

**RECORDING REQUESTED BY,
AND WHEN RECORDED, MAIL TO:**

MAGEE RANCH HOMEOWNERS ASSOCIATION
c/o HOMEOWNER ASSOCIATION SERVICES
Attn: Stacey Lint
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San Ramon, California 94583

(Space Above for Recorder's Use)

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
MAGEE RANCH**

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AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
MAGEE RANCH HOMEOWNERS ASSOCIATION

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date hereinafter set forth by Magee Ranch Homeowners Association, a California nonprofit mutual benefit corporation (hereinafter sometimes referred to as the "Association").

RECITALS

A. WHEREAS, the Association is the successor in interest to Diablo Ranch Development Company, a California general partnership, which, as Declarant, executed that certain Declaration of Covenants, Conditions and Restrictions Establishing a Planned Development for Magee Ranch recorded on December 15, 1989, in Book 1554200, at Page 285, in the Official Records of Contra Costa County, State of California ("Original Declaration").

B. WHEREAS, a Declaration of Annexation, Phase 2, Magee Ranch Planned Development, was recorded on March 25, 1993, as Document No. 93-74315, in the Official Records of Contra Costa County, State of California.

C. WHEREAS, the Original Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in that certain parcel of real property located in the Town of Danville, County of Contra Costa, State of California, and more particularly described as follows:

All real property shown on Subdivision 7058 filed for record on October 10, 1989, in Map Book 338 at Page 19, in the Official Records of the County of Contra Costa, State of California.

All real property shown on the Map of Subdivision 7355, filed for record on July 28, 1992, in Book 362 of Maps at Pages 19 *et seq.*, in the Official Records of the County of Contra Costa, State of California.

Lots 93 through 159, inclusive, and Parcels A, B, and G, as shown on the Map of Subdivision 7668, filed for record on February 26 1993 in Book 365 of Maps at Pages 11 *et seq.*, in the Official Records of the County of Contra Costa, State of California.

All real property shown on the Map of Subdivision 7669, filed for record on December 6, 1994, in Book 376 of Maps at Pages 47 *et seq.*, in the Official Records of the County of Contra Costa, State of California.

D. WHEREAS, Members, constituting at least fifty-one percent (51%) of the voting power of the Association, desire to amend, modify, and otherwise change the Original Declaration, pursuant to Section 9.01(b) thereof.

E. NOW, THEREFORE, pursuant to Section 9.01(b) of the Original Declaration, Members, constituting at least fifty-one percent (51%) of the voting power of the Association, do hereby declare that the aforesaid Original Declaration, be and hereby is, AMENDED AND RESTATED IN ITS ENTIRETY as set forth within this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Magee Ranch Homeowners Association. This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Magee Ranch Homeowners Association replaces and supersedes all previously-recorded Declaration of Covenants, Conditions and Restrictions of Magee Ranch Homeowners Association.

F. IT IS FURTHER HEREBY DECLARED that all of the real property described herein constitutes a planned development within the meaning of *Civil Code* section 4175;

G. IT IS FURTHER HEREBY DECLARED that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the said real property and every part thereof, and of fostering the development,

management, improvement, enjoyment, and sale of the said real property and any part thereof; and

H. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions herein set forth shall constitute enforceable equitable servitudes as provided in Civil Code section 5975, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or of any interest therein and their heirs, successors, and assigns.

ARTICLE 1

DEFINITIONS

1.1 All Weather Access Easement. "All Weather Access Easement" or "A.W.A.E." shall mean the roadway, as shown on the Map, and the easement described in Exhibit A attached hereto which are to be maintained by the Association. The A.W.A.E. excludes from the roadway, for purposes of maintenance by the Association, the sewer collection system. The sewer collection system consists of the manholes and manhole covers at the surface and the pipes, manholes and other assorted improvements lying below the surface of the easement area which are part of the sewer collection system.

1.2 Annual Assessment. "Annual Assessment" shall mean an Assessment levied against an Owner and his or her Lot in accordance with Section 8.6, below.

1.3 Articles. "Articles" shall mean the Articles of Incorporation of Magee Ranch Homeowners Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.

1.4 Assessments. "Assessments" shall mean any or all of the following: the Annual Assessment, Special Assessments, and Special Individual Assessments, each as is defined in the Declaration.

1.5 Association. "Association" shall mean the Magee Ranch Homeowners Association, its successors and assigns.

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

1.7 Bylaws. "Bylaws" shall mean the Bylaws of the Association; as such Bylaws may be amended from time to time.

1.8 Civil Code. "Civil Code" shall mean the California Civil Code as amended from time to time.

1.9 Common Area. "Common Area" shall mean all real and personal property, improvements and airspace owned by the Association for the common use and enjoyment of the Owners and Residents of the Development.

1.10 Common Facilities. "Common Facilities" shall mean the trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, beams, pipes, lines, lighting fixtures, buildings, structures, and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area and owned by the Association.

1.11 County. "County" shall mean the County of Contra Costa.

1.12 Declarant. "Declarant" shall mean and refers to the original project developer of Magee Ranch, namely Diablo Ranch Development Company, a California general partnership.

1.13 Declaration. "Declaration" shall mean the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Magee Ranch Homeowners Association, recorded in the Office of the County Recorder of Contra Costa County, California, and any duly recorded amendments thereto. The Declaration may also be referred to as the "CC&Rs." The "Original Declaration" shall mean and refers to the document referenced in the Preamble to this Declaration, together with all amendments and annexations thereto adopted prior to adoption of this Declaration.

1.14 Development. "Development" shall mean all the real property described in this Declaration which comprises the Magee Ranch planned development, including such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.15 District. "District" shall mean and refers to the Central Contra Costa Sanitary District, a public agency which provides sanitary system maintenance for areas of central Contra Costa County, including Magee Ranch.

1.16 Geologic Hazard Abatement District. "Geologic Hazard Abatement District" or "GHAD" shall mean and refers to the Wiedmann Ranch Geologic Hazard Abatement District, which was formed on July 13, 2021, which now includes the property that is located within the Magee Preserve Development Plan (as of June 10, 2021).

1.17 Design Review Committee. "Design Review Committee" shall mean and refers to the Committee appointed and constituted pursuant to Article 6, below,

which has the authority to review and to approve Improvement projects proposed by Owners for construction, reconstruction, or renovation on their Lots.

1.18 Governing Documents. “Governing Documents” shall mean the Articles, Bylaws, Declaration, and Rules adopted by the Board and distributed to the Members.

1.19 Improvement. “Improvement” is a term that is used herein to define the types of construction or improvement projects undertaken by Owners that must first be reviewed and approved by the Association’s Board of Directors or duly appointed Design Review Committee pursuant to Article 6, below. Specifically, the term “Improvement” shall mean and includes, without limitation: the construction, installation, alteration or remodeling of any buildings, walls, fences, landscaping, skylights, solar heating equipment, spas, antennas, television satellite reception dishes, utility lines or any other structure of any kind.

1.20 Landscape Easement. “Landscaping Easement” or “LS.E.” shall mean and refers to the easements that are so designated on the Subdivision Maps for any portion of the Development and which burden certain of the Lots and are owned by the Association for landscaping purposes.

1.21 Lot. “Lot” shall mean a “separate interest” as defined in Civil Code section 4185 and any plot of land shown upon any recorded Subdivision Map of the Development upon which a Residence has been constructed. There are 259 Lots in the Development.

1.22 Maintenance. “Maintenance” or to “maintain” (whether the term is capitalized or not) shall mean the act of caring for property, preserving it from failure or deterioration, including but not limited to painting, caulking, cleaning, and minor, non-structural upkeep.

1.23 Majority of a Quorum. “Majority of a Quorum” shall mean a majority of the votes cast in any lawful vote or election by the Members in which the number of votes cast equals or exceeds the number required to establish a quorum.

1.24 Member. “Member” shall mean an Owner.

1.25 Mortgage. “Mortgage” shall mean a deed of trust as well as a mortgage in the conventional sense.

1.26 Mortgagee. “Mortgagee” shall mean a beneficiary pursuant to a deed of trust as well as pursuant to a Mortgage.

1.27 Owner. “Owner” shall mean any person, firm, corporation or other entity which owns a fee simple interest in any Lot. If a Lot is transferred or

conveyed to a trust, the Owner is the trustee or the co-trustees of such trust. Except where the context otherwise requires, the term "Owner" shall include the family, guests, tenants and invitees of an Owner.

1.28 Private Access and Utility Easement. "Private Access and Utility Easement" or "P.A.U.E." shall mean and refers to the easements so designated on any Subdivision Map for the Development.

1.29 Private Storm Drain Easement. "Private Storm Drain Easement" or "P.S.D.E." shall mean and refers to the easements so designated on any Subdivision Map for the Development. The P.S.D.E.s of certain of the Lots and owned by the Association for purposes of maintaining and repairing the drainage structures and improvements located therein.

1.30 Residence. "Residence" shall mean a residential structure located upon a Lot which is designed for human residential use and occupancy. The term "Residence" shall include any garage, porch, stoop, deck, balcony, entry steps, patio, etc., serving the Residence.

1.31 Resident. "Resident" shall mean any person who resides on a Lot within the Development whether or not such person is an Owner as defined in Section 1.27 above.

1.32 Rules. "Rules" shall mean the rules, regulations and policies governing the use, occupancy, management, administration, and operation of the Development or any part thereof as adopted and published by the Board of Directors from time to time.

1.33 Special Assessment. "Special Assessment" shall mean an Assessment levied against an Owner and his or her Lot in accordance with Section 8.7, below.

1.34 Special Individual Assessment. "Special Individual Assessment" shall mean an Assessment levied against an Owner and his or her Lot in accordance with Section 8.9, below.

1.35 Subdivision Map. "Subdivision Map" or "Map" shall collectively mean that subdivision map set forth in Section C of the Recitals, above.

1.36 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Lot.

1.37 Town. "Town" shall mean and refers to the Town of Danville, Contra Costa County, and its Town Council and other committees, agencies and divisions.

ARTICLE 2

HOMEOWNERS ASSOCIATION

2.1 Management and Operation. The Association shall manage and operate the Development in accordance with the Governing Documents and California law. The Association shall have all of the powers set forth in the Governing Documents together with the general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do pursuant to California law, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

2.2 Membership. Every Owner of a Lot within the Development shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot, and shall not be transferred, encumbered, pledged, alienated, or hypothecated in any way, except upon the transfer or encumbrance of the Lot to which it is appurtenant. Any attempt to make a prohibited transfer is void. Upon any transfer of title to a Lot including a transfer upon the death of an Owner, membership in the Association shall pass automatically to the transferee.

2.3 Voting. Only Members shall be entitled to vote, and only one vote shall be cast for each Lot, as more particularly set forth in the Bylaws.

2.4 Board of Directors. The affairs of the Association shall be managed by or pursuant to the direction of a Board of Directors, members of which shall meet the qualifications as set forth in the Bylaws. Directors shall be elected or appointed as provided in the Bylaws.

2.5 Association Rules. Subject to Civil Code section 4340 *et seq.*, the Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such Rules as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association.

2.6 Assessments. The Association shall have the power and duty to levy and collect Assessments, as more particularly set forth in Article 8 of this Declaration.

2.7 Acquisition of Property. The Board, acting on behalf of the Association, shall have the power to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, and maintain real or personal property in connection with the affairs of the Association; provided, however, that in any fiscal year acquisitions by purchase of items not included in the reserve budget shall not exceed five percent (5%) of the budgeted gross expenses of the Association for

that fiscal year, except upon the approval of at least a majority of the Total Voting Power of the Association. The foregoing Member approval requirement shall not apply to the acquisition of a Lot by the Association via foreclosure.

2.8 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, installation, or acquisition of Capital Improvements upon the Common Area, provided that in any fiscal year expenditures for Capital Improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the approval of at least a majority of the Total Voting Power of the Association.

2.9 Sale or Transfer of Association Property. Except as otherwise provided herein or by law, the Board of Directors shall not in any fiscal year sell, lease, or otherwise transfer property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of at least a majority of the Total Voting Power of the Association; provided, however, that the foregoing Member approval requirement shall not apply to the sale or transfer of any Lot which is owned by the Association as a result of the Association having acquired such Lot via foreclosure.

2.10 Easements to Owners. The Board shall have the power to grant and convey easements, licenses for use and rights of way in, over, or under the Common Area or any portion thereof to Lot Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Association, subject to the limitations set forth in the Governing Documents. Unless an exception as set forth in Civil Code section 4600 applies, the approval of a Majority of a Quorum shall be required before the Board may grant exclusive use of any portion of the Common Area to a particular Owner.

2.11 Safety and Security. Neither the Association nor the Board is responsible for ensuring the safety and security of the Association's Residents, guests or invitees. Neither the Association nor the Board has police powers.

ARTICLE 3

OWNERSHIP RIGHTS AND EASEMENTS

3.1 Division of Property. All of the real property shown on the Map is hereby divided into Lots and Common Area. Declarant shall convey to the Association all Common Area no later than the time of the first conveyance by sale of a Lot. Whenever a portion of the Common Area has been offered for dedication to a public entity for park, recreational or open space purposes, as evidenced by a certificate on the Map or separate recorded instrument, and has not been accepted for dedication or otherwise conveyed to such public entity, it shall be

conveyed to the Association subject to such offer. Until acceptance of the offer of dedication occurs, the Association shall be responsible for the maintenance of such Common Areas, as set forth in Section 5.1 hereof. To the extent that the offer of dedication is, at any time, rejected by all public entities to whom made, the Association, upon demand shall convey to the Town of Danville any and all rights the Association may have to develop the portions of the Common Area which were made subject to the offer of dedication. The transfer of development rights shall be in a form and contain terms consistent, subject to Civil Code section 815.9, with the grant of "conservation easements" under Civil Code sections 815 *et seq.* Upon transfer of the affected Common Areas pursuant to acceptance of the offer of dedication, the rights and duties of the Owners and the governmental entity acquiring such Common Areas relative to such Common Areas shall be governed, in part, by California Government Code section 831.25 which limits the liability of governmental entities when injury is caused by persons or property by a failure of unimproved public property which failure is the result of a natural condition of such property. The offers of dedication contemplated in this Section shall be deemed prior in right to this Declaration and shall not be subordinate hereto. Concurrent with the transfer of the affected Common Areas, the Board, on behalf of the Association, shall record an instrument which provided that the lands so transferred are de-annexed from the Declaration and are free and clear of the encumbrance thereof.

3.2 Owners' Non-Exclusive Easements of Enjoyment. Every Owner of a Lot shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Development for ingress, egress, and support over and through the Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

- (a) The right of the Board of Directors to establish and enforce reasonable Rules governing the use of the Common Area and facilities thereon;
- (b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;
- (c) The right of the Board to suspend an Owner's rights and privileges as a Member, including the right to use the recreational facilities, for any period during which any Assessment against such Owner's Lot remains unpaid and/or for infraction of the Governing Documents of the Association;
- (d) The right of the Board, as set forth in Section 3.10, to grant easements and rights of way in, on, over, or under the Common Area subject to the limitations set forth in Section 2.10 and Civil Code section 4600;

(e) The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association, subject to any Member approval requirements set forth in this Declaration or the Bylaws; and

(f) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations pursuant to this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common.

3.3 Acquisition of Ownership Interest. Any person who acquires title to a Lot or any ownership interest within the Development must notify the Association of their acquisition of an ownership interest. Notice must be provided in writing, to the Association's managing agent, within thirty (30) days of the person's acquisition of an ownership interest.

3.4 Delegation of Rights of Use and Enjoyment.

3.4.1 Delegation of Use and Leasing of Residences. Any Owner may delegate his or her rights to use and enjoy the Common Area and Common Facilities to his or her family members, tenants, lessees or contract purchasers who reside in the Residence; provided, however, that any rental or lease may only be to a single family for Single Family Residential Use.

3.4.2 Requirements That Must be Observed in all Residential Leases. The following specific limitations shall apply to all leases or tenancies of a Residence within the Development: (i) no Residence (or ADU/JADU - See Town of Danville Municipal Code section 32-76.16) may be leased or rented for a period of less than six (6) months; (ii) the rental shall apply to not less than an entire Residence including its appurtenant rights (except voting rights in the Association which may not be transferred to a tenant or lessee); and (iii) any rental shall be evidenced by a written lease or rental agreement which shall provide that the tenancy is subject to the terms of the Governing Documents and that any failure of the tenant to comply with the terms of any Governing Document relating to residential leases, property use restrictions, or the use and enjoyment of any portion of the Common Areas and Common Facilities shall constitute a default under the lease or rental agreement and shall entitle the Owner to terminate the tenancy upon thirty (30) days' written notice. The Owner-lessor's right to terminate a lease or rental agreement on account of the tenant's violation of the Governing Documents shall in no way restrict the right of the Association or any Owner to enforce the Governing Documents when the Owner's tenant is violating the Governing Documents. The minimum lease term of six (6) months as set forth herein shall not apply to any Member who is an Owner of a Lot on the date this

Declaration is recorded, but shall apply to any such Lot or Lots upon transfer of title to such Lot.

3.4.3 Retained Rights of Owner-Lessors. During any period when a Residence has been rented or leased, the Owner-lessor, his or her family, guests and invitees shall not be entitled to use and enjoy any recreational Common Facilities within the Development. In other respects, non-resident Owners who are leasing their Residences shall have full rights to access the Residence to perform the Owner's responsibilities as a lessor. The restriction on recreational facility usage by Owner-lessors shall not apply to any Owner-lessor who is contemporaneously residing in another Residence within the Development.

3.5 Common Area Construction. Except as may be authorized by the Board, no person or entity, other than the Association or its duly authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

3.6 Mechanic's Liens. In the event there shall be recorded against the Common Area a Notice of Mechanic's Lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Development or their Lot, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the subject Owner for all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses incurred in connection with discharging a lien, including reasonable attorneys' fees.

3.7 Association's Limited Right of Entry.

3.7.1 Right of Entry, Generally. Without limiting the foregoing description of the Association's powers, but in addition thereto, the Association and its agents shall have the right and power to enter any Lot to perform the Association's obligations under this Declaration, including:

- (a) Exterior maintenance or obligations with respect to individual Residences;
- (b) Obligations to enforce the Governing Documents;
- (c) Any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or
- (d) To make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, any portion of the Development or the Owners or Residents in common.

3.7.2 Limitations on Exercise of Right. The Association's right of entry pursuant to this subparagraph 3.7.2 shall be subject to the following:

- (a) The right of entry may be exercised immediately and without prior notice to the Owner or Resident in case of an emergency originating in or threatening the Lot and Residence where entry is required or any adjoining Lots, Residences or Common Area. The Association's work may be performed under such circumstances whether or not the Owner or Resident is present.
- (b) In all non-emergency situations involving routine repair and/or maintenance activities, the Association, or its agents, shall furnish the Owner or his or her lessee with at least twenty-four (24) hours prior written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry, and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing on the Lot.
- (c) In all non-emergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner in default, the Association's entry shall be subject to observance of the notice and hearing requirements imposed by Section 11.10, below.
- (d) In no event shall the Association's right of entry hereunder be construed to permit the Association or its agents to enter any Residence without the Owner's express permission.

3.8 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto and/or as between adjacent Lots due to the unwillful placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon in accordance with the terms of the Declaration; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, a tenant, or the Association. In the event that a structure on any Lot is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist. In addition, each Lot and its Owner(s) are hereby declared to have an easement for retaining walls, footings, and all other encroachments as originally constructed over each adjoining Lot and/or Common Area for the maintenance thereof, together with an easement for the drainage of water from gutters and all other encroachments over each such adjoining Lot and/or Common Area.

3.9 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance, and replacement of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable, or master television antenna lines, drainage facilities, walkways, and landscaping as may be hereafter required or needed to service the Development, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the Common Area except for: (i) those installations maintained by utility companies, public, private, or municipal and (ii) utility installations for which Lot Owners are responsible, as provided in Section 5.4.1. The Association shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Lots.

3.10 Easements Granted by the Board. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkler and/or irrigation systems water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association; provided, however, that no such easements may be granted if such easement would interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Lot and any existing

exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

3.11 No Right to a View. Owners do not have the right to an unobstructed or any other type of view from their Lot. This Declaration shall not be construed as granting any Owner a right to a view and neither the Association nor any Member shall have an obligation to take any action regarding or to preserve or provide for a view from any Lot. This shall be the case even if an Owner purchased a "view Lot" from the Declarant. Owners should anticipate that the view, if any, which may exist at the time of their Lot purchase will change during the period of their ownership.

3.12 Partition Prohibited. There shall be no judicial partition of the Development, or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof; provided, however, that if any Lot is owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition by sale as between such co-tenants.

ARTICLE 4

USE OF PROPERTY AND RESTRICTIONS

4.1 Single Family Residential Use. Except to the extent permitted by Sections 4.2 and 4.3, below, Lots shall be occupied and used for residential purposes only. The number of Residents per Lot shall not exceed two (2) individuals per bedroom plus one (1), so long as said limitation is not in conflict with any governmental regulation or ordinance.

4.2 Restriction on Businesses. Lots and Exclusive Use Common Area shall be used for residential purposes only; no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or Residents of the Lot may use any portion of a Lot as an office, provided that: the primary use of the Lot is as a residence; no advertising or signage is used in any manner in connection with the office use; no customers, clients or patients enter the Lot on any regular basis; and the use is in compliance with all local ordinances. The Board shall have the authority to adopt Rules regarding the use of offices within the Development in order to maintain the residential characteristics of the Development.

4.3 Child Care Facilities. Child care facilities may be maintained on any Lot within the Development so long as they comply with all governmental

requirements. The owner/operator of any permitted day care facility shall provide the Association with prior written notice as to its operation and comply with all local and state laws regarding the licensing and operation of a day care center and, in addition, shall:

(a) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center, as provided pursuant to Health and Safety Code section 1597.531. This Section 4.3(a) is intended to be and shall be conclusively deemed to be the written request to the operator or owner from the Association as specified in Health and Safety Code section 1597.531;

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

(c) Abide by and comply with all of the Association's Governing Documents, including all Rules;

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

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

4.4 Common Areas. The Common Areas shall be preserved as open space and used for recreational purposes and other purposes incidental and ancillary to the use of Lots. Such use shall be limited to the private use for aesthetic and recreational purposes by the Members, their tenants, families and guests, subject to the provisions of the Governing Documents. No Improvement, excavation or work which in any way alters any Common Area or Common Facility from its natural or existing state on the date such Common Area or Common Facility shall be made or done except by the Association and then only in strict compliance with the provisions of this Declaration.

4.5 Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or Common Area nor shall anything be done within the Development which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including, but not limited to barking dogs, the operation of excessively noisy air conditioners, stereo amplifier systems, television systems, motor vehicles, or power tools, to emanate from an

Owner's Lot or from activities within the Common Area, which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Lot or the Common Area. Mechanical and electrical equipment shall be limited to those devices that are incidental to domestic use.

No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot and no refuse pile, rubbish, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere thereon. If any Residence or other improvement shall suffer a casualty which affects the exterior thereof, the Owner shall promptly restore the Residence unless the Residence is incapable of restoration in which case the Owner shall demolish the structure and remove all rubble and debris from the Development. In the event that any Owner shall fail or refuse to keep its Lot free of weeds, underbrush, unreasonable accumulations of garbage, refuse or rubbish, or other unsightly growths or objects, or fail to restore or demolish and remove damaged structures and improvements, the Association may exercise its right of entry to remedy the nuisance after affording the Owner proper notice and an opportunity to be heard. All garbage or trash containers must be concealed from view and placed in walled-in areas of the Lot so that they are not visible from adjoining Lots or the Common Area.

4.6 Temporary Structures. No structure of a temporary character, trailer, mobile home, camper, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a Residence, either temporarily or permanently.

4.7 Household Pets. The following restrictions regarding the care and maintenance of pets within the Development shall be observed by each Owner and Resident:

4.7.1 Number of Authorized Pets. A reasonable number of common household pets may be kept on each Lot so long as the same are not kept, bred or maintained for commercial purposes. No other animals, livestock, or poultry of any kind shall be kept, bred or raised on any Lot or in any Residence.

4.7.2 Supervision of Dogs in the Common Areas. Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners.

4.7.3 Prohibition on the Tethering of Pets. No household pet shall be left chained or otherwise tethered in front of a Lot or in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets within the Development.

4.7.4 Pet Owner's Responsibility for Pet Conduct and Incidents of Injury or Harm. Each person bringing or keeping a pet in the Development shall

be solely responsible for the conduct of the owner's pets. The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants, and contract purchasers for any damage or injury to persons or property caused by any pet.

4.7.5 Authority to Adopt Additional Pet Maintenance Rules. The Board of Directors shall have the right to establish and enforce additional rules and regulations defining in a uniform and nondiscriminatory manner, what constitutes a "reasonable number" of pets depending on their size, disposition and/or maintenance requirements, and imposing standards for the reasonable control and keeping of household pets in, upon and around the Development to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Development by the other Owners and Residents.

4.8 Sign Limitations. No sign of any kind shall be displayed to the public view from any portion of the Development except:

- (a) Signs required by legal proceedings;
- (b) Noncommercial signs or posters no larger than nine (9) square feet in size and noncommercial flags or banners no larger than fifteen (15) square feet in size, displayed upon an Owner's Lot, and limited to the fullest extent permitted by *Civil Code* section 4710;
- (c) A single sign of customary and reasonable dimension and design complying with the Association or Architectural Rules and reasonably located on a Lot advertising a Lot for sale or rent;
- (d) Other signs which by law cannot be prohibited;
- (e) A flag of the United States, subject to any federal, state, City or County restrictions as to size and as to time, place, and manner of display;
- (f) Signs approved by the Board located at or near any entrance to the Development identifying the Development;
- (g) Signs required for traffic control and regulation of streets or open areas within the Development;
- (h) Signs on the Common Area as approved by the Design Review Committee and/or Board for a purpose reasonably related to the affairs of the Association; and

(i) Signs erected by a public agency in connection with the use of rights-of-way and easements on the Development granted to such public agency.

4.9 Storage. Storage of personal property on any Lot shall be entirely within garages and enclosed storage areas. The Association shall have the right to establish and maintain on the premises appropriate storage yards and storage buildings for the maintenance of materials and equipment used by the Association in connection with its planting, building, repair, maintenance, and preservation of the structures, gardens, and other Improvements within the Common Areas.

4.10 Clotheslines. No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes on any Lot in a manner which is visible from any neighboring Lot or the Common Area. Subject to the foregoing and in accordance with Civil Code section 4753, Owners and Residents shall be permitted to maintain a clothesline or a laundry drying rack (i.e., an apparatus designed for laundry to dry or air) in the back yard of the Owner's Lot.

4.11 Burning. There shall be no exterior fires on the Lots, except open flame devices contained within receptacles designed for such purpose.

4.12 Sports Apparatus. The erection of basketball standards or fixed sports apparatus is prohibited, except as provided herein. No basketball standard will be located on or near a sidewalk or the street. A basketball standard must be maintained in good condition and repair. Any portable basketball standard must be stored out of sight of the street or neighboring houses except when it is being used for play.

4.13 Diseases and Pests. No Owner shall permit any thing or condition to exist upon his or her Lot which shall induce, breed, or harbor infectious plant diseases, rodents, or noxious insects.

4.14 Parking and Vehicle Restrictions. The following parking and vehicle restrictions shall apply within the Development:

4.14.1 Maintenance of Driveways and Garages. All driveways and garages shall be maintained in a neat and orderly condition and garage doors shall be maintained in a closed position except as necessary to permit ingress and egress of vehicles or to provide ventilation when the Resident is in the garage area.

4.14.2 Guest Parking. Guests may park along the private streets subject to the Rules adopted by the Board and along public streets subject to local ordinance.

4.14.3 Prohibition on All But Routine Vehicle Repairs. No motor vehicle shall be constructed, reconstructed or repaired within the Development and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Development; provided, however that the provisions of this Section 4.14.3 shall not apply to emergency vehicle repairs.

4.14.4 Prohibition on the Regular Parking of Certain Vehicles and Trailers. Campers, boats, trailers, motorcycles, commercial vehicles, and trucks in excess of three-quarter tons are not to be parked within the Development, except for periods not to exceed six hours for the purpose of loading and unloading; provided, however, that campers, trailers, and recreational vehicles may be parked for periods not to exceed twenty-four (24) hours in parking areas designated by the Board for such use.

4.14.5 Board's Authority to Promulgate Further Rules and Regulations Relating to Vehicles and Parking. The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding parking and vehicles within the Development as may be deemed prudent and appropriate.

4.15 Use of Private Streets in Common Area. Private streets within the Development shall not be used for recreational purposes, including "joy riding" or racing. Motorcycles, mopeds, and cars shall be allowed on such private streets only for ingress and egress.

4.16 Activities Affecting Insurance. Nothing shall be done or kept on any Lot or within any Residence or the Common Area which will increase the rate of insurance relating thereto on any policy maintained by the Association without the prior written consent of the Association and no Owner shall permit anything to be done or kept on his or her Lot or within his or her Residence or the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Residence or any part of the Common Area.

4.17 Accessory Dwelling Units.

4.17.1 Definitions.

(a) "Accessory Dwelling Unit" or "ADU" shall mean an attached or detached residential dwelling which provides separate and independent living space, as set forth in Government Code section 65852.2.

(b) "Junior Accessory Dwelling Unit" or "JADU" shall mean an ADU which is no more than 500 square feet in size and is located entirely

within an existing single-family residence, as set forth in Government Code section 65852.22.

4.17.2 Construction of ADUs. The prior written approval of the Design Review Committee or Board is required for the construction or installation of an ADU or JADU, pursuant to Article 6, below. Any request to construct or install an ADU or JADU must include plans and specifications that meet all applicable requirements found in the Governing Documents, in addition to all applicable state and local laws.

4.17.3 Use of ADUs and JADUs. ADUs and JADUs are for residential use only. All Residents of the Development must comply with the Governing Documents, including but not limited to those restrictions related to parking, animals and pets, trash disposal, and the prohibition on activities that are harmful, offensive, or create a nuisance.

4.18 Variances. Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article 4, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration.

ARTICLE 5

ASSOCIATION AND OWNER MAINTENANCE RESPONSIBILITIES

5.1 Common Area. The Association shall maintain, repair and, when necessary, replace and reconstruct all Common Area improvements including, but not limited to, landscaping, drainage structures (including retention ponds and basins) and irrigation systems. For purposes of this Section, "Common Area improvements" shall include the landscaping and irrigation systems installed in the areas shown on Exhibit B, on that portion of any Lot designated on the Map as a Landscaping Easement or L.S.E. and any drainage improvements and structures constructed on any portion of a Lot designated on the Map as a Private Storm Drainage Easement or P.S.D.E. The Association's obligations under this Section commenced upon conveyance of a Common Area parcel, L.S.E. or P.S.D.E. to the Association and, with respect to the areas shown on Exhibit B, concurrent with the transfer of the first Common Area parcels to the Association.

The Association shall keep all shrubs, trees, grass and plantings of every kind within the Common Area, within the areas shown on Exhibit B, within an L.S.E. or on the boundary between a Lot and the Common Area neatly trimmed, properly cultivated, and free of trash, weeds and other unsightly material. The Association

shall replace dead or defective plant materials with materials of a like kind. In addition to the foregoing, the Association shall maintain the elements of the retaining wall located along Magee Ranch Road consisting of the decorative stone surface of the structural wall and the iron railing running on top of the wall. Structural maintenance of the wall itself shall be performed by the Town of Danville.

The Association shall hire necessary personnel and services and do, or cause to be done, such other things as are necessary to provide for the administration of the Common Area for the benefit of all the Owners and as are consistent with its powers.

5.2 Association Maintenance Responsibilities With Respect to Lot Improvements. The Association shall provide exterior maintenance upon each Lot only within certain prescribed easement areas as stated herein.

5.3 Association Maintenance Manual. In the event, that the Declarant provided the Association with an Association Maintenance Manual applicable to the repair and maintenance of Association Common Areas and Common Facilities, the Association shall be obligated, in accordance with Civil Code section 945.S(c), to comply with all of the maintenance obligations, recommendations, and schedules set forth in the Manual. However, the Board of Directors shall be authorized, from time to time, to make appropriate revisions to the Association's Maintenance Manual based on the Board's review thereof in order to update the Association Maintenance Manual to reflect current industry maintenance practices and recommendations, so long as such changes do not reduce the useful life or functionality of items to which the Maintenance Manual pertains.

5.4 Owner Maintenance Responsibilities.

5.4.1 General. Except as specifically provided in Section 5.2, above, each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot, including any utility installations located thereon. The Owner shall also be responsible for the maintenance of all of the exterior landscaping located within perimeter fences on his or her Lot.

Without limiting the generality of the foregoing, each Owner's repair and Maintenance Obligations shall be in accordance with the Maintenance Manual identified in subparagraph (b) below and shall extend to and include:

(a) Weekly mowing, trimming, edging of lawns and other ground cover, removal of dead or dying plants and weeds;

(b) Watering at intervals necessary to keep grass, shrubs and trees in an attractive condition;

(c) Maintenance of drainage facilities and improvements, if any, on the Owner's Lot; and

(d) Maintenance of the surface of any perimeter wall that faces the Owner's Lot.

5.4.2 Fence Maintenance. Maintenance of fences between two (2) Lots are the joint responsibility of the Owners of the two (2) Lots. Each Owner shall pay one-half (1/2) of the cost of such maintenance.

5.5 Association Recovery of Costs of Certain Repairs and Maintenance.

5.5.1 Association Maintenance Necessitated by Owner Negligence. If the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder, is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by insurance policies maintained by the Association or the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment.

5.5.2 Owner Defaults in Maintenance Responsibilities. If an Owner fails to perform maintenance or repair functions for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt of the Association's notice. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3.7.1, above, to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing.

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

5.7 Drainage Structures, Ditches and Swales.

5.7.1 All drainage structures, culverts and canals improved by the Association for the major collection of storm runoff and any natural drainage courses within Common Areas shall be maintained regularly by the Association.

5.7.2 Except as provided in subparagraph (a), above, each Owner shall keep drainage courses, ditches and swales on his or her Lot free and clear of all obstructions, and shall, in cooperation with contiguous property Owners (including the Association as to any contiguous parcels owned by the Association),

maintain all such drainage ditches, swales and culverts common to their Lots in good order.

5.7.3 No Owner or Resident shall alter or obstruct a natural drainage course, or materially add to the natural water volume of said drainage course without making adequate provisions with respect to neighboring Lots and Common Areas. Any such alterations, obstructions, or additions to water volume shall be considered a work of Improvement that is subject to prior review and approval by the Design Review Committee.

5.8 Geologic Hazard Abatement District A Geologic Hazard Abatement District. ("GHAD") has been formed by the Town of Danville which includes portions of the Magee Ranch development. That GHAD has accepted some of the duties and responsibilities of the Association that are within the jurisdiction of the GHAD. Such duties and responsibilities shall remain with the Association until the District has approved their transfer to the GHAD. Upon approval of the transfer, the necessary reserves shall be accumulated through an assessment levied by the GHAD rather than Assessments levied by the Association. Accordingly, expenditures for the preservation of the A.W.A.E. are now the responsibility of the directors of the GHAD.

The District shall have immediate access at all time to preserve the sewer collection system. If any barrier to the District's immediate access is to be constructed or installed, then the District's prior written approval is required. The Declarant or Association shall submit a plan to the District for prior written approval that provides the District with an acceptable shall mean to obtain immediate access.

The District will repair any damages to the A.W.A.E. in excess of those normally anticipated from wear and aging which are caused by the District's actions to preserve the sewer collection system provided the Association has complied with its duties pertaining to preservation of the A.W.A.E.

If the Association shall breach any covenant, or otherwise fail to perform any of its duties pursuant to the Declaration, Articles and Bylaws to which the District is an intended beneficiary, the District may give written notice of such breach to the Association, together with a demand upon the Association to remedy such breach. If the Association refuses to do so, or fails to take appropriate action within thirty (30) days of the receipt of such notice, the District shall have the standing and the right (but not the obligation) to bring an action in a court of proper jurisdiction to enforce the provisions of Sections 5.1 and 11.16 and any of the above-mentioned Agreements, Articles and Bylaws or to seek damages for said breach. These remedies are cumulative and in addition to any other remedies the District may have. Should the District prevail in any such litigation, the Association shall be liable for and pay to the District its costs (including attorney's fees and all

other involved District staff time). Nothing contained herein shall limit any other right or remedy, which the District may exercise by virtue of authority contained in ordinance or law.

5.9 Rights of East Bay Regional Park District. The East Bay Regional Park District ("EBRPD") shall have the right to enter upon the Common Area over existing rights of way, if such there be, or, if there are none, by such ways and means which permit the least practical interference with the rights of the Owners for purposes of maintaining, repairing, replacing and reconstructing any fences which separate the lands now or hereafter owned by EBRPD from the Magee Ranch development.

ARTICLE 6

ARCHITECTURAL REVIEW

6.1 Architectural Approval Required. Except for improvements made or constructed by or on behalf of the Association, no exterior addition or modification of any kind, including an ADU, fence, wall, obstruction, balcony, screen, patio cover, tent, awning, carport cover, improvement or other structure of any kind or any landscaping, shall be commenced, erected, painted or maintained within the Development, nor shall any exterior addition to or change or alteration thereto be made without prior written approval by the Design Review Committee ("DRC") and/or Board as provided in this Article 6.

6.2 Establishment of Design Review Committee.

6.2.1 Members. The DRC, if any, shall be composed of at least three (3) Members appointed by the Board of Directors. The Board may also appoint one alternate member who may be designated by the DRC to act as a member of the DRC in the absence or incapacity of any DRC member. DRC members shall serve one-year terms subject to the Board's power to remove any DRC member and to appoint their successor. Neither the members of the DRC nor its designated representatives shall be entitled to any compensation for service performed pursuant hereto.

6.2.2 Board May Serve as Design Review Committee. If at any time there is a not a duly constituted Design Review Committee, the Board shall exercise the functions of the DRC in accordance with the terms of this Article 6.

6.2.3 Vacancies. In the event of a vacancy on the DRC, the Board shall have the full authority to appoint a new member.

6.2.4 Duties. It shall be the duty of the Design Review Committee, if any, to consider and act upon proposals or plans submitted to it pursuant to the

terms of this Article 6, to perform other duties delegated to it by the Board, to carry out all other duties imposed upon it by this Declaration and act in accordance with Civil Code section 4765.

6.2.5 Meetings, Minutes, Reimbursement. The DRC, if any, shall meet as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the members of the DRC shall constitute an act by the DRC. The DRC shall keep and maintain a record of all actions/recommendations taken by or made by it at such meetings or otherwise. The DRC and its members shall be entitled only to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any DRC function.

6.3 Architectural Rules. Subject to the Board's approval and the requirements of Civil Code section 4350 *et seq.*, the DRC, if any, may propose, for adoption by the Board, Architectural Rules which may interpret and implement the provisions hereof by providing for any or all of the following:

(a) The standards and procedures for DRC and/or Board review, including the required content of application and procedures for obtaining preliminary approval of plans.

(b) Guidelines for architectural design, placement of any work of improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular improvement projects within the Development.

(c) The criteria and procedures for requesting variances from any property use restrictions or minimum construction standards that would otherwise apply to the proposed improvement pursuant to the Governing Documents. All variances shall be reviewed on a case-by-case basis with no precedent being established if a variance is granted in a particular instance and must be approved by a majority of the affirmative votes of the DRC and/or Board.

(d) Lists of repair projects and minor improvement projects that can receive final review and approval by the Design Review Committee, if any, without review/approval by the Board, so long as the project is undertaken in accordance with plans and specifications that are consistent with the Architectural Rules or the project involves use of an identical color or external material to the existing color or material and the new materials/colors are submitted to and reviewed by the DRC, if any;

(e) Notwithstanding the foregoing, no Architectural Rules shall be in derogation of the minimum standards required by this Declaration. In the event

of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail.

6.4 Application. Any Owner proposing to perform any work of any kind whatsoever, which requires prior approval pursuant to this Article 6, shall apply for approval by notifying the DRC and/or Board, in writing, of the nature of the proposed work and furnishing such information and documentation as the DRC, if any, and Board may require.

6.5 Fees; Consultants. The DRC and/or Board may charge a reasonable fee or fees for its review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including, but not limited to architects, engineers, soils experts, or contractors. The costs of any such outside consultants may be levied against an Owner and their Unit as a Special Individual Assessment. However, before a consultant is retained by the DRC and/or Board, the Owner will be informed in writing of the DRC and/or Board's intention to retain a consultant at the Owner's expense and the Owner will be given the opportunity to decide to pay the consultant's fee or decide not to pursue the improvement or modification. An Owner who withdraws their application shall do so without penalty, including fees.

6.6 Decisions on Architectural Applications. The Owner and, in the Board's discretion, other interested persons, may present information relevant to the requested approval. The decisions of the DRC and/or Board shall be made in good faith and shall not be unreasonable, arbitrary or capricious. The DRC and/or Board may employ subjective criteria and judgments in their review of and determination regarding plans and proposals submitted to them. The decisions of the DRC and/or Board shall be made from the perspective of the interest of the Development as a whole, including the coherence, value, attractiveness and aesthetic compatibility of all architectural designs and features in the Development, after consideration of all factors the Board determines to be relevant and after reasonable investigation consistent with the scope and circumstances of the proposal.

6.7 Grant of Approval. The Design Review Committee shall grant the requested approval only if all the following conditions are met:

- (a) The Owner complied with the provisions of Section 6.4 above.
- (b) The plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the DRC and/or the Board.

(c) The proposed improvements would be consistent with the standards and aesthetics of the Development and the purposes of this Declaration as to: quality of workmanship, design and materials; harmony of exterior design with the existing improvements; structures; and location with respect to topography and finished grade elevations.

6.8 Timing and Form of Approval. All approvals and rejections of requests for approval shall be in writing and shall be issued by the DRC and/or the Board within thirty (30) days from the date of submission of a complete application to the DRC and/or the Board. If the DRC and/or the Board fails to act on a request for approval within thirty (30) days from the date of submission of a complete application, the Owner shall be entitled to request internal dispute resolution, as described in Section 11.12.2, below, and Civil Code section 5900 *et seq.*; except that, in the case of an application for installation or use of a solar energy system subject to *Civil Code* Section 614, any application that is not denied by the DRC and/or the Board within forty five (45) days from receipt of a complete application shall be deemed approved; and in the case of an application for installation or use of an electric vehicle charging station subject to Civil Code section 4745(e), any application that is not denied by the Board within sixty (60) days from receipt of a complete application shall be deemed approved. Owners are responsible for confirming receipt of an application by the DRC and/or the Board. Oral approvals will be of no force and effect. If an application is rejected, the decision shall include an explanation of the decision of the DRC and/or the Board and a notice describing the Owner's right to request reconsideration, if any.

6.9 Appeals; Reconsideration by the Board. If an application is denied by the DRC, the Owner-applicant is entitled to reconsideration of the decision by the Board at an open Board meeting. The Architectural Rules shall contain procedures to process appeals pursuant to this Article 6; however, denial decisions rendered by the Board may not be appealed. DRC decisions may also be modified or overturned by the Board on its own initiative.

6.10 Commencement. Within ninety (90) days of receipt of approval pursuant to Sections 6.7 and 6.8 above, the Owner shall satisfy all conditions thereof and diligently proceed with the commencement and completion of all work pursuant to said approval. If the Owner shall fail to comply with this Section, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of said ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

6.11 Completion. Unless shorter time is specified in the approval by the Association, the Owner shall complete the approved work within six (6) months

after receipt of approval, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section, the Board shall proceed in accordance with the provisions of Section 6.12, below, as though the failure to complete the improvements was a non-compliance with approved plans.

6.12 Inspection of Completed Work; Non-Compliance. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any installation, construction, reconstruction, alteration, or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required pursuant to this Article 6, the Owner shall give written notice thereof to the DRC and/or the Board.

(b) Within thirty (30) days thereafter, the DRC and/or Board, or its duly authorized representative, may inspect such improvement to determine whether it was installed, constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the DRC and/or Board finds that such installation, construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying the particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

(c) If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the DRC and or Board or other duly authorized representative of the Board shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) days nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the DRC, if any, or the Board's duly authorized representative. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the DRC, if any, and, in the discretion of the Board, to any other interested party.

(d) At the hearing, the Owner, the DRC, if any, and, in the Board's discretion, any other interested persons, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the

same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Special Individual Assessment.

(e) If, for any reason, the DRC and/or Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of a notice of completion from the Owner, the improvement shall be deemed to be in accordance with the approved plans.

6.13 Non-Waiver. The approval by the DRC and/or the Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the DRC and/or the Board pursuant to this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

6.14 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall cause to be recorded an estoppel certificate, certifying (with respect to any Lot of said Owner) that as of the date thereof, either: (i) all improvements made and other work completed by said Owner comply with this Declaration, or (ii) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any Owner, or anyone deriving any interest in a Lot through him or her, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

6.15 Variances. The Design Review Committee, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article, the minimum improvement standards specified in Article 7, below, to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided all of the following conditions are met:

6.15.1 If the requested variance will necessitate deviation from, or modification of, a minimum construction standard that would otherwise be applicable under this Declaration, the Design Review Committee may, in its discretion, require the consent of neighboring Owners who may be impacted by the variance, if granted.

6.15.2 The Design Review Committee must make a good faith written determination that the variance is consistent with one or more of the following criteria: (i) the, requested variance will not constitute a material deviation from any restriction contained herein or that the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) that the variance relates to a requirement land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect, to any other Lot or Common Area within the Development.

6.16 Liability. Neither the DRC and/or the Board (or any member thereof) shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any property within the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 6.14, whether or not the facts therein are correct; *provided, however*, that the DRC and/or Board (or any member thereof) has acted in good faith on the basis of such information as may be possessed by it (or such DRC, if any, and/or Board member). Without in any way limiting the generality of the foregoing, the DRC, if any, and/or Board and/or DRC (or any member thereof) may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the DRC and/or the Board. Every purchaser, by acquiring title to a Lot, agrees not to bring any action or suit against the DRC, if any and/or the Board (or any member thereof) seeking to recover any such damages.

6.17 Compliance with Governmental Requirements. The application to the Association and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on the DRC and/or the Board, (or any member thereof) as to the accuracy, efficacy, or sufficiency thereof. The obtaining of a permit or other approval of a government agency shall not be a substitute for nor constitute compliance with the requirements of this Article 6.

ARTICLE 7

MINIMUM IMPROVEMENT REQUIREMENTS

Unless a variance is requested from, and granted by, the Design Review Committee in accordance with Section 6.15, above, Improvements constructed on any Lot shall conform to the following minimum improvement standards:

7.1 Approval by the Design Review Committee. No building, fence, wall or other permanent structure or Improvement shall be erected, altered or placed on any Lot until building plans, specifications, and a plot plan showing the location of structures on the Lots have been submitted to the Design Review Committee for review and approval as described in Article 6, above.

7.2 No Temporary Structures. Other than an ADU and/or a JADU that is constructed in compliance with Civil Code section 4751 and the Town of Danville Municipal Code sections 32-76.2 through 32-76.7, no mobile homes, factory-built housing, modular homes, or other such prefabricated dwelling units manufactured for delivery to and/or assembly on the Property shall be erected, placed, assembled or maintained on any Lot. Notwithstanding the above, a manufactured storage shed may be assembled and/or located in the rear-yard of any Lot, provided such shed is not visible from any adjacent Lot or from the public street.

7.3 No Used Materials. No used buildings or structures, intended for use as a Residence, shall be placed on any Lot.

7.4 Solar Heating Systems. Subject to limitations imposed by California law (see particularly California Civil Code sections 714, 714.1 and 4700(b)), the Design Review Committee shall be entitled to adopt, as part of the Architectural Guidelines, reasonable regulations regarding the installation of solar heating systems. These rules may include limitations on placement and design of such systems to the extent necessary to avoid an unsightly appearance from neighboring Lots or Common Area.

7.5 Colors and Exterior Finishes. No reflective finishes (other than glass) shall be used on exterior surfaces (other than surfaces of hardware fixtures) including, but without limitation, the exterior surfaces of any of the following: roofs, all projections above roofs, retaining walls, doors, trim, fences, pipes, equipment, mailboxes and newspaper tubes. No exterior finishes, textures or materials shall be used without approval of the Design Review Committee. Generally, colors shall be restricted to those found in the immediate vicinity of the Residence and colors found in nature will be favored, and the Committee shall be authorized, as part of the Architectural Guidelines, to adopt a chart of approved colors and stains for exterior finishes.

7.6 Roofing Materials. When Owners replace their roofs, they shall use the same materials and colors as the Declarant used in the initial construction of residences unless the Design Review Committee approves use of a different roofing material or a different color.

7.7 Drainage. No Owner shall do any work, construct any Improvement, place any landscaping, or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Owner's or any adjacent Lots or parcels or Common Area as established in connection with the approval of the final subdivision and parcel maps applicable to the Development by the County, except to the extent such alteration in drainage pattern is approved in writing by the Design Review Committee, the County, and all other public authorities having jurisdiction.

7.8 Antennas, Aerials, and Satellite Dishes. Outside television antenna, aerial, satellite dish or similar device for the transmission or reception of television, radio, satellite, or other signals of any kind are prohibited, except for the following (Civil Code section 4725):

7.8.1 The Association shall have the right, without obligation, to erect, place or install and maintain any such apparatus for the benefit of all or a portion of the Development.

7.8.2 Antennas or satellite dishes that are one meter or less in diameter or diagonal measurement which are designed to receive video programming services via multi-point distribution services, including multi-channel multipoint distribution services, instructional television fixed services and local multipoint distribution services (collectively "Permitted Device") may be erected, placed or installed on a Lot, provided that:

(a) Any such Permitted Device is placed in the least conspicuous location on the Residence or Lot at which an acceptable quality signal can be received and is either not visible from neighboring property or is screened from the view from streets or Common Area; and

(b) Reasonable restrictions which do not significantly increase the cost of installation of a Permitted Device or significantly decrease its efficiency or performance, including, without limitation, screening material, location or complimentary-color painting of the Permitted Device may be imposed as part of the Architectural Guidelines. In no event can the Association or the Design Review Committee impose a pre-installation design review process so long as the Owner is installing a Permitted Device.

7.9 Exterior Lighting and Fixtures. Outdoor lights of the type used for security must be enclosed in a manner that directs the light in a specific area

without causing a visual impairment to passing motorists or will be a nuisance to neighboring properties. The issue of whether a nuisance exists shall be determined by the Design Review Committee in its sole discretion.

7.10 Fences, Hedges and Walls. No fence, hedge, wall or other dividing instrumentality over six (6) feet in height measured from the ground on which it stands shall be constructed or maintained on any Lot. Wherever a portion of a Lot is burdened by a Landscaping Easement or a Private Storm Drainage Easement, as shown on the Subdivision Map or as an exception to the Owner's title, containing a surface drainage structure such as a 8-58 ditch or similar conduit and the Association is responsible for the maintenance thereof, no fence, wall, hedge or other obstruction of any nature shall be erected or maintained within the easement area or otherwise in such manner as to impede access to the easement area from the adjacent Common Area or street. If the drainage structure or facility is underground, Owner may erect non-permanent and readily moveable improvements such as fences and landscaping in the easement area.

7.11 Hydrocarbon and Mineral Exploration and Extraction. No oil drilling, development or refining, and no quarrying or mining operations of any kind shall be permitted within the Development, nor shall oil wells, tanks, tunnels or mineral excavations be permitted upon the surface, or within five hundred (500) feet of the surface, of the Development, nor shall derricks or other structures designed for use in drilling for oil, natural gas, steam or other hydrocarbons or minerals be erected, maintained or operated upon any portion of the Project. No water well shall be drilled or otherwise established on any Lot.

7.12 Window Coverings. All drapes, blinds, shades, shutters or other internal window coverings that are visible from the outside of a Residence shall be white unless otherwise approved by the Design Review Committee.

ARTICLE 8

ASSESSMENTS

8.1 Covenant of Owner. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (i) Annual Assessment; (ii) Special Assessments; and (iii) Special Individual Assessments levied by the Association as hereinafter provided, together with all Additional Charges.

8.1.1 Association's Power to Collect. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the

collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.

8.1.2 Each Assessment Is a Separate Obligation. Each Assessment levied by the Association pursuant to this Article 8, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind their heirs, devisees, personal representatives, successors, and assigns.

8.1.3 Obligation Runs with the Land. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of record of any Lot within the Development shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time they are record Owners of such Lot.

8.1.4 Owner's Liability after Transfer. After an Owner transfers fee title to any Lot they own they shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. The seller of any Lot shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder of Contra Costa County.

8.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied pursuant to this Declaration.

8.2.1 Continuing Lien. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot notwithstanding the transfer of record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been recorded as provided in the Declaration and by law.

8.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Development, to conduct the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and

Residents in the Development, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Lots situated within the Development.

8.4 Authority of the Board. The Board shall have the power and the duty to levy Annual, Special and Special Individual Assessments sufficient to meet the Association's obligations pursuant to the Governing Documents and applicable law.

8.5 Association Funds. Unless otherwise determined by the Board, the Association shall maintain at least two (2) separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated Magee Ranch Homeowners Association Operating Account and Magee Ranch Homeowners Association Reserve Account. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner and shall be used for the purposes set forth in Section 8.3. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Development and another portion of said funds as collected as reserves for contingencies, replacement, and deferred maintenance of the improvements within the Development for which the Association is responsible, as specified in the annual budget. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.

8.6 Annual Assessment.

8.6.1 Calculation of Estimated Requirement. Not later than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Association for such fiscal year, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis; to manage, administer, operate, and maintain the Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with this Declaration.

8.6.2 Allocation of Annual Assessment. The Board shall allocate and assess the Annual Assessment equally among the Lots by dividing the total amount of the Annual Assessment by the number of Lots within the Development. Unless the Board shall designate otherwise, the Annual Assessment shall be levied on an annual basis and shall be paid in quarterly installments (as modified

by the Board) during the fiscal year, and each installment shall be due and payable on the first day of each month.

8.6.3 Surplus Funds. If, as of the end of any fiscal year, there is an excess of membership income over membership expenses, as defined in Internal Revenue Code section 277 for the year ended, such excess shall be applied against the subsequent tax year's Assessments as provided in Internal Revenue Service Revenue Ruling 70-604, unless some other lawful disposition of such excess income is determined by the vote of the Members.

8.6.4 Increases in Annual Assessment. Pursuant to Civil Code section 5605(b), except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members (i.e., Members representing at least one hundred thirty-three (133) Lots), notwithstanding any lower quorum requirement set forth in the Bylaws.

8.7 Special Assessments.

8.7.1 Purpose of Special Assessments. If at any time during any fiscal year the Annual Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of improvements located in the Development, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

8.7.2 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots in the same manner as the Annual Assessment (i.e., equally among the Lots by dividing the total amount of the Special Assessment by the number of Lots within the Development). The Board, in its sole discretion, may allow Owners' portions of a Special Assessment to be paid in installments.

8.7.3 Approval of Special Assessments. Except in the case of an emergency situation as defined in Civil Code section 5610, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes

of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members (i.e., Members representing at least one hundred thirty-three (133) Lots), notwithstanding any lower quorum requirement set forth in the Bylaws.

8.8 Notice of Assessment Increases. Upon the imposition of a Special Assessment or an increase in the Annual Assessment, notice shall be provided to each Owner, as required by law not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Assessment.

8.9 Special Individual Assessments. The Association shall levy a Special Individual Assessment against any Owner and their Lot if a failure by such Owner, or any person or animal, for which the Owner is responsible to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association, specifically including attorneys' fees. A Special Individual Assessment shall include any costs, including attorneys' fees incurred by the Association and costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. Imposition of a Special Individual Assessment shall be effective only after a duly noticed hearing before the Board. Special Individual Assessments shall be due and payable to the Association when levied and subject to the same enforcement procedures as Annual and Special Assessments, including lien and foreclosure.

8.10 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.

8.11 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

8.12 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally

obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, except as prohibited by law. Prior to recording a Notice of Delinquent Assessment, the Association shall provide notice to the Owner in accordance with Civil Code section 5660. Any demand or claim of lien or lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof. No procedures shall be initiated to foreclose the lien securing any Assessment levied pursuant to this Article 8 except as in accordance with Civil Code sections 5705, 5710, and 5720. Except as prohibited by law, upon the recording of the Notice of Delinquent Assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges. Notwithstanding any other provision of this Declaration, the Association must comply with the requirements of the Civil Code when collecting delinquent Assessments.

8.13 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale as provided by law, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Lot at said sale. The decision to record a lien and initiate foreclosure may only be made by the Board and may not be delegated.

8.14 Remedies Cumulative. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive; that is, the Association may use one or more or all of the available remedies to collect delinquent Assessments.

8.15 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.

8.16 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for pursuant to this Article 8 shall have priority as of the date of recording of the original Declaration applicable to the Development over all other liens and encumbrances applicable to the Lots; provided, however, that such Assessment lien shall be subordinate to the lien of

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

8.17 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Article 8, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article 8.

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

(a) All property dedicated to and accepted by Contra Costa County or other local public authority and devoted to public use;

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

(c) All Common Area.

ARTICLE 9

INSURANCE

9.1 Insurance. The Board shall obtain and maintain the insurance policies as provided below.

9.1.1 General Provisions and Limitations. All insurance policies obtained and maintained by the Board on behalf of the Association shall be subject to and, where applicable, contain the following provisions and limitations:

(a) Named Insured. Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Owners. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

(b) Authority to Negotiate. Exclusive authority to adjust losses pursuant to policies obtained by the Association shall be vested in the Board.

(c) Subrogation. All policies shall include a waiver of subrogation by the insurer as to any claims against the Board, the manager, and/or the Owners.

(d) Primary Coverage. The policy or policies obtained by the Association will be primary to all other insurance.

(e) Cancellation/Modification. No policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association, except ten (10) days' notice shall be required for cancellation due to nonpayment of premium.

(f) Endorsements. All property insurance policies shall include an agreed amount endorsement, if the policy contains a coinsurance clause; a replacement cost endorsement; and an inflation guard endorsement.

9.1.2 Types of Coverage. The following policies shall be obtained:

(a) Property Insurance. A blanket (or master) property insurance with the "causes of loss – special form" endorsement covering all insurable Common Area improvements, including fixtures and building service equipment, against loss or damage by fire or other casualty, in an amount equal to the full replacement cost (without respect to depreciation) of all insurable Common Area improvements.

(c) Liability Insurance. A commercial general liability policy with limits set by the Board but in no event less than those set forth in *Civil Code* section 5805. The policy shall include the Association, Board and Owners as insureds. If available, each policy shall contain a provision in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(d) Workers' Compensation. Workers' compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Development.

(e) Fidelity Bond. A fidelity bond or employee dishonesty policy naming the Board, the Owners, the Association and such other persons as

the Board may designate as obligees, in an amount as required by law. This bond or policy shall extend coverage for acts of employees, agents, volunteers, the management company, and management company employees.

(f) Directors and Officers. A policy covering individual liability of Directors, officers and the Association for the negligent acts or omissions of the Directors and officers in an amount equal to at least the minimum amount specified in *Civil Code* section 5800. The policy shall include coverage for the acts of the agents of the Board and/or Association, including the management company and its employees, and Association committee members and volunteers, if such coverage is available.

(g) Other Insurance. The Association may obtain other types of insurance as the Board determines to be necessary to protect the interests of the Owners.

9.1.3 Deductible. Owners shall be responsible to pay the deductible on any Association-maintained insurance applicable to any loss resulting from the conduct, omission or negligence of the Owner, Resident (including tenant), or their invitee or guest. Owners shall also be responsible to pay the deductible on any Association-maintained insurance applicable to any loss which emanates from an Owner's Lot which damages Common Area, the Owner's Lot, improvements and/or personal property, and/or the Lot, improvements and/or personal property of another Owner. The Association may collect the amount of any such deductible as a Special Individual Assessment. The Association shall be responsible for the deductible on Association-maintained insurance in all other instances.

9.2 Insurance by Owner. Each Owner, at that Owner's sole cost and expense, shall obtain and maintain a "special causes of loss" policy in an amount equal to or greater than the total replacement value of the insurable improvements on the Lot, the Residence interior, and personal property contained therein (commonly known as a "HO-3" policy). The policy shall also provide liability coverage in such amounts and for such acts or omissions as are normally and customarily included in homeowners property insurance coverage of the types required herein. However, no Owner shall be entitled to maintain insurance coverage in a manner so as to decrease the amount which the Association, on behalf of all Owners and their Mortgagees, may realize pursuant to any insurance policy which the Association may have in effect at any time. The Board may require any Owner, and may periodically require all Owners, to provide a certificate from the Owner's insurer certifying that the required insurance pursuant to this Section 9.2 has been procured and is in full force and effect.

9.3 Insurance by Tenant. Each Owner who rents or leases out their Lot shall (i) recommend the tenant to obtain and maintain a “renter’s policy” (also known as a “HO-4” policy) and (ii) provide to the Board a certificate from the tenant’s insurer certifying that the recommended insurance pursuant to this Section has been procured and is in full force and effect.

9.4 Claims Submission. No Owner may make a claim to or put either the agent or any insurance company providing insurance to the Association on notice of any damages or claim relating to Association-maintained insurance. Claims may only be made by the Association via the Board of Directors or the managing agent if the Board delegates such authority to the managing agent.

9.5 Notice of Damage to Lot or Residence. Each Owner must notify the Association, or managing agent of any damage sustained to their Lot or Residence to which Association-maintained insurance may apply within 24 hours of the time when the Owner knew or should have known of the damage. Any reduction in insurance coverage available or premium increase resulting from the failure to promptly provide notice of damage as required herein shall be the responsibility of the subject Owner and not the Association and may be subject to a Special Individual Assessment.

9.6 Annual Review. The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three (3) years, the review shall include a replacement cost appraisal of all insurable Common Area improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Development is situated.

9.7 Annual Notice to Members. The Association shall provide a summary of all existing Association policies of property, general liability, earthquake, flood and fidelity insurance, as required by Civil Code section 5300(b)(9).

ARTICLE 10

DAMAGE OR DESTRUCTION OF BUILDINGS; CONDEMNATION

10.1 Replacement or Repair of Association Property. In the event of damage to or destruction of Common Area or other property of the Association or any part thereof, the Association shall repair or replace the same from the insurance proceeds payable to it by reason of such damage or destruction. If any such damage or destruction was insured against and the insurance proceeds are

insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may levy a Special Assessment against the Members of this Association as provided in this Declaration to cover the additional cost of the repair or replacement not covered by the insurance proceeds. The Members may elect not to cause such replacement or repair by the vote or written consent of two-thirds (2/3) of the Total Voting Power of the Association. If there is an election not to rebuild or repair, the applicable insurance proceeds shall be distributed by the Association to the Members pro rata.

10.2 Rebuilding or Repair of Improvements on Lots. If any Lot and/or Residence is damaged or destroyed by fire or other casualty, the Owner(s) of any such Lot shall repair or rebuild the structures upon such Lot and restore such Lot to its condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Architectural Review Committee and/or Board. Repair or rebuilding shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction. The Association shall make available to the Owner(s) of the damaged Lot the proceeds from insurance applicable to the loss, if any, to repair or rebuild the Lot. However, the amount of such proceeds shall not limit the obligation of the Owner(s) to repair or rebuild.

10.3 Condemnation.

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

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

Residence or Lot, the Association shall have the right to seek compensation for any damages incurred by the Association.

ARTICLE 11

ENFORCEMENT

11.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or be in the best interests of the Association and its Members as a whole. Notwithstanding the preceding sentence and without limiting its generality, nothing in the Governing Documents shall be deemed to impose upon the Association, the Board, or the officers, employees, or agents of the Association a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials; the Association, the Board, officers, employees or agents of the Association do not have police powers.

11.2 Violation of Law Is a Violation of Declaration. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

11.3 Owners' Responsibility for Conduct of Others and Damages. Each Owner shall be responsible for informing members of their household and their tenants and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Lot is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

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

11.5 Rights and Remedies of the Association.

11.5.1 Rights and Remedies are Cumulative. The Association, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.

11.5.2 Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or their tenants or guests, the Board shall have the power to impose a sanction against the Owner who is responsible as provided in Section 11.3 for such breach or infraction. A sanction may include but shall not be limited to a monetary penalty and/or the suspension of an Owner's rights as a Member of the Association, including an Owner's right to use the recreational or community facilities on the Common Area. Imposition of a sanction shall be effective only after notice and an opportunity for hearing. Any monetary penalty imposed pursuant to this Section shall not exceed the amount for each violation, as set forth in the schedule of monetary penalties adopted pursuant to Civil Code section 5850(a). Each Owner shall be obligated to pay costs incurred by the Association relating to violation of any provisions of the Governing Documents by such members of Owner's household, tenants, guests, pets, or other invitees. Sanctions may be enforced by the Association in any manner permitted by law.

11.5.3 Continuing Violations. In the case of a continuing violation, such as an uncorrected architectural violation, where an Owner, member of an Owner's household, or their tenants or guests fails to cease or remedy a violation after notice from the Board to do so, the Board may deem such a continuing violation and may impose separate and successive sanctions for each such violation without holding further hearings for each sanction.

11.6 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment, a remedy at law to recover damages for the breach or violation of the Governing Documents is inadequate and the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association or by any Owner, or by their respective successors in interest.

11.7 Limitation on Disciplinary Rights. The Association shall not have the power to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of their Lot as the result of the failure by such Owner, members of such Owner's household, or their tenants, guests, invitees or household pets to comply

with any provision of the Governing Documents, except where such forfeiture or abridgement is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale pursuant to private power of sale for failure of such Owner to pay Assessments. The provisions of this Section shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

11.8 Disciplinary Rules. The Board may adopt Rules that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such Rules, when approved and adopted by the Board subject to Civil Code section 4340 *et seq.*, shall be deemed to be a part of the Association Rules provided for, in and constituting a part of the Governing Documents.

11.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or Resident, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter.

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

or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

11.11 Notices. Any notices required or given pursuant to this Article 11 shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Association.

11.12 Dispute Resolution.

11.12.1 Alternative Dispute Resolution. Any dispute other than those listed in Civil Code section 5930(b) or those related to the power and duty of the Board of Directors to levy and collect Assessments through lien and foreclosure proceedings shall be submitted to alternative dispute resolution procedures ("ADR") as described in Civil Code section 5925 *et seq.* In the case of any claim, dispute, or controversy which is not otherwise subject to Civil Code section 5925 *et seq.*, involving a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute shall have the right to file a claim in Small Claims Court and have the matter determined therein in lieu of ADR.

11.12.2 Internal Dispute Resolution. In addition to the ADR provisions of Civil Code section 5925 *et seq.*, the Association shall provide for Internal Dispute Resolution in any dispute regarding the rights, duties or liabilities pursuant to Civil Code section 4000 *et seq.*, the Nonprofit Mutual Benefit Corporation Law, or the Governing Documents. The procedure may be invoked by any party pursuant to Civil Code section 5900 *et seq.*

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

11.14 Costs and Attorneys' Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Owner or Resident, member of their household, tenants, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Association shall be entitled to recover the full amount of all costs including

attorneys' fees and experts' fees incurred by the Association in responding to such a violation and/or in enforcing any Governing Document provision, to the extent permitted by law. In the event of a court awarding attorneys' fees, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, but shall not necessarily be limited to, the imposition of a Special Individual Assessment as provided in Article 8.9 of this Declaration.

11.15 Rights of the Town of Danville. The Town of Danville (the "**Town**") is an express and intended beneficiary of the covenants set forth in Section 7.1 of the Bylaws [former Sections 3.05(b)(iv) and 3.06] and Sections 3.1 (Division of Property) [former Section 2.01], 4.8(i)(Signs) [former Section 5.03(e)], 8.2 (Creation of Lien) [Section 4.01], Section 8.12 (Delinquent Assessments) [Section 4.07]. The Town shall have the right, but not the obligation, to enforce by proceedings at law or in equity the covenants imposed by this Declaration with respect to which it is an express beneficiary, including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons (including the Association) who have violated or are attempting to violate any of said covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied, and/or to recover damages for said violation. In the event of any violation of any of said covenants, the Town may give written notice of said violation together with a demand upon the affected party to remedy the said violation. If the affected party refuses to remedy said violation, or fails to take appropriate action within thirty (30) days of the receipt of said written notice, the Town shall have full power to cause said violation to be remedied and/or to recover damages for said violation. The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative. The failure to enforce any of said covenants shall not constitute a waiver of the right to enforce any of said covenants thereafter. The covenants with respect to which the Town is an express beneficiary shall not be amended or rescinded without the consent of the Town, which consent shall not be unreasonably withheld or delayed.

11.16 Rights of the Central Contra Costa Sanitary District. The Central Contra Costa Sanitary District ("District") is an express and intended beneficiary of the covenants set forth in Section 1.1, Section 11.16, Article 5, and Exhibit B of this Declaration. The covenants and Association Bylaws with respect to which the District is an express beneficiary shall not be amended or rescinded without prior written consent of the District, which consent shall not be unreasonably withheld or delayed. The Association shall have the power and the duty to reconstruct, restore, replace, modify, repair, and maintain (the foregoing activities are hereinafter collectively called "preservation" or "preserve") the A.W.A.E., all of which shall be done in conformance with the requirements of the District. Any

preservation by the Association shall also include, without limitation, any retaining walls within or adjacent to the A.W.A.E. and any other appurtenances to the roadway. In connection with performance of the Association's duties.

Pursuant to Article 8 of the Declaration, the Association shall collect from the Owners as part of the Annual Assessments the sums necessary to provide for preservation including regular maintenance and repair and to fund reserves for preservation of the A.W.A.E. The foregoing sums shall be used only for preservation of the A.W.A.E.

At the request of the District, and at no cost to the District, the Association shall provide to the District copies of the pro-forma operating statement (budget) and other documents included in the Annual Budget Report, as described in the Bylaws. For purposes of such statements the A.W.A.E. shall be deemed a "Major Component" of the Development and the financial statements of the Association shall show the balance of the Reserve Account for preservation of the A.W.A.E.

At the request of the District, the Association shall provide evidence, satisfactory to the District that the funds representing the Association's Reserves for preservation of the A.W.A.E. are on deposit in the Association's Reserve Account.

ARTICLE 12

AMENDMENT OF DECLARATION

12.1 Amendment of the Declaration. This Declaration may be amended by the affirmative vote of Members representing at least a Majority of a Quorum of the Members. For purposes of the preceding sentence, the quorum requirement shall be twenty-five percent (25%) the Total Voting Power (which may be reduced to fifteen percent (15%) of the Total Voting Power), as set forth in Section 4.8.4 of the Bylaws. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and recorded in the Office of the Contra Costa County Recorder.

12.2 Amendment by the Board of Directors. The Board of Directors may, by a majority vote of all Directors then in office, adopt amendments to this Declaration, when an amendment is needed to conform a particular provision or provisions of this Declaration to changes in applicable California statutory law that are nondiscretionary in nature. Before entertaining a motion to approve any such amendment(s), the Board shall receive a written opinion from an attorney licensed to practice law in the State of California confirming that a change or changes in California statutory law necessitates a corresponding amendment to this

Declaration to conform to the statutory requirements, which the Association is bound by law to follow.

ARTICLE 13

GENERAL PROVISIONS

13.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration or otherwise.

13.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.

13.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.

13.4 Conflict Between Governing Documents. In the case of any conflict between the Articles of Incorporation, Bylaws and or Rules and this Declaration, this Declaration shall control.

13.5 Amendment to Referenced Statutes. References in this Declaration to particular statutes, including sections of the Civil Code, shall be deemed to include any successor statute and any amendments to existing or successor statutes.

13.6 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.

13.7 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.

13.8 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Lots and Common Area, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and

their respective agents and successors in interest, for a term of thirty (30) years from the date of recordation of this Declaration. Thereafter, the term shall be automatically extended for successive periods of ten (10) years each, unless within the six (6) months prior to the expiration of the initial thirty (30) year term or any ten (10) year extension period, a written instrument approved by Owners entitled to vote and holding at least a majority of the Total Voting Power of the Association, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Contra Costa County, California.

DRAFT

IN WITNESS WHEREOF, we, the Members of Magee Ranch Homeowners Association, constituting at least fifty-one percent (51%) of the voting power of the Association, hereby affirm, approve, and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Magee Ranch Homeowners Association in accordance with Section 9.01(b) of the Original Declaration, by means of the signatures of the President and Secretary of the Association, duly authorized by the affirmative vote of at least fifty-one percent (51%) of the voting power of the Association; therefore the Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder of Contra Costa County, California.

DATED: _____

MAGEE RANCH HOMEOWNERS
ASSOCIATION

President

Print Name

Secretary

Print Name

AMENDED AND RESTATED DECLARATION
MAGEE RANCH HOMEOWNERS ASSOCIATION

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)



EXHIBIT A

(A.W.A.E.)

DESCRIPTION OF
ALL WEATHER ACCESS
EASEMENT
AND COVENANT TO
PROVIDE MAINTENANCE
GUARANTY BOND

The All Weather Access Easement or A.W.A.E. consists of two elements. The first such element is shown on the Map and has been offered for dedication by Declarant to the Central Contra Costa Sanitary District (the "District"). The second such element consists of a strip of land described as:

SEE ATTACHED

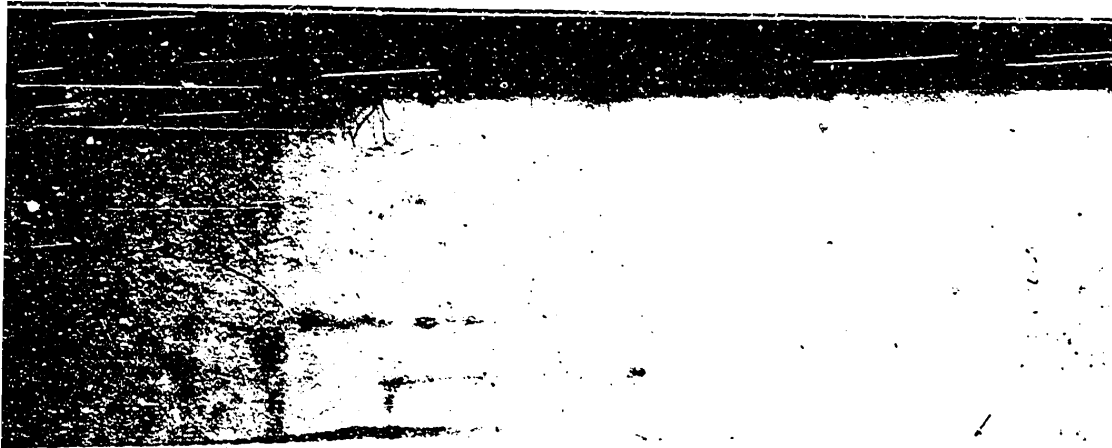
which easement burdens the property (the "Servient Tenement") described as:

SEE ATTACHED

The Association is obligated to maintain the roadway portion of both elements of the A.W.A.E. With respect to the second element, an easement has been granted by the owner of the Servient Tenement directly to the District for purposes of access and the right to maintain the components of the sewer system and an easement has been granted to Declarant, with the right to transfer such easement to the Association and/or to a Geologic Hazard Abatement District for purposes of access and to permit performance of the maintenance functions described in Sections 6.01(c) and 9.04(b) of the Declaration. The easements granted to the Declarant and the District have identical boundaries.

To assure the Owner of the Servient Tenement that the maintenance obligations of the Association with respect to the portion of the A.W.A.E. lying within the Servient Tenement are timely and properly performed, the Association, so long as the maintenance obligations have not been assumed by a Geologic Hazard Abatement District, shall keep in continuous force and effect a maintenance guaranty bond provided by a corporate surety naming the owner of the Servient Tenement as obligee thereunder. If the Servient Tenement is subdivided into multiple ownerships, the subdivider thereof shall designate a single person or organization as the named obligee.

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FIRST SEGMENT

SERVIENT TENEMENT: A PORTION OF PARCEL F AS SAID PARCEL IS SHOWN ON THE MAP OF SUBDIVISION #6983, FILED FEBRUARY 2, 1988, IN BOOK 319 OF MAPS AT PAGE 11. ALSO BEING A PORTION OF THE ROADWAY AND UTILITY EASEMENT DESCRIBED AS PARCEL THREE IN THE DEED TO H.B.J. CO., A CORPORATION RECORDED JUNE 4, 1957, IN BOOK 2992 OFICIAL RECORDS, PAGE 440, DESCRIBED AS FOLLOWS:

EASEMENT: A STRIP OF LAND 15.00 FEET WIDE, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL THREE (2992 OR 440) ALSO BEING AN ANGLE POINT IN THE EASTERN BOUNDARY OF SAID PARCEL F (319 M 11); THENCE FROM SAID POINT OF COMMENCEMENT ALONG THE COMMON EASTERN LINE OF SAID EASEMENT (2992 O.R. 440) AND SAID PARCEL F (319 M 11), NORTH 00°40'55" EAST 31.80 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT OF BEGINNING BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 99.28 FEET AND TO WHICH POINT OF BEGINNING A RADIAL LINE OF SAID CURVE BEARS SOUTH 41°15'42" WEST; THENCE FROM THE TRUE POINT OF BEGINNING NORTHWESTERLY ALONG THE ARC OF SAID CURVE 35.22 FEET, THROUGH A CENTRAL ANGLE OF 20°19'42" TO A POINT ON THE NORTHERLY LINE OF SAID PARCEL THREE (2992 OR 440) AND SAID PARCEL F (319 M 11).

THE SIDELINES OF SAID 15 FEET IN WIDTH STRIP OF LAND SHALL BE LENGTHENED OR SHORTENED TO TERMINATE ON SAID COMMON NORTHERN AND EASTERN LINES.

BOOK 155426 349



SECOND SEGMENT

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THE SIDE LINES OF SAID 15 FEET IN WIDTH STRIP OF LAND TO BE LENGTHENED OR SHORTENED TO EXTEND ENTIRELY ACROSS SAID PARCEL F (319 M 11).

BOOK 155426 350

THIRD SEEM: I

SERVIENT TENEMENT. PORTIONS OF PARCEL E AS SAID PARCEL IS SHOWN ON THE MAP OF SUBDIVISION 6983, FILED FEBRUARY 2, 1988, IN BOOK 319 OF MAPS AT PAGE 11, DESCRIBED AS FOLLOWS:

EASEMENT: PARCEL A - A STRIP OF LAND 15.00 FEET WIDE, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO GEORGE C. WOOD, ET. AL., RECORDED JUNE 4, 1957, IN BOOK 2992, OFFICIAL RECORDS, PAGE 451 SAID CORNER ALSO BEING AN ANGLE POINT IN THE NORTHERN BOUNDARY OF SAID PARCEL E (319 M 11); THENCE FROM SAID POINT OF COMMENCEMENT ALONG THE EASTERLY LINE OF SAID WOOD PARCEL (2992 OR 451) AND THE NORTHERN BOUNDARY OF SAID PARCEL E (319 M 11) NORTH 32°30'07" WEST 20.01 FEET TO THE TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 280 FEET AND TO WHICH POINT OF BEGINNING A RADIAL LINE OF SAID CURVE BEARS NORTH 84°15'48" EAST; THENCE FROM THE TRUE POINT OF BEGINNING SOUTHERLY ALONG THE ARC OF SAID CURVE 59.95 FEET, THROUGH A CENTRAL ANGLE OF 12°16'03"; THENCE NON-TANGENT TO SAID CURVE SOUTH 32°30'07" EAST 199.92 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 800.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE 188.52 FEET THROUGH A CENTRAL ANGLE OF 13°30'07"; THENCE TANGENT TO CURVE SOUTH 19°00'00" EAST 426.42 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 300.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE 148.14 FEET THROUGH A CENTRAL ANGLE OF 16°58'32" TO A POINT, CALLED POINT "C" FOR THIS DESCRIPTION.

EASEMENT:

PARCEL E - BEGINNING AT POINT "C" AS HEREIN ABOVE DESCRIBED IN PARCEL A OF THIS DESCRIPTION; THENCE FROM SAID POINT OF BEGINNING NORTH 54°01'28" EAST 7.5 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 20 FEET AND TO WHICH POINT OF BEGINNING A RADIAL LINE OF SAID CURVE BEARS SOUTH 54°01'28" WEST; THENCE SOUTH EASTERLY ALONG THE ARC OF SAID CURVE 31.42 FEET THROUGH A CENTRAL ANGLE OF 90°; THENCE NON-TANGENT TO SAID CURVE SOUTH 35°58'32" EAST 20 FEET; THENCE SOUTH 54°01'28" WEST 55 FEET; THENCE NORTH 35°58'32" WEST 20 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 20 FEET AND TO WHICH POINT OF BEGINNING A RADIAL LINE OF SAID CURVE BEARS SOUTH 35°58'32" EAST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 31.42 FEET THROUGH A CENTRAL ANGLE OF 90°; THENCE NORTH 54°01'28" EAST 7.5 FEET TO THE POINT OF BEGINNING.

BOOK 155428 351



EXHIBIT B (Landscaping)

DESCRIPTION OF FIRST PHASE OF PROJECT

LOTS

Lots 1 through 92, inclusive, as shown on the Map of Subdivision 7058, recorded on October 10, 1989, in Book 338 of Maps at Page 19 of the Contra Costa County Records.

COMMON AREA

Parcels A through E, inclusive, and J, as shown on the Map of Subdivision 7058, recorded on October 10, 1989, in Book 338 of Maps at Page 19 of the Contra Costa County Records.

BOOK 155428 346



DESCRIPTION
LANDS WHICH
MAY BE ANNEXED
TO DECLARATION

All of that land as shown on the Map of Subdivision
7052, recorded on October 10, 1989, in Book 338 of Maps at
Page 19 of the Contra Costa County Records, excepting therefrom
Lots 1 through 32, inclusive, and Parcels A through E,
inclusive, and Parcel J.

BOOK 155420 347



DESCRIPTION OF
ALL WEATHER ACCESS
EASEMENT
AND COVENANT TO
PROVIDE MAINTENANCE
GUARANTY BOND

The All Weather Access Easement or A.W.A.E. consists of two elements. The first such element is shown on the Map and has been offered for dedication by Declarant to the Central Contra Costa Sanitary District (the "District"). The second such element consists of a strip of land described as:

SEE ATTACHED

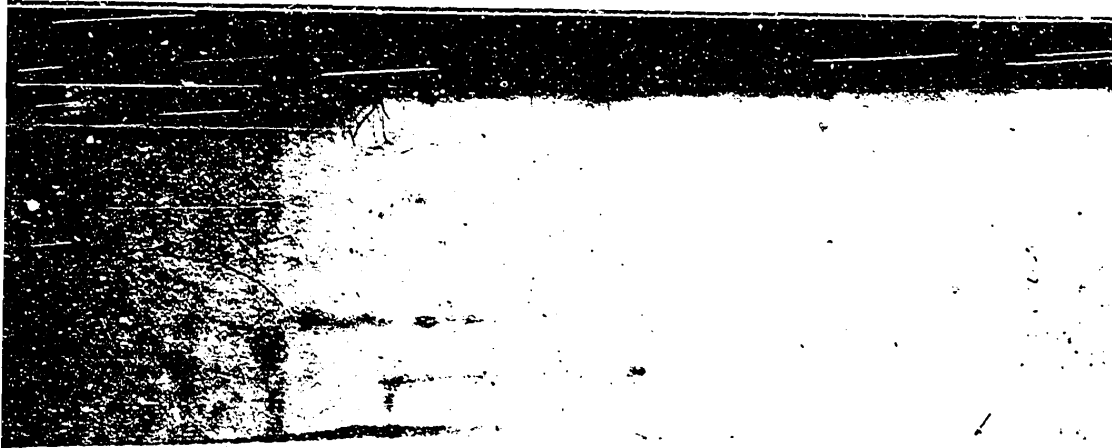
which easement burdens the property (the "Servient Tenement") described as:

SEE ATTACHED

The Association is obligated to maintain the roadway portion of both elements of the A.W.A.E. With respect to the second element, an easement has been granted by the owner of the Servient Tenement directly to the District for purposes of access and the right to maintain the components of the sewer system and an easement has been granted to Declarant, with the right to transfer such easement to the Association and/or to a Geologic Hazard Abatement District for purposes of access and to permit performance of the maintenance functions described in Sections 6.01(c) and 9.04(b) of the Declaration. The easements granted to the Declarant and the District have identical boundaries.

To assure the Owner of the Servient Tenement that the maintenance obligations of the Association with respect to the portion of the A.W.A.E. lying within the Servient Tenement are timely and properly performed, the Association, so long as the maintenance obligations have not been assumed by a Geologic Hazard Abatement District, shall keep in continuous force and effect a maintenance guaranty bond provided by a corporate surety naming the owner of the Servient Tenement as obligee thereunder. If the Servient Tenement is subdivided into multiple ownerships, the subdivider thereof shall designate a single person or organization as the named obligee.

155426 348



FIRST SEGMENT

SERVIENT TENEMENT: A PORTION OF PARCEL F AS SAID PARCEL IS SHOWN ON THE MAP OF SUBDIVISION #6983, FILED FEBRUARY 2, 1988, IN BOOK 319 OF MAPS AT PAGE 11. ALSO BEING A PORTION OF THE ROADWAY AND UTILITY EASEMENT DESCRIBED AS PARCEL THREE IN THE DEED TO H. & J. CO., A CORPORATION RECORDED JUNE 4, 1957, IN BOOK 2992 OFICIAL RECORDS, PAGE 440, DESCRIBED AS FOLLOWS:

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THE SIDELINES OF SAID 15 FEET IN WIDTH STRIP OF LAND SHALL BE LENGTHENED OR SHORTENED TO TERMINATE ON SAID COMMON NORTHERN AND EASTERN LINES.

BOOK 155426 349



SECOND SEGMENT

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BOOK 155426 350

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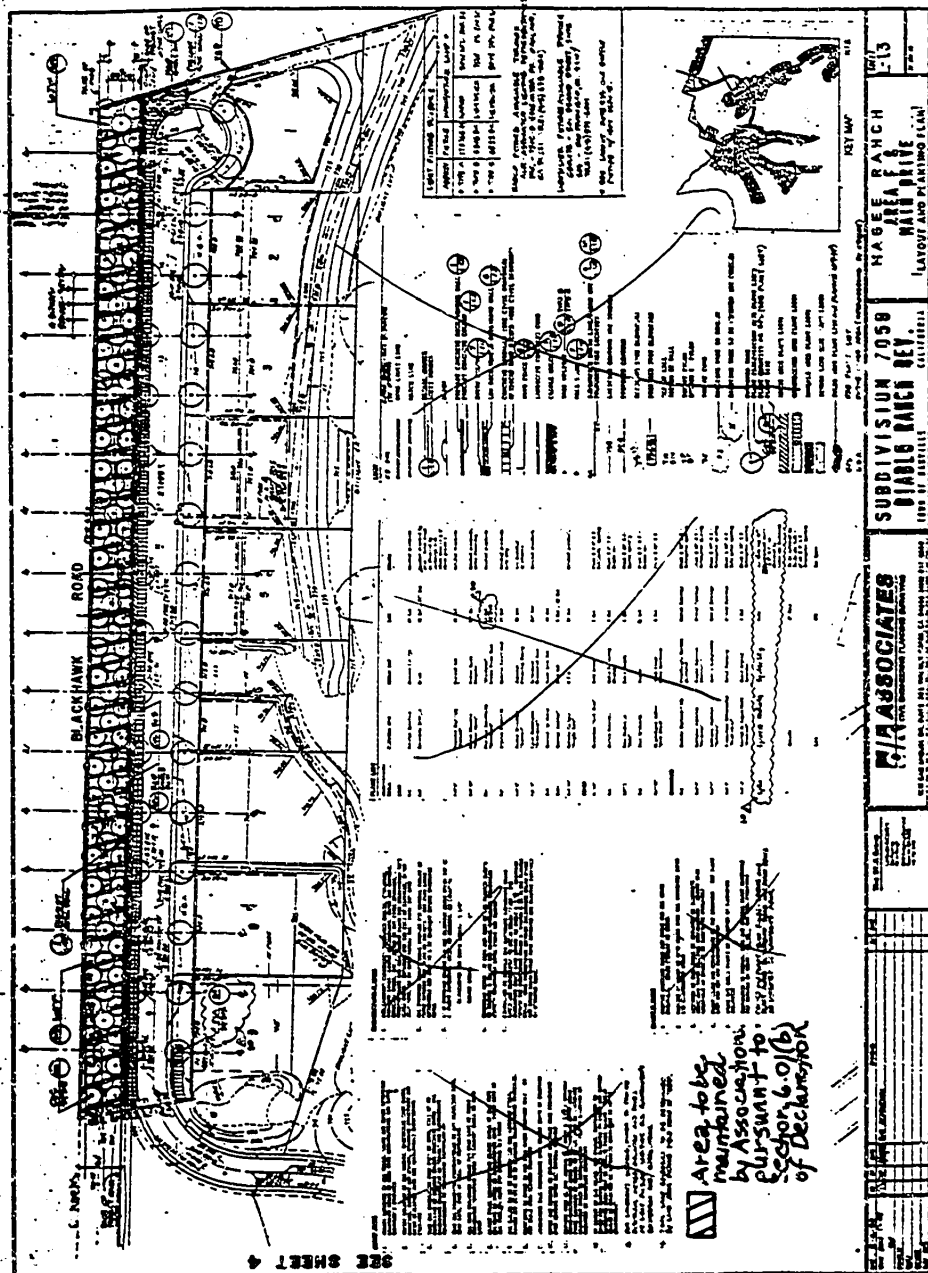
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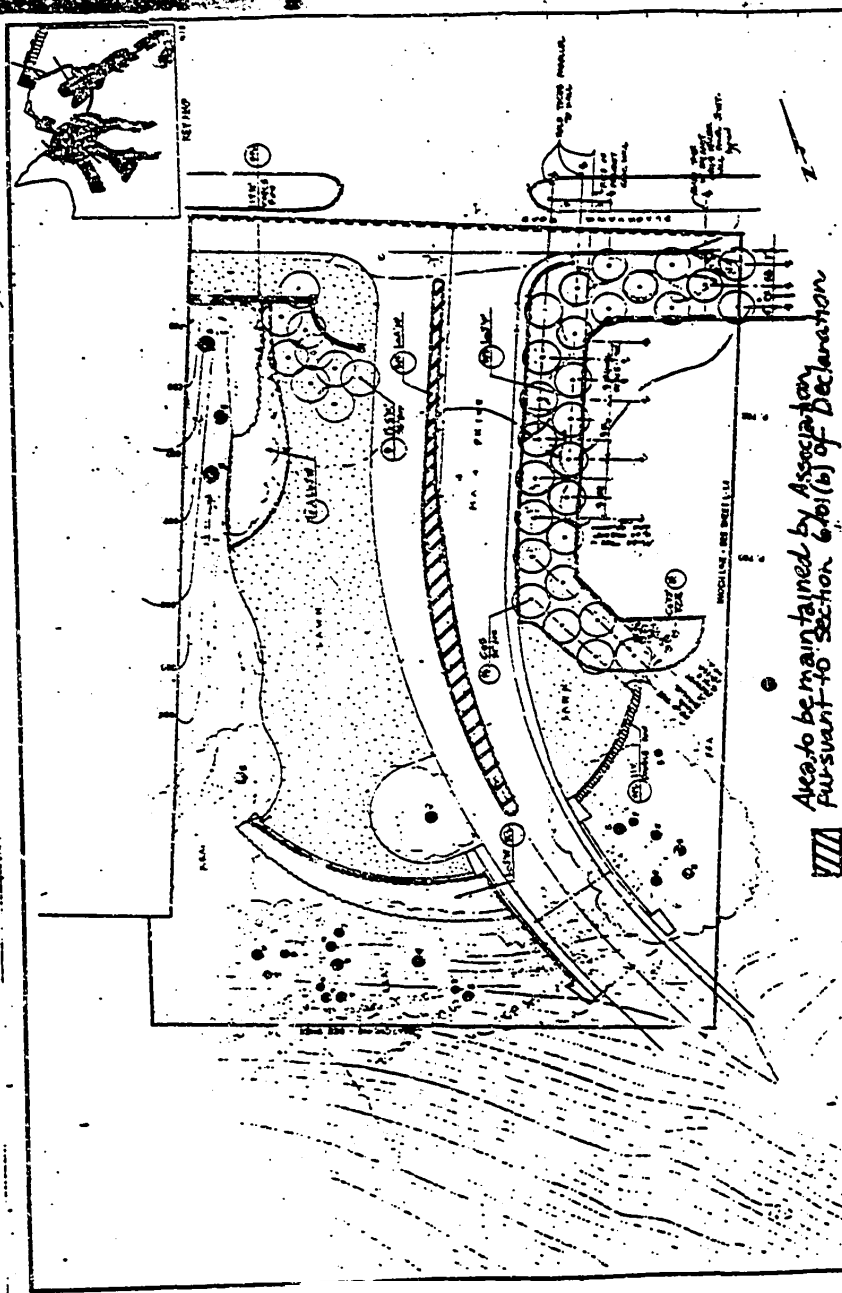
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BOOK 155420 351



OFFSITE LANDSCAPING AREAS



Area to be maintained by Association
pursuant to Section 6.01(b) of Declaration

SUBDIVISION 7853 BLAIR PARK DEV. CALIFORNIA		WAGEE RANCH BLACKHAWK ROAD & MAIN DRIVE 91775	
FIA ASSOCIATES CIVIL ENGINEERS & ARCHITECTS 10000 WILSON AVENUE, SUITE 100 BELLFLOWER, CALIFORNIA 91706		DATE: 10/1/83 BY: [Signature] CHECKED: [Signature] TITLE: [Title]	

OFFSITE LANDSCAPING AREAS

END OF DOCUMENT

BOOK 1554280 353