

**DECLARATION OF  
COVENANTS CONDITIONS AND RESTRICTIONS OF THE  
KINGSWOOD VILLAGE PROPERTY OWNERS ASSOCIATION**

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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS CONDITIONS AND RESTRICTIONS OF KINGSWOOD VILLAGE  
PROPERTY OWNERS ASSOCIATION**

The Amended Declarations of Covenant, Conditions and Restrictions for Kingswood Village Property Owners Association executed by Kingswood Village Property Owners Association, a California Corporation (“Declarant”), and recorded as Instrument Number 93-087339 on November 23, 1993 (“Declaration”) and as amended by Instruments 2004-0072137 and 2005-0049534 on June 3, 2004 and April 21, 2005 respectively in the Official Records of Placer County, California and which affects all of the Properties described and commonly known as Kingswood Village is hereby amended and restated in its entirety to read as follows:

**RECITALS**

A. Declarant constitutes the Association and record Owners in fee simple of Lots in Kingswood Village, a planned Development Project, located in the County of Placer, State of California. The Project consists of 238 Lots and Common Area.

B. The latest Amended Declaration of Covenants, Conditions and Restrictions of Kingswood Village was approved by the required membership vote and recorded November 23, 1993 as Instrument Number 93-087339 as amended by Instrument Numbers 2004-0072137 and 2005-0049534 on June 3, 2004 and April 21, 2005 respectively.

C. Declarant consists of the Association and record Owners of Lots constituting more than fifty-five percent (55%) of the total voting power of the Association and is empowered by Article VIII, Section 1 of the November 25, 1993 declaration to amend and restate that declaration.

NOW, THEREFORE, Declarant hereby declares that the Latest Declaration is amended in its entirety as follows:

**ARTICLE I**

**Definitions**

[1.1] “**Architectural Committee**” means the committee created in accordance with Article V of this Declaration, or it shall mean the Board of Directors if the committee is not created.

[1.2] “**Articles**” means the Articles of Incorporation of the Association, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

[1.3] “**Assessment**” means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV of this Declaration.

[1.4] **“Association”** means the Kingswood Village Property Owners Association, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an “association” as defined in California Civil Code section 1351(a).

[1.5] **“Association Rules”** means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to Article III, section 7 of this Declaration, as the same may be in effect from time to time.

[1.6] **“Board of Directors” or “Board”** means the Board of Directors of the Association.

[1.7] **“By-Laws”** means the By-Laws of the Association, as such By-Laws may be amended from time to time.

[1.8] **“City”** means Kings Beach and its various departments, divisions, employees and representatives.

[1.9] **“Common Area”** shall mean the Property covered by this Declaration, excepting all Residence Lots granted or reserved. The Common Area is comprised of APN 111-150-26 (Boat Lot), APN 111-150-25 (Tennis Court), APN 111-150-28 (Swimming Pool), APN 111-250-01 (Maintenance Building), Lots 119, 120, 121, 174, 175, 259, 260, 261, Lot A, and Lot B as shown on the Map.

[1.10] **“Common Expense”** means any use of Common Funds authorized by Article IV section 4.5 hereof and Article IX of the By-Laws and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities, (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors, and (c) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

[1.11] **“County”** means the County of Placer, State of California, and its various departments, divisions, employees and representatives.

[1.12] **“Declarant”** means the original developer of the Properties, namely Homewood Investment Company, a California corporation.

[1.13] **“Declaration”** means this instrument, as it may be amended from time to time. The “Original Declaration” means and refers to the documents referenced in the Preamble to the Declaration together with all amendments and annexations thereto, adopted prior to adoption of this Declaration.

[1.14] **“Governing Documents”** is a collective term that means and refers to this Declaration and to the Articles, the By-Laws, and the Association Rules.



**[1.15] “Improvement”** includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, decks, fences, swimming pools, landscaping, landscape structures, skylights, solar heating equipment, spas, antennas, utility lines, or any structure of any kind. In no event shall the term “Improvement” be interpreted to include projects which are restricted to the interior of any Residence.

**[1.16] “Lot”** shall mean only the following Lots as shown on the Map:

(a) Lots 1 through 64 and 68, inclusive, as shown on Subdivision Map No. 160;

(b) Lots 69 through 118, inclusive, as shown on Subdivision Map No. 188;

(c) Lots 122 through 173, inclusive, as shown on Subdivision Map No. 235;

(d) Lots 176 through 222, inclusive; 229 through 244, inclusive; and 251 through 258, inclusive, as shown on Subdivision Map No. 276. It is understood and agreed that Lots 223 through 228 and 245 through 250, inclusive, though shown on said Subdivision Map No. 276 were never constructed and are not included in the definition of Lot as set out herein, but, rather, are part of the Common Area.

**[1.17] “Map”** shall collectively mean the following Subdivision Maps recorded in the Official Records of the County:

(a) Tract No. 160, Kingswood Village Unit No. 1, recorded on September 17, 1969 in Book I of Maps, at Page 67 (“Subdivision Map No. 160”);

(b) Tract No. 188, Kingswood Village Unit No. 2A, recorded on April 28, 1971 in Book J of Maps, at Page 23 (“Subdivision Map No. 188”);

(c) Tract No. 235, Kingswood Village Unit No. 2B, recorded on April 19, 1972 in Book J of Maps, at Page 50 (“Subdivision Map No. 235”); and

(d) Tract No. 276, Kingswood Village Unit No. 3, recorded on August 2, 1973 in Book J of Maps, at Page 88 (“Subdivision Map No. 276”).

**[1.18] “Member”** means every person or entity who is an Owner of record and therefore holds a membership in the Association.

**[1.19] “Mortgage”** means any security device encumbering all or any portion of the Properties, including any Deed of Trust. “Mortgagee” shall refer to a beneficiary under a Deed of Trust as well as to a mortgagee in the conventional sense.

**[1.20] “Owner”** means any person, firm, corporation or other entity which owns a fee simple interest in any Lot. The term “Owner” shall include, except where the context otherwise requires, the family, guests, and invitees of an Owner.

[1.21] **“Owner of Record”** and **“Member of the Association”** include an Owner and mean any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

[1.22] **“Properties”** shall mean and refer to that certain real property here before described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

[1.23] **“Regular Assessment”** means an Assessment levied on an Owner and his or her Lot in accordance with Article IV, section 2 hereof.

[1.24] **“Residence”** means living facilities for a single family situated on a designated Lot as appears from the subdivision map of the Properties.

[1.25] **“Single Family Residential Use”** means occupation and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

[1.26] **“Special Assessment”** means an Assessment levied on an Owner and his or her Lot in accordance with Article IV, section 3 hereof.

[1.27] **“Special Individual Assessment”** means an Assessment made against an Owner and his or her Lot in accordance with Article IV, section 4 hereof.

[1.28] **“Subdivision Map”** means the map for the Properties of this Declaration.

## ARTICLE II

### Property Rights and Obligations of Owners

[2.1] **Elements of Planned Development.** Ownership of each Lot within the Project includes a Residence; an undivided interest in the Common Area, which is set forth herein and is specified in the deed from Declarant to each Owner and which undivided interest cannot be altered or changed as long as the prohibition against severability of component interests in a Planned Development remains in effect; a membership in the Association; and any exclusive or nonexclusive easement or easements appurtenant to such Planned Development over the Common Area as described in the Declaration, the Condominium Plan and the deed to the Condominium.

[2.2] **Owners’ Non-Exclusive Easements of Enjoyment.** Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Areas within the Properties, including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following rights and restrictions:

(a) The right of the Association to assign, rent, license, lease, charge reasonable admission and other fees for, and to otherwise designate and control the use of any unassigned parking spaces within the Common Area.

(b) The right of the Association to adopt Association Rules as provided in Article III, section 7 hereof, regulating the use and enjoyment of the Properties for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or Tenant, to temporarily suspend the voting rights and/or right to use the Common Facilities, other than roads, by any Owner and/or the Owner's Tenants and guests, subject to compliance with the due process requirements of Article XII, section 6 hereof.

(c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and Common Facilities and in aid thereof to mortgage said Property; provided, however, that the rights of any such Mortgagee in said Properties shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Article IV, section 3 hereof.

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds of the voting power of the Members, and their first Mortgagees consenting to such dedication or transfer has been recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Lot. Said instrument may be executed in counterparts so long as each counterpart is in recordable form.

(e) The right of the Association and Owners (or their representatives) of adjoining Lots of entry upon and access to slopes and drainage ways located upon a Lot when such access is essential for the maintenance or stabilization of slopes or drainage, or both, on such adjoining Lots, provided requests for entry are made in advance and that entry is at a time convenient to the Owner whose Lot is being entered upon. In case of emergency the right of entry shall be immediate.

**[2.3] Persons Subject to Governing Documents.** All present and future Owners, Tenants and occupants of Lots within the Properties shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, Tenants, invitees, etc.). The acceptance of a deed to any Lot, the entering into a lease, sublease or contract of sale with respect to any Lot, or the occupancy of any Residence shall constitute the consent and agreement of such Owner, Tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents.

**[2.4] Delegation of Use.**

(a) Delegation of Use and Leasing of Residences. Any Owner may delegate the Owner's rights to use and enjoy the Common Area and Common Facilities to members of the Owner's family or to the Owner's Tenants, lessees or contract purchasers who reside in the Owner's Residence.

During any period when a Unit has been rented or leased, the Owner-lessor, his or her family, guests and invitees shall not be entitled to use and enjoy the Common Areas or Common Facilities of the Properties (other than roads), except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Residence, provided that this restriction shall not apply to an Owner-lessor who is contemporaneously residing in another Residence within the Properties.

**[2.5] Obligations of Owners.** Owners of Lots within the Properties shall be subject to the following:

(a) Owner's Duty to Notify Association of Tenants and Contract Purchasers. Each Owner shall notify the Secretary of the Association or the Association's Property manager, if any, of the names of any contract purchaser or Tenant of the Owner's Lot. Each Owner, contract purchaser or Tenant shall also notify the Secretary of the Association of the names of all persons to whom such Owner, contract purchaser or Tenant has delegated any rights to use and enjoy the Properties and the relationship that each such person bears to the Owner, contract purchaser or Tenant.

(b) Contract Purchasers. A contract seller of a Lot must delegate his or her voting rights as a Member of the Association and seller's right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the Property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the Property sold has been transferred to the purchaser.

(c) Notification Regarding Governing Documents.

(i) As more particularly provided in the California Civil Code section 1368, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser (A) a current copy of the Governing Documents; (B) the Association's most current financial statement; and (C) a true statement in writing from the Association ("delinquency statement") as to the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold.

(ii) The Association shall, within 10 days of the mailing or delivery of a request for the information described in subparagraph (c)(i), above, provide the Owner with a copy of the current Governing Documents, together with the delinquency statement referred to in the immediately preceding paragraph. The Association shall be entitled to impose a fee for providing the Governing Documents and delinquency statement equal to (but not more than) the reasonable cost of preparing and reproducing the requested materials.

(d) Payment of Assessments and Compliance With Rules. Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(e) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

(f) Joint Ownership of Lot. In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(g) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Lot or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to this Declaration.

(h) Termination of Obligations. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any Assessments levied with respect to such Lot which become due after the date of recording of the deed evidencing said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

(i) Obligation To Permit Entry by Association Adjacent Owners. Each Owner shall be obligated to permit the Owners of adjacent Residences or the representatives of such adjacent Owners to enter the Owner's Residences for purposes of performing installations, alterations or repairs to mechanical or electrical services, including installation of television antennas and related cables, which are reasonably necessary for the use and enjoyment of his or her Residences, provided that requests for entry are made at least 24 hours in advance and that entry is at a time convenient to the Owner whose Residence is being entered upon. Each Owner shall also honor the right of the Association and its agents to enter Residences as provided in Article III, section 6(b) of this Declaration. In order for an Owner of an adjacent unit to enter into an adjoining unit, the Owner seeking entry must make arrangements with the Association to have a Kingswood maintenance staff person present at time of entry.

## **[2.6] Restriction on Leasing or Rental of Lots/Residences**

(a) The right to lease/rent a Lot/Residence hereunder shall be restricted to a maximum number at any time of 48 Lots or twenty percent of the total number of Lots in the Project. Any such rental or lease of an Owner's Residence must be by a written agreement which requires the Tenant to observe the Project Restrictions and makes breach of the Project Restrictions a breach of such rental agreement or lease. This Section 2.6 shall apply to all rental/lease agreements having a term or potential term (e.g. month to month without a specified termination date) of six

(6) months or longer. Kingswood Village serves as the vacation home for many of its members and some of them, from time to time, rent their units on a short term basis e.g. for a week-end or a week. The restriction contained in this Section 2.6 is not intended nor shall it apply to short term rentals of this nature. The Association retains the right, subject to the provisions of the California Civil Code including the member's veto rights, to create rules for short term rentals.

(i) Priority. The right of the Owner of Record to lease/rent his or her Lot/Residence within the 1 unit allowable under this section, shall be determined on a priority basis of date of request. If two Owners request permission simultaneously then priority shall be on the basis of the earliest ownership date, provided, however, that should a Lot/Residence Owner of a lower priority already be leasing his or her Lot/Residence, an Owner prior in record shall not have the right to supersede or supplant such current lease/rent, but must await the next available vacancy within the allowable 1 unit.

(ii) Retroactivity. This section shall not affect any Residence Owner's lease/rental existing on the recordation date of the Amendment to these Covenants, Conditions and Restrictions, or any extension thereof, with the same lessee.

(iii) First Exception. Any record Owner shall have the right, on good cause, to evidence in writing to the Board of Directors, to lease/rent his or her Lot/Residence for a limited term, if such Owner represents that he or she shall return to the Lot/Residence within a reasonable time and again take possession as a resident Owner; or, in the alternative, by offering the Lot/Residence for sale; and such limited lease/rental shall be permitted by the Board of Directors without regard to the 1 unit maximum set forth in this section; provided, however, that the Board of Directors must have first approved of such lease/rent in writing, as described in subsection (d) following, in order to verify the representations made by the requesting record Owner.

(iv) Second Exception. Lot/Residences occupied by the family of a Lot/Residence Owner of record, shall not be included in the calculation of total rental of Lots/Residences so long as family occupants are not paying rent to the Lot/Residence Owner.

(v) Procedure.

(1) Each Owner shall have the right, upon written notice delivered to the Secretary of the Association, to appear before the Board of Directors and request the right to lease/rent his or her Lot/Residence.

(2) The Board of Directors shall prepare a list of all Owners currently leasing or renting his or her unit Lot/Residence, which list shall include the Owner's name, mailing address, unit number, Lot/Residence address, date of recorded ownership, and lease/rent term; and such list shall be made available to all Owners upon request.

(3) The Board of Directors shall also prepare a "waiting list" of those Owners who have requested to lease or rent their Lot/Residence, which list shall include the name, mailing address, Lot/Residence number, and record date of ownership. The priority on the waiting list shall be established by date of application.

(4) Any Owner desiring to lease/rent his or her Lot/Residence shall submit such request in writing to the Board of Directors, which request shall contain the following information: name, mailing address, Lot/Residence number, and record ownership date of the Owner; proposed lease/rent term, and any other information which the Board of Directors may reasonably require from time to time.

(5) Within thirty (30) days of receipt of such Request to Lease/rent, the Board of Directors shall review such request, and approve or disapprove of the request in writing delivered to the requesting Owner, which, if disapproved, shall specify the exact reason or reasons, therefore.

(6) If the lease/rent request is disapproved, the Owner concerned shall have a right to rehearing upon written notice to the Board of Directors at its next regular meeting, or as otherwise agreed upon between the parties. The Owner shall have the right to appear at the rehearing, and present his or her case; and on termination of such rehearing, the Board shall deliver its written finding to the requesting Owner within ten (10) days thereafter; and, if again disapproved, specify the reasons for such disapproval.

(7) If the Board of Directors fails to either approve or disapprove of the proposed lease/rent within said thirty (30) day period, the lease/rental shall be automatically deemed approved.

(8) The decision of the Board of Directors in approving or disapproving a request of Owner to lease/rental his or her Lot/Residence shall be absolute, unless in clear violation of this section; and the Board shall have the right and power to promulgate and implement reasonable regulations for the supervision and conduct of either the lessees or Tenants thereunder.

(9) Upon receipt of approval of a request to rent or lease, a Member shall have 90 days to rent or lease their Lot/Residence. Failure to rent or lease the Lot/Residence within this time period revokes the Board of Directors approval, and removes the Member from the waiting list.

(10) A of the Association shall have the right to apply for rental/leasing permission as many times as they desire.

(b) Discipline of Lessees. Subject to subparagraph (c) below, in the event that any Tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances, which may include initiation of an eviction proceeding in accordance with subparagraph (c) below, suspension of the Tenant's privileges to use any recreational Common Facilities, or the imposition of fines and penalties against the Owner or Tenant.

Whether or not such right is stated in any rental agreement, every Owner who rents his or her Residence automatically grants to the Association the right to determine a Tenant's default under the Governing Documents and of terminating the tenancy and evicting the Tenant for such default. If the Board takes such eviction action, either in its own name or in the Owner's name, the Owner shall be responsible for all costs thereof, including reasonable attorney's fees, and shall reimburse the Association upon demand for the entire amount of such

costs. If the Owner refused to make such reimbursement, the sums shall constitute a special Individual Assessment (Article IV, section 4) for which a lien may be imposed against the Owner's Lot. The Association's right to maintain an eviction action hereunder is derived from section 1161 of the California Code of Civil Procedure and shall only arise if the Tenant's or lessee's conduct involves damage to or destruction of Common Areas or Common Facilities, or constitutes a nuisance or unreasonable interference with the quiet enjoyment of other residents.

Any fine or penalty levied pursuant to this section 4 shall be considered a Special Individual Assessment as defined in Article IV, section 4, below. If a Special Individual Assessment is imposed as a result of the conduct of a renter or lessee, the renter or lessee agrees to be personally obligated for the payment of such assessments in the event the Owner-lessor fails to pay the assessments prior to the delinquency date. This provision, however, shall not be construed to release the Owner from any obligation, including the obligation to pay any duly imposed Special Individual Assessments, for which such Owner would otherwise be responsible. Any lessee charged with a violation of the Governing Documents is entitled to the same notice and hearing rights to which the Owner is entitled as provided in subparagraph (c) below. Any Owner who shall lease his or her Residence shall be responsible for assuring compliance by the lessee with the Governing Documents.

(c) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Properties or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or Tenant) on account of the misconduct of the Owner's lessee or Tenant unless and until the following conditions have been satisfied: (i) The Owner has received written notice from the Board, the Association's Property manager detailing the nature of the lessee's or Tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner; and (iii) the Owner has failed to prevent or correct the Tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with Article XII, section 6 hereof.

(d) Security Deposit. Through its rule-making power, exercised in accordance with Article III, section 7 hereof, the Board of Directors is hereby authorized and empowered, but not required, to establish and implement an Association security deposit procedure to protect the Association, the Common Area and Common Facilities from negligence, damage and/or destruction caused by the Tenants, or lessees of any Owner, their families and guests. Said security deposit, if required, shall be payable by the Owner and shall be fixed in an amount not to exceed one month's Regular Assessment and shall be held by the Association in a separate security deposit fund in the name of the Association. The Association shall not be obligated to pay interest on said deposit. Within two weeks following receipt of notice from the Owner-lessor that the Residence is no longer being leased, the Association shall furnish the Owner with an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and shall return the remaining portion of the security to the Owner.



(e) Recoverable Costs and Expenses. In the event of (i) damage to, or destruction of, Common Areas or Common Facilities by a Tenant or lessee or the Owner of a leased Residence; (ii) the imposition of a fine or penalty against an Owner-lessor as a result of any act or omission of the Owner's Tenant or lessee; or (iii) expenses incurred by the Association in the successful prosecution of an eviction proceeding pursuant to subparagraph (b), above.

The Association shall be entitled to apply the security deposit to the Recoverable Costs and Expenses. The Owner-lessor shall thereupon immediately reimburse the security deposit fund in an amount equal to the sums thus applied. Upon termination of the lease and notification to the Association of such termination, the security deposit, or the balance thereof, shall be refunded to the Owner without interest. As a condition to the Association's right to apply security deposit funds in the manner provided above, the Association must give the Owner-lessor the notice and hearing rights specified in subparagraph (c) above.

(f) Time Shares are prohibited. Time Shares, whether of the equity or non-equity variety are prohibited. It is the intent of this Declaration to prohibit any form of ownership the net effect of which is to create a "Time Share" form of ownership. This shall include but is not limited to corporate ownership where minority shareholders are entitled to limited rights of tenancy and tenancies in common where there are more than four Tenant in common interests.

## ARTICLE III

### Homeowners Association

**[3.1] Association Membership.** Every Owner of a Lot shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Lot owned and the membership shall be appurtenant to such Lot. Ownership of a Lot or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership in all Lots in the Properties ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed in lieu thereof.

**[3.2] One Class of Membership.** The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

**[3.3] Voting Rights of Members.** Each Member of the Association shall be entitled to one vote for each Lot owned by said Member. When more than one person holds an interest in any Lot, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Lot. Voting rights may be temporarily suspended under those circumstances described in Article XII, section 6 hereof.

**[3.4] Assessments.** The Association shall have the power to establish, fix and, levy Assessments against the Owners of Lot within the Properties and to enforce payment of such Assessments in accordance with Article IV, section 9 of this Declaration. Any Assessments

levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

**[3.5] Transfer of Memberships.** Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Lot. In the case of an encumbrance of such Lot, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use pursuant to Article II, section 3 hereof do not thereby become Members, although the Tenant and Members of the Tenant's family shall, at all times, be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

**[3.6] Powers and Authority of the Association.**

(a) Powers Generally. The Association shall have the responsibility of owning, managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its Properties and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. By way of example and not limitation, fire safety inspections of fire extinguishers, alarms and fireplaces are included. The specific powers of the Association and the limitations thereon shall be as set forth in Article IX of the By-Laws.

(b) Association's Limited Right of Entry. The Association, and/or its agents shall have the right, when necessary, to enter any Lot to perform the Association's obligations under this Declaration, including (i) exterior maintenance or repair obligations if any, on individual Residences; (ii) obligations to enforce the architectural and land use restrictions of Article V and Article VII hereof; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or (iv) to inspect and make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association Property or the Owners in common.

The Association's rights of entry under this subparagraph (b) shall be immediate in case of an emergency originating in or threatening the Lot where entry is required, or any adjoining Lots or Common Area, and the Association's work may be performed under such circumstances

whether or not the Owner or his or her lessee is present. In all non-emergency situations, the Association or its agents shall furnish the Owner or his or her lessee with at least 24 hours written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Residence located on the Lot.

Every Owner shall provide the Association with entry keys and current telephone contact numbers. Entry keys shall only be used by the Association for the reasons set forth in Section 3.6(b).

### **[3.7] Association Rules.**

(a) Rule-Making Power. The Board may, from time to time and subject to the provisions of this Declaration and the California Civil Code, propose, enact and amend rules and regulations of general application to the Owners of Lots within the Properties. Such rules may concern, but need not be limited to (i) matters pertaining to the maintenance, repair, management and use of the Common Area, Common Facilities and other Properties by Owners, their Tenants, guests and invitees, or any other person(s) who have rights of use and enjoyment of such Common Area and Common Facilities and Properties; (ii) architectural control and the rules of the Architectural Committee under Article V, section 4 hereof; (iii) the conduct of disciplinary proceedings in accordance with Article XII, section 6 hereof; (iv) regulation of parking, pet ownership and other matters subject to regulation and restriction under Article VII hereof; (v) collection and disposal of refuse; and (vi) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of Members thereunder. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents shall be deemed to prevail.

(b) Distribution of Rules. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. A copy of the Association Rules shall also be available and open for inspection during normal business hours at the principal office of the Association.

(c) Adoption and Amendment of Rules. Association Rules may be adopted or amended from time to time by majority vote of the Board, provided, however, that no Association Rules or amendments thereto shall be adopted by the Board until at least 30 days after the proposed rule or rule amendment has been published in the Association newsletter, if any, or otherwise communicated to the Owners in writing. The notice describing the proposed rule or amendment shall also set forth the date, time and location of the Board meeting at which action on the proposal is scheduled to be taken.

Any duly adopted rule or amendment to the Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail.

**[3.8] Breach of Rules or Restrictions.** Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XII hereof.

**[3.9] Limitation on Liability of Association's Directors and Officers.**

(a) Claims Regarding Breach of Duty. No Director or Officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Governing Documents, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No Released Party shall be responsible to any Owner or to any member of his or her family or any of his or her Tenants, guests, servants, employees, licensees, invitees or any other person for any loss or damage suffered by reason of theft or otherwise of any article, vehicle or other item of personal property which may be stored by such Owner or other person on any Lot or within any Residence or for any injury to or death of any person or loss or damage to the Property of any person caused by fire, explosion, the elements or any other Owner or person within the Properties, or by any other cause, unless the same is attributable to his or her own willful or wanton act or gross negligence. It is the intent of this subparagraph to provide volunteer directors and officers with protection from liability to the full extent permitted by California Civil Code section 1365.7, or comparable superseding statute, and to the extent this provision is inconsistent with said section, the Civil Code shall prevail.

## **ARTICLE IV**

### **Assessments**

**[4.1] Assessments Generally.**

(a) Covenant to Pay Assessments. Each Owner of one or more Lot, by acceptance of a deed or other conveyance therefore (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments, (ii)

Special Assessments, and (iii) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided.

(b) Extent of Owner's Personal Obligation for Assessments. All assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the Person who was the Owner of the Lot at the time the Assessment was levied. Each Owner who acquires title to a Lot (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

(c) Creation of Assessment Lien. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this Article may be subject to foreclosure as provided in Article IV, section 4.9(b) hereof.

(d) No Avoidance of Assessment Obligations. No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Lot or any other portion of the Properties.

#### **[4.2] Regular Assessments.**

(a) Preparation of Annual Budget: Establishment of Regular Assessments. Not less than 30 nor more than 90 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Association Members a budget satisfying the requirements of Article XII, section 5 of the By-Laws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with the By-Laws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this action, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes of a meeting or election of the Association conducted in accordance with the By-Laws.

(b) Establishment of Regular Assessment by Board or Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in subparagraph (a) above, and

subparagraph (c) below, the Board of Directors may not impose a Regular Assessment that is more than 20 percent greater (or as otherwise provided by law) than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association (see Article IV, section 7, below).

(c) Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. For purposes of this subparagraph (c), an emergency situation is any of the following:

(i) An extraordinary expense required by an order of a court.

(ii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to subparagraph (a) above, provided that, prior to the imposition or collection of an assessment under this paragraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

(d) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), above, shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Lots within the Properties owned by the assessed Owner to the total number of Lots subject to Assessments so that each Lot bears an equal share of the total Regular Assessment.

(e) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a Property Owner or as a Member of the Association. The Assessment roll (which may be maintained in the form of a computer printout) shall show for each Lot the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by Article II, section 5 hereof shall be conclusive upon the Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(f) Mailing Notice of Assessment. The Board of Directors shall mail to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may from time to

time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than 30 days prior to the beginning of the next fiscal year.

(g) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Article IV, section 3(a)(i) for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

(h) Installment Payment of Assessments. The Regular Assessment levied against each Owner and his or her Lot shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Association's Board of Directors. Installments of Regular Assessments shall be delinquent if not paid by the 15th day of the month in which the Assessment is due.

#### **[4.3] Special Assessments.**

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in subparagraph (b) below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by Article IV, section 2(a), the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder. The Board's assessment authority pursuant to this section 3 subparagraph (a)(i) shall be subject to membership approval requirements under the circumstances described in Article IV, section 2(a).

(ii) Capital Improvements. The Board may also levy Special Assessments for additional capital improvements within the Common Area (i.e., improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article X.

(b) Special Assessments Requiring Membership Approval. No Special Assessments described in (i) section 3(a) hereof, which in the aggregate exceed 5 percent (or as otherwise

provided by law) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied; or (ii) in the last sentence of Article IV, section 2(a) or otherwise provided by law, shall be made without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address “emergency situations” as defined in this Article IV, section 2(c).

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to Article IV, section 2(d), above. The Special Assessment so levied shall be recorded on the Association’s Assessment roll and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in section 3(a)(i) shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in section 3(a)(ii) shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable in full to the Association within 30 days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

#### **[4.4] Special Individual Assessments.**

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with section 3, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this section 4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Article XII, section 6 hereof, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association’s Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of any portion of the Common Area or the Common Facilities, including any portion of the Residence structure the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any Owner (by way of example and not as a matter of limitation, a homeowner’s negligent failure to replace a washing machine water intake hose with a properly reinforced hose that results in damage to the unit and neighboring units shall be the financial responsibility of that Owner), any member of his or her family, or any of his or her Tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.



(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Properties that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(iii) Required Maintenance on Lot as more particularly provided in Article III, section 6(b) (and without limiting the generality of that subparagraph), if any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash junk automobiles, or improper weed or vegetation control, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in section 4(a), such Special Individual Assessment shall be recorded on the Association's Assessment roll, notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment.

**[4.5] Purpose and Reasonableness of Assessments.** Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety and welfare of individuals residing within the Properties; (b) to promote the enjoyment and use of the Properties by the Owners and their families, Tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**[4.6] Exemption of Certain of the Properties From Assessments.** The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Properties dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Lot owned by the Association.

**[4.7] Notice and Procedure for Member Approval Pursuant to Sections 2 and 3.** In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to sections 2 and 3 of this Article IV, approval of the requisite percentage of the Members shall be solicited either by written ballot conducted in accordance with Corporations Code section 7513 and Article IV, section 6 of the By-Laws or at a meeting of the Members called for that purpose, duly noticed in accordance with Article V, section 4 of the By-Laws. The quorum required for such membership action shall be a majority of the Members.

**[4.8] Maintenance of Assessment Funds.**

(a) Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. Reserve funds are a portion of the assessments set aside for the maintenance, repair and replacement of Common Area components like the swimming pool (area). The Board, and such Officers or agents of the Association as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code section 1365.5 and Article XII section 2 of the By-Laws.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

(b) Separate Accounts: Commingling of Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, under funded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to this Article IV, section 3(a)(i) shall be accounted for

together with the receipts and disbursements of Regular Assessments; and separate liability accounts shall be maintained for each capital improvement for which reserve funds for replacement are allocated.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

**[4.9] Collection of Assessments; Enforcement of Liens.**

(a) Delinquent Assessments. If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within 15 days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law, pursuant to Civil Code section 1366, as amended, from and after 30 days from the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by California Civil Code sections 1366(c) and 1366.1 or comparable superseding statutes.

(b) Effect of Nonpayment of Assessments.

(i) Creation and Imposition of a Lien for Delinquent Assessments. As more particularly provided in California Civil Code section 1367.1 or comparable superseding statute, the amount of any delinquent Regular or Special, or Special Individual Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed only when the Association causes to be recorded in the Office of the County Recorder of the County where the Lot is situate, a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth (a) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this Article IV and California Civil Code section 1366, (b) the legal description of the Owner's Lot against which the Assessments and other sums are levied, (c) the name of the Owner of Record of such Lot, (d) the name and address of the Association, (e) and the name and address of the trustee authorized by the Association to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

(ii) Remedies Available to the Association to Collect Assessments. The Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Lot or accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by judicial foreclosure or by non-judicial foreclosure by the trustee designated in the Notice of Delinquent Assessment or by a trustee substituted pursuant to California Civil Code section 2934a. Any sale of a Lot by a trustee acting pursuant to this section 9 shall be conducted in accordance with California Civil Code

sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages or deeds of trust.

(iii) Non-Judicial Foreclosure. Non-judicial foreclosure shall be commenced by the Association by recording in the Office of the County Recorder a Notice of Default, which notice shall state all amounts which have become delinquent with respect to the Owner's Lot and the costs (including attorneys' fees), penalties and interest that have accrued thereon, the amount of any Assessment which is due and payable although not delinquent, a legal description of the property with respect to which the delinquent Assessment is owed, and the name of the Owner of Record or reputed Owner thereof. The Notice of Default shall state the election of the Association to sell the Lot or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under California Civil Code section 2924c, or comparable superseding statute.

The Association shall have the rights conferred by California Civil Code section 2934a to assign its rights and obligations as trustee in any non-judicial foreclosure proceedings to the same extent as a trustee designated under a Deed of Trust and for purposes of said section 2934a, the Association shall be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship; the Association shall be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in non-judicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any non-judicial foreclosure hereunder.

The Association or its assignee shall mail a copy of the Notice of Default to the Owner or reputed Owner of the subject Lot at the Owner's last address appearing on the books or records of the Association, and to any person to whom the giving of a notice of default is required by applicable provisions of California Civil Code section 2924b. Following receipt of the Association's notice, the Owner and junior encumbrances shall have reinstatement rights identical to those provided by law for trustors or mortgagors, which rights must be exercised during the period specified by law for reinstatement of obligations secured by deeds of trust.

After the lapse of such time as may then be required by law following the recording of a Notice of Default under a Deed of Trust, the Association or its assignee may give Notice of Sale in the manner and for the period required in the case of deeds of trust. After the giving of the Notice of Sale, the Association, or its assignee, without demand on the Owner, may sell the Lot at the time and place fixed in the Notice of Sale, at public auction to the highest bidder. At the Trustee's sale, the Trustee shall have the right to require every bidder to show evidence of his or her ability to deposit with the Trustee the full amount of his or her final bid in cash or a bank or savings and loan certified check and to require the last and highest bidder to deposit the full amount of his or her final bid in cash or a bank or savings and loan association certified check. The Association or its assignee may postpone the noticed sale by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement.

The Association shall deliver to the purchaser at such foreclosure sale the Association's deed conveying the Lot so sold, but without covenant or warranty, express or implied. The

recitals in such deeds shall be conclusive proof of the truthfulness thereof. Any person, including the Association, may bid on the subject Property and purchase the same at such sale.

After deducting from the sale proceeds all costs, fees, and expenses incurred by the Association, the net proceeds shall be applied to the payment of all sums secured by the Association's lien at the time of sale, including interest, costs and attorneys' fees, and the remainder, if any, shall be disbursed to the person or persons legally entitled thereto.

(iv) **Actions for Money Judgment.** In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

**[4.10] Transfer of Lot by Sale or Foreclosure.** Except as otherwise provided herein, the sale or transfer of any Lot shall not affect any Assessment lien duly recorded with respect to such Lot prior to the sale or transfer. However, the sale or transfer of any Lot pursuant to the foreclosure of any first Mortgage or other mortgage or lien recorded prior to the Association's Assessment lien (collectively "prior encumbrance") shall extinguish the lien of such Assessments as to payments which becomes due prior to such sale or transfer. No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale or otherwise shall relieve the new Owner of such Lot, whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party from liability for any Assessments thereafter becoming due or from the lien thereof.

Where the first Mortgagee or other purchaser of a Lot obtains title to the same as a result of foreclosure of any such first Mortgage or other prior encumbrance or exercise of a power of sale contained therein, the person acquiring title, his or her successors and assigns, shall not be solely liable for the Assessments chargeable to Lot which became due prior to the acquisition of title. Instead, such unpaid Assessments shall be deemed to be Common Expenses collectible from the Owners of all of the Lot, including such acquirer, his or her successors, and assigns. Furthermore, foreclosure shall not affect the Association's right to maintain an action for the collection of delinquent Assessments against the foreclosed party personally.

**[4.11] Priorities.** When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens or encumbrances recorded subsequent thereto, except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or Deed of Trust with first priority over other Mortgages or deeds of trust) made in good faith and for value, provided that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such properly pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or Deed of Trust, or other prior encumbrance.

**[4.12] Unallocated Taxes.** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lot, such taxes shall be included in the Regular Assessments imposed pursuant to this Article IV, section 2

and, if necessary, a Special Assessment may be levied against the Lot in an amount equal to such taxes to be paid in two installments, thirty days prior to the due date of each tax installment.

**[4.13] Assignment of Rents.** Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the Property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this section 13 shall be subordinate to the rights of any First Mortgagee.

**[4.14] Waiver of Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article IV, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Lot.

## ARTICLE V

### Architectural Committee

**[5.1] In General.** No "improvement" (as defined in Article I, section 15) of any kind shall be commenced, erected or maintained within the Properties, nor shall any exterior addition to or structural change or alteration be made in or to any Residence or to any Exclusive Use Common Area until the plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials, and location of the same shall have been submitted to and approved in writing by the Association's Board of Directors as to quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, setback lines, topography and finish grade elevation.

**[5.2] Appointment of Architectural Committee.** The Board of Directors shall appoint an Architectural Committee composed of not less than three nor more than five members. Committee members appointed shall be from the membership of the Association. A majority of the Architectural Committee may designate a representative to act on its behalf.

Members of the Committee shall serve for a term of one year. In the event of the death or resignation of any member of the Architectural Committee, a successor shall be appointed by the Board. Neither the members of the committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. In the event an Architectural Committee is not created, the Board of Directors shall be the Architectural Committee.

**[5.3] Submission of Plans; Action by Board or Committee.**

The procedures to apply for approval to make exterior modifications to the Member's separate interest are as follows:

(a) The Member shall submit an architectural application via personal delivery or certified mail to the Board of Directors on a form obtained by the Member from the Association. The Board of Directors will submit the application to the Architectural Committee, if any, within 30 days of its receipt. The Architectural Committee will tender its recommendation to the Board of Directors within 30 days of the committee's receipt of the application. The Board of Directors, at its next regularly scheduled meeting, will issue its decision on the application. The Board of Directors will advise the Member applicant, in writing, of its decision on the application within 10 days of reaching its decision. If there is no Architectural Committee or if the Board of Directors elects to act upon the application itself, it shall so act at the next regularly scheduled meeting after receipt of the application unless the meeting is to occur in less than 30 days of receipt of the application, and in that event the Board of Directors shall act upon the application at the following regularly scheduled meeting.

(b) In the event the Board of Directors determines that it needs additional information before approving or denying the application, the Board shall notify the Member applicant as soon as practical after making said determination. Upon obtaining the requested additional information, the Member applicant shall tender the information on an addendum application to the Board of Directors. Upon receipt of the addendum, the application process recommences and is subject to the timetable set forth in paragraph one, above.

(c) Any decision on the application will be made in good faith and will not be unreasonable, arbitrary, or capricious. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board of Directors. If a proposed change is disapproved, the applicant is entitled to reconsideration by the Board of Directors of the Association that made the decision, at an open meeting of the Board. This paragraph does not require reconsideration of a decision that is made by the Board of Directors at an open meeting of the Board.

(d) The application shall include, but is not limited to, the following information to the extent it is pertinent:

- (i) A complete description of the proposed change;
- (ii) Any color modification shall include a color swatch and the brand of paint to be used;
- (iii) Any structural change shall include competent drawings that are easily understood with to-scale measurements;
- (iv) In the event a building permit is required by the governing authority, a copy of all plans required to be submitted for the permit process;

(v) Any work that requires a building permit shall be performed only by a licensed professional or tradesman. Said professional or tradesman shall be approved by the Board of Directors or its designee(s) and shall provide proof of their license and worker's compensation and liability insurance prior to the commencement of any work;

(vi) All building permits or copies thereof shall be presented to the Board of Directors or its designee(s) prior to the commencement of any work.

(e) In the event the Board of Directors fails to approve or deny a complete application within 90 days of its submission, the application shall be deemed approved. However, no application for structural changes to any structure shall be deemed approved if not denied within said 90 days.

(f) In the event the application is disapproved in whole or part, the applicant may apply, in writing, to the Board of Directors for reconsideration. Any reconsideration shall be heard by the Board that denied the application, in whole or part, at an open meeting of the Board. Said meeting shall take place at the next regularly scheduled meeting if said request for reconsideration is received by the Board within 20 days of said meeting. Otherwise said hearing shall occur at the following regularly scheduled meeting. However, if the original denial, in whole or part, was rendered at an open meeting of the Board of Directors, the Board is not required to reconsider its decision.

**[5.4] Architectural Rules.** The Architectural Committee may, subject to review by the Board of Directors, from time to time adopt, amend and repeal rules and regulations to be known as "Architectural Rules." Said rules shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for the review and approval of proposed Improvements and guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended for use within the Properties, landscaping that is visible from the front of any Lot or Common Area, provided that said rules shall not be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the Declaration shall prevail.

**[5.5] Variances.** The Board of Directors shall be entitled to allow reasonable variances with respect to this Article or any restrictions specified in Article VII in order to overcome practical difficulties, avoid unnecessary expenses or prevent unnecessary hardships, provided that the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Board must conduct a hearing on the proposed variance after giving at least 10 days prior written notice to the Board and to all Owners of Residences within 100 feet of the Property for which the variance applies. The Owners receiving notice of the proposed variance shall have 30 days in which to submit to the Board or Committee written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the 30-day comment period has expired.



(b) The Board must make a good faith determination that (i) the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Properties or from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement hereunder that it is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Residence, Common Area or Owner within the Properties.

**[5.6] Estoppel Certificate.** Within 30 days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall execute an estoppel certificate, executed by any two of its members, certifying (with respect to any Residence owned by the applicant Owner) that as of the date thereof, either (i) all Improvements made and other work completed by said Owner with respect to the Residence comply with this Declaration; or (ii) that such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the Owner, or anyone deriving any interest in said Residence through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

## ARTICLE VI

### Minimum Construction Standards in the Event of Reconstruction

**[6.1] No Temporary Structures.** No recreational vehicle, trailer, mobile home, camper, tent, shack, used structures, structures of a temporary character, or other outbuildings shall be used on any Lot at any time as a Residence.

**[6.2] Utility Lines.** All utility lines running from overhead utility poles within the Properties to Improvements constructed on any Lot shall be placed underground.

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

**[6.4] Solar Heating Systems.** Subject to limitations imposed by California law, the Architectural Committee shall be entitled to adopt, as part of the Architectural Rules, reasonable regulations regarding the installation of solar heating systems. These rules may include limitations on placement and design of such systems to the extent necessary to avoid an unsightly appearance from neighboring Lots or Common Area.

**[6.5] Colors and Exterior Finishes.** No reflective finishes (other than glass) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including but without limitation, the exterior surfaces of any of the following: roofs, all projections above roofs, retaining walls, doors, trim, fences, pipes, equipment, mailboxes and newspaper tubes. No exterior finishes shall be used without approval of the Architectural Committee. Generally,

colors shall be restricted to those found in the immediate vicinity of the Residence and colors found in nature will be favored. The Committee shall be authorized, as part of the Architectural Rules, to adopt a chart of approved colors and stains for exterior finishes.

**[6.6] Roofing Materials.** Natural wood or shingle roofing materials or composition roofing materials shall not be permitted on any Residence within the Properties unless they are treated with fire retardant materials. The use of other roofing materials, such as tile, gravel or artificial shingles or shakes that have the appearance of natural wood shingles shall be permitted, subject to prior Architectural Committee approval of the appearance and quality of the material.

**[6.7] Roofs.** The roof design of all Residences must be approved by the Committee. Any approval by the Committee shall in no way imply any roof guarantee by such Committee. The pitch of the roof must be less than five feet in twelve feet. Every Residence constructed on any of the Lots shall have a minimum roof overhang of 30” including gutters, unless deviation for a specified design and/or feature is approved by the Architectural Committee. All visible roofing on any Residence shall be uniform in design and material. Buildings may be approved without the minimum roof overhang, provided that the lack of overhang is an integral part of the specific design.

**[6.8] Siding Materials.** No metallic siding shall be permitted. No siding composed in whole or part of artificial or “fake” stones, stucco stones or manufactured used brick shall be permitted unless a variance is granted by the Architectural Committee in accordance with Article V, section 5 hereof.

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

**[6.10] Modular and Prefabricated Housing; Mobile Homes.** No modular housing unit or prefabricated housing unit assembled off the building site shall be permitted on any Lot.

**[6.11] Antennas, External Fixtures, etc.** No television or radio poles, antennas, flagpoles, clotheslines, basketball standards, or other external fixtures except those approved by the Architectural Committee shall be constructed, erected or maintained on any Lot. No wiring, insulation, air-conditioning, or other machinery or equipment other than those approved by the Architectural Committee, and their duplicate replacements shall be constructed, erected or maintained on or within the exterior of any structure within the Properties.

**[6.12] Exterior Lighting and Fixtures.** No colored lights (except holiday displays and yellow insect type lights) shall be permitted at any location within the Properties. All exterior fixtures that are attached to the main Residence shall be compatible with the design and materials of the Residence. Any post-mounted exterior fixtures shall also be compatible in design and

materials to the fixtures attached to the main Residence. No fixtures which illuminate and excessively glare onto any other Lot shall be permitted. No white plastic address type identification fixtures, or unshielded spot/floodlight fixtures are permitted.

**[6.13] Glass and Skylights.** Certain architectural glass treatments such as octagon or hexagon-shaped windows, sloped glass, greenhouses or sunrooms with radius roof or wall sections, extensive use of black or heavy tint glass, mirrored or reflective glass, or brightly colored glass or polycarbonate panels are not permitted without specific prior approval of the Architectural Committee. No screen type doors mounted over a hinged type door which is visible to the public view shall be permitted. No domed or “bubble” type skylights are permitted where visible from any eye level area within the public view.

**[6.14] Delivery Receptacles.** No newspaper type or exterior unattached mail receptacle shall be permitted at any location within the Properties.

**[6.15] Water Systems and Pools.** No individual water supply system or swimming pool shall be permitted on any Lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the appropriate public health authority and the Architectural Committee. Approval of such systems shall also be obtained, if required, by any responsible governmental agency.

**[6.16] Fences.** All screening and fencing must be approved by the Architectural Committee and must be designed to conform to the design of the proposed or existing Residence; such screening must be architecturally designed and shall be constructed of wood, rock, masonry or wrought iron or a combination thereof. All screening and fencing must be maintained in a good sound structural manner, and painted or stained periodically so as not to have a shabby or unkempt appearance. Screening and fencing must be so designed as to face its most attractive side toward the street or toward any neighboring vacant Lots or Common Area. Screening or fencing of double-sided construction, with cap board and baseboard to guarantee a lasting appearance, is desired. Any front-facing wing fence on a Lot and any side yard fence which is on a corner Lot and visible from any street shall be of the same material and color as the exterior wall surface of the Residence to which it relates.

Where Residences on adjoining Lots are set back different distances from the street, the visible perimeter fence on their common property line shall be of the same material and color as the wing fence of the Residence which is closest to the street. If any different material or color is desired, or if more than one material or color is used on the exterior wall surfaces, the proposal for the style, material and color of such fences shall be subject to prior review and approval by the Architectural Committee.

**[6.17] Landscaping.** As noted in Article V, section 4, landscaping is a matter which is subject to review and regulation by the Architectural Committee.

**[6.18] Landscaping Shall Include Lawns, Shrubs, Trees and Flowers.** The use of artificial materials such as plastic plants or flowers, artificial turf, or gravel gardens will be disapproved by the Committee, although nothing contained herein shall prohibit the use of large

decorative rocks as a landscape element or the use of limited gravel and/or bark in flower beds between or under substantial vegetation.

In the event that any Owner fails to properly maintain his or her landscaping, the Association or its Architectural Committee may either cause the appropriate work to be done at the Owner's expense (recoverable through imposition of a Special Individual Assessment). If the Association elects to undertake landscape maintenance work on an Owner's behalf, then at least 15 days prior to the date any work is to be done, written notice must be hand delivered or mailed by first-class mail to the Owner at his or her last address as shown by the Association's records. The notice shall recite the nature of any work to be performed, the reasons therefore, and the date, time and place at which the Owner may be heard by the Board, either orally or in writing, regarding the propriety of the work. If a hearing is requested, it shall be conducted in accordance with Article XII, section 6 hereof. In no event shall the hearing be held less than five days prior to the date the work is scheduled to commence.

## ARTICLE VII

### Use of Properties and Restrictions

In addition to the restrictions established by law or Association Rules promulgated by the Board of Directors (consistent with this Declaration), the following restrictions are hereby imposed upon the use of the Lots, Common Areas and other parcels within the Properties.

**[7.1] Conveyance of Lots.** Each Lot shall be conveyed as a separately designated and legally described fee simple estate subject to this Declaration.

**[7.2] Improvements and Interior Alterations or Modifications.** No Owner shall at his or her expense or otherwise make any improvements to the exterior of the buildings, porches, steps decks or railings containing the Owner's Residence without the prior written consent of the Architectural Committee. Furthermore, no structural alterations or modifications to the interior of any Residence shall be made and no plumbing or electrical work within any bearing or common walls shall be performed by any Owner without the prior written consent of the Board of Directors or the Architectural Committee and proper building permits. Under no circumstances shall any Owner undertake any activity or work with respect to the Owner's Residence that will impair the structural soundness or integrity of another Residence or impair any easement or hereditament or do any act or allow any condition to exist in or around the Owner's or another Residence or Lot which will adversely affect any other Residences or their occupants.

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

Each Owner shall be liable to the remaining Owners for any damage to the Common Area and Common Facilities that may be sustained by reason of the negligence of that Owner, that Owner's family members, contract purchasers, Tenants, guests, or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association.

Each Owner, by acceptance of his or her deed, agrees personally and for family members, contract purchasers, Tenants, guests, and invitees, to indemnify each and every other Owner, and to hold such Owner(s) harmless from, and to defend him against, any claim of any person for personal injury or property damage occurring within the Residence of that particular Owner, including Exclusive Use Common Area, if any, except to the extent (i) that such injury or damage is covered by liability insurance in favor of the Association or other Owner or (ii) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other person temporarily visiting his or her Residence.

**[7.4] Prohibition of Noxious or Nuisance Activities.** No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or Common Area nor shall anything be done within the Properties which is or could become an unreasonable annoyance or nuisance to neighboring Lot Owners. Without limiting the foregoing, no Owner shall permit noise, including but not limited to barking dogs, the operation of excessively noisy air conditioners, stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from an Owner's Lot or from activities within the Common Area, which would unreasonably disturb any other Owner's or Tenant's enjoyment of his or her Lot or the Common Area.

**[7.5] Household Pets.** Household pets are defined as cats, dogs, birds and fish. The following restrictions regarding the care and maintenance of pets within the Properties shall be observed by each Owner and resident:

(a) Household pets may be kept on each Lot so long as the same are not kept, bred or maintained for commercial purposes. No other animals, livestock, or poultry of any kind shall be kept, bred or raised on any Lot or in any Residence. No pets may be kept on the Project which result in an annoyance or nuisance to the other Owners, or are a safety risk to other Owners.

(b) Dogs shall be kept on a leash held by a person capable of maintaining direct physical control of the dog while in or on the Common Area.

(c) No household pet shall be left chained or otherwise tethered in front of a Lot or in the Common Area. Pet owners shall be responsible for the prompt disposal of pet wastes deposited by their pets on Lot areas adjacent to the Owner's Residence.

(d) Each person bringing or keeping a pet on the Properties shall be solely responsible for the conduct of that pet. The Association, its Board, Officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, Tenants and contract purchasers for any damage or injury to persons or property caused by any pet.

(e) The Board of Directors shall have the right to establish and enforce additional rules and regulations defining in a uniform and nondiscriminatory manner, what constitutes a

“reasonable number” of pets depending on their size, disposition and/or maintenance requirements and imposing standards for the reasonable control and keeping of household pets in, upon and around the Properties to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Properties by the other Owners and residents.

**[7.6] Signs.** No advertising signs or billboards shall be displayed on any Lot or posted within or upon any portion of the Common Area except that Owners may post on their Lot any signs required by legal proceedings and a single “For Rent,” “For Lease” or “For Sale” sign of reasonable dimensions.

A-frame or other directional signs of real estate brokers advertising lots for sale or lease shall only be allowed within the Common Area or roadways within the Properties in strict compliance with applicable Association Rules.

The Architectural Committee, in its discretion, shall be entitled to regulate or prevent altogether the erection and maintenance of Owner’s, agent’s or broker’s directional signs along roadways or on any Common Areas within the Properties.

**[7.7] Business Activities.** No business or commercial activities of any kind whatsoever shall be conducted in any Residence provided that the foregoing restriction shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this section shall be construed in such a manner so as to prohibit any Owner from (a) maintaining his or her personal library in his or her Residence, (b) keeping his or her personal business records or accounts therein, (c) handling his or her personal or professional telephone calls or correspondence therefrom, (d) leasing or renting his or her Residence in accordance with Article II, section 4 hereof, or (e) conducting any other activities on the Owner’s Lot otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization. The uses described in (a) through (e), above, are expressly declared to be customarily incidental to the principal residential use of the Lot and not in violation of this section.

**[7.8] Clotheslines.** No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes on any Lot in a manner which is visible from any neighboring Lot or the Common Area.

**[7.9] Antennas and Similar Devices.** Installation of a radio, video, or television antenna, including a satellite dish, designed to receive television signals that is or will be located on property within the exclusive use or control of the antenna user, and that is not otherwise prohibited by law, must be within applicable requirements of California Civil Code Section 1376 and the Code of Federal Regulations, 47 CFR Section 1.4000, or comparable superseding statutes or regulations. As allowed by applicable law, the Board may request notification prior to installation of such radio, video, or television antenna, including a satellite dish. The Board will disallow installation of antennas or satellite dishes with a diameter or diagonal measurement exceeding one meter, or above the roof line and/or require that installation be to a height that the antenna, if it topples, will be wholly contained within the Owner's property. As allowed by

applicable law, the Board may prohibit installations of individual antennas or satellite dishes when the Association has installed a central system. As allowed by applicable law, the Board may disallow installation of antennas or other devices that are not designed to receive television signals. As allowed by applicable law, the Board may enforce reasonable painting or other camouflage requirements provided such requirements do not impair reception or place an unreasonable financial burden on the Owner. As allowed by applicable law, the Board may establish and enforce collection powers that allow the Association to recover for any resulting Association property damage and other costs arising from harm caused by an Owner's installation of such installed antennas or satellite dishes. Such powers of the Board to levy a Special Individual Assessment are pursuant to Section 4.4 above. As allowed by applicable law, the Board may establish and impose penalties on Owners who violate this section and applicable Rules. The Board has the authority to require that any contractor installing any antenna or satellite dish provide appropriate proof of liability and workers' compensation insurance prior to commencing work, and require that such contractor agree in writing to indemnify and defend the Association from any claims arising out of or in connection with his work.

The location of common antennas or connection facilities for any cable television system serving more than one Residence shall be designated by the Association or the Architectural Committee, if any, and each Residence and its Owner shall be subject to the right of other Owners or the Association to install, use, and maintain such common antennas or cable television facilities.

**[7.10] Burning.** There shall be no exterior fires whatsoever except barbecue fires located only upon the Owner's Lot and contained within receptacles designated for such purpose.

**[7.11] Basketball Standards.** No basketball standards or fixed or portable or other sports apparatus shall be permitted on any Lot or Common Areas within the Properties except at locations in fenced rear yard areas which are not visible from any neighboring Lot or Common Areas.

**[7.12] Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence or appurtenant structures within the Properties.

**[7.13] Diseases and Pests.** No Owner shall permit anything or condition to exist on his or her Lot, which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

**[7.14] Parking and Vehicle Restrictions.**

(a) **Parking Spaces.** The original Declarant/Developer set aside private roads and parking spaces within the Common Area, the number, configuration and location of which were approved by the County of Placer. Each of such parking spaces is of suitable size for the parking of one automobile, but in no event less than 8 feet by 20 feet in size, and is designed so as to provide for maneuvering of automobiles in such a way that the automobiles may leave the parking area to enter any county road in a forward direction, except as otherwise approved by the Department of Public Works of the County of Placer. The foregoing provisions of this section

are made for the express benefit of the County of Placer, and shall not be amended, modified or changed without the prior written approval of the County of Placer.

(b) Maintenance of Parking Spaces. The cost of maintaining the parking spaces and roads described in this section shall be paid by the Association.

**[7.15] Accountability.** Each Owner and resident shall be accountable to the remaining Owners and residents, for the conduct and behavior of their families, visitors, guests and invitees, residing in or visiting the Owner or resident and for any property damage caused by such their families, visitors, guests and invitees.

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

**[7.17] Restriction on Further Subdivision and Severability.** No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof and no Owner of a Lot within the Properties shall be entitled to sever his or her Lot from the Common Area portion of the Properties.

**[7.18] Variances.** Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Board shall follow the procedures set forth in Article V, section 5 for the granting of architectural variances.

**[7.19] Enforcement of Property Use Restrictions.** The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and Tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Article XII, section 6 hereof, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the non-complying condition, request that the Owner or Tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or Tenant of his or her appeal rights.



## ARTICLE VIII

### Maintenance Responsibilities

**[8.1] Common Area.** The Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area.

In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express written approval of the Association.

Without limiting the foregoing, the Association shall be responsible for:

(a) The reconstruction, replacement, or refinishing of any Common Facility or other improvements located within or constructed upon Common Area as necessary in accordance with the original design, finish or standard of construction of such Improvement.

(b) The construction, reconstruction, replacement, refinishing of any road, driveway, trail or surface upon any portion of Common Area designated on a Subdivision Map as a private road or parking area. The Association shall maintain, repair and otherwise care for all walkways and driveways, and parking spaces within the Project.

(c) The replacement of trees or other vegetation and the planting of trees, shrubs and ground cover upon any portion of Common Area.

(d) The placement and maintenance of such signs as the Association may deem necessary for the identification of the development and of roads, the regulation of traffic, including parking, the regulation and use of Common Area and Common Facilities and for the health, welfare and safety of Owners, Tenants and guests. Any such signs to be placed within the street area shall be subject to County approval.

**[8.2] Association Maintenance Responsibility With Respect to Lot Improvements.** The Association shall maintain exteriors of each Lot and Residence which is subject to Assessment hereunder, as follows:

(a) The Association shall paint and provide structural repair and replacement of the exterior surfaces of the Residences, including roofs, walls, porches, decks, and doors. The Association and its agents shall have the right to enter upon the exteriors of any Lot for the performance of maintenance but they shall not have the right to enter a Residence without permission of the Owner of such Residence unless an emergency exists. The term "emergency" shall include situations where the Owner unreasonably withholds permission after notice and an opportunity to be heard by the board.

### **[8.3] Owner Maintenance Responsibilities**

Except as specifically provided in sections 7.2 and 8.2, above; each Owner shall be responsible to keep all portions of his or her Residence and Lot in good repair and condition, including the interiors of his Residence or Residence Lot.

### **[8.4] Recovery of Costs of Certain Repairs and Maintenance.**

(a) In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, Tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Article IV, section 4 hereof .

(b) In the event that an Owner fails to perform maintenance functions for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Article III, section 6(b) to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Article XII, section 6, hereof.

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

**[8.6] Maintenance of Party Walls.** Each Owner of a Lot containing party wall(s), shall have a fifty percent (50%) financial responsibility for the party component with his adjoining neighbor. If the party component is damaged by the negligence or the intentional act of one Owner, said Owner shall be responsible for the repair of the entire party component.

## **ARTICLE IX**

### **Easements**

**[9.1] Encroachment Easements.** Each Lot and its Owner shall have and is granted an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of structures, or any other cause as long as the encroachment remains. However, in no event shall a valid easement for encroachment exist in favor of an Owner if the encroachment occurred due to willful misconduct of the Owner. In the event a Residence is partially or totally destroyed, and then repaired or rebuilt, the Owner of each Lot agrees that minor encroachments over adjoining Lots and the Common Area shall be permitted and there

shall be valid easements for the maintenance of the encroachments as long as they shall exist. Each Lot and its Owner shall have and is granted an easement, appurtenant to such Lot over each adjoining Lot or the Common Area, as the case may be, for overhanging roofs and eaves, fireplace structures, and other structural components as originally constructed by the Declarant or, if partially or totally destroyed, as subsequently rebuilt or repaired in accordance with the original plans and specifications.

**[9.2] Blanket Utility Easement.** There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage and electricity and the master television antenna or cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Properties except as initially designed and approved by the Declarant or thereafter approved by the Association's Board of Directors. The easements provided for in this section 2 shall in no way affect any other recorded easement on the Properties.

**[9.3] Maintenance Easements.** An easement is hereby granted to the Association, its officers, agents, employees, and to any management company or contractor selected by the Association to enter in or to cross over the Common Area and any Lot to perform the duties of maintenance and repair of the Lots, Common Area, or Common Facilities, provided that any entry by the Association or its agents onto any Lot shall only be undertaken in strict compliance with Article III, section 6(b).

**[9.4] Boundary Changes.** An easement shall exist for use and maintenance as Common Area over any portion of a Lot which, because of a change in the boundary of a private structure, including a fence, wall or patio, at the time of original construction by the Declarant lies between that boundary and a lot line abutting the Common Area.

**[9.5] Party Walls, Party Roofs and/or Party Fence Easements.** Each Owner of a Lot containing party wall, party upon which such party wall is located shall have a reciprocal non-exclusive easement over and across such portions of the contiguous Lot as is necessary to maintain such wall.

**[9.6] Other Easements.** Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Properties and each Lot and Common Area as shown on the Subdivision Map.

**[9.7] Priority of Easements.** Wherever easements granted to the County are, in whole or in part, coterminous with any other easements, the easements of the County shall have and are hereby granted priority over said other easements in all respects.

## ARTICLE X

### Insurance

**[10.1] Insurance.** The Board shall obtain and maintain at least a minimum insurance as provided in this Section.

(a) General Provisions and Limitations. All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(i) Underwriter. All policies shall be written with a company legally qualified to do business in the State of California and holding a rating of A-XII or better in the financial category as established by Best's Insurance Reports, if such a company is available, or, if not available, the best rating possible or its equivalent.

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

(iii) Certificate of Insurance. If reasonably available, provision shall be made for the issuance of a certificate of insurance to each Owner and his Mortgagee, which shall specify the amount of such insurance attributable to the particular Owner's Lot.

(iv) Authority to Negotiate. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

(v) Contribution. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchases by Owners or their Mortgagees.

(vi) General Provisions. To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Board, the Manager, the Owners and their respective servants, agents and guests;

(2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash;

(3) That no policy may be canceled, invalidated or suspended on account of the acts of any one or more individual Owners;

(4) That no policy may be canceled, invalidated or suspended on account of the conduct of any Manager, Director, Officer or employee of the Association without prior demand in writing delivered to the Association requiring remedying of the defect and allowing a reasonable time within which the defect may be cured by the Association, its Manager, any

Owner or Mortgagees;

(5) That any “other insurance” clause in any policy excludes individual Owners’ policies from consideration;

(6) That no policy may be canceled or substantially modified without at least ten (10) days’ prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;

(7) An agreed amount endorsement; and

(8) An inflation guard endorsement.

(vii) Term. The period of each policy shall not exceed three (3) years, provided the policy permits short rate cancellation by the insureds.

(viii) Annual Review. The Board shall review the adequacy of all insurance at least once every year. At least once every three years the review shall include a replacement cost appraisal of all insurable Common Area Improvements and Residences without respect to depreciation. The Board shall adjust the policies to provide coverage and protection that is customarily carried by prudent owners of similar property in the area in which the Project is situated.

(ix) Deductible. The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

(x) Additional Insurance by Member. Any Member may obtain additional insurance coverage which the Member considers necessary or desirable to protect himself or his Residence and personal property, at his own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in a manner so as to decrease the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time. Each Member is also responsible for obtaining liability insurance for his Lot and insurance for his own personal property at his own expense. Each Member is also responsible for obtaining property insurance for all fixtures within his unit such as wall to wall carpeting, appliances, cabinetry, paint, paneling, plumbing fixtures and such that are within the bare walls of a unit at his own expense.

**[10.2] Types of Coverage.** The Association shall obtain and maintain at least the following kinds and amount of insurance:

(a) Property Insurance. A policy or policies of all risk property insurance for all insurable Common Area Improvements and all Residences, excluding all fixtures within the unit such as wall to wall carpeting, appliances, cabinetry, paint, paneling, plumbing fixtures and such that are within the bare walls of the units, against loss or damage by fire or other perils typically covered under a “special form” insurance policy, if available, in an amount equal to at least ninety percent (90%) of the current full replacement cost (without respect to depreciation) of the

Common Area and all Residences, and exclusive of land, foundations, excavation and other items normally excluded from coverage. A replacement cost endorsement shall be part of the policy.

(b) **Liability Insurance.** A combined single limit policy of public liability insurance in amount not less than Three Million Dollars (\$3,000,000.00) covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Members against any liability to the public or to any Member incident to the use of or resulting from any accident or intentional or unintentional act occurring in or about the Common Area. If available, each policy shall contain a cross-liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(c) **Worker's Compensation.** Worker's Compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

(d) **Fidelity Bond.** A Fidelity Bond or insurance naming the Association as obligee, in an amount equal to at least one-fourth (1/4) of the total sum budgeted for the Current Operation Account and Reserve Account for the current fiscal year. The Fidelity Bond shall cover the Board, committee members and employees of the Association. The Fidelity Bond shall contain a waiver of any defense based upon the exclusion of persons serving without compensation.

(e) **Directors and Officers.** Errors and omissions insurance covering Directors and Officers and Association Committee members the minimum amount of \$1,000,000 or the minimum amount specified by statute necessary to protect the Directors and Officers from personal liability.

(f) **Additional Insurance.** Owned vehicles and equipment and other property owned by the Association, non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

**[10.3] Copies of Policies.** Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

**[10.4] Owner's Insurance.** An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Lot that he or she desires. However, any such policy shall include a waiver of subrogation clause acceptable by the Board and to any institutional First Mortgagee.

## ARTICLE XI

### Repair and Restoration

**[11.1] General.** Notwithstanding the provision of insurance in Article X, the Association and the Owners are and shall be under the obligations of maintenance, repair and restoration hereinafter set forth; provided, however, that all expenses to the extent covered by insurance shall be paid from such insurance proceeds.

**[11.2] Owners.** The Owner of each Residence Lot shall at his expense maintain, and in the case of damage or destruction shall repair or restore, the interior of his Residence or his Residence Lot. All such repair or restoration shall be done substantially in accordance with the original plans and specifications, or in accordance with any modification thereof as approved by the Association. Each Owner is responsible for obtaining liability insurance for his Lot, property insurance for his personal property and all fixtures within his unit such as wall to wall carpeting, appliances, cabinetry, paint, paneling, plumbing fixtures and such that are within the bare walls of a unit at his own expense.

**[11.3] The Association.** The Association shall have the obligation to maintain, obtain and pay for an all risk property insurance policy for all insurable Common Area improvements and all Residences excluding all fixtures within the units such as wall to wall carpeting, appliances, cabinetry, paint, paneling, plumbing fixtures and such that are within the bare walls of the unit, against loss or damage by fire or other perils typically covered under a “special form” insurance policy, if available, in an amount equal to at least ninety percent (90%) of the current full replacement cost (without regard to depreciation) of the Common Area and all Residences, exclusive of land, foundations, excavation and other items normally excluded from coverage. A replacement cost endorsement should be part of the policy.

The Association shall have the obligation to maintain at its expense, and in the case of damage or destruction shall replace, repair or restore at its expense, the exterior of all improvements on each Lot, including but not limited to roofs, walls, doors, windows, decks, patios and steps, and all foundations and other parts of such improvements of a structural nature. Said maintenance shall include but not be limited to painting as often as the same shall be necessary, replacement of trim, and caulking and other repairs of roofs. The expense of any extraordinary maintenance or any repair or restoration caused by the negligent willful acts of an Owner or a member of his family or a person occupying or invited upon his Residence Lot shall all be paid by such Owner.

**[11.4] Apportionment of Expenses.** If two or more Owners cannot agree on the apportionment of such expenses, they shall be conclusively apportioned by the Association. If the Association is involved in a dispute over the apportionment of such expenses, then the dispute shall be settled by arbitration as provided in Article XII.

**[11.5] Liens.** If the Association undertakes any work which section 2 hereof requires the Association to undertake at the expense of the Owner, the Association shall assess the unit Owner for such work and shall so inform the Owner thereof in writing; provided, however, that the assessment shall be reduced by the amount of any insurance proceeds paid to the Association

as a result of damage to or destruction of the Residence Lot involved. Such assessment shall be a lien upon the unit ownership of the Owner, and such lien may be foreclosed as set forth in Article IV, section 4.9(b).

**[11.6] Approval of Plans.** No work provided for in this Article or elsewhere in this Declaration shall be commenced, and no structure shall be painted or repainted on the exterior thereof or constructed, altered or repaired, until complete plans and specifications for the work, including color scheme, shall have been approved by the Association.

**[11.7] Waiver of Approval.** Neither approval nor disapproval by the Association of any plan or specification shall prevent the Association from granting or withholding its approval of an identical plan or specification, or part thereof, when subsequently or additionally submitted for approval by the same or any other Owner.

**[11.8] Non-Liability.** Approval by the Association of any plan or specification submitted to it for approval shall not cause the Association or its members to be liable in any way to any person.

**[11.9] Total Destruction.** If the project is substantially or totally destroyed, the Association shall obtain bids from three contractors to restore the project as nearly as possible to its condition immediately prior to its destruction, excluding improvements added by individual Owners. As soon as possible thereafter, the Association shall hold a special meeting to consider the bids. Unless Owners holding an aggregate of more than 75% interest in the Common Area are opposed to repair or restoration of the project, the project shall be restored according to the provisions of this Article.

## ARTICLE XII

### Breach and Default

**[12.1] Remedy at Law Inadequate.** Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, Tenant, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its Officers or Board of Directors, or by their respective successors in interest.

**[12.2] Nuisance.** Without limiting the generality of the foregoing section 1, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.



**[12.3] Costs and Attorneys' Fees.** In any internal Association enforcement proceedings or action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the Association shall be entitled to attorneys' fees and costs.

**[12.4] Cumulative Remedies.** The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

**[12.5] Failure Not a Waiver.** The failure of any Owner, the Board of Directors, the Association or its Officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its Officers or agents.

**[12.6] Rights and Remedies of the Association.**

(a) Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or Tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Facilities or suspension of the Owner's voting rights as a Member of the Association; provided that the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this section 6. The initiation of legal action shall be subject to section 8, below.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of the California Civil Code section 1369.510 or otherwise by law.

(b) Schedule of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment.

(c) Definition of "Violation." A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative

imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Limitations of Disciplinary Rights. Loss of Rights: Forfeitures. The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or his or her family members, Tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph below.

(e) Hearings. No penalty or temporary suspension of rights shall be imposed pursuant to this Article unless the Owner alleged to be in violation is given at least 15 days prior notice of the proposed penalty or temporary suspension and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) at a hearing conducted at least 5 days before the effective date of the proposed disciplinary action or as provided in Civil Code section 1367.1, as amended or its successor sections.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes (i) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (ii) a traffic or fire hazard; (iii) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (iv) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible or as provided in Civil Code section 1367.1, as amended or its successor sections.

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 disciplinary action. If the accused Owner desires a hearing, a written request therefore shall be delivered to the Association no later than five days following the date when the fine is levied. The hearing shall be held no more than 15 days following the date of the disciplinary action or 15 days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing or as provided in Civil Code section 1367.1, as amended or its successor sections.

(f) Notices. Any notice required by this Article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged

violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association or as provided in Civil Code section 1367.1, as amended or its successor sections.

(g) Rules Regarding Disciplinary Proceedings. The Board shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

**[12.7] Internal Dispute Resolution/Alternative Dispute Resolution Procedures:**

The two procedures to invoke dispute resolution between the Association and Owner are as follows:

(a) Either party to a dispute may invoke the following procedure:

(i) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

(ii) A Member of an Association may refuse a request to meet and confer. The Association may not refuse a request to meet and confer.

(iii) The Association's Board of Directors shall designate a member of the board to meet and confer.

(iv) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in an effort to resolve the dispute.

(v) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association.

(vi) An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:

(1) The agreement is not in conflict with law or the governing documents of the Association.

(2) The agreement is either consistent with the authority granted by the Board of Directors to its designee or the agreement is ratified by the Board of Directors.

(b) If the first procedure fails or the Member is unwilling to participate, the second procedure is as follows:

The invoking party, be it the Association or the Owner, if the controversy involves declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than Association assessments, not in excess of five thousand dollars (\$5,000), related to the

enforcement of the governing documents, shall serve upon the other party, in the manner as prescribed for service in a small claims action as provided in Section 116.340 of the Code of Civil Procedure, a Request for Resolution.

(i) The Request for Resolution shall include:

- (1) A brief description of the dispute between the parties,
- (2) A request for alternative dispute resolution, and
- (3) A notice that the party receiving the Request for Resolution is required to respond thereto within 30 days of receipt or it will be deemed rejected.

(ii) If alternative dispute resolution is accepted by the party upon whom the Request for Resolution is served, the alternative dispute resolution shall be completed within 90 days of receipt of the acceptance by the party initiating the Request for Resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties.

(1) The Association shall provide a fair, reasonable, and expeditious dispute resolution procedure that shall satisfy all of the following requirements:

- a. The procedure may be invoked by either party to the dispute.
- b. If the procedure is invoked by a member, the Association shall participate in, and is bound by any resolution of the dispute pursuant to, the procedure.
- c. If the procedure is invoked by the Association, the Member may elect not to participate in the procedure. If the Member participates but the dispute is resolved other than by agreement of the member, the Member shall have a right of appeal to the Association's board of Directors.
- d. An agreement reached pursuant to the procedure, that is not in conflict with the law or the governing documents, binds the parties and is judicially enforceable.
- e. A Member of the Association shall not be charged a fee to participate in the process.

(2) Members of the Association shall annually be provided a summary of the provisions for dispute resolution, which specifically references Section 1369.510, et seq. of the Civil Code. The summary shall include the following language: "Failure by any member of the Association to comply with the pre-filing requirements of Section 1369.510, et seq. of the Civil Code may result in the loss of your rights to sue the Association or another member of the Association regarding enforcement of the governing documents." The summary shall be provided either at the time the pro forma budget required by Section 1365 of the Civil Code is distributed or in the manner specified in Section 5016 of the Corporations Code. Any Request

for Resolution sent to the Owner of a separate interest shall include a copy of Section 1369.510, et seq. of the Civil Code.

**[12.8] Court Actions.**

(a) Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the Board.

(b) Before instituting any judicial action, arbitration, or other proceeding arising out of any Owner's or resident's failure or alleged failure to comply with any provision including but not limited to Article II, section 4 (Delegation of Use), Article V (Architectural Control), or Article VII (Use of Properties and Restrictions), the Association or Owner who desires to initiate such action ("Complaining Party") must make a good faith attempt to mediate the dispute pursuant to this paragraph. The Complaining Party shall send the other party (the "Responding Party") written notice of the nature of the dispute and the facts giving rise to its claim and its desire to mediate (the "Mediation Notice").

The procedures to be followed shall be as follows: Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action by either an association or an Owner or a Member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not in excess of five thousand dollars (\$5,000), related to the enforcement of the governing documents, the parties shall endeavor, as provided in this subdivision, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or non-binding at the option of the parties. Any party to such a dispute may initiate this process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within 30 days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be in the same manner as prescribed for service in a small claims action as provided in Section 116.340 of the Code of Civil Procedure. Parties receiving a Request for Resolution shall have 30 days following service of the Request for Resolution to accept or reject alternative dispute resolution and, if not accepted within the 30-day period by a party, shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the Request for Resolution is served, the alternative dispute resolution shall be completed within 90 days of receipt of the acceptance by the party initiating the Request for Resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties or as provided in Civil Code section 1369.510, as amended or its successor sections.

At the hearing, any relevant evidence may be presented by any party and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence shall be admitted or excluded in the sole discretion of the arbitrator(s).

## ARTICLE XIII

### Notices

**[13.1] Mailing Addresses.** Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to any Owner: to the street address of his or her lot or to such other address as he or she may from time to time designate in writing to the Association.

If to the Association: to the principal office of the Association (or to such other address as the Association may from time to time designate in writing to the Owners).

Owners shall provide the Association with their current address and provide new address whenever they move.

**[13.2] Personal Service Upon Owners and Others.** Personal service of a notice or demand to one of the Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, shall be deemed delivered to all such Owners, to such partnership, or to such corporation, as the case may be.

**[13.3] Deposit in United States Mail.** All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered four days after deposit in the United States mail.

## ARTICLE XIV

### No Public Rights

**[14.1] No Public Rights in the Properties.** Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Properties to the general public or for any public use or purpose whatsoever.

## ARTICLE XV

### Amendment of Declaration

**[15.1] Amendment in General.** This Declaration may be amended or revoked in any respect by the vote or assent by written ballot of the holders of not less than fifty-five percent (55%) of the Owners entitled to vote and holding at least fifty-five percent (55%) of the voting power of the Association. Notwithstanding the foregoing, the percentage of the Owners necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

With respect to any vote hereunder the Association shall be entitled to accept the vote of any Owner of Record of a Lot as the vote of all Owners of Record of such Lot unless the Association receives more than one vote from said co-Owners, in which case the vote of a majority of the co-Owners shall bind all.

**[15.2] Effective Date of Amendment.** The amendment will be effective upon recording, in the Office of the Recorder of Placer County, a Certificate of Amendment duly executed and certified by the president and Secretary of the Association setting forth in full the amendment so approved and that the approval requirements of section 1, above, have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first Deed of Trust or Mortgage recorded prior to the recording of such amendment. If the consent or approval of any governmental authority, Mortgagee or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

**[15.3] Reliance on Amendments.** Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## ARTICLE XVI

### General Provisions

**[16.1] 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 the Lot and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, and its Officers and agents, and their respective successors in interest, for the term of 60 years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of 10 years each unless, within 6 months prior to the expiration of the initial 60-year term or any such 10 year extension period, a recordable written instrument, approved by 51 percent of all Owners entitled to vote and holding at least 51 percent of the voting power of the Association terminating the effectiveness of this Declaration shall be filed for recording in the Office of the County Recorder of Placer County, California.

### **[16.2] Construction of Declaration.**

(a) **Restrictions Construed Together.** All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) **Restrictions Severable.** Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and

severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Exhibits. All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

IN WITNESS WHEREOF, the undersigned, being the authorized representative of the Association herein, has executed this Declaration this \_\_\_\_ day of \_\_\_\_\_ 2009.

Kingswood Village Property Owners Association

By: \_\_\_\_\_  
Secretary