this Declaration:

(1) Levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards; or

(2) Determining the pro rata share of ownership of each Lot in the Common Area and the improvements thereon.

(c) Partition or subdivide any Lot;

(d) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area unless due to an annexation pursuant to Article XI of this Declaration (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause);

(e) use hazard insurance proceeds for losses to any Development property (whether to Lots or to the Common Area) for other than the repair, replacement, or reconstruction of that property, except as provided by statute in case of substantial loss to the Lots and/or Common Area of the Development.

Liens

Section 10.08. All taxes, assessments, and charges that may

become liens prior to the First Mortgage under local law, shall relate only to the individual Lots and not to the Development as a whole.

Priority

Section 10.09. No provision of the Governing Instruments gives any Owner, or any other party, priority over any rights of the First Mortgagee of the Lot pursuant to its Mortgage in the case of distribution to the Lot Owner of insurance proceeds or condemnation awards for losses to, or raking of, all or a portion of a Lot or Lots and/or the Common Area.

Reserve Fund

Section 10.10. Association assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those common elements that must be replaced on a periodic basis. The reserve fund shall be funded by the regular assessments rather than special assessments.

Management

Section 10.11. Any agreement for professional management of the Development shall not exceed three years and shall provide that either party may terminate the agreement, with or without cause and without the imposition of a termination fee, on 90 days written notice. The approval of holders of at least 75 percent of First of First Mortgages shall be obtained before the Association terminates a professional management agreement.

Right to Inspect Books and Records

Section 30.12. Institutional First Mortgagees, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours and (2) require the submission of any financial data furnished to the Owners by the Association.

Payments by Mortgagee

Section 10.13. First Mortgagees may, jointly or severally, pay

taxes or other charges that are in default and that may or have become a charge against the Common Area, and may pay any overdue premiums on hazard insurance coverage upon the lapse of a policy, for the Common Area, and First Mortgagees making these payments shall be entitled to immediate reimbursement from the Association.

Right to Furnish Mortgage Information

Section 10.14. Each Owner hereby authorizes the First Mortgagee of a First Mortgage on the Owner's Lot to furnish information to the Board concerning the status of the First Mortgage and the loan that it secures.

ARTICLE XI. AMENDMENTS

Amendment or Revocation Before Close of First Sale

Section 11.01. At any time before the close of the first sale of a Lot to a purchaser other than Declarant, Declarant and any Mortgage of record may, by executing an appropriate instrument, amend or revoke this Declaration. The executed instrument shall be acknowledged and recorded in the Office of the Recorder of Nevada? County.

Amendments by Owners After Close of First Sale

Section 11.02. At any time after the close of the first sale of a Lot to a purchaser other than Declarant, this Declaration may be amended by the vote or written consent of Owners representing not less than 51 percent of the voting power of each class of Owners of the Association. If only one class of membership exists at the time an amendment is proposed, then it must be approved by not less than 51 percent of the voting power of the Association, which shall include at least a majority of the votes residing in Owners other than Declarant. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (1) the approval of the required percentage of Owners has been given, (2) that fact has been certified in a writing executed and acknowledged by an officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association and

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(3) that writing has been recorded in the county in which this Development is located.

Amendments Pursuant to Court Order

Section 11.03. If this Declaration requires a proposed amendment to be approved by the affirmative vote of a specified percentage (exceeding 50 percent) of the votes in the Association or of Owners having a specified percentage (exceeding 50 percent) of the votes in more than one class (a "supermajority"), and more than 50 percent but less than the required supermajority of the votes approve the amendment, the association or any owner may petition the Superior Court of Nevada county, California, subject to the requirements, limitations, and exceptions set forth in Section 1356 of the California Civil Code, for an order reducing the percentage of the affirmative votes necessary for the amendment or approving the amendment. If such an order is issued, the amendment shall be acknowledged by any person designated by the Association for that purpose or, if no such designation is made, by the President of the Association, and that person shall have the amendment and the court order recorded in Nevada County. Upon recordation, the amended provision or provisions of this Declaration shall have the same force and effect as if the amendment were adopted in compliance with every requirement imposed by this Declaration and the other governing documents. Within a reasonable time after recordation, the Association shall mail a copy of the amendment and a statement regarding the amendment to each Owner.

ARTICLE XII. GENERAL PROVISIONS

Term

Section 12.31. The provisions of this Declaration shall continue in effect for a term of 20 years from the date of execution. Thereafter, it shall be automatically extended for successive periods of 20 years, until the membership of the Association decides to terminate it.

Nonwaiver of Remedies

Section 12.02. Each remedy provided for in this Declaration is

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separate, distinct, and nonexclusive. **Failure** to exercise a particular remedy shall not be construed **as a** waiver of the **remedy**.

Severability

Section 12.03. The provisions of this Declaration shall be deemed **independent** and severable, **and** the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity of enforceability of any other provision.

Binding

Section 12.04. **This** Declaration, as well as any amendment to it and any **valid** action or directive made pursuant to it, shall be binding on the Declarant and the Owners and their heirs, grantees, tenants, successors, **and** assigns.

Interpretation

Section 12.05. The provisions of this **Declaration** shall be liberally construed and interpreted to **effectuate its** purpose of creating a uniform plan for the development and operation of a planned development. Failure to **enforce** any provision of this Declaration shall *not* constitute a **waiver of** the right to enforce **that** provision or any other provision of this Declaration.

Limitation of Liability

Section 12.06. The liability of any Owner for performance of any of **the** provisions of this Declaration shall terminate upon sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Lot with respect to obligations arising from and after the date of the divestment.

Fair Housing

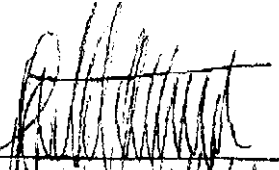
Section 12.07. **Neither** Declarant nor any Owner shall either directly, or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of **the Owner's Lot** to any person on the basis of race, color, **sex**, religion, ancestry, or national origin.

Number and Headings

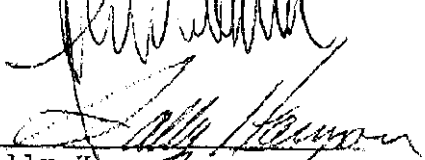
Section 12.08. As used in this Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Declaration, and shall not affect the interpretation of any provision.

Signature

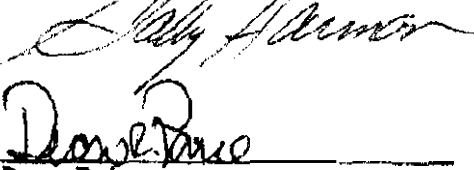
IN WITNESS WHEREOF, the undersigned has executed this instrument this 22ND day of May 3998.



Robert Harmon



Sally Harmon



Dean Paine
/R.

D:\HARMON\HARMON10.D4D (Rev: March 17, 1998)

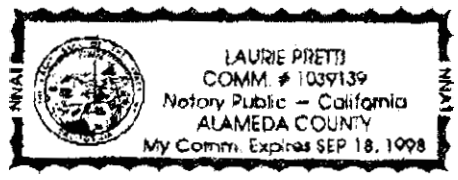
NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA }ss
COUNTY OF Alameda }

On May 22, 1998, before me, Laurie Pretti, a Notary Public in and for said State, personally appeared Robert Harmon and Sally Harmon, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the Same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the Instrument.

WITNESS my hand and official seal.

Signature Laurie Pretti



(This area for official notarial seal)

OPTIONAL:

DESCRIPTION OF ATTACHED DOCUMENT

98026280

No 5907

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San

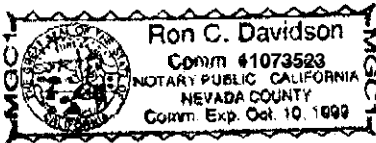
On July 30, 1998 before me, Ron C. Davidson, Notary Public

NAME, TITLE OF OFFICER - E.G., JANE DOE, NOTARY PUBLIC

personally appeared Robert Harmon and Sally Harmon

NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

Signature of Notary

SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
CORPORATE OFFICER

- PARTNER(S) LIMITED GENERAL
ATTORNEY-IN-FACT
TRUSTEE(S)
GUARDIAN/CONSERVATOR
OTHER:

SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES)

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGE'S

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

98026280

No. 5907

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of NEVADA

On 8-7-98 before me, Ron C. Davidson Notary Public

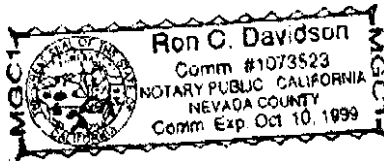
DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE," NOTARY PUBLIC

personally appeared Dean R. Payne

NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

Ron C. Davidson
SIGNATURE OF NOTARY

OPTIONAL

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

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TITLE(S)

TITLE OR TYPE OF DOCUMENT

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- GENERAL

- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER _____

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

SIGNER(S) OTHER THAN NAMED ABOVE



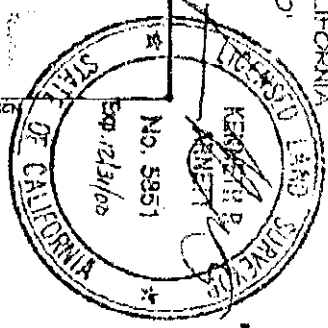
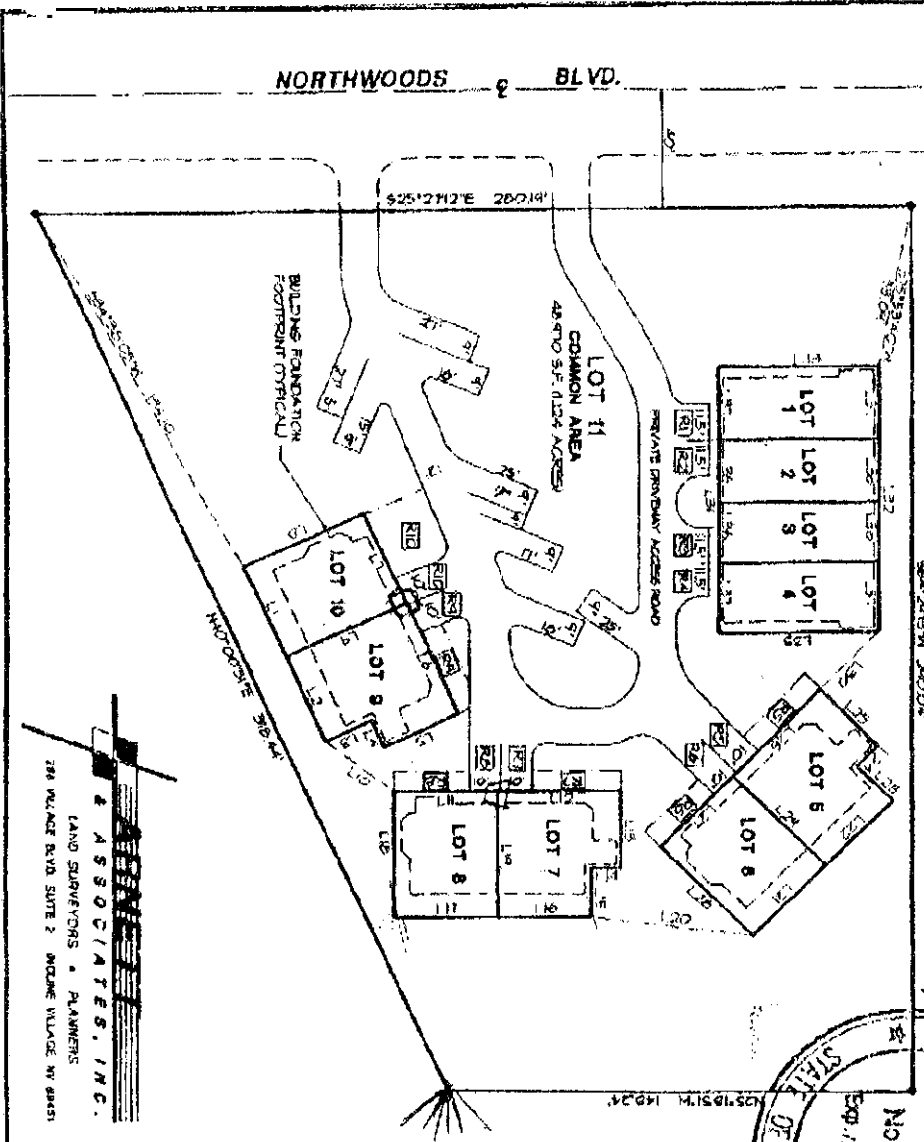
NORTH
SCALE: 1"=50'

EXHIBIT 'A'

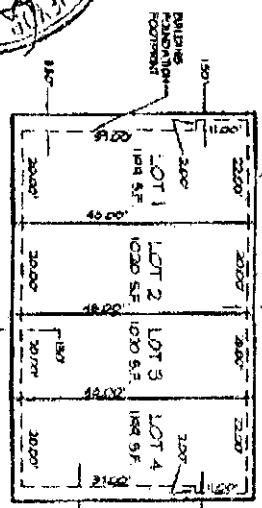
DONNER VILLAGE TOWNHOMES

A PLANNED DEVELOPMENT

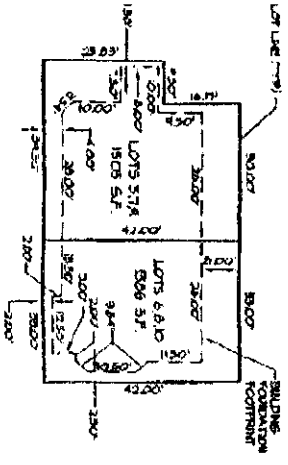
TOWN OF TRUCKEE NEVADA COUNTY CALIFORNIA
DATE: OCTOBER 1997 SCALE: 1"=50'



ASSOCIATES, INC.
LAND SURVEYORS & PLANNERS
788 PALACE BLVD. SUITE 2 MOOREVILLE, NC 28551



BUILDING FOOTPRINT - LOTS 1-4 ONLY



TYPICAL BUILDING FOOTPRINT - LOTS 5-10

DENOTES RESTRICTED COMMON AREA AFFRIEUVANT TO LOT INDICATED.

LINE	DIRECTION	DISTANCE	LINE	DIRECTION	DISTANCE
1	S89°54'48"W	24.00'	11	S0°30'45"E	30.00'
2	S89°54'48"W	51.00'	12	S0°30'45"E	30.00'
3	S90°00'00"W	51.00'	13	N0°00'00"E	8.00'
4	S90°00'00"W	51.00'	14	N0°00'00"E	8.00'
5	S90°00'00"W	51.00'	15	N0°00'00"E	8.00'
6	S90°00'00"W	51.00'	16	N0°00'00"E	8.00'
7	S90°00'00"W	51.00'	17	N0°00'00"E	8.00'
8	S90°00'00"W	51.00'	18	N0°00'00"E	8.00'
9	S90°00'00"W	51.00'	19	N0°00'00"E	8.00'
10	S90°00'00"W	51.00'	20	N0°00'00"E	8.00'
11	S90°00'00"W	51.00'	21	N0°00'00"E	8.00'
12	S90°00'00"W	51.00'	22	N0°00'00"E	8.00'
13	S90°00'00"W	51.00'	23	N0°00'00"E	8.00'
14	S90°00'00"W	51.00'	24	N0°00'00"E	8.00'
15	S90°00'00"W	51.00'	25	N0°00'00"E	8.00'
16	S90°00'00"W	51.00'	26	N0°00'00"E	8.00'
17	S90°00'00"W	51.00'	27	N0°00'00"E	8.00'
18	S90°00'00"W	51.00'	28	N0°00'00"E	8.00'
19	S90°00'00"W	51.00'	29	N0°00'00"E	8.00'
20	S90°00'00"W	51.00'	30	N0°00'00"E	8.00'

END OF DOCUMENT

DONNER VILLAGE TOWNHOME ASSOCIATION INC
P. O. BOX 11110
TRUCKEE. CA 96162

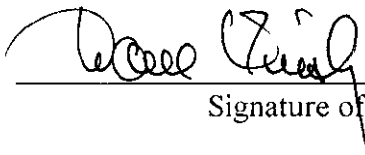
RESOLUTION 2001-1

WHEREAS, Section 11.02 of the Declaration for Donner Village Townhomes, a Planned Development states "At any time after the close of the first sale of a lot to a purchaser other than the Declarant, this Declaration may be amended by the vote or written consent of Owners representing not less than **51** percent of the voting power of each class of Owners of the Association: and

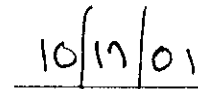
WHEREAS, at the duly noticed Annual Meeting of the Members held on May 26, 2001, eight out of ten lots (80%) were represented in person or by proxy; and

WHEREAS, at the duly noticed Annual Meeting of the Members held on May 26, 2001, all lots represented voted to assess all lots an equal amount, said amount being equal to one tenth of the estimated annual expenditures; therefore

BE IT RESOLVED that said vote amends Section 4.04, to read as follows. "Within 60 days prior to the beginning of each calendar year, the Board shall estimate the net charges to be paid during that year, including a reasonable provision for contingencies and replacements, with adjustments made for any expected income and surplus from the prior year's fund. The estimated cash requirement shall be shared equally by each owner irrespective of the total living area owned by such owner. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Board in equal monthly installments on *or* before the first day of each month unless the Board adopts an alternative method for payment. Declarant shall pay its full prorated share of the regular assessments on any unsold Lots subject to regular assessments upon which construction has been completed."



Signature of Director



Date