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FIRST RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LINCOLN ESTATES

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CONDITIONS AND RESTRICTIONS  
FOR  
LINCOLN ESTATES**

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**FIRST RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LINCOLN ESTATES**

This First Restated Declaration of Covenants, Conditions and Restrictions for Lincoln Estates (the "Declaration") is made by LINCOLN ESTATES HOMES ASSOCIATION, a California nonprofit mutual benefit corporation (the "Association").

**RECITALS**

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A. The Association is an "association", as that term is defined in California Civil Code Section 1351(a), which has been created to manage that certain common interest development located in Stanislaus County, California, commonly known as Lincoln Estates, which is more particularly described as follows:

All of Lincoln Estates, according to the Map thereof filed in the Office of the County Recorder, Stanislaus County, State of California, on December 15, 1959 in Vol. 19 of Maps, Page 32 ("Unit One").

All of Lincoln Estates No. 2, according to the Map thereof filed in the Office of the County Recorder, Stanislaus County, State of California, on May 10, 1961 in Vol. 19 of Maps, Page 66 ("Unit Two").

All of Lincoln Estates No. 3, according to the Map thereof filed in the Office of the County Recorder, Stanislaus County, State of California, on July 23, 1963 in Vol. 20 of Maps, Page 51 ("Unit Three").

All of Lincoln Estates No. 4, according to the Map thereof filed in the Office of the County Recorder, Stanislaus County, State of California, on July 29, 1965 in Vol. 21 of Maps, Page 14 ("Unit Four").

B. Unit One, Unit Two, Unit Three and Unit Four are collectively referred to as the "Development".

C. The original developer of the Development, Security Title Insurance Company, a corporation ("Declarant"), executed that certain Declaration of Restrictions, which was recorded on January 11, 1960 in Volume 1588, at Page 434 et seq., of the Official Records

of Stanislaus County, California (the "Unit One Declaration"). The Unit One Declaration encumbers Unit One.

D. The Declarant executed that certain Declaration of Restrictions, which was recorded on May 16, 1961 in Volume 1683, at Page 567 et seq., of the Official Records of Stanislaus County, California (the "Unit Two Declaration"). The Unit Two Declaration encumbers Unit Two.

E. The Declarant executed that certain Declaration of Restrictions, which was recorded on July 24, 1963 in Volume 1871, at Page 625 et seq., of the Official Records of Stanislaus County, California (the "Unit Three Declaration"). The Unit Three Declaration encumbers Unit Three.

F. The Declarant executed that certain Declaration of Restrictions, which was recorded on July 29, 1965 in Book 2046, at Page 643 et seq., of the Official Records of Stanislaus County, California (the "Unit Four Declaration"). The Unit Four Declaration encumbers Unit Four.

G. The Unit Four Declaration was subsequently amended by documents entitled (i) Amendment to Declaration of Restrictions, recorded on October 6, 1965 in Book 2060, at Page 381 et seq., (ii) Second Amendment to Declaration of Restrictions, recorded on November 4, 1965 in Book 2066, at Page 650 et seq., and (iii) Third Amendment to Restrictions Lincoln Estates No. 4, recorded on December 30, 1977 in Volume 3005, at Page 258 et seq., all in the Official Records of Stanislaus County, California.

H. The Unit One Declaration, the Unit Two Declaration, the Unit Three Declaration and the Unit Four Declaration, as amended, are collectively referred to as the "Original Declarations".

I. The owners of the lots within the Development wish to amend, combine, consolidate and restate the Original Declarations into one single document which shall apply to the entire Development.

J. At least (i) a majority of the owners of lots within Unit One as evidenced by the written ballot instruments attached hereto as Exhibit "A", (ii) a majority of the owners of lots within Unit Two as evidenced by the written ballot instruments attached hereto as Exhibit "B", (iii) a majority of the owners of lots within Unit Three as evidenced by the written ballot instruments attached hereto as Exhibit "C", and (iv) a majority of the owners of lots within Unit Four as evidenced by the written ballot instruments attached hereto as Exhibit "D", desire to amend, combine, consolidate, restate and supersede the Original Declarations pursuant to their provisions.

NOW, THEREFORE, it is hereby declared as follows:

1. The Original Declarations are hereby amended, combined, consolidated, restated and superseded in their entirety to read as set forth in this Declaration.

2. All of the real property comprising the Development constitutes a "planned development", as that term is defined in California Civil Code Section 1351(k).

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3. All of the real property comprising the Development 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 Development and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the real property comprising the Development and any part thereof.

4. All of the covenants, conditions, and restrictions set forth in this Declaration shall constitute enforceable equitable servitudes as provided in California Civil Code Section 1354, shall constitute covenants that shall run with the real property comprising the Development, and shall be binding upon and inure to the benefit of each Owner of any portion of such real property or of any interest therein and their heirs, successors, and assigns.

## **ARTICLE 1                      DEFINITIONS**

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1.1 Absolute Majority. "Absolute Majority" shall mean a majority of the Total Voting Power of the Association.

1.2 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, Recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.

1.3 Articles. "Articles" shall mean the Articles of Incorporation of the 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 Assessment. "Assessment" shall mean a charge levied by the Association against an Owner and his or her Lot as provided in Article 6 of this Declaration. "Assessment" shall include any or all of the following:

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

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

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

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

1.5 Association. "Association" shall mean the Lincoln Estates Homes 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 they shall be adopted by the Board of Directors and Members and any duly-adopted amendments thereof.

1.8 Capital Improvement. "Capital Improvement" shall mean the original construction of an improvement that did not previously exist, as distinguished from the repair, upgrading, or replacing of an existing improvement.

1.9 City. "City" shall mean the City of Modesto, County of Stanislaus, State of California.

1.10 Common Area. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and Residents of the Development.

1.11 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.

1.12 County. "County" shall mean the County of Stanislaus, State of California.

1.13 Declaration. "Declaration" shall mean this instrument, as it may be amended from time to time.

1.14 Development. "Development" shall mean all the real property described in this Declaration comprising the Lincoln Estates residential planned development, including such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.15 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, Rules, and the policies and resolutions duly adopted by the Board and distributed to the Members.

1.16 Lot. "Lot" shall mean any plot of land shown upon any Recorded subdivision map for any portion of the Development, with the exception of the Common Area.

1.17 Member. "Member" shall mean an Owner.

1.18 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all dues, Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents, as may be more particularly set forth in the Bylaws.

1.19 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense. "First Mortgage" shall mean any Recorded Mortgage with first priority over other Mortgages.

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1.20 Mortgagee. "Mortgagee" shall mean a beneficiary under a deed of trust as well as a mortgagee under a mortgage.

1.21 Owner. "Owner" means any person, firm, corporation or other entity in which fee title to a Lot is vested as shown by the Official Records of the Office of the County Recorder, including Contract Sellers, but excluding Contract Purchasers and excluding those having such interest merely as security for the performance of an obligation. Where the context requires, the term "Owner" shall include the family, guests, tenants/lessees (hereafter, "tenants") and invitees of an Owner; provided, however, that such persons are not "Owners" for purposes of exercising voting rights in the Association.

1.22 Record. "Record" shall mean, with respect to any document, the recordation or filing of such document in the Office of the County Recorder.

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

1.24 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 1.21 of this Declaration.

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

1.26 Simple Majority. "Simple Majority" shall mean a majority of the votes of the Members (i) represented and voting at a meeting at which a quorum is present, or (ii) cast by written ballot (in conformity with California Corporations Code Section 7513) in which the number of ballots received equals or exceeds the number required to establish a quorum.

1.27 Subdivision Map. "Subdivision Map" shall mean, collectively, the Unit 1 Map, the Unit 2 Map, the Unit 3 Map, and the Unit 4 Map and any other Recorded subdivision map(s) for any portion of the Development.

1.28 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, excluding any Lots as to which an Owner is not then a Member in Good Standing.

1.29 Unit 1 Map. "Unit 1 Map" shall mean the subdivision map entitled "Lincoln Estates" filed in the Office of the County Recorder, Stanislaus County, California, on December 15, 1959 in Vol. 19 of Maps at Page 32.

1.30 Unit 2 Map. "Unit 2 Map" shall mean the subdivision map entitled "Lincoln Estates No. 2" filed in the Office of the County Recorder, Stanislaus County, California, on May 10, 1961 in Vol. 19 of Maps at Page 66.

1.31 Unit 3 Map. "Unit 3 Map" shall mean the subdivision map entitled "Lincoln Estates No. 3" filed in the Office of the County Recorder, Stanislaus County, California, on July 23, 1963 in Vol. 20 of Maps at Page 51.

1.32 Unit 4 Map. "Unit 4 Map" shall mean the subdivision map entitled "Lincoln Estates No. 4" filed in the Office of the County Recorder, Stanislaus County, California, on July 28, 1965 in Vol. 21 of Maps at Page 14.

**ARTICLE 2                      PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT**

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2.1 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof. However, if any Lot shall be 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.

2.2 Common Area. Subject to the provisions of the Declaration, the Common Area shall be held, maintained, and used to meet the common interests of the Members of the Association, and their families, tenants, resident Contract Purchasers, and guests as provided in the Governing Documents.

2.3 Owners Non-Exclusive Easements of Enjoyment. Every Owner shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Development. 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 including, without limitation, rules limiting the number of guests of Members permitted to use the Common Areas and facilities thereon at any one time;

(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, as may be more particularly addressed in the Bylaws, to suspend an Owner's 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;

(d) The right of the Board, as set forth in Section 3.3 of this Declaration, to grant easements and rights of way in, on, over, or under the Common Area subject to such conditions as may be agreed to by the Board;

(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; and

(f) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including, without limitation, obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common.

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2.4 Delegation of Use. Any Owner may delegate his rights of use and enjoyment, including easements, in the Development to the members of his family, tenants, Contract Purchasers, guests and invitees, subject to the terms of the Governing Documents. Upon the leasing or renting of a Lot, or upon occupancy of a Lot by a Contract Purchaser, the Owner shall be deemed to have delegated and assigned all such rights exclusively to the tenants or Contract Purchasers of such Lot. Each Owner shall notify the Secretary of the Association of the names of any tenants or any such Contract Purchasers of such Owner's Lot. Each Owner, tenant, or Contract Purchaser shall also notify the Secretary of the Association of the names of all members of his or her household to whom such Owner, tenant, or Contract Purchaser has delegated any rights of enjoyment in the Development as provided herein and the relationship which each such person bears to such Owner, tenant, or Contract Purchaser. Any rights of enjoyment delegated pursuant to this section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. It is the express purpose and intent of the provisions of this section to limit the right of use and enjoyment of the Common Area to Residents of the Development and their guests.

2.5 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.

2.6 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 his or her 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 Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

2.7 Shared Fences. The following provisions shall govern shared fences:

(a) General Rules of Law to Apply. Each fence which was built as a part of, or in replacement of, the original construction of the Residences within the Development and serves as the boundary between the Lots shall constitute a shared

fence. To the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to the shared fences.

(b) Sharing of Repair and Maintenance. The cost of reasonable maintenance and repair of a shared fence or shared wall shall be shared by the Owners who make use of the fence or wall in proportion to such use.

(c) Destruction by Fire or Other Casualty. If a shared fence is destroyed or damaged by fire or other casualty, any Owner who has used the fence may restore it, and if the other Owners thereafter make use of the fence, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this section shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

(e) Arbitration. If any dispute arises concerning a shared fence, or under the provisions of this section, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators and shall be binding.

**ARTICLE 3                    EASEMENTS**

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3.1 Easements in General. In addition to all easements reserved and granted on the Subdivision Map and the easements provided in Article 2 of this Declaration, there are hereby specifically reserved and granted for the benefit of the Lots and Lot Owners in common and for each Lot and Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this article.

3.2 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, meters, and facilities, cable lines, drainage facilities, walkways, and landscaping as shown on the Subdivision Map, and 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 those installations maintained by utility companies, public, private, or municipal.

3.3 Easements Granted by 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, sprinkling systems, water, heating and gas lines or

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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, and each purchaser, in accepting a deed to a Lot, expressly consents thereto. Notwithstanding the provisions of this section, no such easements may be granted if such easement would materially interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Lot without the consent of the affected Owner(s).

3.4 Association Easements for Maintenance and Repair. The Association shall have an easement in, on, over or under every Lot as reasonably necessary to maintain and repair the Common Area, and perform its obligations under this Declaration.

#### **ARTICLE 4                      USE RESTRICTIONS**

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4.1 Single Family Residential Use. Residences shall be occupied and used for single-family residential purposes only.

4.2 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except (i) such professional and administrative professions as may be permitted by applicable governmental ordinances and provided that there shall be no external evidence thereof, and (ii) care facilities limited to the extent specifically authorized by statute, including family day care centers and community care facilities as provided in subsections (a) and (b) of this section. Copies of any licenses or permits issued or required for such businesses allowed by this section must be provided to the Association at all times that such businesses are operated.

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

(i) 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 under California Health and Safety Code Section 1597.531. This subsection is intended to be and shall be conclusively deemed to be the written notice to the operator or owner from the Association as specified in California Health and Safety Code Section 1597.531;

(ii) 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;

(iii) Abide by and comply with all of the Association's Rules;

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

(v) 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.

(b) Community Care Facilities. Except for residential facilities defined as community care facilities under California Health and Safety Code Section 1502, serving six (6) or fewer persons, no health care facilities operating as a business or charity shall be permitted in the Development. The owner/operator of any such community care facility shall comply with all local and state laws regarding the licensing and operating of such a community care facility, and, in addition, to the extent permitted by applicable laws, shall:

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

(ii) 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 such a community care facility;

(iii) Abide by and comply with all of the Association's Rules as applied to Residences in the Development in a general manner;

(iv) Supervise and be completely responsible for occupants of such a residential facility at all times while they are within the Development; and

(v) 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 such a community care facility to these conditions, or other reasonable requests.

4.3 Offensive Conduct, Nuisances, Noise. No noxious, harmful, or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area and facilities thereon or the use and enjoyment of their Lots or Residences. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs or excessively loud music, to emanate from the Resident's Lot, which would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Lot and Residence.

4.4 Use of Common Area. All use of Common Area is subject to the Governing Documents. Without limiting the generality of the foregoing, no alterations or additions to the Common Area shall be permitted without the prior written approval of the Board; nothing shall be altered, constructed, placed, kept, stored, parked, planted on, or removed from the

Common Area without the prior written consent of the Board; and the Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. Each Owner shall avoid causing any damage to the Common Area.

4.5 Hazards. There shall be no obstruction of any part of the Common Area. Nothing shall be done, placed, or kept within the Development that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy maintained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation. Nothing shall be stored in the Common Area without the prior consent of the Board.

4.6 Rental of Lots. In order to (i) protect the equity in the Lots for the Owners; (ii) carry out the purposes for which the Association was formed by preserving the character of the Development as a homogeneous residential community of owner-occupied Residences; (iii) prevent the Development from assuming the character of a renter-occupied area; (iv) ensure that those who control the Association are committed to the community purposes set forth in this Declaration and with the Association's effective operation and property maintenance of the Common Area; and (v) retain the Development's ability to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the Development be substantially owner-occupied, any leasing or renting of any Lot shall be subject to all the provisions of the Governing Documents and this section.

(a) Restriction on Number of Lots Leased. Not more than twenty-five percent (25%) of the Residences within the Development shall, at any particular time, be leased or rented or occupied by anyone other than an Owner, members of his or her household, or temporary guests, except as provided in this section. The restriction on the number or percentage of Residences that may be leased or rented as set forth in this section shall not apply to any Lot which is being leased or rented on the date this Declaration is Recorded, but shall apply to any Lot or Lots upon transfer of title to such Lot subsequent to the date this Declaration is Recorded.

(b) Implementation. Upon request from the Board after this Declaration is Recorded, each Owner renting or leasing a Lot shall provide such information as the Board may reasonably require to implement the provisions of this section, including without limitation the names of the tenants and the members of the tenants' household and a copy of the signed lease. Any permitted rental or leasing of a Lot commencing after this Declaration is Recorded and the renewal of a tenancy in effect on the date this Declaration is Recorded shall be pursuant to a written lease or rental agreement in accordance with Section 4.6(m).

(c) Exceptions. The Board of Directors shall have the right, but not the obligation, to waive some or all of the provisions of this section either (i) in cases of deserving and unusual hardship or (ii) for a limited term, not to exceed one (1) year upon written request of an Owner representing that he or she will retake possession and occupancy of the Lot as a Resident thereof upon the expiration of such limited term and subject to such other conditions as the Board may determine. The Board shall have the right to review and approve the lease for such limited term. Exceptions as authorized by the Board shall take precedence over the order of priority established pursuant to Section 4.6(i).



(d) Written Application. Any Owner desiring to lease or rent his or her Residence shall submit an application in writing to the Board of Directors, which shall state: the name, mailing address, Residence address, and Record ownership date of the Owner; the proposed lease term; the number of tenants; and such other information which the Board of Directors may reasonably require from time to time. Each Record Owner shall have the further right, upon written request delivered to the Association, to appear in person before the Board of Directors and to discuss the request to lease or rent his or her Residence.

(e) Board Review of Application. Within thirty (30) days after receipt of such application to lease or rent, the Board of Directors shall review such application, and approve or disapprove it in a written notice transmitted to the requesting Owner. If the application is disapproved, the notice shall specify the reason(s) for disapproval. The Board shall approve the application, unless doing so will increase the number of Residences leased or rented within the Development to more than allowed under Section 4.6(a), or will otherwise result in the violation of any provision of this section.

(f) Rehearing. If the application is disapproved, the Owner concerned shall have a right to rehearing upon written request to the Board of Directors, at its next regular meeting, or as otherwise agreed between the Owner and the Board. The Owner shall have the right to appear at the rehearing and present his or her case. Within ten (10) days after the conclusion of such rehearing, the Board shall transmit its written determination to the requesting Owner and, if again disapproved, shall specify the reasons for such disapproval.

(g) Board of Decision Conclusive. The decision of the Board of Directors pursuant to this section in approving or disapproving an application of an Owner to lease his or her Residence shall be final and conclusive.

(h) List of Rented Lots. The Board of Directors shall prepare a list of all Owners currently leasing or renting a Residence, which list shall include the Owner's name, mailing address, Residence address, date of Record ownership, and term of the lease. Such list shall be made available to any Owner upon payment of a reasonable administrative charge to be set by the Board of Directors and may only be used to determine eligibility to lease or rent his or her Lot pursuant to this section.

(i) Priority of Applicants. The Board shall establish and maintain a priority list, identifying the name, mailing address, address of Residence, Record date of ownership, and date the written application or request of each Owner to lease or rent his or her Residence was submitted to the Board. When the number of Residences leased or rented in the Development is less than the number allowed under Section 4.6(a), the Board shall authorize the Owner who submitted the earliest application to lease or rent his or her Residence. Once an Owner obtains permission to lease or rent, he or she may do so to consecutive lessees or renters or for consecutive terms without interruption of more than thirty (30) days or may reoccupy his or her Residence for a period not to exceed thirty (30) days, without having to reapply to the Board for permission to lease or rent.

(j) Owner Responsibility. Each Owner leasing a Residence shall be strictly responsible and liable to the Association for the actions of such Owner's tenant in or about all Residences and Common Area and for each tenant's compliance with the provisions of all Association Governing Documents. An Owner leasing or renting a Lot shall provide the tenant with copies of the Governing Documents and all subsequent amendments.

(k) Association's Enforcement Rights. In the event a tenant's conduct involves damage or misuse of any Common Area or facilities on any Common Area or constitutes an unreasonable nuisance to Residents, the Association shall be entitled to maintain an eviction action against such tenant to the same extent as the Owner of the Lot, the Association being deemed to be a third party beneficiary of any lease or rental agreement involving any Lot within the Development. The Association's right to maintain an eviction action shall arise only in the event that (i) the Association has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments as to why eviction by the Association is not necessary, and (ii) the Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.

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

(m) Requirements of Written Lease or Rental Agreement. Any lease or rental of any Residence within the Development shall be by written lease or rental agreement, a copy of which shall be filed with the Board, which shall expressly provide that its terms are subject to all of the provisions of the Governing Documents, that the tenants and lessees of such Lot shall comply with all provisions of the Governing Documents, and that any violation of any provisions of the Governing Documents shall constitute a breach and default of the terms of such lease or rental agreement.

(n) No Hotel-Like Services; Minimum Rental Term. Any lease or rental agreement entered into between an Owner and a lessee or renter shall be for a minimum term of thirty (30) days. No lease or rental of a Lot shall be permitted which contemplates or results in the provision of those services typically provided by a hotel or motel.

(o) Time-Share Arrangements. No Lot, or any portion thereof, shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any

time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall include, without limitation, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Lot, or any portion thereof, rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time. This section shall not be construed to limit the personal use of any Lot or any portion thereof in the Development by any Owner or his or her or its social or familial guests.

(p) Requirement of Inclusive Lease. No Owner may lease, rent or hire any garage, accessory building, or similar improvement to anyone who does not have the right of possession of the entirety of the Residence on the Lot.

4.7 Building Sizes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family dwelling not to exceed two (2) stories in height and a private garage for not more than three (3) automobiles. The ground floor area of the Residence on a Lot, exclusive of open porches and garages, shall not be less than one thousand five hundred (1,500) square feet.

4.8 Building, Fence and Wall Placement. All of the following restrictions shall apply to the placement of buildings upon Lots:

(a) No building shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building set-back lines shown on the Subdivision Map.

(b) No building shall be located on any Lot nearer than fifteen (15) feet to the front Lot line, or nearer than fifteen (15) feet to any side street line.

(c) No building with a bedroom wing shall be located nearer than seven (7) feet and no building with a garage side shall be located nearer than five (5) feet to an interior Lot line, except that no side yard shall be required for a garage or other permitted accessory building located forty (40) feet or more from the minimum building set-back line.

(d) No building shall be erected or placed on any Lot having an area of less than nine thousand (9,000) square feet.

(e) For the purposes of this section, eaves, steps and open porches shall not be considered as a part of a building, provided however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

(f) No fence or wall shall be erected, placed or allowed to remain on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building set-back lines shown on the Subdivision Map.

4.9 Sight Line Obstructions.

(a) No fence, wall, hedge or shrub which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended.

(b) No fence, wall, hedge or shrub which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement.

(c) No tree shall be permitted to remain within the areas described in Sections 4.9(a) and 4.9(b) unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

4.10 Limitation on Further Subdivision. No lot in this tract shall be resubdivided into building plots having less than 9,000 square feet in area.

4.11 Outbuildings and Other Structures. No outbuilding, tent, shack, trailer, shed, cabana, umbrella or temporary building of any kind shall be used as a Residence or for residential purposes, either temporarily or permanently.

4.12 Refuse.

(a) No Lot shall be used or maintained as a dumping ground for rubbish or refuse. Trash, garbage or other waste shall not be kept on any Lot, except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

(b) No debris, refuse or other waste material shall be deposited, placed or dumped upon any street or alley. Garbage and garden refuse, if deposited in containers, may be placed in the alley for a reasonable length of time in such a manner not to obstruct free passage while awaiting pick up service from a garbage or garden refuse collecting agency.

4.13 Alleys and Streets. No vehicle or object of a large or bulky nature shall be placed or allowed to remain in any street or alley which may obstruct the free passage through such street or alley.

4.14 Vehicles. The following provisions apply to all vehicles within the Development. For the purposes of this section, the term "vehicles" shall include any type of vehicle, including, without limitation, automobiles, trucks, recreational vehicles, trailers, campers, boats, and motorcycles.

(a) No vehicle shall be repaired while situated in any street or alley except emergency repairs for such time as is necessary to enable the vehicle to be removed from the street or alley. No vehicle shall be abandoned in any street or alley.

(b) No dilapidated, inoperable, or abandoned vehicle shall be parked, kept, or permitted to remain upon any area within the Development except upon a Lot in a manner that any such vehicle is completely out of sight from (i) the alleys and streets within the Development, and (ii) the Common Area.

(c) No vehicle may be stored within the Development except upon a Lot in a manner that any such vehicle is completely out of sight from (i) alleys and streets within the Development, and (ii) the Common Area. A vehicle shall be deemed "stored" if it does not move, under its own power, during a period of thirty (30) consecutive days. Movement by a vehicle for the purpose of avoiding this restriction on storage shall be ineffective for the purposes of this subsection.

(d) No vehicle shall be parked on any portion of a Lot except upon a driveway or pad designed specifically for the parking of vehicles. Without limiting the foregoing, under no circumstances shall any vehicle be parked upon the landscaped portion of any Lot.

#### 4.15 Animals.

(a) Limitation on Pets. No dogs, cats, birds, or other animals of any kind shall be kept, maintained, or bred in any Residence or upon any Lot or elsewhere within the Development except that domestic dogs, cats and other customary household pets may be kept in reasonable numbers and size, as determined by the Board, and subject to the Rules and any applicable local governmental ordinances, provided they are not kept, bred, or raised for commercial purposes. While in Common Areas each dog must be restrained on a leash held by a responsible person capable of controlling it.

(b) Owner's Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such pet. The Board shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to pets, including without limitation fines for failure to remove and dispose of pet waste as required by this section. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Development by such person or by members of his or her family, tenants, guests, or invitees. The Owner shall indemnify the Association and its officers, directors, and agents against any and all claims, damages, losses, demands, liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner, members of his or her family, guests, tenants, or invitees.

(c) Pet Rules. The Board may adopt and enforce pet rules, which shall be Rules as that term is defined by this Declaration, in addition to the provisions of this

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section. The Association shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance to any other person.

4.16 Signs. No sign of any kind shall be displayed to the public view from any portion of the Development except that this limitation shall not apply to:

- (a) Signs required by legal proceedings;
- (b) Signs which by law cannot be prohibited;
- (c) A single sign of customary and reasonable dimension and design, complying with the Rules and reasonably located on a Lot advertising the Lot for sale or rent;
- (d) A single identification sign which has been approved by the Board of Directors located on a Lot identifying the number or address of the Lot;
- (e) Signs approved by the Board located at or near any entrance to the Development identifying the Development;
- (f) Signs required for traffic control and regulation of streets or open areas within the Development; and
- (g) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association.

4.17 Mineral Exploration. No Lot shall be used to explore for or to remove any water, oil, hydrocarbons, or minerals of any kind.

## **ARTICLE 5                      LINCOLN ESTATES HOMES ASSOCIATION**

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5.1 Management and Operation. The Association, through the Board of Directors, 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 general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

5.2 Membership. Every Owner of a Lot shall be a Member of the Association and shall remain a Member thereof until such time as his or her Lot ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.

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

5.4 Board of Directors. The affairs of the Association shall be managed by or under the direction of a Board of Directors. The number and qualifications of Directors shall be as established in the Bylaws, and the members of the Board shall be elected as provided in the Bylaws. The Board of Directors shall have all of the powers and duties set forth in any provision of the Governing Documents, including, without limitation, such powers and duties as may be expressly set forth in this Declaration.

5.5 Association Rules. 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. Such Rules may concern, but need not be limited to, matters pertaining to use of the Common Area; pets; signs; collection and disposal of refuse; minimum standards for maintenance of property; use of recreation facilities; parking and traffic regulations; rental or leasing of Lots; and any other subject matter within the jurisdiction of the Association as provided in the Governing Documents or by law.

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

5.7 Insurance. The Board shall procure and maintain liability insurance and property insurance as it shall deem proper and as more particularly set forth in the Bylaws.

5.8 Capital Improvements. The Board shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of Capital Improvements upon the Common Area.

5.9 Sale or Transfer of Association Property. The Board shall have the power and authority to dedicated, sell or transfer property owned by the Association.

5.10 Mortgage of Association Real Property. The Board, acting on behalf of the Association, shall have the power and authority to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed or debts incurred by the Association.

5.11 Access. The Board and its duly authorized agents or representatives shall have the right, after reasonable notice to the Owner thereof, to enter any Lot for the purpose of performing the maintenance authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of their responsibilities.

## **ARTICLE 6                    ASSESSMENTS AND LIENS**

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6.1 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 Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.

Each Assessment levied by the Association under this article, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of Record of any Lot shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is Record Owner of such Lot. After an Owner transfers of Record any Lot he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. A Contract 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.

6.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and 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 under this Declaration. 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 this Declaration and by law. The priority of all such liens on each Lot shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Lot for succeeding months.

6.3 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, of conducting 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 or which, in the opinion of the Board, shall be deemed to be necessary or proper for the management of the Development or of the affairs of the Association, or the benefit of the Lot Owners, or for the enforcement of the Governing Documents.

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

6.5 Annual Assessment.

(a) Calculation of Estimated Requirement. Not later than forty-five (45) 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.

(b) Allocation of Annual Assessment. The Board shall allocate and assess the amount of estimated required funds equally among the Lots by dividing the amount by the number of Lots. Unless the Board shall designate otherwise, Annual Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

(c) Surplus Funds. If, as of the end of any fiscal year, there is a surplus of cash in the Association's current maintenance and operating account, as reflected in the Association's financial statement for such fiscal year, such surplus shall be applied to reserves unless some other disposition of such surplus funds is determined by the vote of the Members.

(d) Increases in Annual Assessment. Pursuant to California Civil Code Section 1366(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 the maximum amount permitted by law, except upon the affirmative vote or written consent 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 of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

6.6 Special Assessments.

(a) 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.

(b) Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots in the same manner as Annual Assessments.

(c) Approval of Special Assessments. Except in the case of an emergency situation as defined in California Civil Code Section 1366, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the 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 of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

6.7 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his or her Lot if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such Owner or his Lot into compliance. The Association shall also levy a Reimbursement Assessment in the event that the Association has expended funds performing emergency repairs as authorized by this Declaration. A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Association, including costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied.

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

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

6.10 Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and 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.

6.11 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 (i) bringing an action at law against any Owner personally obligated to pay the same, and by enforcing any judgment obtained in any such action in any legal manner, or (ii) 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 as required by California Civil Code Section 1367(a) or other applicable statute. The Notice of Delinquent Assessment shall be mailed in the manner set forth in California Civil Code Section 2924b to all record owners of the Lot no later than ten (10) days after recordation as required by California Civil Code Section 1367(b). No procedures shall be initiated to foreclose the lien securing any Assessment levied under this article until after the expiration of thirty (30) days following the Recording of a lien created pursuant to California Civil Code Section 1367(b) or other applicable statute. 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 such sums, including all Additional Charges.

6.12 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 in Division III, Part 4, Title 14, Chapter 2, Article 1, of the California Civil Code, 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 such lien, except as prohibited by law. The Association or any Owner may purchase the Lot at the sale. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive.

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

6.14 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this article shall have priority as of the date of Recording of the Unit One Declaration 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 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 First Mortgage, or pursuant to a power of sale contained in any such First 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.

6.15 Association Funds. Unless otherwise determined by the Board, the Association shall maintain at least two separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated LINCOLN ESTATES HOMES

ASSOCIATION OPERATING ACCOUNT and LINCOLN ESTATES HOMES ASSOCIATION RESERVE ACCOUNT. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be used for the purposes set forth in Section 6.3.

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

6.17 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 the 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 7                    MAINTENANCE OF PROPERTY**

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7.1 Association Responsibility. The Association shall provide maintenance, repair, and replacement of the Common Area and all facilities, improvements, and landscaping thereon, including, without limitation, the swimming pool, parking areas, walks and utility facilities (except for those utility facilities which are maintained by public or private utility companies or agencies), and all other real and/or personal property that may be acquired by the Association, keeping such property in good condition and repair. The Association shall further be responsible for providing lighting, landscaping, gardening (including periodic replacement, as the Board deems necessary, of trees, shrubs, and other plants upon the Common Area), and janitorial services for the Common Area, as needed, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in good condition and repair, including painting of the exterior surfaces of any building(s) and such other portions of the Common Area as the Board, in its discretion, determines to be necessary.

7.2 Authority for Entry of Lot. The Association or its agents may enter any Lot, whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is responsible or which it is authorized to perform, including without limitation the authorization provided in Section 7.5. Although under no obligation to do so, the Board, in its complete and sole discretion, may enter or may authorize the Association's agents to enter any Lot to effect emergency repairs where such repairs are necessary for safety reasons or

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to prevent or discontinue damage to the entered Lot, any other Lot or the Common Area. The cost of performing any such emergency repairs shall be charged to the Owner as a Reimbursement Assessment. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

7.3 Association Liability. The Association shall not be responsible or liable for any maintenance, repair, or replacement of a Lot or any improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the negligence or fault of the Association, its employees, contractors, or agents.

7.4 Owner Responsibility.

(a) Each Owner shall be responsible for keeping his or her Lot and all improvements thereon in good condition and repair. Such responsibility shall include, without limitation, the maintenance, repair and replacement of (i) the Residence and other buildings, (ii) all landscaping, and (iii) all fences, located on such Lot.

(b) An Owner's right and responsibility for maintaining, repairing or replacing any portions of his or her Lot shall be subject to any applicable provisions of the Governing Documents relating to architectural control, including, without limitation, Section 4.7, Section 4.8, Section 4.9, and Section 4.10 of this Declaration.

7.5 Owner Failure to Maintain. The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement which is the responsibility of an Owner is necessary to preserve the appearance and value of the property comprising the Development, or any portion thereof, and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within thirty (30) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

7.6 Owner Liability. In the event the need for any maintenance, repair, or replacement by the Association is caused by the willful or negligent act or omission of an Owner or an Owner's family, tenants, Contract Purchaser, guests, invitees, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment.

**ARTICLE 8                      ARCHITECTURAL CONTROL**

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The construction, installation, modification, or alteration of Residences, buildings, or other structures of any kind, or fences or walls, is subject to the provisions of this Declaration, including, without limitation, Section 4.7, Section 4.8, Section 4.9, and Section 4.10.

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**ARTICLE 9                      ENFORCEMENT**

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9.1 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 or its Officers or Board of Directors or by any Owner; 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 protect the interests of the Association and its Members as a whole.

9.2 Violation of Law. 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.

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

9.4 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 his or her Lot.

9.5 Rights and Remedies of the Association.

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

(b) Member Not In Good Standing. Upon a determination by the Board of Directors, after prior notice to the affected Member and an opportunity for a hearing, that such Member has violated any provision of the Governing Documents including a failure to pay any Assessment when due, the Board may, but shall not be required to, give notice in writing to such Member that he or she is deemed not to be a Member in Good Standing. Such Member shall be deemed to remain in that status until such time as the Board shall determine in writing that the violation which resulted in the Board's determination has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member shall again be deemed to be a Member in Good Standing of the Association.

(c) Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's family, or his or her tenants, Contract Purchasers, or guests, the Board shall have the power to impose a sanction against the Owner who is responsible as provided in Section 9.3 for such breach or infraction. A sanction may include, but shall not necessarily be limited to, the imposition of monetary penalties (fines) and/or the suspension of an Owner's rights as a Member of the Association, including an Owner's voting rights or 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 as provided in the Bylaws. The payment of any such monetary penalty may be enforced as an Enforcement Assessment as provided in Article 6 of this Declaration as well as in any manner permitted by law. Further, each Owner shall be obligated to pay Reimbursement Assessments levied by the Board for reimbursement of any costs incurred by the Association relating to violation of any provisions of the Governing Documents by such Owner's family, tenants, Contract Purchasers, guests, pets, or other invitees.

(d) Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of Article 6 of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the family 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, its Officers or Board of Directors, or by any Owner or by their respective successors in interest.

(e) Limitation on Disciplinary Rights. The Association shall not have the power and authority to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of such Owner's family, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to Article 6 of this Declaration. The provisions of this subsection shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

9.6 Disciplinary Rules. The Board or a committee appointed by the Board for that purpose may adopt rules and regulations that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such rules, when approved and adopted by the Board, shall be deemed to be a part of the Association Rules provided for in, and constituting a part of, the Governing Documents.

9.7 Emergency Situations. The following shall constitute emergency situations:  
(i) an immediate and unreasonable infringement of or threat to the safety or peaceful

enjoyment of Residents of the Development, (ii) a traffic or fire hazard, (iii) a threat of material damage to or destruction of the Development or any portion thereof, (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 provisions of the Governing Documents, under circumstances involving conduct that 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 therefor 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.

9.8 Alternative Dispute Resolution. California Civil Code Section 1354(b) shall be complied with respect to any dispute subject to such section.

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

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

9.11 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 Member or members of his or her family or his or her tenants, Contract Purchasers, 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 attorney's fees incurred by the Association in responding to such a violation and/or in enforcing any Governing Document provision. The remedies of the Association to recover the amount of such costs and attorney's fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment as provided in Article 6 of this Declaration.



**ARTICLE 10                    AMENDMENT**

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This Declaration may be amended by the affirmative vote or written consent of Members representing at least an Absolute Majority. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and shall be Recorded.

**ARTICLE 11                    GENERAL PROVISIONS**

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11.1 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.

11.2 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.

11.3 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.

11.4 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.

11.5 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.

11.6 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.

11.7 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 Areas, 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 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 voting power of the Association, terminating the effectiveness of this Declaration shall be Recorded.

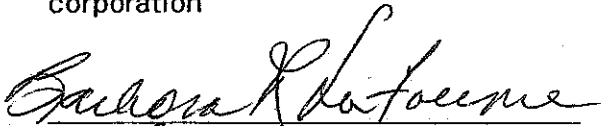
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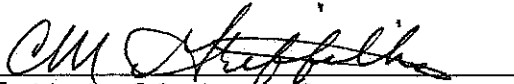
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IN WITNESS WHEREOF, the members of LINCOLN ESTATES HOMES ASSOCIATION, constituting at least (i) a majority of the owners of lots within Unit One, (ii) a majority of the owners of lots within Unit Two, (iii) a majority of the owners of lots within Unit Three, and (iv) a majority of the owners of lots within Unit Four, hereby affirm, approve, and adopt the foregoing First Restated Declaration of Covenants, Conditions and Restrictions for Lincoln Estates, in accordance with the provisions of the Original Declarations by means of the signatures of the President and Secretary of the Association, which Declaration shall be Recorded.

DATED: August 17, 2000.

LINCOLN ESTATES HOMES ASSOCIATION,  
a California nonprofit mutual benefit  
corporation

  
\_\_\_\_\_  
BARBARA R. LAFAUCE, President

  
\_\_\_\_\_  
C-M Griffiths, Secretary

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**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

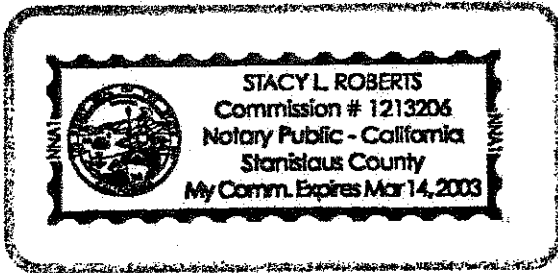
State of California

County of Stanislaus } ss.

On Aug 17, 2000 before me, Stacy L. Roberts (Notary Public)  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Barbara R. LaFauce  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal.

Stacy L. Roberts  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

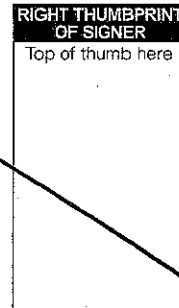
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



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**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

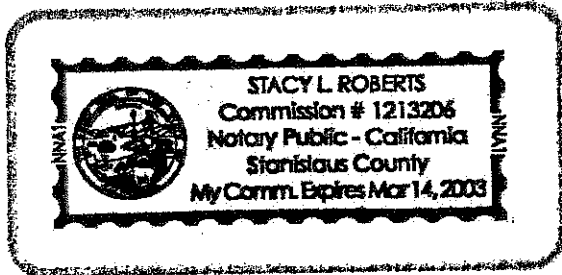
State of California

County of Stanislaus } ss.

On Aug 17, 2000 before me, Stacy L. Roberts (Notary Public)  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared C-m Griffiths  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal.

Stacy L. Roberts  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



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