

**RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
RIVIERA HEIGHTS ASSOCIATION**

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**RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
OF
RIVIERA HEIGHTS HOMEOWNERS' ASSOCIATION**

This Restated Declaration of Covenants, Conditions and Restrictions amends and replaces all prior Declarations of Covenants, Conditions and Restrictions and amendments thereto which affect the Properties (as defined below), commonly known as Riviera Heights, as follows:

RECITALS

A. On July 13, 1970, Edward De Felice, dba Riviera-Heights Development Co., ("Declarant") recorded a Declaration of Covenants, Conditions and Restrictions for Riviera-Heights Unit No. 1, in Book 636, Page 117, of the official records of Lake County ("Unit-1 Declaration"). On September 27, 1971, Declarant recorded a Declaration of Covenants, Conditions and Restrictions for Riviera-Heights, Unit No. 2, in Book 676, Page 44 of the official records of Lake County ("Unit-2 Declaration"). The Unit-1 Declaration and the Unit-2 Declaration may be referred to collectively herein as the ("Original Declarations").

B. At the time the respective Original Declarations were recorded, Declarant was the owner of that certain real property ("Properties," as that term is defined herein) located in an unincorporated portion of Lake County, California, a portion of which are more particularly described in the subdivision maps recorded in the official records of Lake County as follows:

Riviera Heights Unit No. 1, recorded on May 4, 1970, in Book 11, pages 44-49,
("Unit No. 1 Map"); and,
Riviera Heights Unit No. 2, recorded on September 8, 1971, in Book 12, pages 8 and 9
("Unit No. 2 Map").

C. It was the intention of the Declarant to sell and convey residential Lots to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in the Original Declarations and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties as a Planned Development as described in § 1351(k) of the *California Civil Code*. It was the further intention of Declarant that the "Common Areas" and "Common Facilities" be maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

D. The undersigned, as President of the Riviera Heights Homeowners' Association ("Association"), certifies that on **April 12, 2004**, not less than a majority of the Members of voted to amend and restate the Original Declarations, all in accordance with the procedures for amendment set forth in the Original Declarations. It was the intention of said Members of the Association to replace the Original Declarations, in their entirety, with the recordation of this Declaration. The Owners' action to amend and restate the Original Declarations as set forth herein and the fact that the requisite percentage of affirmative votes required in the Original Declarations was achieved, is attested by the execution of this Restated Declaration of Covenants, Conditions and Restrictions by duly authorized officers of the Association, as required by *California Civil Code* § 1355(a). As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

Section 1 Definitions

Section 1.0. “Sections”. All references to Sections, unless otherwise indicated, shall mean the Sections of this Declaration.

Section 1.1. “Architectural Review Committee” or “ARC” means the committee created in accordance with Section 5 of this Declaration.

Section 1.2. “ARC Rules” means the rules, regulations and policies adopted or approved by the ARC of the Association as the same may be in effect from time to time. The ARC Rules are part of the Association Rules.

Section 1.3. “Articles” mean the Articles of Incorporation of Riviera Heights Homeowners’ Association, filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 1.4. “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 Section 4 of this Declaration.

Section 1.5. “Association” means Riviera Heights Homeowners’ Association, a California non-profit corporation, its successors and assigns. The Association is an “Association” as defined in *California Civil Code* § 1351(a).

Section 1.6. “Association Rules” means the rules, regulations and policies adopted by the Board of Directors of the Association as the same may be in effect from time to time.

Section 1.7. “Board of Directors” or “Board” means the Board of Directors of the Association.

Section 1.8. “Bylaws” mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.9. “Common Area” means all the real property and improvements, including, without limitation, landscape areas, pool, clubhouse and other recreational areas within the Project owned by the Association for the common use and enjoyment of all of the Owners.

Section 1.10. “Common Expense” means any use of Assessments authorized by the Governing Documents 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 or any portion of any Lot that the Association is obligated to maintain or repair, (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors or any portion of any Lot that the Association is obligated to maintain or replace, and for nonpayment of any Assessments, 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.

Section 1.11. “Common Facilities” means the swimming pool and apron area, pool storage and pump house, pool furniture, clubhouse, fishing pier, boat launch ramp, picnic area, Greenbelt Areas, Wilderness Area, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed, installed, or located within the Common Area. The Common Facilities are a part of the Common Area.

Section 1.12. “County” means the County of Lake, State of California, and its various departments, divisions, employees and representatives.

Section 1.13. “Declarant” means the original developer of the Properties and any successors and assigns.

Section 1.14. “Declaration” means this instrument, as it may be amended from time to time.

Section 1.15. “Duplex Lots” means the Lots described in Section 1.32

Section 1.16. “Governing Documents” is a collective term that means and refers to this Declaration, the Articles, the Bylaws, and the Association Rules, including ARC Rules.

Section 1.17. “Greenbelt Areas” means the real property described as Parcel “B” and Parcel “C” on Unit No. 1 Map and Parcel “A” on Unit No. 2 Map.

Section 1.18. “Improvement” includes, without limitation, the construction, reconstruction, installation, alteration, or remodeling of any buildings, walls, decks, fences, swimming pools, streets and driveways, 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 a Residence and which are not visible from any other Lot or the Common Area.

Section 1.19. “Lot” means any parcel of real property designated by a number on the Subdivision Maps for any portion of the properties except the Common Area or a Merged Lot. When appropriate within the context of this Declaration, “Lot” shall also include the Residence and other improvements constructed or to be constructed on a Lot.

Section 1.20. “Manager” means any person or entity retained by the Board to manage the day-to-day affairs of the Association under the Board’s direction.

Section 1.21. “Marina” or **“Riviera Heights Marina”** means the real property described in that certain Grant Deed recorded on June 4, 1970 in the Official Records of Lake County in Book 632 at Page 189.

Section 1.22. “Map(s)” or **“Subdivision Map(s)”** means the Subdivision Maps described in Recital “B” of this Declaration.

Section 1.23. “Member” means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Section 16.6.

Section 1.24. “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. **“First Mortgage”** means a Mortgage having priority over all other Mortgages. **“Eligible First Mortgage”** means a First Mortgage who has sent a written request for notice to the Association, stating its name and address and the Lot number or address of the Residence on which it has the Mortgage.

Section 1.25. “Owner” means any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the County. The term “Owner” shall include, except where the context otherwise requires, the family, guests, tenants and invitees of an Owner.

Section 1.26. “Planned Development” means a development as defined in *Civil Code* § 1351(k).

Section 1.27. “Project” means the Properties and any other real property owned by the Association for the benefit of the owners in common, and the improvements located thereon which are intended to create a Planned Development.

Section 1.28. "Properties" means all parcels of real property (Common Area and Lots) described or referred to in Exhibit "A" attached to this Declaration, together with all buildings, structures, utilities, Common Facilities, and other improvements located thereon, and all appurtenances thereto. The term Properties shall also include any additional real property owned by the Association for the benefit of all Owners or annexed to the Project and any further subdivision of the real property described in Exhibit "A".

Section 1.29. "Recreational Area" means the real property and improvements located thereon which are owned or maintained by the Association for the common recreational use and enjoyment of the Owners. The Recreational Area improvements are a portion of the Common Area.

Section 1.30. "Regular Assessment" means an Assessment levied on an Owner and his or her Lot in accordance with Section 4.2.

Section 1.31. "Residence" means a structure constructed and occupied as a residential dwelling.

Section 1.32. "Single Family Residential Use" means occupation and use of a Lot for a single family dwelling in conformity with this Declaration and the requirements imposed by applicable zoning or other laws or governing regulations limiting the number of persons who may occupy residential dwellings; except that the following Lots ("**Duplex Lots**") may contain two attached residential dwellings:

Unit No 1 Map:	Unit No. 2 Map:		
Block	Lots	Block	Lots
3	45 through 55, inclusive	22	1 through 18, inclusive
10	4 through 25, inclusive		
11	5 through 19, inclusive		
14	10 through 17, inclusive		
18	2 through 22, inclusive		

Section 1.33. "Special Assessment" means an Assessment levied on an Owner and his or her Lot in accordance with Section 4.3.

Section 1.34. "Special Individual Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.4.

Section 1.35. "Subdivision Map(s)" or "Map(s)" means the Subdivision Maps described in Recital B of this Declaration.

Section 1.36. "Wilderness Area" means the real property described in that certain Individual Grant Deed recorded in the Official Records of Lake County on August 24, 1971 in Book 673 at Pages 53, 54 and 55; excepting therefrom the real property described in that certain Grant Deed recorded in the Official Records of Lake County on November 3, 1993 as document number 93-022330.

Section 2 Project Description, Rights and Obligations of Owners

Section 2.1. Description of Project. The Project has been developed as a residential Planned Development containing individual Lots and the Common Areas as described in the Governing Documents, consisting of that real property shown as Parcel A on Unit No. 1 Map, (commonly known as the Clubhouse and Grounds); the Green Belt Areas and the Marina and Wilderness Area.

Section 2.2. Owners' Nonexclusive Easements of Enjoyment. Every Owner shall have a nonexclusive 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 the Common Areas, any unassigned parking and storage spaces within the Common Area, to regulate and restrict swimming and any other uses of the Recreational Areas, including among other things to prohibit entirely certain uses, and to charge reasonable admission and other fees or to limit the number of guests of Members who may use any Recreational Area.

(b) The right of the Association to adopt Association Rules as provided in Section 3.7 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 of the Owners and/or the right to use the Common Facilities, other than streets/roads or driveways, by any Owner and/or the Owner's tenants and guests, subject to compliance with the due process requirements of Section 16.

(c) The right of the Association, in accordance with its Articles and Bylaws, 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 Section 4.3.

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, utility or other person or entity for such purposes and subject to such conditions as may be in the best interests of the Association or as required by law; provided, however, that no such dedication or transfer shall be effective unless approved by at least a majority of the Members at a duly called meeting at which a quorum is present or by Written Ballot as provided in the Bylaws, and an instrument reciting such approval has been recorded in the official records of the County. No dedication shall be permitted that impairs the ingress and egress to any Lot.

(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. In case of emergencies, the right of entry shall be immediate.

Section 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 Lot shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Governing Document, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person shall observe and comply with the Governing Documents.

Section 2.4. Delegation of Use.

(a) **Delegation of Use and Leasing of Lots.** Any Owner may delegate the Owner's rights to use and enjoy the Common Area and Common Facilities to person(s) who reside on Owner's Lot, including members of the Owner's family, tenants, lessees and contract purchasers (collectively "Tenants"), provided that any rental or lease must be in writing and may only be for Residential Use and for a term not less than thirty (30) days.

During any period when a Lot 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 Lot, provided that this restriction shall not apply to an Owner-lessor who

is contemporaneously residing in another Residence or owns another undeveloped Lot within the Properties.

Any rental or lease of a Lot shall be subject to the provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any Tenant with a current copy of all Governing Documents and shall be responsible for compliance by the Owner's Tenant with all of the provisions of the Governing Documents during the Tenant's or lessee's occupancy and use of the Lot.

(b) Discipline of Lessees; Exercise of Eviction Authority. 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 Area, and the imposition of fines and penalties against the Owner, Tenant, or both.

Whether or not such right is stated in any rental agreement, every Owner who rents his or her Lot automatically grants to the Association the right to determine a Tenant's default under the Governing Documents and to terminate the tenancy and evict 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 and Tenant shall be jointly and severally 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 refuses to make such reimbursement, the sums shall constitute a special Individual Assessment pursuant to Section 4.4 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 §383 and 1165 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 penalty levied pursuant to this Section 2.4 shall be considered a Special Individual Assessment as defined in Section 4.4, below. If a Special Individual Assessment is imposed as a result of the conduct of a Tenant, the Tenant 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 Tenant 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 Lot shall be responsible for assuring compliance by the Tenant 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 Tenant) on account of the misconduct of the Owner's Tenant unless and until the following conditions have been satisfied:

- (i)** The Owner has been given written notice from the Board, the Association's property manager or authorized committee of the Board detailing the nature of the Tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter. Any hearing requested hereunder shall be conducted in accordance with Section 16.6(e);
- (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.

Section 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 Tenant of the Owner's Lot prior to the Tenant's occupancy of the Lot. Each Owner or Tenant shall also notify the property manager or secretary of the Association of the names and telephone numbers of all persons to whom such Owner or contract purchaser has delegated any rights to use and enjoy the Properties and the relationship that each such person bears to the Owner or contract purchaser.

(b) **Contract Purchasers.** An Owner must delegate his or her voting rights as a Member of the Association and the Owner's right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the Lot 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 Lot sold has been transferred to the purchaser.

(c) **Notification Regarding Governing Documents.**

(i) As more particularly provided in the *California Civil Code* § 1368, or any superseding statute, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner must provide to the prospective purchaser:

(A) a current copy of the Governing Documents;

(B) the Association's most current financial statement;

(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, attorney's fees, interest, and reasonable costs of collection which, as of the date the delinquency statement is issued, are or may become a lien on the Lot being sold; and,

(D) any change in the Association's current Regular and Special Assessments and fees which have been approved, but have not become due and payable as of the date the disclosure is provided.

(ii) The Association shall, within ten (10) days of the mailing or delivery by the owner of a request, provide the Owner with a copy of the items specified in subparagraph (c)(i) above, and a copy of the most recent documents distributed pursuant to *Civil Code* § 1365, or superseding statute. The Association shall be entitled to impose a fee for providing the Governing Documents and delinquency statement not to exceed 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 enhancing or protecting the Common Area and Common Facilities and/or the interests of all Owners.

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

(f) **Joint Ownership of Lots.** 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 and Adjacent Owners. Each Owner shall be obligated to permit the Owners of adjacent Lots or the representatives of such adjacent Owners to enter the Owner's Lot for purposes of performing installations, alterations or repairs to mechanical or electrical services, which are reasonably necessary for the use and enjoyment of his or her Lot, provided that requests for entry are made at least forty-eight (48) hours in advance and that entry is at a time convenient to the Owner whose Lot is being entered. Each Owner shall also honor the right of the Association and its agents to enter Lots as provided in Section 3.6(b) of this Declaration.

Section 3 Homeowners' Association

Section 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.

Section 3.2. One Class of Membership. The Association shall have one (1) class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

Section 3.3. Voting Rights of Members. Each Member of the Association shall be entitled to one (1) vote for each Lot owned by said Member. When more than one (1) person holds an interest in any Lot, all such persons shall be Members, although in no event shall more than one (1) vote be cast with respect to any Lot. Voting rights may be temporarily suspended under those circumstances described in Section 16.

Section 3.4. Assessments. The Association shall have the power and obligation to establish, fix and levy Assessments against the Owners of Lots within the Properties and to enforce payment of such Assessments in accordance with Section 4 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.

Section 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 Lots 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. Tenants who are delegated rights of use pursuant to Section 2.4 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.

Section 3.6. Powers and Authority of the Association:

(a) Powers Generally. The Association shall have the responsibility of 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. The specific powers of the Association and the limitations thereon shall be as set forth in Article VI of the Bylaws.

(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) obligations to enforce the architectural and land use restrictions of Section 5 (Architectural Review Committee) and Section 7 (Use of Property and Restrictions); (ii) any obligations with respect to construction, maintenance and repair of adjacent Common Areas; or (iii) to make necessary repairs and maintenance that an Owner has failed to perform which, if left undone, will create a nuisance, pose a threat to, or cause an unreasonable interference with Association property or the quiet enjoyment of any other Owner.

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 forty-eight (48) 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.

In no event shall the Association's right of entry be construed to permit the Association or its agents to enter any Residence without the Owner's prior permission.

(c) Association as Attorney-in-Fact for Owners. Without limiting the generality of the foregoing, the Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Lot to (i) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) deal with Properties upon their destruction or obsolescence as hereinafter provided; and (iii) deal with and handle insurance and insurance proceeds, as provided in Sections 10 and 11, and condemnation and condemnation awards, as provided in Section 12. The acceptance by any person or entity of any interest in any Lot shall constitute an appointment of the Association as the Owner's attorney-in-fact as provided above.

Section 3.7. Association Rules.

(a) **Rule-Making Power.** The Board may, from time to time and subject to the provisions of the Governing Documents, 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 and Common Facilities 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; (ii) architectural control and the rules of the ARC under Section 5; (iii) the conduct of disciplinary proceedings in accordance with Section 16; (iv) regulation of parking, pet ownership and other matters subject to regulation and restriction under Section 7; (v) collection and disposal of refuse; (vi) minimum standards for the maintenance of landscaping or other Improvements on any Lot and (vii) any other subject or matter within the jurisdiction of the Association.

Notwithstanding the foregoing grant of authority, the Association Rules shall be consistent with and shall not 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 provisions contained in the other Governing Documents shall 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.

(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 thirty (30) days after the proposed rule or rule amendment has been (i) published by the Association or otherwise communicated to the Owners in writing and (ii) posted on Bulletin Boards within the Properties, if the Association has established such Bulletin Boards. 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 dates as the Board may deem appropriate. Any duly adopted rule or amendment shall be distributed to the Owners by mail or other reasonable means.

Section 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 Section 16.

Section 3.9. Limitation on Liability of Association's Directors and Officers.

(a) **Claims Regarding Breach of Duty.** No director or officer, or other agent of the Association (collectively "Agent") 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 Bylaws, provided that such Agent has, upon the basis of such information as may be possessed by the Agent, 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 a reasonable and 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 director or officer 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, an

act of God 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* § 1365.7, or comparable superseding statute, and to the extent this provision is inconsistent with said section, the *Civil Code* shall prevail.

Section 4 Assessments

Section 4.1. Assessments Generally.

(a) **Covenant to Pay Assessments.** Each Owner of each Lot, by acceptance of a deed or other conveyance therefor (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 attorney's 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, trustees' 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 attorney's 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, Section 4.9(b).

(d) **Notice of Increased Assessments.** The Association shall provide notice of any increase in Assessments by first-class mail to the Owners not less than thirty (30) nor more than sixty (60) days prior to the increase becoming due.

(e) **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.

Section 4.2. Regular Assessments.

(a) **Preparation of Annual Budget.** Not less than forty-five (45) nor more than sixty (60) days prior to the beginning of the Association's fiscal year, unless otherwise provided by law, 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 10.5 of the Bylaws. 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 by written ballot of the Association conducted in accordance with the Bylaws.

(b) **Establishment of Regular Assessments.** The total annual expenses estimated in the Association's budget shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater 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 by written ballot or at a meeting of the Association, except to address “emergency situations” as defined in Section 4.2 (c), below.

(c) Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) 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 interest which the Association is obligated to maintain where a threat to personal safety is discovered; or,
- (iii)** An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interest 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. For the purpose of allocating, assessing and charging Regular Assessments, a merged Lot, as evidenced by an appropriate document duly recorded in the Official Records of Lake County shall be considered as a single Lot.

(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 Section 2.5(c) 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 on it in good faith.

(f) 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 Section 4.3(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.

(g) 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 on the first day of the fiscal year 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 fifteenth (15th) day after the due date.

Section 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. Subject to the limitations of Section 4.3(b) and except as prohibited in Section 4.2(a), 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, 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.

(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 Section 10.

(b) Special Assessments Requiring Membership Approval. No Special Assessments, which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied; shall be made without the vote or written assent of Members, constituting a quorum, casting a majority of the votes by written ballot or at a meeting of the Association, provided that membership approval shall not be required for any Special Assessment levied to address "emergency situations" as defined in Section 4.2(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 Section 4.2(d). 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 4.3(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 a lump sum within thirty (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.

Section 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 4.3 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 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 16.6(e), 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 Lot which the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any 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 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, management fees, court costs and reasonable attorney's fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(iii) Required Maintenance on Lots. As more particularly provided in Section 3.6(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, 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 thirty (30) days after the mailing of notice of the Assessment.

(c) Special Individual Assessments imposed by the Associations Board of Directors other than those related to delinquent Assessments or specified in subsections (a)(i) and (ii), shall not be enforceable through foreclosure, but the same may be recovered by the Association through other legal processes. Special Individual Assessments may be recorded in the official records of Lake County as a lien and/or a Notice of Non-Compliance against the Owner's Lot. Special Individual Assessments relating to delinquent assessments shall be subject to imposition of a lien and enforceable through foreclosure or sale under a power of sale for failure of an Owner to pay such Assessment, all as more particularly provided in Section 4.9 or specified in subsections (a)(i) and (ii).

Section 4.5. Purpose and Reasonableness of Assessments.

(a) Purpose. 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.

(b) Reasonable. 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.

Section 4.6. Exemption of Certain Property 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.

Section 4.7. Obtaining Member Approval. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 4.2 and 4.3, approval of the requisite percentage of the Members shall be solicited either by written ballot conducted in accordance with *Corporations Code* § 7513 (or any comparable superseding statute), or at a meeting of the Members called for that purpose, duly noticed in accordance with the Bylaws. The quorum required for such membership action shall be a majority of the Members.

Section 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 which has offices located with the County of Lake. 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.

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* § 1365.5 and the Bylaws.

(b) **Commingling of Funds.** 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 (c), below.

(c) **Separate Accounting.** 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 Section 4.3(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.

Section 4.9. Collection of Assessments; Enforcement of Liens.

(a) **Delinquent Assessments.** If any lump sum payment of a Regular Assessment or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within fifteen (15) days after the same becomes due, such payment shall be delinquent and the amount thereof shall bear interest at the maximum rate allowed by law from and after 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* §§ 1366 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* § 1367 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 attorney's 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, 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 Section 4 and *California Civil Code* § 1366;

(B) A legally sufficient 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; and

(E) The name and address of the trustee authorized by the Association to enforce the lien by sale... lien for Special Individual Assessments shall be subject to the limitations imposed by Section 4.4(c).

(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 both and may accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure by the trustee designated in the Notice of Delinquent Assessment or by a trustee substituted pursuant to *California Civil Code* § 2934a. Any sale of a Lot by a trustee acting pursuant to this Section 4.9 shall be conducted in accordance with *California Civil Code* commencing at § 2924 and applicable to the exercise of powers of sale in Mortgages or deeds of trust.

(iii) **Actions for Money Judgment.** 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 attorney's fees without foreclosure or waiver of the lien securing same.

Section 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 whenever recorded 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 become due and payable 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 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, and his or her successors and assigns, shall not be solely liable for the Assessments chargeable to such Lot which became due prior to the acquisition of title, unless otherwise allowed by law. Such unpaid Assessments shall be deemed to be Common Expenses collectible from the Owners of all of the Lots, 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.

Section 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 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 property 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.

Section 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 Lots, such taxes shall be included in the Regular Assessments imposed pursuant to Section 4.2 and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

Section 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 4.13 shall be subordinate to the rights of any First Mortgagee.

Section 4.14.Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Section 4, 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.

Section 5 Architectural Review Committee

Section 5.1. Appointment of Architectural Review Committee. The Board of Directors may act as an ARC or may appoint an ARC composed of three (3) members. Members of the ARC shall serve for a term of three (3) years subject to the Board's power to remove any Committee member and to appoint successors. Terms shall be staggered so that no more than one (1) term expires each year. In the event of the death or resignation of any member of the ARC, a successor shall be appointed by the Board. The members of the ARC shall not be entitled to any compensation for services performed pursuant hereto.

Section 5.2. Duties of Committee. It shall be the duty of the ARC to consider and act upon the proposals and plans submitted to it pursuant to this Declaration, to adopt Architectural Rules pursuant to this Section 5, to perform other duties delegated to it by the Board of Directors and to carry out all other duties imposed upon it by this Declaration.

Section 5.3. Improvements in General. Except as otherwise provided in the Architectural Rules, no “Improvement” (as defined in Section 1.18) of any kind shall be commenced, erected or maintained within the Properties, nor shall any exterior addition to or change or alteration be made in or to any Lot until the plans and specifications (application) 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 ARC 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.

Section 5.4. Submission of Plans. A written application for approval of plans and specifications for any proposed Improvement shall be submitted to the ARC along with two sets of the plans and specifications for the Improvement by personal delivery or certified mail to the Manager or the chairman of the ARC.

Section 5.5. Basis for Approval of Improvements.

(a) **Original Application.** When an Application for a proposed Improvement is submitted to the ARC for review, the ARC shall grant the requested approval only if the Committee, in its discretion, finds that all of the following provisions have been satisfied:

(i) The Owner has complied with those provisions of this Declaration and the Association and Architectural Rules pertaining to the content and procedures for submittal of plans and specifications;

(ii) The Owner’s plans and specifications;

(A) Conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the ARC;

(B) Will result in the construction of an Improvement that is in harmony with the external design of other structures and/or landscaping within the Properties; and

(C) Will not interfere with the reasonable enjoyment of any other Owner of his or her property; and

(iii) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Properties and with the overall plan and scheme of development and the purposes of this Declaration.

(b) **No Modification to Approved Plans.** Once a proposed Improvement has been duly approved by the ARC, no material modifications shall be made in the approved plans and specifications therefore and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the ARC. In the event that it comes to the knowledge and attention of the Association, its-ARC, or the agents or employees of either that a work of Improvement, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified in Section 5.8, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper ARC review and approval is obtained.

(c) **ARC Discretion.** The ARC shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar improvement or component has previously been approved for use at another location within the Properties if factors such as drainage, topography or visibility from roads, Common areas or other Lots or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement or its use at other locations within the Properties mitigate against erection of the Improvement or use of a particular component thereof on the Lot involved in the Owner’s submittal. It is expressly agreed that the Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when considering an Owner’s request so long as the committee acts reasonably and in good faith.

In approving a request for construction of an Improvement, the ARC may condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement, color or materials modifications or similar mitigating conditions. The ARC shall return one set of such plans to the applicant, with notification of any modification, and written notice of approval, conditional approval, or disapproval.

Section 5.6. Decision. Any decision by the ARC regarding an application for approval of an improvement shall be in writing.

(a) **Notice.** Notice of any decision of the ARC regarding an application for approval of an improvement shall be given to the Owner on whose behalf the application was made in accordance with Section 17.

(b) **Time.** In the event the ARC fails to approve or disapprove such request within thirty (30) days after said plans and specifications have been submitted to it, the application shall be deemed denied. Under such circumstances, the written application, including plans and specifications, may be resubmitted to the ARC. If the ARC fails to approve or disapprove such resubmitted application within thirty (30) days of its resubmittal, the request shall be deemed approved. The ARC shall notify the applicant within twenty-one (21) days of receipt by the ARC of the application if the application is not complete. The notice shall identify the items necessary to complete the application.

Section 5.7. Meetings.

(a) **Generally.** The ARC shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the ARC members shall constitute the action of the ARC and the ARC shall keep and maintain a written record of all actions taken. The Owner shall be entitled to appear at any meeting of the ARC at which the Owner's proposal has been scheduled for consideration or reconsideration. The Owner shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer and/or contractor. Other Owners whose properties may be affected by the proposed Improvement in terms of the structural integrity of any adjoining Residence, view or solar access of the applicant's or any adjacent Lot, noise or other consideration shall also be entitled to attend the meeting.

(b) **Notice.** Reasonable notice of the time, place and proposed agenda for ARC meetings shall be communicated before the date of the meeting to any Owner whose application is scheduled to be heard. If the proposed Improvement will be visible from any neighboring Lot or involves any entry into or modification of a roof or wall shared by an adjacent Residence, the Owners of the other affected Residences shall be notified promptly of the Owner submittal and shall be furnished with notice of an ARC meeting where the application is scheduled to be heard.

Section 5.8. Enforcement. In the event that it comes to the knowledge and attention of the Association, its ACC, or the agents or employees of either that an Improvement, or any modification thereof, is proceeding, or has been completed, without proper approval, the Association shall be entitled to exercise enforcement remedies specified in Section 16, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper ARC review and approval is obtained.

Section 5.9. Architectural Rules. The ARC may, subject to review and approval 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, 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.

Section 5.10.Failure to Commence or Complete Work.

(a) **Commencement.** Upon receipt of approval of an Improvement from the ARC the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement of construction and excavation, if required, pursuant to said approval. In all cases, work on an Improvement project shall commence within a time to be determined by the ARC but in no event more than one-hundred eighty (180) days from the date notice of such approval is mailed to the Owner. If the Owner fails to comply with this paragraph, any approval given pursuant to this Section 5 shall be deemed revoked unless the ARC, upon written request of the Owner prior to the expiration of the initial one-hundred eighty (180) days, extends the time for commencement or completion. No such extension shall be granted except upon a finding by the ARC that there has been no change in the circumstances upon which the original approval was granted and that the Owner has a bona fide intention and ability to complete the Improvement project within the time specified in the extension request.

(b) **Completion.** Unless the Owner has been granted an extension of time to complete the project by the ARC, construction, reconstruction, refinishing or alteration of any such Improvement must be complete within a time to be determined by the ARC, but in no event more than one (1) year after approval of the Improvement by the ARC. If the Owner fails to comply with this section, the Association shall proceed pursuant to Section 5.8 as though the failure to complete the Improvement was a noncompliance with approved plans.

(c) **Exception.** An Owner shall not be considered to have failed to comply with the time requirements to commence and/or complete work on the improvement to the extent and for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents.

Section 5.11.Inspection of Work by ARC. Inspection of the work relating to any approved Improvement and correction of defects therein shall proceed as follows:

(a) During the course of construction, representatives of the ARC shall have the right to inspect the job site to confirm that the Improvement project is proceeding in accordance with the approved plans and specifications.

(b) Upon the completion of any work of Improvements for which ARC approval is required under this Section 5, the Owner shall give the ARC a written notice of completion.

(c) Within thirty (30) days thereafter, the ARC, or its duly authorized representative, shall inspect the Improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approval plans. If the ARC finds that the Improvement was not erected, constructed or installed in substantial compliance with the Owner's approved plans, then within thirty (30) days after receipt of the Owner's written Notice of Completion the ARC shall give the Owner a written notice of noncompliance detailing those aspects of the Improvement project that must be modified, completed or corrected. If the violation or nonconforming work is not corrected, the Association shall have the enforcement rights and remedies set forth in Section 5.8.

(d) If for any reason the ARC fails to notify the Owner of any noncompliance within sixty (60) days of receipt of the Owner's notice of completion, the Improvement shall be deemed to have been constructed in accordance with the approved plans for the project, unless it can be demonstrated that the Owner knew of the noncompliance and intentionally mislead the ARC with respect thereto.

Section 5.12.Variances. The Board shall be entitled to allow reasonable variances with respect to Section 6 or any restrictions specified in Section 7 in order to overcome practical difficulties, avoid unnecessary expense 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 ten (10) days' prior written notice to all Owners of Lots within one hundred (100) feet of the property for which the variance applies. The Owners receiving notice of the proposed variance shall have thirty (30) days in which to submit to the Board written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the thirty (30) day comment period has expired; and

(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 Lot or Common Area within the properties.

Section 6 Minimum Construction Standards

Unless a variance is requested from, and granted by, the ARC in accordance with Section 5.12, Improvements shall conform to the following minimum construction standards:

Section 6.1. Licensed Contractor. Improvements requiring a contractor's license shall be constructed by a contractor licensed under the laws of the State of California.

Section 6.2. Approval by ARC. No building, fence, wall, landscaping, or other structure or Improvement shall be erected, altered or placed on any Lot until building plans, specifications and a plot plan showing the location of structures and/or other improvements on the Lots have been submitted to and approved by the ARC as described in Section 5.

Section 6.3. 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 the roofs, retaining walls, doors, trim, fences, pipes, equipment, mailboxes and newspaper tubes. No exterior finishes shall be used without prior approval of the ARC; except that no prior approval shall be required to repaint the exterior of any Residence using the same color existing of the Residence at the time of repainting.

Section 6.4. Roofing Materials. No flat roofs or rock material shall be permitted. The roofing materials shall consist of one of the following materials: composition shingles, or tile. Any other type of roofing material must be submitted for review and approval by the ARC.

Section 6.5. 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.

Section 6.6. Patios, Walkways and Driveways. All driveways, patio, and walks materials shall be architecturally compatible to the design of the main structure.

Section 6.7. Water Systems and Pools. No individual water 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 ARC. Approval of such systems shall also be obtained, if required, by any responsible governmental agency.

Section 6.8. Garages. Each Residence shall have at least a two-car attached garage or carport. Garages for detached single family Residences shall not exceed facilities for more than three (3) cars and garages for Duplex Lots shall not exceed facilities for more than two (2) cars for each attached Residence.

Section 6.9. Fences. All screening and fencing must be approved by the ARC and must be designed to conform to the design of the proposed or existing Residence. All screening and fencing must be maintained in a good sound structural manner, 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. No fence, wall or coping ("Fence") shall exceed a height of six (6) feet measured from the adjoining ground surface inside the Fence. Boundary planting along side and rear lot lines, except trees with single trunks, shall not be permitted to grow higher than eight (8) feet.

Section 6.10.Landscaping. As noted in Section 5, landscaping is a matter which is subject to review and regulation by the ARC.

Landscaping shall include lawns, shrubs, trees and flowers. The use of artificial materials such as plastic plants or flowers or artificial turf, shall be disapproved by the Committee, although nothing contained herein shall prohibit the use of large decorative natural rocks as a landscape element or the use of limited gravel and/or bark in flower beds between or under substantial vegetation.

Section 6.11.Minimum Building Size. Every Residence constructed on any Lot shall have not less than twelve hundred (1200) square feet of fully enclosed floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces, garages, carports and other buildings) without prior approval of the Board.

All Residences shall be limited to one (1) story in height. The Committee shall have the authority to establish regulations as to height and size requirements for all other types of buildings and structures, including fences, walls, copings, etc.

Section 6.12.Building Set-Backs. All buildings or other structures permitted to be constructed on a lot shall be set back from the sides of such lot by a distance which is at least equal to ten percent (10%) of the length of the total front boundary of the lot. Front and rear set-backs shall be no less than twenty (20) feet from the front or rear boundary line of the lot. In the event of any conflict between these set-back requirements and any greater set-backs required by appropriate governmental agencies, such other requirements shall prevail.

Section 7 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 Lots, Common Areas and other parcels within the Properties.

Section 7.1. Residential Use. The use of the Lots within the Properties is hereby restricted to Single Family Residential Use, as defined in Section 1.32. In no event shall a Residence be occupied by more individuals than permitted by applicable zoning laws or governmental regulations. An Owner is permitted to lease or rent his or her Lot subject to the provisions of Section 2.4 ("Delegation of Use") of this Declaration.

Section 7.2 Merging of Lots An Owner may merge up to and including three(3) Lots to create a single Lot in the Project. In no case may an owner merge more than three(3) Lots.

Section 7.3. Conveyance of Lots. Each Lot shall be conveyed as a separately designated and legally described fee simple estate subject to this Declaration. All Lots and the Residences and other Improvements erected or placed thereon, shall at all times be maintained in such a manner as to prevent their becoming unsightly.

Section 7.4. Improvements. No Owner shall at his or her expense or otherwise make any alterations or modifications to the exterior of the buildings, fences or railings containing the Owner's Residence without the prior written consent of the ARC. Furthermore, no alterations to the exterior of the Residence or the Lot surrounding any Residence shall be made by any Owner without the prior written consent of the ARC. 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 Residence or Lot which will adversely affect any other Residence or its occupants.

Section 7.5. Common Areas. The Common Areas shall be preserved as open space and used for storage of water, recreational purposes and other purposes incidental and ancillary to the use of Lots. Such use shall be limited to the private use for aesthetic and recreational purposes by the 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 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 or the Recreation Area 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 the Association and each and every other Owner, and to hold the Association and such Owner(s) harmless from, and to defend them against, any claim of any person for personal injury or property damage occurring within the Lot of that particular Owner, except to the extent (i) that such injury or damage is covered by liability insurance in favor of the Association or other Owner; (ii) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner; or (iii) does not increase the cost of such insurance.

Section 7.6. Prohibition of Noxious or Offensive Activities. No illegal, noxious or offensive activities shall be carried out or conducted upon or affecting any Common Area nor shall anything be done within or near the Properties which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including but not limited to barking dogs, audio amplifier systems, television systems, motor vehicles, power tools, or the operation of excessively noisy air conditioners or other appliances, to emanate from an Owner's Lot or from activities within or near the Common Area, which would unreasonably disturb any other Owner's or Tenant's enjoyment of his or her Lot or the Common Area.

Section 7.7. Household Pets. The following restrictions regarding the care and maintenance of pets within the Properties shall be observed by each Owner and resident:

(a) A reasonable number of household pets (dogs and cats) and a reasonable number of pets in cages or aquariums may be kept within an Owner's Lot so long as the same are not kept, bred or maintained for commercial purposes. No insects, reptiles, livestock, poultry or any other animals of any kind shall be kept, bred or raised within any Lot.

(b) Dogs shall be allowed on Common Area only when they are leashed and are otherwise under the supervision and restraint of their Owners. The Board may adopt Rules limiting or excluding dogs from specific Common Areas.

(c) No household pet shall be left chained or otherwise tethered on a Lot or in the Common Area. Pet owners shall be responsible for the prompt disposal of pet wastes deposited by their pets in the Common Area including Restricted Use Common Areas.

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

(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.

Section 7.8. Business Activities. No business or commercial activities of any kind whatsoever shall be conducted within the Properties without the prior written approval of the Board, provided that the foregoing restriction shall not apply to the signs or activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this Section 7.8 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 Lot;
- (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 Lot in accordance with the Governing Documents;
- (e) Garage/yard sales are limited to two (2) per year per Lot.
- (f) Conducting any other activities within the Owner's Lot otherwise compatible with residential use and the provisions of this Declaration which do not increase vehicular traffic within the Properties, and 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.

Section 7.9. Garbage. No rubbish, trash, or garbage shall be allowed to accumulate outside of any Lot. Any trash that is accumulated by an Owner or other occupant of a Lot shall be stored entirely within appropriate covered disposal containers and screened from view from any street, neighboring Lot or Common Area.

Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Properties to a public dump or trash collection area by the Owner or Tenant at his or her expense. The Association shall be entitled to remove the accumulation of rubbish, trash, garbage or debris and to impose reasonable fines and penalties for the improper accumulation of garbage and refuse.

Section 7.10. Grass Weeds and Brush. All Owners are obligated to comply with County of Lake Ordinances and the Kelseyville Fire Protection District regulations concerning the care o property, both unimproved and improved, by the removal of grass, weeds and brush there from. In addition, ,the Board of Directors of the Association may determine by resolution that the removal of grass, weeds or brush is desirable and necessary for the safety and enjoyable living of the Owners

Section 7.11.Storage. Storage of personal property within any Lot shall be entirely within enclosed storage areas. There shall be no woodpiles nor storage piles accumulated on top, or outside of any enclosed storage area that are visible from the street.

The Association shall have the right to establish and maintain on the premises appropriate storage yards and storage buildings for the maintenance of materials and equipment used by the Association in connection with its planting, building, repair, maintenance and preservation of the structures, landscaping and other Improvements within the Common Areas which the Association is obligated to repair and maintain.

Section 7.12.Clotheslines. No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes on the balcony area of any Lot or in the Common Area.

Section 7.13.Antennas and Similar Devices. Except as otherwise provided by law, no Owner, contract purchaser, resident or Tenant shall, place or maintain any objects, such as masts, towers, poles, television; radio, "CB" antennas, or television satellite reception dishes on or about the exterior of any building within the Properties, which are visible from any adjacent lot or the Common Area without the prior approval of the ARC and the Board of Directors. No radio station or shortwave operators of any kind shall operate from any lot or Residence unless approved by the ARC. Furthermore, no activity shall be conducted within any Lot which causes an unreasonable broadcast interference with television, radio or telephone reception on any other Lot.

The location of common antennas or connection facilities for any cable television or similar system, if any, serving more than one Lot shall be as designated by the Association and shall be subject to the right of the Association to install, use, and maintain such common antennas or cable television or similar facilities for the use and benefit of the Owners.

Section 7.14 Sports Fixtures. No fixed basketball standards or other sports apparatus shall be permitted within the Properties without the prior approval of the ARC; except that the Association may cause such fixtures to be installed in the Common Areas for the benefit of all members. The Board may adopt Rules to permit and regulate use of temporary/movable sports apparatus.

Section 7.15.Diseases and Pests. No Owner shall permit any thing or condition to exist in his or her Lot which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

Section 7.16. Parking and Vehicle Restrictions. The following parking and vehicle restrictions shall apply within the Properties:

(a) Unless otherwise permitted by the Association, no vehicle, trailer, etc. shall be parked or left within the Properties other than within a garage or driveway or other approved and properly constructed off-street parking. No vehicle owned, operated or within the control of any Owner and member of the Owner's family or any guest of the Owner, shall be parked on any paved portion of a street within the Properties after sunset;

(b) Except as otherwise provided in subparagraph (f), below, only the following vehicles ("authorized vehicles") shall be permitted to be parked within the Properties: standard passenger vehicles, including 4-wheel drive passenger vehicles, pickup trucks as defined by California Vehicle Code Section 471, boats, trailers, campers and recreational vehicles. Trucks in excess of three-quarter tons in payload weight, commercial vehicles (including without limitation, any dump truck, cement-mixer, oil or gas truck, or delivery vehicles) and buses are not "authorized vehicles" and shall only be permitted within the Properties as provided below;

(c) All driveways and garages shall be maintained in a neat and orderly condition. The garages are to be used for the parking of authorized vehicles and shall not be converted to living quarters or work shops or used for storage which will preclude the parking of the Owner's or occupant's authorized vehicles within the garage. All garages shall remain closed except for a reasonable period during which the garage is being used;

(d) No motor vehicles shall be constructed, reconstructed, or repaired within the Properties, except while within a garage, and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Properties; provided however that the provisions of this Section shall not apply to emergency vehicle repairs;

(e) Parking by commercial vehicles for the purpose of making deliveries or service calls shall be permitted only in accordance with the Association Rules;

(f) The Board shall have the authority to tow or restrain by use of devices such as the “Denver Boot”, at the Owner’s expense, any vehicle parked or stored in violation of this Section. The Board shall post such notices or signs within the Common Area as may be required by law to effectuate this towing provision; and,

(g) The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding parking and vehicles within the properties as may be deemed prudent and appropriate.

Section 7.17.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; provided, however, that the ARC may grant permission for such temporary buildings or structures for storage of materials during construction on the lot.

Section 7.18 Utility Lines. All utility, cable television, and similar type lines within the Properties to Improvements constructed in the Properties shall be placed underground for all installation commencing after the adoption of this Declaration, unless otherwise approved by the Board. The Board shall adopt rules to regarding the undergrounding of such lines installed prior to the adoption of this Declaration. All cable television and similar lines shall be contained within the Residences unless otherwise approved by the Board.

Section 7.19.Water Supply System. No individual water supply system, sewage disposal system, or water softener system shall be permitted on any Lot outside the Residence unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any applicable water district, the County health department, and all other applicable governmental authorities, and upon approval of the ARC.

Section 7.20.Solar Heating Systems. Subject to limitations imposed by law, the ARC 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.

Section 7.21.Exterior Lighting. 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 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 unshielded spot/floodlight fixtures are permitted.

Section 7.22 Removal of Trees No tree with a trunk in excess of three inches in diameter shall be removed from and Lot without first obtaining a written consent of the ARC and subject to the enforcement procedures in 16.6

Section 7.23. Activities Affecting Insurance. Nothing shall be done or kept within any Lot or within the Common Area which will increase the rate of insurance relating thereto on any policy maintained by the Association (see Section 10) without the prior written consent of the Association and no Owner shall permit anything to be done or kept within 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 Lot or any part of the Common Area.

Section 7.24. Variances Upon the application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set for in this Section 7, if specific application of the restriction will, in sole discretion of the Board, either cause and undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of the development contemplated by this Declaration. In considering and acting upon any request for a variance, the Board shall follow the procedures set forth in Section 5 for the granting of architectural variances.

Section 7.25. Enforcement of Property Use Restrictions. The Objective of this Declaration shall be to promote and seek voluntary compliance

Section 8 Maintenance Responsibilities

Section 8.1. Association.

(a) **Common Area - General.** 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 written approval of the Association.

Section 8.2. Owner. Except as specifically provided in 8.1 above, each Owner shall be responsible to clean, maintain in good condition, repair and replace his or her Residence, Lot and all Improvements, including without limitation the glass surfaces, glass doors, windows, screens and screen doors, other exterior doors, window fixtures, hardware, patio areas, and concrete surfaces on his or her Lot, the interior of his or her Residence, the plumbing, electrical, heating and air conditioning systems servicing his or her Residence, and, each Owner shall be responsible for the maintenance, repair and replacement of trees, bushes, flowers and all other landscaping on his or her Lot. The interior of windows visible from the street, Common Area or another Lot, shall be covered only by curtains, drapes, shutters, blinds, shades or similar devices but cannot be painted or covered by foil, cardboard, sheets, blankets, or other similar materials.

Section 8.3. 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, 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 Section 4.4.

(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 fifteen (15) days after receipt of the request. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3.6(b) to enter the Owner's Lot and Residence and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 16.6, hereof.

Section 8.4. 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 performing its work.

Section 8.5. Damage and Destruction Affecting Residence - Duty to Rebuild or Clear. If all or any portion of any Residence is damaged or destroyed by fire or other casualty, it shall be the duty of the

Owner of the Lot upon which such Residence is situated to rebuild, repair or reconstruct such Residence in a manner which will restore it substantially to its appearance and condition immediately prior to such fire or other casualty, or clear and remove all debris and return the Lot to its original unimproved natural condition prior to construction of the Residence, unless otherwise approved by the ARC. Any such repair, reconstruction or clearing shall be subject to the provisions of Section 5.

Section 8.6. Time Limitation. The Owner of any damaged Lot or Residence shall commence reconstruction or clearing within three (3) months after the damage occurs and shall proceed diligently to complete such reconstruction or clearing as soon as reasonably practical, not to exceed one (1) year.

Section 9 Easements

Section 9.1. Encroachment Easements. If any portion of the Common Area encroaches on any Residence or if any portion of a Residence encroaches on the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Residences and the Common Area are made subject to such easements. 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. If any structure containing a Residence is partially or totally destroyed and then rebuilt and any encroachment on the Common Area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and, all Residences and the Common Area are made subject to such easements.

Section 9.2. Street Easements. Each Owner and the Association shall have and is hereby granted a nonexclusive easement for street, roadway and vehicular traffic purposes over and along the private streets and paved parking areas within the Properties, if any, subject to termination of such easement and the rights and restrictions set forth in this Declaration.

Section 9.3. 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 approved by the Association's Board of Directors. The easements provided for in this Section 9.3 shall in no way affect any other recorded easement on the Properties.

Section 9.4. Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any management company 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 into any Residence shall only be undertaken in strict compliance with Section 3.6(b).

Section 9.5. 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.

Section 10 Insurance

Section 10.1.Types of Insurance Coverage. The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent such insurance, with the coverage described below, is available at a reasonable premium cost:

(a) Fire and Casualty Insurance. A policy of fire and casualty insurance naming as parties insured the Association and any Mortgagee of the Common Area, and containing the standard extended coverage and replacement cost endorsements and such other or special endorsements as will afford protection and insure, for the full insurable, current replacement cost (excluding foundations and excavation, but without deduction for depreciation) as determined annually by the insurance carrier, all Common Facilities and the personal property of the Association for or against the following:

- (i) Loss or damage by fire or other risks covered by the standard extended coverage endorsement; and,
- (ii) Loss or damage from theft, vandalism or malicious mischief.

(b) Public Liability and Property Damage Insurance. To the extent such insurance is reasonably obtainable, the Association shall obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Board of Directors, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and any other Association owned or maintained real or personal property. The limits of such insurance shall not be less than Three Million Dollars (\$3,000,000) or any amount required by law including *California Civil Code* §§ 1365.7 and 1365.9 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for 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.

(c) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this Section, demolition insurance, flood insurance, earthquake insurance and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than one hundred percent (100%) of each year's estimated annual operating expenses and reserves and which shall contain an endorsement of any person who may serve without compensation. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance, including directors and officers liability insurance in the minimum amounts required by law, including *California Civil Code* §§ 1365.7 and 1365.9 that it deems necessary or desirable. The following endorsements should be included, if applicable:

- (i) Change in building codes and demolition coverage (sometimes referred to as "ordinary or law endorsement");
- (ii) Inflation guard coverage;
- (iii) "Agreed-amount" endorsement (to eliminate coinsurance problems);
- (iv) Replacement cost; and,
- (v) Primary coverage.

The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor thereto (except for earthquake insurance). If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area.

Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Lots (including Declarant) and mortgagees, and cross-liability and severability of interest coverage insuring each insured

against liability to each other insured. The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, the Owners and occupants of the Lots and mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

Section 10.2.Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 10.1 is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

The Association, and its directors and officers, shall have no liability to any Owner or mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any mortgagee entitled to notice that the insurance will not be obtained or renewed.

Section 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.

Section 10.4.Mortgagee Requirement. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bonds as are specified in the requirements for planned developments established by the FHLMC, the FNMA and the GNMA, so long as any of them is a Mortgagee or an Owner, except to the extent such coverage is not available or has been waived in writing by the FHLMC, the FNMA and the GNMA, as applicable.

Section 10.5.Trustee. All insurance proceeds payable under any policy described in Section 10.1. may, in the discretion of the Board of Directors, be paid to a trustee or to the Board as trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee, other than the Board, shall be a commercial bank or other institution with trust powers within the County that agrees in writing to accept such trust. If repair or reconstruction is authorized pursuant to Section 11 below, the Association and any duly appointed trustee shall have the duty to contract for such work as provided in Section 11.

Section 10.6.Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 10.1. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

Section 11 Damage or Destruction

Section 11.1.Lots. If any improvements or landscaping on any Lot are damaged or destroyed by fire or other casualty, the Owner of such Lot shall repair or reconstruct the improvement in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or clear all material and debris from the Lot pursuant to Section 8.5, as authorized by the Architectural Review Committee.

The Owner is responsible for the cost of reconstruction or clearing that is not covered by insurance or is within the deductible amount. If an Owner fails to pay the cost of reconstruction or clearing, the Association may elect to pay for the uninsured portion of the cost and shall have the right to assess the Owner(s) for the cost thereof and to enforce the assessment as provided in this Declaration. In any case where insurance proceeds are pre-empted by any Owner's lender for application to said Owner's debt, the Association shall immediately impose an individual Assessment upon said Owner's Lot equal in amount to such preemption pursuant to Section 4.3, and shall enforce such Assessment in accordance with Sections 4.9 and 3.6. The proceeds of such Assessment or lien shall then be substituted for the pre-empted insurance proceeds.

Section 11.2.Common Area. If improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Architectural Review Committee, unless either of the following occurs:

(a) The cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Common Area improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the total voting power of the Association residing in Members and their Eligible First Mortgagees vote against such repair and reconstruction; or,

(b) Available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in Section 4, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

Section 11.3.Rebuilding Procedures. If the improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Common Area improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowing by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

(a) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(b) That such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, material men, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;

(c) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(d) That no part of the cost of the services and materials described in the foregoing Section 11.3(a) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and,

(e) That the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the Common Area improvements, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

The repair or reconstruction shall commence no later than ninety (90) days after the date of such damage or destruction and shall be completed no later than one hundred eighty (180) days after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. The Owner of the damaged or destroyed improvement immediately shall take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

In the event the work required to maintain or to repair or restore damage or destruction involves work that is the responsibility of Owner and the Association as provided in Section 8, then all of such work shall be directed by the Board, with the expense to be allocated between Owner and the Association pursuant to Section 8. If more than one Owner is involved, the expense to be paid by each Owner shall be apportioned by the Board. If the Association is involved in a dispute over the apportionment of such expenses, then the dispute shall be settled by arbitration pursuant to any appropriate alternative dispute process.

If the Association undertakes any work which Section 8 requires an Owner to undertake, or any work which the Association is required to undertake at the expense of the Owner, the Board shall assess the Lot of the 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 or the Lot involved. Such Assessment shall be in lien upon the Lot of the Owner and may be foreclosed, as set forth in Section 4.9.

Section 11.4.Process If Repair or Reconstruction Not Undertaken: If the Common Area improvement is not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners and their respective mortgagees in the same proportion that the Owners are assessed, subject to the rights of the Owners' mortgagees, after first applying the proceeds to the cost of mitigating hazardous conditions on the project, making provision for the continuance of public liability insurance to protect the interests of the Owners until the property can be sold, and complying with all other applicable requirements of governmental agencies.

Section 12 Condemnation

Section 12.1.Lots. If any portion of a lot is taken by eminent domain, the award shall be disbursed to the Owner of the Lot, subject to the rights of the Owner's mortgagees. If the taking renders the lot uninhabitable, the Owner shall be divested of any further interest in the project, including membership in the Association, and the interest of the remaining Owners shall be adjusted accordingly.

Section 12.2.Common Area. If all or any part of the Common Area is taken by eminent domain, the proceeds of condemnation shall be used to restore or replace the portion of the Common Area affected by condemnation, if restoration or replacement is impossible, and any remaining funds, after payment of any and all fees and expenses incurred by the Association relating to such condemnation, shall be distributed among the Owners in the same proportion as such Owners are assessed, subject to the rights of

mortgagees. If necessary, the remaining portion of the project shall be resurveyed to reflect such taking. The Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Lots are not valued separately by the condemning authority or by the court. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof.

Section 13 Mortgagee's Protection

Section 13.1. Mortgages Permitted. Any Owner may encumber his or her Lot with Mortgages.

Section 13.2. Priority of Mortgage. Notwithstanding any other provision of this Declaration, it is hereby provided that a breach of any of the conditions in the Governing Documents by any Owner or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any Mortgage or deed of trust made in good faith and for value as to said Lot or any part thereof. Any lien which the Association may have on any Lot in the Project for the payment of common expense assessments shall be subordinate to the lien or equivalent security interest of any First Mortgage on the Lot recorded prior to the date any such common expense assessments became due.

Section 13.3. Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

Section 13.4. Mortgagee's Rights. A First Mortgagee's rights shall include, but not be limited to, the following:

(a) **Attend Meetings.** Any Mortgagee, upon written request, shall receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(b) **Furnish Information.** Any Mortgagee may furnish information to the Board concerning the status of any Mortgage.

(c) **Inspect Book and Records.** The Association shall make available to Owners and Mortgagees current copies of the Governing Documents and the books, records and financial statements of the Association for inspection, upon request, during normal business hours.

In addition, the Association must provide a financial statement for the immediately preceding fiscal year if a Mortgagee submits a written request for it. The Association may charge the First Mortgagee a reasonable fee to provide the financial statement. Said financial statement shall be furnished by the Association within a reasonable time following such request.

Section 13.5. No Restrictions on Owner's Right to Ingress and Egress. There shall be no restriction upon any Owner's right to ingress and egress to his or her Lot, which right shall be perpetual and appurtenant to his or her Lot ownership.

Section 13.6. Notices to Mortgagees. Any Eligible First Mortgagee shall be entitled to timely written notice of the following:

- (a) Any proposed amendment to the Governing Documents effecting a change in:
 - (i) The boundaries of any Lot or the restricted rights appurtenant thereto, if any;
 - (ii) The interests in the general or Restricted Common Areas, if any, appurtenant to any Lot or the liability for common expenses appurtenant thereto;
 - (iii) The number of votes in the Association appurtenant to any Lot; or,
 - (iv) The purposes to which any portion of the Common Area are restricted.

- (b) Any proposed termination of the legal status of the Project as a planned development.
- (c) Any condemnation or casualty loss which affects either a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such requesting party.
- (d) Any sixty (60) day delinquency in the payment of Assessments owned by an Owner subject to a First Mortgage held, insured or guaranteed by such Eligible First Mortgagee.
- (e) Any default in the performance by the affected Owner of any obligation under the Governing Documents which is not cured within sixty (60) days.
- (f) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (g) Any proposed action which requires the consent of a specified percentage of Eligible First Mortgagees.

Section 13.7.FNMA, FHLMC, FHA, VA Mortgagees.

(a) **Applications of Section.** The provisions of this Section 13.7 shall apply if any of the following conditions exist pertaining to a First Mortgage on any of the Lots:

- (i) Any First Mortgage is sold or transferred to FNMA;
- (ii) Any First Mortgage is sold or transferred to FHLMC; or,
- (iii) Any First Mortgage is FHA insured or a Veterans Administration (“VA”) Mortgage.

(b) **Approval of Material Amendments.** The approval of sixty-six and two-thirds percent (66²/₃%) of the total voting power of the Association and fifty-one percent (51%) or more of the Eligible First Mortgagees (based upon one vote for each First Mortgage owned) must be obtained for amendments of a material nature to the Governing Documents. A change to any of the following are material:

- (i) Voting rights;
- (ii) Assessments, assessment liens, or subordination of assessment liens;
- (iii) Reserves for maintenance, repair and replacement of common areas or any other portions of the Project which the Association has a duty to maintain, repair and replace;
- (iv) Responsibility for maintenance and repairs;
- (v) Reallocation of interests in the general or restricted use common areas, if any, or rights to their use;
- (vi) Boundaries of any Lot;
- (vii) Convertibility of Lots into common areas or vice versa;
- (viii) Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (ix) Insurance or fidelity bonds;
- (x) Leasing Lots;
- (xi) Imposition of any right of first refusal or similar restriction on a Lot Owner’s right to sell, transfer or convey his or her Lot;
- (xii) A decision by the Owners’ Association to establish self management when professional management has been required previously by a First Mortgagee;
- (xiii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;
- (xiv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or,

(xv) Any provisions that expressly benefit First Mortgagees, insurers or guarantors.

An addition or amendment to the Governing Documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

Approval of any amendments will be implied when an Eligible First Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is submitted.

(c) **Reallocation of Interests in the Common Area.** No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Project shall be effected without approval of fifty-one percent (51%) of the Eligible First Mortgagee based upon one vote for each First Mortgage owned.

(d) **Restriction on Certain Changes.** Unless at least sixty-six and two-thirds percent (662/3%) of the First Mortgagees (based on one vote for each First Mortgage owned) or sixty-six and two-thirds percent (662/3%) of the Owners other than Declaration have given their prior written approval, the Association shall not:

- (i) By act or omission seek to abandon or terminate the planned development;
- (ii) Change the pro rata interest or obligations of any Lot in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Lot in the common elements;
- (iii) Partition or subdivide any Lot;
- (iv) Seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas by act or omission. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas is not a transfer within the meaning of this clause; or,
- (v) Use hazard insurance proceeds for losses to any Lots or Common Areas for other than the repair, replacement, or reconstruction of the Lot or Common Area.

(e) **No Right of First Refusal.** The right of an Owner to sell, transfer or otherwise convey his or her Lot shall not be subject to any "right of first refusal" or similar restriction.

(f) **Foreclosure Eliminates Unpaid Assessments.** Each holder of a First Mortgage lien on a Lot who comes into possession of the Lot by virtue of foreclosure of the Mortgage or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid Assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except as provided by law and except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessments or charges of all Project Lots, including the Mortgaged Lot.

(g) **Mortgage Priority in Case of Distribution.** No provision in any Governing Document will entitle a Lot Owner or other party to priority over any rights of the First Mortgagee on the Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of the Lot and/or Common Area.

(h) **Leasing Restriction.** No Owner shall be permitted to lease his or her Lot for transient or hotel purposes. No Owner may lease less than the entire Lot. Any lease or rental agreement must be in writing and be subject to the provisions of the Governing Documents. No Lot may be leased or rented for less than thirty (30) days.

(i) **Taxes Relate to Individual Lots.** All taxes, assessments and charges which may become liens prior to the First Mortgage under local laws shall relate only to the individual Lots and not to the Project as a whole.

Whenever the approval of FHA is required, the notice or the request for approval shall be sent to the supervisor of the FHA office in which the project is located. If FHA does not respond to a request

within twenty (20) days after the notice is mailed or delivered, then FHA shall be deemed to have approved the request.

Section 13.8. Compliance with FHA/VA, FHLMC or FNMA Requirements. The Association intends that the Project shall comply with all of the requirements of the Federal Housing Administration (“FHA”), the Veterans Administration (“VA”), the Federal Home Loan Mortgage Corporation (“FHLMC”) and the Federal National Mortgage Association (“FNMA”). All casualty and liability insurance covering any portion of the Project encumbered by a Mortgage insured by FHA, guaranteed by VA, or held by FHLMC or FNMA, shall therefore conform to the applicable FHA/VA, FHLMC or FNMA requirements. Declarant and all Lot Owners also agree that in the event the Project or the Governing Documents do not comply with the applicable FHA/VA, FHLMC or FNMA requirements, the Board and each Owner shall take any action or adopt any resolutions required by any First Mortgagee to conform such Governing Documents, or the Project, to the FHA/VA, FHLMC or FNMA requirements.

Section 13.9. Waivers. A Mortgagee may waive any requirement contained in this Declaration as they pertain to such Mortgagee, provided that such waiver shall be in writing.

Section 13.10. Conflicts. In the event of a conflict between any of the provisions of this Section 13 and any other provisions of this Declaration, the provisions of this Section 13 shall control.

Section 13.11. Status. Each Owner hereby authorizes the First Mortgagee of a First Mortgage on the Owner’s Lot to furnish information to the Board concerning the status of the First Mortgage and the loan that it secures.

Section 14 (Reserved)

Section 15 Subdivision and Severability

Section 15.1. Prohibited. No Lot shall be further subdivided and an Owner shall not be entitled to sever his or her Lot from his or her membership in the Association. However, nothing contained in this Section 15.1 shall preclude the Owner of any Lot from creating an estate for life or an estate for years or from creating a cotenancy or joint tenancy in the ownership of the Lot with any other person or persons.

Section 16 Breach and Default

Section 16.1. 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.

Section 16.2. Nuisance. Without limiting the generality of the Section 16.1, 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.

Section 16.3. Costs and Attorney’s Fees. In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the court may award to any party in any such action such attorney’s fees and other costs as the court deems just and reasonable.

Section 16.4.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.

Section 16.5.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.

Section 16.6.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 hiring legal counsel, imposing of fines and monetary penalties, pursuit of legal action, recording notices of violation or non-compliance with the County, and the suspension of the Owner's right to use Recreational Common Area and 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 16. The initiation of legal action shall be subject to Section 16.8, 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* § 1354 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.

(i) 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 subsection 16.6(e).

(ii) Monetary Penalties. Monetary penalties imposed by the Association for (a) failure of a Member to comply with the Governing Documents, (b) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area or Common Facilities allegedly caused by a Member, or (c) in bringing the Member and his or her Lot into compliance with the Governing Documents, may become a lien against the Member's Lot but such lien may not be enforceable by a sale of the Lot in nonjudicial foreclosure, provided that this limitation on the Association's lien rights shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney's fees) in the Association's efforts to collect delinquent Assessments.

(e) Hearings. No penalty or temporary suspension of rights shall be imposed pursuant to this section unless the Owner alleged to be in violation is given at least fifteen (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 or Alternative Dispute Resolution proceeding pursuant to Section 16.8 conducted at least five (5) days before the effective date of the proposed disciplinary action.

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, or on its own initiative, conduct a hearing following the corrective or disciplinary action.

If the accused Owner desires a hearing, a written request for hearing shall be delivered to the Association by the Owner no later than five (5) days following the date notice of the fine or other action to be taken by the Association is delivered to the Owner. The hearing shall be held no more than fifteen (15) days following the date of the disciplinary action or fifteen (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.

(f) Notices. Any notice required by this section 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. Notice by mail shall be deemed delivered three (3) days after placed in the United States mail properly addressed and with adequate postage.

(g) Rules Regarding Disciplinary Proceedings. The Board, or a Committee appointed by the Board to conduct and administer disciplinary hearings and related proceedings pursuant to Section 16.7, below, 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.

Section 16.7. Alternative Dispute Resolution Committee.

(a) Appointment of Committee. Acting pursuant to Article VIII, Section 1 of the Bylaws, the Board of Directors may establish an Alternative Dispute Resolution (“ADR”) Committee to hear and decide cases involving alleged violations of the Governing Documents. If no Committee is established, the Board shall appoint non-member mediator(s) or arbitrator(s). If a Committee is established, it shall consist of members of the Association.

(b) Jurisdiction and Hearing Procedures of the Committee. The ADR Committee shall review written complaints from Owners, the Board, or the ARC (for violations other than those relating to specific improvement projects within the jurisdiction of the ARC) regarding alleged violations of the Governing Documents or Association Rules, and, when determined appropriate, conduct hearings and make findings regarding the alleged violation(s). The ADR Committee may levy penalties and/or fines (pursuant to a Board-approved fine schedule) in the event the allegations regarding such violations are found to be true. The Board shall adopt rules of procedure for ADR hearings which shall be conducted in accordance with such rules. Notwithstanding the foregoing, enforcement of specific violations of architectural requirements relating to improvement projects submitted to, and reviewed by, the ARC shall remain the jurisdiction of the ARC pursuant to Section 5.

(c) Appeals. The decisions of the ADR Committee, if established, shall be appealable to the Board of Directors within ten (10) calendar days following receipt of the ADR committee’s decision. The Board shall have the discretion to hear any appealed matter or decline to take the appeal and thus affirm the decision of the ADR Committee. Any decision to decline an appeal shall be based on a reasonable determination from the record that the appeal lacks merit. Decisions of the Board shall be final. Procedures for appeal and the hearing of appeals shall be set forth in the Association Rules.

Section 16.8. Court Actions/Alternative Dispute Resolution.

(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 arising out of any Owner’s or resident’s failure or alleged failure to comply with any provision of Section 2.4 (Delegation of Use), Section 5 (Architectural Review Committee), or Section 7 (Use of Properties and Restrictions), the Association or Owner who desires to initiate such action (“Complaining Party”) must make a good faith attempt to resolve the dispute pursuant to this Section 16.8. The Complaining Party shall send the other party (the “Responding Party”) written notice of the nature of the dispute, the facts giving rise to its claim and its desire to attempt to resolve the dispute through ADR (the “Request for Resolution”) pursuant to *Civil Code* § 1354(b). Should either party commence a judicial action, arbitration, or other proceeding without sending a Request for Resolution, the Responding Party shall be entitled to stay the action and request a Request for Resolution.

(c) If the Request for Resolution is accepted, within thirty (30) days of its receipt, the dispute shall be submitted to, and determined by, the ADR Committee in accordance with this Section 16, provided, however, that the provisions of this subsection shall not preclude any party from seeking injunctive or other provisional or equitable relief in order to preserve the status quo of the parties pending resolution of the dispute, and the filing of an action seeking injunctive or other provisional relief shall not be construed as a waiver of that party’s hearing rights under this Section 16.

The parties shall submit to the ADR Committee all written, documentary, or other evidence and oral testimony as is reasonably necessary for a proper resolution of the dispute. Copies of all written submittals shall be provided to the ADR Committee and both parties. The ADR Committee shall conduct such hearings as (s)he/they consider necessary, may require the submission of briefs or points and authorities and may submit written questions to the parties. The parties shall respond to such questions in writing. If a question is addressed to less than all of the parties, copies of the question and the answer thereto shall be served on the other parties.

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 ADR Committee.

The Hearing shall proceed with due dispatch and a decision shall be rendered within thirty (30) days after the date set for the Hearing. In the event the parties agree to conduct the ADR Hearing as binding arbitration, the ADR Committee's decision shall be in writing and in a form sufficient for entry of a judgment in a court of competent jurisdiction in the State of California.

The decision shall pertain, and shall be limited to, the granting of Special Individual Assessments, damages not to exceed any party's actual out-of-pocket expenses and the costs of undertaking any repairs, maintenance or reconstruction relating to the dispute. In no event shall the award include any component for punitive or exemplary damages. Costs of the arbitration proceeding shall be borne as determined by the ADR Committee.

Except as provided above, the procedures set forth in the California Arbitration Act (*Code of Civil Procedure* §§ 1282-1294.2) shall apply to the Hearing.

Section 17 Notices

Section 17.1. 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).

Section 17.2. Personal Service Upon Co-Owners and Others. Personal service of a notice or demand to one of the Co-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 Co-Owners, to such partnership, or to such corporation, as the case may be.

Section 17.3. 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 on the earlier of actual receipt or three (3) days after deposit in the United States mail in California.

Section 18 No Public Rights in the Properties

Section 18.1. 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.

Section 19 Amendment of Declaration

Section 19.1. Amendment in General. Subject to Section 13.7, this Declaration may be amended or revoked in whole or in any respect by the vote or assent by written ballot of the Members entitled to vote and holding at least fifty-one percent (51%) of the voting power of the Association. Notwithstanding the foregoing, in the event of an amendment affecting only specific provisions or clauses, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

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.

Section 19.2. Effective Date of Amendment. The amendment will be effective upon the recording in the Office of the Recorder of Lake 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 19.1, have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the lien rights of the holder of any First 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.

Section 19.3. 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.

Section 20 General Provisions

Section 20.1. 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 Lots 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 twenty (20) years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial twenty (20) year term or any such ten (10) year extension period, a recordable written instrument, approved by seventy-five percent (75%) of all Owners entitled to vote terminating the effectiveness of this Declaration shall be filed for recording in the Office of the County Recorder of Lake County, California.

Section 20.2. 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.

Dated: April 14, 2004, RIVIERA HEIGHTS HOMEOWNERS' ASSOCIATION

By Burl McDaniel
Burl McDaniel
(President)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LAKE)

On this day of **April 14, 2004**, before me, the undersigned, a Notary Public in and for said State, personally appeared, **Burl McDaniel** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Judith Steele Lanfranco
(Signature)

Judith Steele Lanfranco
(Printed Name)

My commission expires Feb. 8, 2007

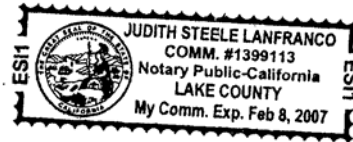


EXHIBIT A

The Properties include all that certain real property situated in Lake County, California and more particularly described as follows:

Parcel One:

All Lots and Parcels A, B and C as shown on that certain subdivision map entitled "Riviera-Heights, Unit No. 1 recorded on May 4, 1970, in the Official Records of Lake County.

Parcel Two:

All Lots and Parcel A as shown on that certain subdivision map entitled "Riviera-Heights, Unit No. 2, recorded on September 8, 1971, in the Official Records of Lake County.

Parcel Three:

The real property commonly known as the "Riviera Heights Marina" and more particularly described in the Individual Grant Deed recorded on June 4, 1970 in the Official Records of Lake County in Book 632 at Page 189.

Parcel Four:

The real property commonly known as the "Wilderness Area" and more particularly described in that certain Individual Grant Deed recorded on August 24, 1971 in the Official Records of Lake County in Book 673 at Page 53.