

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HERITAGE OAKS**

This Declaration of Covenants, Conditions and Restrictions for Heritage Oaks is made by Nevada County Habitat for Humanity, a California nonprofit public benefit corporation (the "Declarant").

RECITALS

A. Declarant is the owner of certain real property located in the County of Nevada, State of California, more particularly described in Exhibit "A," attached hereto (the "Property").

B. It is the intention of the Declarant to develop the Property as a residential development comprised of sixteen (16) affordable housing residences and to sell those residences originally constructed by Declarant to Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, liens, grants of easements, rights, rights-of-way, charges and equitable servitudes between Declarant and such Owners as set forth in this Declaration and any duly adopted amendments thereto as well as the covenants and restrictions set forth in the Restrictive Covenant that is more particularly identified in Section 18.07, below.

C. It is the further intention of the Declarant to convey to the Association the "Common Area" and "Common Facilities" within the Development which are to be owned and maintained by the Association and reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees subject to the terms and conditions of this Declaration and the other Governing Documents.

D. Accordingly, the Declarant hereby declares that all of the Lots, Common Areas and improvements now located or hereafter constructed on the Property shall be held, sold and conveyed subject to the following easements, restrictions, associations, reservations, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Residences and Common Areas of the Development. These covenants, easements, restrictions, conditions, associations and reservations: (i) create a general plan and scheme for the subdivision development, sale and use of the Property as a "planned development" as that term is defined in California Civil Code section 1351(k); (ii) are for the benefit and protection of the Property and the Development and for the protection and enhancement of the desirability, value and attractiveness of each parcel of property located therein; (iii) run with the Property and bind all parties having or acquiring any right, title or interest in the Property or the Development or any part thereof; and (iv) inure to the benefit of the successors and assigns of each Owner of any property within the Development.

ARTICLE I DEFINITIONS

Section 1.01. "Articles" means the Articles of Incorporation of the Association, which are filed in the Office of the California Secretary of State, as such as may be amended from time to time.

Section 1.02. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV, below.

Section 1.03. "Association" means and refers to Heritage Oaks Association, a California nonprofit mutual benefit corporation, its successors and assigns. The Association is an "association" as defined in California Civil Code section 1351(a).

Section 1.04. "Association Rules" means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to Section 3.08, below, as the same may be in effect from time to time.

Section 1.05. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 1.06. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.07. "City" means the incorporated municipal City of Grass Valley, in the County of Nevada, State of California, and its various departments, divisions, employees and representatives.

Section 1.08. "Common Area" means all real property owned by the Association for the common use and enjoyment of the Owners, including, without limitation, all roadways, utilities and open space owned by the Association. The Common Area to be owned by the Association at the time of the conveyance of the first Lot in Heritage Oaks is more particularly shown as Lots A, B, C, and D, all as shown on the Subdivision Map. Unless the context clearly indicates a contrary intent, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon.

Section 1.09. "Common Expense" means any use of Common Funds authorized by Article IV hereof and Article IX of the Bylaws 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 and Common Facilities; (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors to the extent required by Article X below; (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities, and for nonpayment of any Assessments; and (d) 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 1.10. "Common Facilities" means the parking areas of the Development, the open space parcel (Lot B on the Subdivision Map), the picnic area improvements in Lot B, the parking spaces in Lot A, and the landscaping and other improvements located within the Common Areas, documentation, and any utilities, pipes, lines, lighting fixtures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Areas and owned by the Association..

Section 1.11. "Common Funds" means and refers to all funds of the Association, whether derived from Assessments, fees, investments or other sources.

Section 1.12. "Conditions of Approval" means and refers to that certain document entitled "Findings and Conditions for Approval of Planned Development (10PLN-01) and Tentative Map (10PLN-02) for Habitat for Humanity, As Approved by the City of Grass Valley Planning Commission on April 20, 2010.

Section 1.13. "County" means the County of Nevada, State of California, and its various departments, divisions, employees and representatives.

Section 1.14. "Declarant" means Nevada County Habitat for Humanity, a California nonprofit public benefit corporation, and its successors and assigns if such successors-in-interest should acquire or hold record title to more than one undeveloped Lot for the purpose of development and resale and the successors or assigns are designated as a successor Declarant in an instrument executed, acknowledged by the current Declarant and that instrument is recorded in the Official Records of Nevada County.

Section 1.15. "Declaration" means this instrument as it may be amended from time to time.

Section 1.16. "Design Guidelines" means and refers to any rules or procedures relating to the construction of Improvements within the Development and/or the process for seeking approval for Improvement projects from the Neighborhood Design Committee Design Guidelines may be adopted pursuant to Section 5.05, below.

Section 1.17. "Development" means the real estate common interest development that is being developed on the Property in accordance with the Subdivision Map, this Declaration and the other Governing Documents of the Association. At times herein, where the context is appropriate, the "Development" is referred to by its common name which "Heritage Oaks".

Section 1.18. "Governing Documents" is a collective term that means and refers to this Declaration, the Restrictive Covenant, and to the Articles of Incorporation and Bylaws of the Association and the Association Rules.

Section 1.19. "Habitat Note" means and refers to the promissory note entitled "First Promissory Note" by and between the Declarant and any purchaser/Owner of a Lot in the Development that is secured by a first deed of trust on the Owner's Lot.

Section 1.20. "Improvement" is a term that is used in this Declaration to identify those construction or remodeling projects that Owners may desire to undertake on their Lots which

Section 1.21. "Lot" means any parcel of real property designated by a number on the Subdivision Map, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other Improvements constructed or to be constructed on a Lot.

Section 1.22. "Majority of a Quorum" means the vote of a majority of the votes cast at a meeting or by written ballot when the number of Members attending the meeting in person or by proxy or casting written ballots equals or exceeds the quorum requirement for Member action, as specified in the Bylaws or otherwise by statute.

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 13.06, below.

Section 1.24. "Mortgage" means any security device encumbering all or any portion of the Development, 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.

Section 1.25. "Neighborhood Design Committee" means and refers to the Committee by that name that has the duties and responsibilities set forth in Article V, below.

Section 1.26. "Owner" means any person, firm, corporation or other entity which owns a fee simple interest in any Lot. The term "Owner" shall include the Declarant for so long as the Declarant possesses any Lot within the Development. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust.

Section 1.27. "Owner of Record" and "Member of the Association" include an Owner and mean any person, firm, corporation or other entity in which title to a Lot is vested as shown by the Official Records of the Office of the County Recorder.

Section 1.28. "Development" means all parcels of real property (Common Area and Lots) described in Exhibit "A," together with all buildings, structures, utilities, Common Facilities, and other Improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

Section 1.29. "Record," "Recorded" and "Recording" means, with respect to any document, the recordation or filing of such document in the Office of the Nevada County Recorder.

Section 1.30. "Regular Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.02, below.

Section 1.31. "Residence" means a private, single-family dwelling constructed or to be constructed on any Lot.

Section 1.32. "Restrictive Covenant" means and refers to the document that is more particularly identified in Section 18.07, below.

Section 1.33. "Restrictive Period" means and refers to the term for which the limitations imposed by the Restrictive Covenant remain in place, namely a period of forty-five (45) years from the recordation date of the Restrictive Covenant.

Section 1.34. "Single Family Residential Use" means occupation and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

Section 1.35. "Special Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.03, below.

Section 1.36. "Special Individual Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.04, below.

Section 1.37. "Subdivision Map" means the final subdivision map for the Development which is entitled "Final Map – 10PLN-02 for Heritage Oaks (Nevada County Habitat for Humanity) which was filed for record on _____, 2011 in the Office of the Nevada County Recorder, at Book ____ of Maps, Page _____.

Section 1.38. "Violation" shall have the meaning given to that term in Section 13.06(c).

Section 1.39. "Voting Power" means those Members who are eligible to vote for the election of directors or with respect to any other matter, issue or proposal properly presented to the Members for approval at any time a determination of voting rights is made. To be part of the Voting Power, a Member must be in Good Standing, as defined in the Bylaws of the Association.

ARTICLE II DEVELOPMENT RIGHTS AND OBLIGATIONS OF OWNERS

Section 2.01. Declaration Regarding the Development.

(a) Imposition of the Plan of Development on the Property. The Residences, Common Areas and other improvements comprising the Heritage Oaks development shall be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied and improved only upon compliance with and subject to the provisions of this Declaration, which is hereby declared to: (i) be in furtherance of a plan for the subdivision of the real property comprising the Development and the sale of residential Lots and Residences within the Development; (ii) be for

(b) Binding Effect on Successors in Interest. Each conveyance, transfer, sale, assignment, lease or sublease made by Declarant of the Common Area and of any Lot shall be deemed to incorporate by reference all of the provisions of this Declaration. All present and future Owners, tenants and occupants of Lots and Residences within the Development shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same shall be amended from time to time unless a particular provision of the Governing Documents is specifically restricted to one or more classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the execution of a lease, sublease or contract of sale with respect to any Lot or the entering into occupancy of any Residence shall make the provisions of this Declaration binding upon said persons and they shall thereafter be obligated to observe and comply with all Governing Documents.

Section 2.02. Property Rights in the Common Area.

(a) Fee Title in Association. Declarant shall convey fee simple title to the Common Area to the Association, free of all encumbrances and liens, with the exception of current real property taxes (which shall be prorated as of the date of such conveyance) and any easements, conditions and reservations then of record, including those set forth in this Declaration. Such conveyance shall be made prior to, or concurrently with, the first transfer or conveyance by Declarant of a Lot to an Owner pursuant to a Department of Real Estate Public Report.

(b) Rights of Owners in Common Areas. The interest of each Lot Owner in and to the use and benefit of the Common Area and the Common Facilities shall be appurtenant to the Lot owned by the Owner and shall not be sold, conveyed or otherwise transferred by the Owner separately from the ownership interest in the Lot. Any sale, transfer or conveyance of such Lot shall transfer the appurtenant right to use and enjoy the Common Area and Common Facilities, subject to the limitations set forth in Section 2.03, below. There shall be no judicial partition of the Common Area or any part thereof, and each Owner, whether by deed, gift, devise, or operation of law for his or her own benefit and for the benefit of all other Owners specifically waives and abandons all rights, interest and causes of action for a judicial partition of any ownership interest in the Common Area and does further covenant that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The rights of all Owners in the Common Area shall be further subject to the requirements and restrictions set forth in Section 2.03, below.

Section 2.03. Owners' Nonexclusive Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas of the Development, 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 provisions:

(a) Right of Association to Regulate Common Area Uses. The right of the Association to regulate and control the use of any unassigned parking and storage spaces located within the Common Area.

(b) Right of Association to Adopt Rules. The right of the Association to adopt Association Rules as provided in Section 3.08, below, regulating the use and enjoyment of the Development 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 initiate disciplinary action against the violating Owner or tenant in accordance with Section 13.06, below. Such action may include the levying of fines and/or the temporary suspension of the voting rights and/or the right to use the Common Facilities, other than roads, by any Owner and the Owner's tenants and guests.

(c) Right to Incur Indebtedness. 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 of the Development, provided, however, that any new capital improvement in the Common Area for which capital replacement reserves have not been accumulated shall be funded by levy of a Special Assessment in accordance with the provisions of Section 4.03, below.

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

(e) Rights of Easement Holders. All easements affecting the Common Area described in Article IX, below.

Section 2.04. Delegation of Use; Leasing Restrictions.

(a) Delegation of Use and Leasing of Residences.

(i) Prohibition on Leasing Prior to Repayment of Habitat Note. For so long as an Owner's Lot is encumbered by a Habitat Note, the Owner agrees that he or she will not lease the Lot and Residence without the prior approval of Declarant as the holder of the Habitat Note(s). If an Owner rents or leases his or her Residence or fails to occupy the Residence as the Owner's principal place of residence without the prior written approval of the Declarant for a period of four (4) consecutive months, the Declarant, in the Declarant's sole discretion shall have the right, pursuant to the Restrictive Covenant, to repurchase the Lot and Residence on the terms and conditions set forth in the Restrictive Covenant.

(ii) Restrictions on Leasing of Residences Following Repayment of the Habitat Note. Once an Owner's Habitat Note has been repaid in full the following restrictions on the rental and lease of the Owner's Lot and Residence shall remain in effect: In accordance with

(b) Any Permitted Lease Must Conform to the Governing Documents. Any permitted rental or lease of a Residence shall be subject to the provisions of this Declaration and the other Governing Documents of the Development, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents or, in the alternative, an excerpt from those documents (prepared by the Association) that addresses issues and restrictions that are most relevant to tenancies, the occupation and use of Residences, and the terms of the Restrictive Covenant that pertain to leasing and renting Residences. Each Owner-lessor shall be responsible for compliance by the tenant or lessee with all of the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the Residence.

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

(d) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Development or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) the Owner has received written notice from the Board, the Association's property manager or an authorized committee of the Board detailing the nature of the lessee's/tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner; and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with Section 13.06, below.

Section 2.05. Obligations of Owners. Owners of Lots within the Development shall be subject to the following:

(a) Owner's Duty to Notify Association of Tenants and Contract Purchasers. Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant residing in the Owner's Residence.

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

(c) Notification to Prospective Purchasers Regarding Governing Documents.

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

(A) a copy of the Governing Documents;

(B) a copy of the most recent documents distributed by the Association pursuant to California Civil Code section 1365 (see Article XII of the Bylaws);

(C) a true statement ("delinquency statement") in writing from an authorized representative of the Association as to: (1) the amount of the Association's current Regular and Special Assessments and fees; (2) the amount of any Assessments levied upon the Owner's Lot that remain unpaid as of the date of the delinquency statement; and (3) any monetary fines or penalties levied upon the Owner's Lot and unpaid as of the date of the delinquency statement. The delinquency statement shall also include information on late charges, interest, and costs of collection that, as of the date of the delinquency statement, are or may become a lien against the Owner's Lot pursuant to Civil Code sections 1367 and 1367.1;

(D) a copy or summary of any notice previously sent to the Owner pursuant to Civil Code section 1363(h), that sets forth any alleged violations of the Governing Documents that remain unresolved at the time of the request; and

(E) a statement disclosing any change in the Association's current Regular and Special Assessments and fees which have been approved by the Board but have not become due and payable as of the date the information is provided.

(ii) Within ten (10) days of the mailing or delivery of a request for the information described in subparagraph (c)(i), above, the Association shall provide the Owner with copies of the requested items. The items that the Association is obligated to provide pursuant to this subparagraph (c) may be maintained in electronic form and requesting parties shall have the option of receiving them by electronic transmission or machine readable storage media if the Association maintains these items in electronic form. The Association may charge a reasonable fee for these services based upon the Association's actual cost to procure, prepare, and reproduce the requested items.

(iii) The provisions of this subparagraph (c), except for those provisions relating to the furnishing of a delinquency statement, shall not apply to any Owner who is subject to the requirements of California Business and Professions Code section 11018.1 (i.e., the

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

(e) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot in accordance with Section 4.10(b), below.

(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) 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 the transfer and, upon such Recording, all Association membership rights possessed by the transferor by virtue of the ownership of the Lot shall automatically cease.

ARTICLE III THE HERITAGE OAKS ASSOCIATION

Section 3.01. Formation of the Association. The Heritage Oaks Association is a California nonprofit mutual benefit corporation that has been formed by the Declarant as part of the implementation of the common plan of development contemplated by this Declaration. On or before the first close of escrow for the sale of a Lot to an Owner, the Declarant shall convey fee simple title to the Common Area to the Association as provided in Section 2.02(a), above, and thereupon the Association shall be charged with the duties and invested with the powers set forth in the Governing Documents, including, but not limited to, the ownership, control, maintenance and repair of the Common Area and Common Facilities of the Development.

Section 3.02. Association Action; Board of Directors and Officers. With the exception of those matters requiring approval of Members under the Governing Documents or California law, the affairs of the Association shall be conducted by the Board of Directors and such officers as the Board may elect or appoint. Except as otherwise provided in the Governing Documents or California law, all matters requiring the approval of Members shall be deemed approved if approved by a Majority of a Quorum of the Members.

Section 3.03. Membership.

(a) Qualifications. Each Owner of a Lot within the Development, including the Declarant as to all Lots still owned by the Declarant, shall be a Member of the Association. An Owner shall hold one membership in the Association for each Lot he or she owns. Sole or joint ownership of a Lot shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership of, or ownership interest, in all Lots in the Development ceases, at which time the Owner's 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.

(b) Members' Rights and Duties. Membership in the Association shall give rise to the rights, duties, and obligations set forth in the Governing Documents and any amendments thereto.

Section 3.04. Membership Voting.

(a) Commencement of Voting Rights. Voting rights attributable to the ownership of Lots shall not vest until such time as the Association's right to levy Assessments against those Lots has commenced.

(b) Classes of Membership. The Association shall have two (2) classes of voting membership, namely a Class A Members which shall initially consist of all Owners of Lots except the Declarant and a Class B Membership which shall be held by the Declarant. The voting rights and other privileges of the two (2) classes of membership and the conversion of the Declarant's Class B membership into Class A membership shall be as set forth in Article IV of the Bylaws.

(c) Suspension of Voting Rights. Voting rights may be temporarily suspended under those circumstances described in Section 13.06, below.

(d) Intent of Provisions Imposing Limitations on Declarant Voting Rights. With the exception of any membership vote pursuant to Section 3.11, below, (relating to the enforcement of bonded obligations), no provision of any Governing Document requiring approval of a prescribed majority of the voting power of the Association other than the Declarant is intended to preclude the Declarant from casting votes attributable to any Lots owned by the Declarant. Instead, what is required is the approval of a bare majority of the Class B voting power as well as the approval of the prescribed majority of the Class A voting power. Once the Class B membership has been converted to Class A membership, the intent is to require the approval of a bare majority of the total voting power of the Association as well as the approval of the prescribed majority of the total voting power of the Association other than the Declarant.

Section 3.05. Assessments. The Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within the Development and to enforce payment of such Assessments, as more particularly provided in Article IV, below. Any Assessments levied by the Association against its Members shall be levied in accordance with, and pursuant to, the provisions of this Declaration.

Section 3.06. Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale of the Lot to

Section 3.07. Powers and Authority of the Association.

(a) Powers, Generally. The Association shall have the responsibility of owning, managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its properties and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association 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 are set forth in Article IX of the Bylaws.

(b) Association's Limited Right of Entry.

(i) Right of Entry, Generally. Without limiting the foregoing description of powers, but in addition thereto, the Association and its agents shall have the right and power to enter any Lot to perform the Association's obligations under this Declaration, including: (A) exterior maintenance or obligations with respect to individual Residences; (B) obligations to enforce the architectural and land use restrictions of Articles V and VII hereof; (C) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or (D) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, any portion of the Development or the Owners in common.

(ii) Limitations on Exercise of Right. The Association's right of entry pursuant to this subparagraph (b), shall be subject to the following:

(A) The right of entry may be exercised immediately and without prior notice to the Owner or resident in case of an emergency originating in or threatening the Lot where entry is required or any adjoining Lots or Common Areas. The Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

(B) In all non-emergency situations involving routine repair and/or maintenance activities, the Association, or its agents, shall furnish the Owner or his or her lessee with at least twenty-four (24) hours prior written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry, and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing on the Lot.

(C) In all non-emergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner in default, the Association's entry shall be subject to observance of the notice and hearing requirements imposed by Section 13.06, below.

(D) In no event shall the Association's right of entry hereunder be construed to permit the Association or its agents to enter any Residence without the express permission of the Owner or tenant.

Section 3.08. Association Rules.

(a) Rule Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners (the "Association Rules"). The Association Rules may concern, but need not be limited to: (i) matters pertaining to use of the Common Area and Common Facilities; (ii) architectural control and the rules of the Neighborhood Design Committee under Article V, below; (iii) regulation of pet ownership, parking, signs, collection and disposal of refuse and other matters subject to regulation and restriction under Article VII, below; (iv) collection of delinquent Assessments; (v) minimum standards of maintenance of landscaping or other Improvements on any Lot; (vi) the conduct of disciplinary proceedings in accordance with Section 13.06, below, and (vii) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents. Once the authority to appoint the members of the Neighborhood Design Committee is vested solely in the Board of Directors of the Association, the Design Guidelines shall also include the Design Guidelines

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the Governing Documents or the rights, preferences and privileges of the Owners hereunder. In the event of any material conflict between any Association Rule and the provisions of any other Governing Document, the conflicting provisions contained in the other Governing Document shall prevail. All Association Rules shall be adopted, amended and repealed (as the case may be) in good faith and in substantial compliance with this Declaration and California Civil Code sections 1357.100 through 1357.150.

(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.

(i) Requirement of Prior Notice to the Members of Certain Operating Rules or Amendments Thereto. California Civil Code section 1357.100 defines an "Operating Rule" as an Association Rule or regulation that applies generally to the management and operation of the Development or to the conduct of the business and affairs of the Association. That Civil Code section further defines a "Rule Change" as any adoption, amendment, or repeal of an Operating Rule by the Board of Directors. Civil Code section 1357.120 identifies seven (7) types of Operating Rules (and Rule Changes involving such Operating Rules) that must first be provided to the members in writing at least thirty (30) days prior to the Board taking action to implement the Rule Change. The notice must include the text of the proposed Rule Change and a description of the purpose and effect of the proposed Rule Change. This requirement of prior notice to the Members applies only to Operating Rules that relate to one (1) or more of the following subjects:

- (A) Use of the Common Areas of the Development;
- (B) Use of any Residence or Lot in the Development (including Design Guidelines);
- (C) Member discipline, including any schedule of monetary penalties for violation of the Governing Documents and any procedure for the imposition of penalties;
- (D) Any standards for delinquent Assessment payment plans;
- (E) Any procedures adopted by the Association for resolution of Assessment disputes;
- (F) Any procedures for reviewing and approving or disapproving a proposed physical change to an Owner's Residence or Lot, from and after the time when the Association is solely responsible for appointing all members of the Neighborhood Design Committee; and
- (G) Any procedures for the conduct of elections.

Specifically excluded by Civil Code section 1357.120 from the requirement of prior notice to Members are the following actions of the Board, regardless of whether those actions may be construed as being Association Rules or "Operating Rules," as defined in the Civil Code: (i) any Rule Change that the Board adopts to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association (such "emergency rules" can be adopted and remain in effect for up to one hundred and twenty (120) days); (ii) decisions regarding maintenance of the Common Areas or Common Facilities; (iii) a decision on a specific matter that is not intended to apply to all Members, generally; (iv) establishing the amount of an Assessment; (v) adoption of a Rule Change that is required by law (if the Board of Directors has no discretion regarding the substantive effect of the Rule Change); and (vi) issuance of a document that merely repeats existing law or the Governing Documents.

With respect solely to Operating Rules and/or Rule Changes listed in subparagraphs (A) through (G), of subparagraph (c)(i) above, Civil Code section 1357.140 gives Members owning five percent (5%) or more of the Lots in the Development the right to demand that a special meeting of the Members be called to reverse a proposed Rule Change, so long as the request for the special meeting is delivered to the Association not more than thirty (30) days after the Members are given notice of the Rule Change. If a proper and timely demand for a special meeting to vote to rescind an Operating Rule or Rule Change is tendered to the Association, the Board shall establish the date, time and location of the meeting and provide notice thereof to the Members in accordance with Corporations Code section 7511(c).

So long as a quorum of the Members is present at any such meeting, the Rule Change can be reversed on the affirmative vote of a Majority of a Quorum of the Members, with each Member having one (1) vote on the matter for each Lot owned. If the Members vote to reverse an Operating rule or a Rule Change, the Board may not take action to readopt the Operating Rule or Rule Change for a period of one (1) year after the date of the special meeting where reversal of the Operating Rule or Rule Change was approved; provided, however, that this provision is not intended to preclude the Board from adopting a different Operating Rule or Rule Change on the same subject as the Rule Change that was successfully reversed. As soon as possible following the close of voting on any proposal to reverse an Operating Rule or Rule Change, but not more than fifteen (15) days after the close of voting, the Board shall provide notice to each Member of the results of the Member vote by personal delivery or first-class mail.

(ii) Minimum Content for Election Rules. Civil Code section 1363.03 requires associations to adopt rules regarding the conduct of elections that do all of the following:

(A) Ensure that any candidate or member advocating a point of view is provided access to Association media, newsletters, or Internet Web sites during a campaign so long as the access is reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view (whether or not endorsed by the Board). The Association may not edit or redact any content from these campaign communications, but may include a statement specifying that the candidate or Member, and not the Association, is responsible for that content.

(B) Ensure access to the Common Area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all Members advocating a point of view (whether or not endorsed by the Board) so long as use of the space is for a purpose that is reasonably related to the election.

(C) Specify the qualifications for candidates for election to the Board of Directors and any other elected position, and procedures for the nomination of candidates. A nomination or election procedure shall not be deemed reasonable if it disallows any Member of the Association from nominating himself or herself for election to the Board.

(D) Specify the qualifications for voting, the Voting Power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close.

(E) Specify a method of selecting one (1) or three (3) inspectors of election by the Board of Directors.

(F) Allow the inspector, or inspectors, to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties (as defined in Section 7.05(e) of the Bylaws).

(iii) Adoption of Other Association Rules. Except as provided in subparagraph (c)(i), above, with respect to certain Operating Rules and Rule Changes that must first be distributed to the Members, any other Association Rules may be adopted or amended from time to time by majority vote of the Board; provided, however, that no Association Rule or amendment thereto shall be adopted by the Board until at least thirty (30) days after the proposed rule or rule amendment has been distributed in writing to each Member, along with a description of the purpose and effect of the proposed Association Rule or amendment thereto. 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 Association Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail or personal delivery.

(iv) Prohibition on Adoption of Certain Rules. In accordance with Civil Code section 1368.1, any rule or regulation of an association that arbitrarily or unreasonably restricts an Owner's ability to market his or her Residence and Lot is void. Without limiting the foregoing, in no event shall the Association be entitled to impose an Assessment or fee in connection with the marketing of an Owner's Lot in an amount that exceeds the Association's actual and direct costs (see also, Section 4.01(e), below)

Section 3.09. Breach of Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XIII, below.

Section 3.10. Limitation on Liability of the Association's Directors and Officers.

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

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

maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer director or volunteer officer of the Association shall recover damages from such director or officer if all of the following conditions are satisfied:

- (i) The director or officer owns no more than two Lots;
- (ii) The act or omission was performed within the scope of the volunteer director's or officer's Association duties;
- (iii) The act or omission was performed in good faith;
- (iv) The act or omission was not willful, wanton, or grossly negligent;
- (v) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made general liability insurance with coverage of at least Five Hundred Thousand Dollars (\$500,000).

The payment of actual expenses incurred by a director or officer in the execution of such person's Association duties shall not affect such person's status as a volunteer director or officer for the purposes of this Section. The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations pursuant to California Civil Code section 1365.7. In the event said Civil Code section is amended or superseded by another, similar provision of the California statutes, this subparagraph (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor Civil Code provision.

Section 3.11. Enforcement of Bonded Obligations. If any of the Common Area improvements within the Development have not been completed when the California Real Estate Commissioner issues a final subdivision public report for the Development, and if the Association is the obligee under a bond or other arrangement ("bond") to secure performance of a commitment of the Declarant to complete such Common Area improvements, then the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvements for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that improvement in the "planned construction statement" appended to the bond. However, if the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the action to enforce the obligations under the bond only if a notice of completion has not been filed within thirty (30) days after the expiration of the extension.

If the Board fails to consider and vote on the action to enforce the obligations under the bond or decides not to initiate action to enforce the obligations under the bond, then on the petition in writing to the Board signed by Members representing not less than five percent (5%)

of the total voting power of the Association other than the Declarant, the Board shall call a special membership meeting for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the bond.

The meeting shall be called by the Board by fixing a date not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of said petition. Notice of the meeting shall be given to all Owners entitled to vote in the manner provided in Section 5.04 of the Bylaws for notices of special membership meetings. At the meeting, the vote in person or by proxy of a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board shall then implement the Owners' decision by initiating and pursuing appropriate action in the name of the Association.

ARTICLE IV ASSESSMENTS

Section 4.01. Assessments Generally.

(a) Covenant to Pay Assessments. Declarant for each Lot owned within the Development, and each Owner of a Lot by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), covenants and agrees to pay to the Association: (i) Regular Assessments; (ii) Special Assessments; (iii) Emergency Assessments; and (iv) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided.

(b) Extent of Owner's Personal Obligation for Assessments. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the person who is the Owner of the Lot at the time the Assessment is levied. Each Owner who acquires title to a Lot (whether by conventional conveyance, at a judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot which become due and payable after the date that the person acquires title. Accordingly, when a person acquires title to a Lot, he or she shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. However, if the acquired Lot is conveyed subject to a valid lien for delinquent Assessments (and related costs of collection), the Association may continue to exercise its foreclosure remedies against the Lot, regardless of the change of ownership, and/or the Association may pursue its collection remedies against the prior Owner, individually.

(c) Creation of Assessment Lien. All Assessments and fees, other than Special Individual Assessments, together with late charges, interest, and reasonable costs for the collection thereof (including reasonable attorneys' fees), shall be a personal obligation of the assessed Owner as of the date that the Assessment is levied. In addition, the amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with section 1366 of the California Civil Code, shall be a lien on the Owner's Lot from and after the date that the Association causes to be Recorded in the Office of the County Recorder a Notice of Delinquent Assessment pursuant to Section 4.10(b), below. Any lien for unpaid Assessments

(d) No Avoidance of Assessment Obligations. No Owner may exempt himself/herself or the Owner's Lot from liability or charge for the Owner's share of any Assessment made against the Owner or his or her share of any Regular or Special Assessment made against the Owner's Lot, by waiving or relinquishing, or offering to waive or relinquish, the Owner's right to use and enjoy all or any portion of the Common Area or Common Facilities or by the abandonment or non-use of the Owner's Lot.

(e) Improper Assessment. The Association shall not impose or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which the Assessment or fee is levied.

Section 4.02. Regular Assessments. All Assessments and fees, other than Special Individual Assessments, together with late charges, interest, and reasonable costs for the collection thereof (including reasonable attorneys' fees), shall be a personal obligation of the assessed Owner as of the date that the Assessment is levied. In addition, the amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with section 1366 of the California Civil Code, shall be a lien on the Owner's Lot from and after the date that the Association causes to be Recorded in the Office of the County Recorder a Notice of Delinquent Assessment pursuant to Section 4.10(b), below. Any lien for unpaid Assessments (other than Special Individual Assessments) created pursuant to the provisions of this Article IV may be subject to foreclosure to the extent and as provided in Section 4.10(b), below. Certain Special Individual Assessments are prohibited by law from being recovered through the use of non-judicial foreclosure remedies.

(a) Preparation of Annual Budget; Establishment of Regular Assessments. Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities or portions of the Lots which the Association is obligated to maintain by preparing and distributing to all Members a budget satisfying the requirements of Section 12.05 of the Bylaws). If the Board fails to distribute the budget for any fiscal year within the time period specified in the first sentence of this Section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of the requisite percentage of the Members in accordance with Section 4.08, below.

(b) Establishment of Regular Assessment by Board/Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year; provided, however, that, except as provided in Section 4.05, below, the Board of Directors may not impose a Regular Assessment that is more than twenty

(c) Commencement of Regular Assessments. Regular Assessments shall commence with respect to all Lots within the Development on the first day of the month next following the closing date of the first sale of a Lot under authority of a public report to an Owner other than the Declarant.

(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 Development owned by the assessed Owner to the total number of Lots subject to Assessment so that each Lot bears an equal share of the total Regular Assessment.

(e) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a property Owner or as a Member of the Association. The Assessment roll 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 2.05(c)(i)(C), above, shall be conclusive upon the Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(f) Mailing Notices of Assessments and Related Financial Disclosures. Not less than thirty (30) nor more than sixty (60) days prior to the beginning of the Association's fiscal year the Board of Directors shall provide notice by first-class mail to the Owners of Lots, at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, of the amount of the Regular Assessment for the next succeeding fiscal year. This notice is in addition to the following notices which must also be distributed to the Members: (i) the written notice that is required to be distributed pursuant to Civil Code section 1365.1 (the notice providing Members with general information regarding assessments, foreclosure rights, payment of assessments and payment plans); (ii) the form required by Civil Code section 1365.2.5 that provides summarized information regarding the amount of the current Regular Assessment, additional assessments that have already been scheduled to be imposed or charged, and the calculation of reserve replacement needs and funding requirements; and (iii) the statement that is required by Civil Code section 1365(d) which describes the Association's policies and practices in enforcing lien rights or other legal remedies for the collection of delinquent assessment obligations. These budgets and disclosure documents shall be delivered to the Members by one of the methods authorized by Civil Code section 1350.7.

(g) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.03(a)(i), below, 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 Board.

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

Section 4.03. Special Assessments.

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

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then 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 Article IX, below.

(b) Special Assessments Requiring Membership Approval. The following Special Assessments require prior membership approval in accordance with Section 4.08, below: (i) any Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied; and (ii) any Special Assessments imposed pursuant to subparagraph (a)(i) of this Section when the Board has failed to distribute a budget to the Members within the time specified in Section 4.02(a), above. The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any "emergency situation" as defined in Section 4.05, below.

(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 (including the Declarant as to any unsold or retained Lots) in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4.02(d), above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in subparagraph (a)(i) of this Section shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in subparagraph (a)(ii) shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable in full to the Association within 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 4.04. 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 4.03, 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, however, that no Special Individual Assessments may be imposed against an Owner pursuant to this section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 13.06, below, has been given a reasonable opportunity to comply voluntarily with the 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, or any portions of the Lots 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 (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

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

(iii) Required Maintenance on Lots. If any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, the Association shall have the right to enter said Lot, correct the condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry on the property of any Owner by the Association shall be effected in accordance with Section 3.07(b), above.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in subparagraph (a) of this Section, such Special Individual Assessment shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to the affected Owner. 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) Limitation on Right to Lien Lots For Special Individual Assessments. The right of the Association to collect delinquent Special Individual Assessments through the use of lien and foreclosure remedies is subject to the limitations set forth in Section 4.10(b)(ix), below. However Special Individual Assessments may be collected by the Association through the use of other legal processes, including, without limitation, an action in small claims court.

Section 4.05. Assessments to Address Emergency Situations.

(a) Authority of Board to Impose Emergency Assessments. The requirement of a membership vote to approve: (i) Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment; or (ii) Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, shall not apply to Assessments necessary to address emergency situations ("Emergency Assessments"). For purposes of this Section, 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 or Common Facilities where a threat to personal safety is discovered; or

(iii) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 4.02(a), above; provided, however, that prior to the imposition or collection of an Assessment under this subparagraph (a), 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.

(b) Payment of Emergency Assessments. When levied by the Board, the Emergency Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot (including the Declarant as to any unsold or retained Lots) in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4.02(d), above. The Emergency

Section 4.06. Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively: (a) to promote the recreation, health, safety and welfare of individuals residing within the Development; (b) to promote the enjoyment and use of the Development 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 and those portions of the Lots which the Association is obligated to maintain. 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 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, however, 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. Subject to the limitations imposed by Section 4.04(c), above, limiting the right of the Association to impose a lien as a remedy for collecting most Special Individual Assessments, the Association shall also be entitled to collect delinquent Assessments through lien and foreclosure, as more particularly provided in Section 4.10, below.

Section 4.07. Exemption of Certain Portions of the Development From Assessments. The following real property subject to this Declaration shall, unless devoted to the use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

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

Section 4.08. Notice and Procedure for Member Approval Pursuant to Sections 4.02 and 4.03. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 4.02 and 4.03, above, the affirmative vote required to approve the increase shall be a Majority of a Quorum of the Members. The quorum required for such membership action shall be a majority of the Members. Any vote on an increase in the Regular Assessment or on the imposition of a Special Assessment that requires approval of the Members must be conducted by use of a secret ballot and that balloting process shall be conducted using the same procedures for the casting of ballots in the election of directors pursuant to Section 7.05 of the Bylaws.

Section 4.09. Maintenance of Assessment Funds.

(a) Establishment and Maintenance of Association Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in FDIC 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 section 1365.5 and Section 12.02 of the Bylaws. Any interest received on deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

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

(c) Separate Accounts; Commingling of Funds. Except as otherwise provided in subparagraph (d), below, 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. For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate accounting of all funds received by the Association in payment of each Assessment and of all disbursements made therefrom; provided, however, that receipts and disbursements of Special Assessments made pursuant to Section 4.03(a)(i), above, shall be accounted for together with the receipts and disbursements of Regular Assessments, and a separate accounting 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.

(d) Reserve Funds. As more particularly provided in Article XII of the Association Bylaws, the Association Board is required by law to periodically identify the major components of the Development that the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of thirty (30) years or less. In the capital reserve analysis process, the Board is also obligated to identify the probable remaining useful life of the components identified in the study and to estimate the cost of repair, replacement, restoration, or maintenance of the components during and at the end of their useful life. The information developed in this capital reserve replacement analysis is then to be used by the Board as a component of preparing the annual budget of the Association. The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or for litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short term cash flow requirements or other expenses if the Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided to the Members as specified in Civil Code section 1363.05. The notice shall include the reasons why the transfer is needed, some of the options for repayment, and whether a Special Assessment may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the monies will be repaid to the reserve fund.

The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, after giving the same notice required for considering a transfer, and upon making a finding supported by documentation that a temporary delay would be in the best interests of the Development, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this subparagraph (d). This Special Assessment is subject to the Member approval requirements of California Civil Code section 1366 and Section 4.03(b), above, if the aggregate amount of the Special Assessment exceeds five percent (5%) of the budgeted gross expenses of the Association for the year in which the Special Assessment is imposed. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to California Corporations Code section 5016, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's principal office.

(e) Limitations on Association's Authority to Assign or Pledge Assessment Obligations. The Association may not voluntarily assign or pledge its right to collect payments or Assessments, or to enforce or foreclosure a lien to a third party, except when the assignment

Section 4.10. Collection of Assessments; Enforcement of Liens. Installments of Regular Assessments shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board. Special Assessments, Special Individual Assessments and Emergency Assessments shall be delinquent if not paid within the times prescribed in Sections 4.03(c), 4.04(b) and 4.05(b), respectively. When an Assessment becomes delinquent, the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law commencing thirty (30) days 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 sections 1366(c) and 1366.1 or comparable successor statutes. Once an Assessment becomes delinquent, the Association may elect to one (1) or both of the following remedies:

(a) Enforcement of An Owner's Personal Obligation to Pay Assessments. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the Assessment and in such action shall be entitled to recover the delinquent Assessment or Assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in subparagraph (b), below.

(b) Imposition and Enforcement of Assessment Lien and Limitations Thereon. Except as otherwise provided in subsection (b)(ix), below, with respect to the limitation on the imposition of liens for Special Individual Assessments, the Association may impose a lien against the Owner's Lot for the amount of the delinquent Assessment or Assessments, plus any reasonable costs of collection (including reasonable attorneys' fees), late charges and interest by taking the following steps:

(i) Issuance of Delinquency Notice; Contents. At least thirty (30) days prior to recording a lien upon the Owner's Lot to collect a delinquent Assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(A) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Lot Owner has the right to inspect the Association records, pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR LOT IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(B) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(C) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection previously levied by the Association if it is subsequently determined that the Assessment was paid on time.

(D) The right of the notified Owner to request a meeting with the Board as provided in subsection (iv), below.

(E) The right to dispute the Assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program pursuant to Civil Code section 1363.810, et seq.

(F) The right of the noticed Member to request alternative dispute resolution with a neutral third party pursuant to Civil Code section 1369.510, et seq. before the Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure, rather than a non-judicial foreclosure.

(ii) Application of Payments. Any payments made by the Lot Owner toward the delinquent Assessment shall first be applied to the Assessments that are owed at the time the payment is made; and only after the Assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received the payment on behalf of the Association. The Association shall provide its Members with a mailing address for overnight payment of Assessments.

(iii) Pre-Lien Offer to Meet and Confer with the Owner. Prior to recording a lien for delinquent Assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's meet and confer program that is required by Civil Code section 1363.810, et seq. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(iv) Rights of Owners to Propose Payment Plans. An Owner may also submit a written request to meet with the Board to discuss a payment plan for the delinquent Assessment. This request must also be made within fifteen (15) days of the postmark of the Delinquency Notice. The Association shall provide the Owners with the standards for payment plans, if such standards have been adopted. So long as a timely request for a meeting has been tendered, the Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request for a meeting, unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one (1) or more

(v) Association Assessment Lien Rights. Except as provided in subsection (ix), below (relating to Special Individual Assessments), the amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with Civil Code section 1366 shall be a lien on the Owner's Lot from and after the time the Association causes to be recorded in the Office of the County Recorder a Notice of Delinquent Assessment, which shall state the amount of the Assessment and other sums imposed in accordance with Civil Code section 1366, a legal description of the Owner's Lot against which the Assessment and other sums are levied, the name of the record owner of the Owner's Lot against which the lien is imposed. The itemized statement of the charges owed by the Owner that is required by subparagraph (b)(i)(B), of this Section 4.10 shall be recorded together with the Notice of Delinquent Assessment. The decision to record a lien for delinquent Assessments shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board in an open meeting and the vote shall be recorded in the minutes of the meeting.

In order for the lien to be imposed by non-judicial foreclosure as provided in subsection (vii), below, the Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be signed by any officer of the Association or by the person designated by the Association for that purpose or if no one is designated, by the president of the Association. A copy of the recorded Notice of Delinquent Assessment shall be mailed by certified mail to every person whose name is shown as an Owner of the Lot in the Association's records, and the notice shall be mailed no later than ten (10) calendar days after Recordation. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices, including Notices of Delinquent Assessments, required by Civil Code section 1367.1 to the secondary address that is specified.

(vi) Priority of Assessment Liens. A lien created pursuant to subsection (v), above or subsection (ix), below, shall be prior to all other liens recorded against the Owner's Lot subsequent to the Notice of Delinquent Assessment, except as described in Section 4.12, below.

(vii) Enforcement of Assessment Liens. Subject to the limitations of this Section 4.10(b) and in particular this subparagraph (vii), after expiration of thirty (30) days following the recording of a Notice of Delinquent Assessment, the Association's lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to Civil Code section 2934(a). Any sale by the trustee shall be conducted in accordance with Civil Code sections 2924, 2924(b) and 2924(c) applicable to the exercise of powers of sale in

The following specific limitations shall apply to the pursuit of foreclosure remedies:

(A) The decision to initiate foreclosure of a lien for delinquent Assessments that has been validly recorded shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board in an executive session and shall record the vote in the minutes of the next meeting of the Board that is open to attendance by the Members. The Board shall maintain the confidentiality of the Owner or Owners of the Lot by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least thirty (30) days prior to any public sale of the Lot in question.

(B) Prior to initiating a foreclosure for delinquent Assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's meet and confer program that is required by Civil Code section 1363.810, et seq. or alternate dispute resolution with a neutral third party pursuant to Civil Code section 1369.510, et seq. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate judicial foreclosure, rather than non-judicial foreclosure.

(C) If the Board votes to commence foreclosure proceedings to collect delinquent Assessments pursuant to this subsection (vii), the Board shall provide notice of that decision by personal service to an Owner of the Lot in accordance with the manner of service of summons pursuant to Code of Civil Procedure sections 415.10, et seq. who occupies the Residence or to the Owner's legal representative. If the Owner does not occupy the Residence and Lot that are the subject of the foreclosure proceeding, the Board shall provide written notice to the Owner by first-class mail, postage prepaid, at the most current address for the Owner that is shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Lot may be treated as the Owner's mailing address.

(D) Debts for Assessments, Regular or Special, may not be collected through the use of judicial or non-judicial foreclosure remedies until the delinquent Assessment amount, exclusive of any accelerated assessments, late charges, fees, costs of collection, attorneys' fees, and interest, equals or exceeds One Thousand Eight Hundred Dollars (\$1,800.00) or the Assessments are more than twelve (12) months delinquent. Delinquent Assessments in a smaller amount may not be collected through the use of foreclosure remedies, but may be collected through the use of any of the following other means: (1) a civil action in small claims court; (2) by recording a lien on the Owner's Lot (subject to the restrictions on foreclosure of that lien); or (3) any other manner provided by law, other than judicial or non-judicial foreclosure. If the Association elects to record a lien for delinquent Assessments, subsections (b)(iii) and (b)(v), above, shall continue to apply. The limitations on the use of foreclosure remedies set forth in this subparagraph (D) do not apply to Assessment collection actions against the Declarant in its capacity as an Owner when the Declarant's Assessment obligations are delinquent.

(viii) Foreclosed Owner's Rights of Redemption. A non-judicial foreclosure by the Association of an Owner's interest in his or her Lot to collect a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the Lot may be redeemed from a foreclosure sale under this subsection (viii) (which reflects Civil Code section 1367.4(c)(4)) ends ninety (90) days after the sale. In addition to the requirements of Civil Code section 2924(f), a notice of sale in connection with an Association's foreclosure of a Residence and Lot shall include a statement that the property is being sold subject to the right of redemption created pursuant to Civil Code section 1367.4(c)(4).

(ix) Limitation on Authority to Use Lien and Foreclosure Remedies to Collect Special Individual Assessments. For so long as any Residences or Lots within the Development are being sold under authority of a Department of Real Estate Public Report, a Special Individual Assessment or other monetary charge imposed by the Association: (A) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area Improvements or landscaping for which the Member or the Member's guests or tenants were responsible; or (B) as a disciplinary measure for failure of a Member to comply with the Governing Documents (except for reasonable late payment penalties, interest, and other reasonable costs of collection authorized by Civil Code section 1366) may not be characterized nor treated as an Assessment that may become a lien against the Owner's Lot enforceable by the sale of the interest under Civil Code sections 2924, 2924(b) and 2924(c).

Once the Association is no longer subject to the regulatory jurisdiction of the Department of Real Estate, the following categories of Special Individual Assessments may be collected through the use of lien and foreclosure remedies in accordance with subsections (v) through (viii), above: (A) Special Individual Assessments or other monetary charges imposed by the Association as a means of reimbursing the Association for costs incurred in the repair of damage to Common Areas and Common Facilities for which the Member or the Member's guests or tenants were responsible; and (B) Special Individual Assessments imposed to recover late charges, reasonable costs of collection and interest assessed in accordance with Civil Code section 1366(e).

(x) Obligation to Record Lien Releases. If it is determined that a lien previously recorded against a Lot was recorded in error, the party who recorded the lien, within twenty-one (21) calendar days, shall record or cause to be recorded in the Office of the County Recorder a lien release or notice of rescission and provide the Lot Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. If the determination that the lien was recorded in error is the result of dispute resolution meet and confer proceedings conducted pursuant to Civil Code section 1363.810 or alternative dispute resolution with a neutral third-party pursuant to Civil Code section 1369.510, the Association shall also be obligated to promptly reverse all late charges, fees, interest, attorneys' fees, costs of collection, costs imposed for the issuance of the notices prescribed by Civil Code section 1367.1, and costs of recording the lien release and all costs incurred in the mediation or alternative dispute resolution process.

In addition, within twenty-one (21) days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder a lien release or notice of rescission and provide the Lot Owner a copy of the lien release or notice that the delinquent Assessment has been satisfied.

(xi) Effect of Failure to Adhere to Lien Restrictions. If the Association fails to comply with the procedures set forth in this Section 4.10(b) prior to recording a lien, the Association shall recommence the required notice process prior to recording a lien. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Lot Owner.

The provisions of this Section 4.10(b) are intended to comply with the requirements of Civil Code sections 1367.1, 1367.4 and 1367.5, as in effect on January 1, 2007. If these sections of the Civil Code are amended or modified in the future in a way that is binding on the Association and causes this Section to be in conflict with applicable law, the provisions of this Section 4.10(b) automatically shall be amended or modified in the same manner by action of the Board of Directors without necessity of approval of the amendment by the Members so long as all Members are given a copy of the recorded amendment and the decision to approve the amendment is made at a duly noticed open meeting of the Board of Directors. .

Section 4.11. Transfer of Lot by Sale or Foreclosure. The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Lot:

(a) Except as provided in subparagraph (b), below, the sale or transfer of any Lot shall not affect any Assessment lien which has been duly Recorded against the Lot prior to the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest and costs of collection incurred prior to the sale or transfer of a Lot pursuant to a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not pursuant to a deed-in-lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien Recorded against the Lot at any time prior to Recordation of the Association's Assessment lien (see Section 4.12, below).

(c) 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 acquiring an interest in the Lot) from liability for any Assessments which thereafter become due with respect to the Lot or from the lien thereof.

(d) Any Assessments, late charges, interest and associated costs of collection which are lost as a result of a sale or transfer of a Lot covered by subparagraph (b), above, shall be deemed to be a Common Expense collectible from the Owners of all of the Lots, including the person who acquires the Lot and his or her successors and assigns.

(e) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest and associated costs of collection incurred prior to and/or in connection with the sale or transfer.

Section 4.12. 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 except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any first Mortgage of record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value; provided, however, 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 other prior encumbrance.

Section 4.13. 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 4.02, above, and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

ARTICLE V ARCHITECTURAL CONTROL

Section 5.01. Neighborhood Design Committee Approval of Improvements.

(a) Approval Generally. Prior to commencement of construction or installation of any Improvement within the Development (as defined in Section 1.20, above), other than the initial construction of Residences by the Declarant, the Owner planning such Improvement must submit to the Association's Neighborhood Design Committee a written request for approval. Owners shall submit applications in writing regarding all proposed Improvements on their Lot to the Neighborhood Design Committee. Each application shall be accompanied by two (2) complete sets of construction plans, specifications, and plot plans. The plans shall show the location of all structures previously existing upon said Lot, location of proposed Improvements, the composition and color of all exterior materials and any other information that the Committee may require so as to clearly indicate the proposed improvement and its effects on trees, landscaping, grading and drainage. Unless the Committee's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Committee shall base its decision on the criteria described in Section 5.06, below.

(b) Modifications to Approved Plans Must Also Be Approved. Once a proposed work of Improvement has been duly approved by the Neighborhood Design Committee, 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 Committee. If the proposed modification will have, or is likely to have, a material affect on

In the event that it comes to the knowledge and attention of the Association, its Neighborhood Design Committee, 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 5.12, below, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Neighborhood Design Committee review and approval is obtained.

Section 5.02. Establishment of Neighborhood Design Committee. The Neighborhood Design Committee shall consist of three (3) members appointed as follows: The Declarant reserves to itself the power to appoint all of the original members to the Neighborhood Design Committee and all replacements until the first anniversary of the issuance of the original public report of the California Real Estate Commissioner for the Development. During the period commencing on said first (1st) anniversary date and continuing until ninety (90%) percent of all Lots within the Development have been sold or until the fifth (5th) anniversary date of the original issuance of the final public report for the Development, whichever first occurs, the Declarant shall be empowered to appoint a majority (two (2) members) of the Neighborhood Design Committee and the Board of Directors shall have the power to appoint one (1) member of the Neighborhood Design Committee. Thereafter, the Board shall have the power to appoint all of the members of the Neighborhood Design Committee.

All individuals appointed to the Neighborhood Design Committee by the Board shall be Members of the Association. Individuals appointed to the Neighborhood Design Committee by the Declarant need not be Members of the Association. With the exception of those individuals appointed by the Declarant, all members of the Neighborhood Design Committee shall serve for terms of office coextensive with the terms of office of the Board of Directors who are responsible for their appointment.

In the event of the death or resignation of any member of the Committee, the successor shall be appointed by the entity that appointed such member to the Committee (i.e., either the Board of Directors of the Association or the Declarant). Once the Declarant's authority to appoint members of the Committee has ended, the Board shall have full authority to designate such a successor. Neither the members of the Architectural services performed pursuant hereto.

Section 5.03. Duties. It shall be the duty of the Neighborhood Design Committee to consider and act upon the proposals and plans for Improvements submitted to it pursuant to this Declaration, to adopt Design Guidelines pursuant to Section 5.05, below, 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. The Committee members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Neighborhood Design Committee functions. Requests for reimbursement shall be supported by adequate documentation and shall be submitted to, and approved by, the Board of Directors.

Section 5.04. Meetings. The Neighborhood Design Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Committee members shall constitute an act by the Committee and the Committee shall keep and maintain a written record of all actions taken.

The Owner-Applicant shall be entitled to appear at any meeting of the Neighborhood Design Committee at which the Owner's proposal has been scheduled for review and consideration. 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 view or solar access of their Lot, noise or other considerations) shall also be entitled to attend the meeting. Reasonable notice of the time, place and proposed agenda for Neighborhood Design Committee meetings shall be communicated before the date of the meeting to any Owner-Applicant whose application is scheduled to be heard.

Section 5.05. Design Guidelines. The Neighborhood Design Committee may, from time to time and with approval of the Board of Directors, adopt, amend and repeal rules and regulations to be known as "Design Guidelines." The Design Guidelines shall interpret and implement the provisions hereof by setting forth: (a) any standards and procedures for Neighborhood Design Committee review; (b) guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular Improvement projects within the Development; and (c) the criteria and procedures for requesting variances from any property use restrictions or minimum construction standards that would otherwise apply to the proposed Improvement under the Governing Documents (see Section 5.13 (variances), below). Notwithstanding the foregoing, no Design Guideline shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Design Guidelines and this Declaration, the provisions of the Declaration shall prevail.

Among other things, in accordance with Civil Code section 1378(a)(1), the Design Guidelines shall provide a fair, reasonable and expeditious procedures that the Committee must follow when making decisions on submitted Improvement plans and projects. The procedures shall include prompt deadlines for various actions and a maximum time for response to an application, consistent with Section 5.07, below.

Section 5.06. Basis for Approval of Improvements. When a proposed Improvement is submitted to the Neighborhood Design Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion, makes the following findings regarding the proposed project:

(a) Owner's plans and specifications conform to this Declaration and to the Design Guidelines in effect at the time such plans are submitted to the Committee;

(b) The Improvement will be in harmony with the external design of other structures and/or landscaping within the Development;

(c) The Improvement, as a result of its appearance, location or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her property; and

(d) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Development and with the overall plan and scheme of development within the Development.

While it is recognized that the Neighborhood Design Committee's determination will, of necessity, be subjective to some degree, the members of the Committee shall act reasonably and in good faith and shall consider such factors as the quality of workmanship and materials proposed for the Improvement project, the harmony of its exterior design, finished materials and color with that of other existing structures, and the proposed location of the Improvement in relation to the existing topography, finished grade elevations, roads, Common Areas and other existing structures. Any decision on a proposed improvement project shall be made in good faith and may not be unreasonable, arbitrary, or capricious. Furthermore, in spite of the discretion conferred on the Committee pursuant to this Article V, no decision of the Committee regarding a proposed Improvement project can be made or imposed that violates any governing provision of law (including, without limitation, the California Fair Employment and Housing Act) or a building code or other applicable law governing land use or public safety.

Decisions on proposed improvement projects shall be in writing and if a proposed project is not approved the Board's written decision shall include both an explanation of why the proposed change was not approved and a description of the procedure for reconsideration of the decision by the Board of Directors. Any applicant whose proposal is not approved shall have the right to seek reconsideration by the Board of Directors at an open meeting of the Board. On an annual basis the Association shall provide the Members with notice of any requirements for Association approval of improvement projects that are subject to this Article V. The notice shall describe the types of changes that require Association approval and shall include a copy of the procedure used to review and approve or disapprove proposed improvement projects.

In approving a request for construction of an Improvement, the Neighborhood Design Committee may condition approval upon the adoption of modifications in the Owner's plans and specifications or observance of restrictions as to location, noise abatement or similar mitigating conditions applicable to the Improvement.

Section 5.07. Delivery of Plans and Specifications. Plans and specifications shall be submitted to the Neighborhood Design Committee by personal delivery or first-class mail addressed to the secretary of the Association or the chairman of the Neighborhood Design Committee at the Association's principal office.

Section 5.08. Time Limits for Approval or Rejection. Within thirty (30) days after submission of plans and specifications satisfying the requirements of the Design Guidelines, the Neighborhood Design Committee shall return one (1) set of such plans to the applicant, with either written notice of approval or disapproval or with written suggestions of changes required for approval. If written suggestions of changes required for approval accompany the returned set of plans, the applicant may implement such changes to the plans and within thirty (30) days resubmit plans incorporating such changes for approval to the Committee, which shall not

Section 5.09. Proceeding With Work. Upon receipt of approval from the Neighborhood Design Committee, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement of construction and erection of the Improvement and excavation pursuant to said approval, said commencement to be, in all cases, within one (1) year from the date of such approval. If the Owner shall fail to comply with this Section, any approval given pursuant to this shall be deemed revoked unless the Neighborhood Design Committee, upon written request of the Owner made prior to the expiration of the initial one (1) year period, extends the time for commencement or completion. No such extension shall be granted except upon a finding by the Neighborhood Design Committee 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 project within the time specified in the extension request.

Section 5.10. Failure to Complete Work. Unless the Owner has been granted an extension of time to complete the project by the Neighborhood Design Committee, construction, reconstruction, refinishing or alteration of any such Improvement must be complete within one (1) year after construction has commenced, except 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.

If the Owner fails to comply with this Section, the Neighborhood Design Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 5.11(c) below as though the failure to complete the Improvement was a noncompliance with approved plans.

Section 5.11. Inspection of Work by Neighborhood Design Committee. 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 Neighborhood Design Committee shall have the right to inspect the job site to confirm that the work of Improvement is proceeding in accordance with the approved plans and specifications.

(b) Upon the completion of any work of Improvement for which Neighborhood Design Committee approval is required under this Article V, the Owner shall give the Neighborhood Design Committee a written notice of completion.

(c) Within thirty (30) days thereafter, the Neighborhood Design Committee, or its duly authorized representative, may inspect the Improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approval plans. If the Neighborhood Design Committee finds that the Improvement was not erected, constructed or installed in substantial compliance with the Owner's approved plans, then within

(d) If for any reason the Neighborhood Design Committee fails to notify the Owner of any noncompliance within thirty (30) days after 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 the Owner knows of the noncompliance and intentionally misleads the Committee with respect thereto.

Section 5.12. Enforcement.

(a) In addition to other enforcement remedies set forth in this Declaration, the Neighborhood Design Committee shall have the authority to order an abatement ("red tag") of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Committee or if it does not conform to the plans and specifications submitted to and approved by the Committee. If an Improvement project is red tagged, the Owner and his or her contractor shall cease all construction activity until such time as the issue giving rise to the red tag order is resolved. The red tag notice shall clearly state the reasons why the abatement has been ordered.

(b) No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

(c) If the Owner fails to remedy any noticed noncompliance within thirty (30) days from the date of such notification, or if the Owner feels that the project has been red tagged without justification, the Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing shall be conducted in accordance with Section 13.06, below.

(d) The approval by the Neighborhood Design Committee of any plans, drawings or specifications for any work of Improvement done or proposed, or for any other matter requiring the approval of the Neighborhood Design Committee under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different locations for Improvements, the size of the structure, proximity to other Residences and other factors may be taken into consideration by the Committee in reviewing a particular submittal.

Section 5.13. Variances. The Neighborhood Design Committee shall be entitled to allow reasonable variances with respect to the review and approval procedures of this Article V or the property use restrictions set forth in Article VII, below, in order to overcome practical difficulties, provided that the following conditions are met:

(a) Unless the requested variance pertains to a procedural matter or to the extent of documentation required to be included in the submission for approval of an Improvement project, the Neighborhood Design Committee shall be required to conduct a hearing on the matter that is open to attendance by all Owners of Lots in the Development. Notice of the date, time and location of the variance request hearing shall be given to the applicant and all other Owners at least ten (10) days prior to the date of the hearing and the notice shall contain a reasonably detailed description of the variance for which approval is being sought. The Owners receiving such notice shall have ten (10) days after the hearing on the variance in which to submit to the Board and the Committee written comments or objections with respect to the variance. The Committee shall make no decision until the comment period has expired.

(b) To approve the variance, the Neighborhood Design Committee must make a good faith determination that the variance does not constitute a material deviation from the overall scheme of development of the Development and will not result in a material detriment, or create an unreasonable nuisance with respect to any other residence, Common Area, Owner or resident.

Section 5.14. Certificate of Compliance. Within thirty (30) days after written demand is delivered to the Neighborhood Design Committee by any Owner, and upon payment to the Association of a reasonable fee (as established from time to time by the Board), the Neighborhood Design Committee shall Record a certificate of compliance, executed by any two (2) of its members, certifying (with respect to any Lot owned by the applicant Owner) that as of the date thereof either: (a) all Improvements made and other work completed by said Owner comply with this Declaration; or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the Owner, or from anyone deriving any interest in said Lot through the Owner, shall be entitled to rely on the Association's certificate of compliance with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant, all Owners and any persons deriving any interest through them.

Section 5.15. Limitation on Liability. Neither the Declarant, the Association, its Neighborhood Design Committee nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any Improvement project, whether or not pursuant to approved plans, drawings specifications; (c) the development of any Lot within the Development; or (d) the execution and filing of a Notice of Noncompliance pursuant to Section 5.11(c), above, or a compliance certificate pursuant to Section 5.14, above, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as he or she possessed at the time the act or omission occurred.

Section 5.16. Compliance With Governmental Regulations. Review and approval by the Neighborhood Design Committee of any proposals, plans or other submittal pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Lot Owner who desires to construct, install, or modify the Improvement.

ARTICLE VI MINIMUM IMPROVEMENT STANDARDS

This Article imposes minimum requirements for particular Improvement projects that Owners (other than the Declarant) may wish to undertake within the Development. :

Section 6.01. Approval by Neighborhood Design Committee. No building, fence, wall or other permanent structure or Improvement shall be erected, altered or placed on any Lot until building plans, specifications and a plot plan showing the location of structures on the Lots have been submitted to the Neighborhood Design Committee for review and approval as described in Article V, above.

Section 6.02. Solar Heating Systems. Subject to limitations imposed by California law, the Neighborhood Design Committee shall be entitled to adopt, as part of the Design Guidelines, reasonable regulations regarding the installation of solar heating systems. These rules may include limitations on placement and design of such systems to the extent necessary to avoid an unsightly appearance from neighboring Lots or Common Area.

Section 6.03. Colors and Exterior Finishes. No reflective finishes (other than glass) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including but without limitation, the exterior surfaces of any of the following: roofs, all projections above roofs, retaining walls, doors, trim, fences, pipes, equipment, mailboxes and newspaper tubes. No exterior finishes, textures or materials shall be used without approval of the Neighborhood Design Committee. The exterior color of Residences shall be consistent throughout the Development and the color scheme that was originally implemented by the Declarant shall be maintained unless two-thirds of the Owners approve a different color scheme.

Section 6.04. Roofing Materials. When Owners replace their roofs, they shall use the same materials and colors as the Declarant used in the initial construction of residences unless the Neighborhood Design Committee approves use of a different roofing material or a different color.

Section 6.05. Drainage. No Owner shall do any work, construct any Improvement, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Owner's or any adjacent Lots or parcels or Common Area as established in connection with the approval of the final subdivision and parcel maps applicable to the Development by the County, except to the extent such alteration in drainage pattern is approved in writing by the Neighborhood Design Committee, the County, and all other public authorities having jurisdiction.

Section 6.06. Antennas, Aerials and Satellite Dishes. No outside television antenna, aerial, satellite dish or similar device for the transmission or reception of television, radio, satellite, or other signals or any kind are prohibited, except:

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

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

(i) Any such Permitted Device is placed in the least conspicuous location on the Residence or Lot at which an acceptable quality signal can be received and is either not Visible from Neighboring Development or is screened from the view from streets of any neighboring Lot or Common Area.

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

Section 6.07. Exterior Lighting and Fixtures. Fluorescent, mercury vapor, sodium, or amber vapor lights, or standards outdoor lights of the type used for security must be enclosed in a manner that directs the light in a specific area without causing a visual impairment to passing motorist or a nuisance to neighboring properties. The issue of whether a nuisance exists shall be determined by the Neighborhood Design Committee in its sole discretion.

ARTICLE VII ASSOCIATION AND OWNER MAINTENANCE RESPONSIBILITIES

Section 7.01. Association Common Area Maintenance Responsibilities. The Association shall be solely responsible for all maintenance, repair, upkeep and replacement of all landscaping, parking areas, irrigation systems, signage and other improvements within the Common Area. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Common Area improvement or create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association. Without limiting the foregoing, Condition of Approval No. 27(a) requires that the Development have a Fire Protection Plan. It shall be the responsibility of the Association to perform annual

Section 7.02. Owner Maintenance Responsibilities. Each Owner shall be solely responsible for the maintenance and repair of his or her Residence and Lot, including the exterior walls and roofs of the Residence, the Owner's garage, and all Lot landscaping and irrigation. Such maintenance shall be done in a uniformly high and consistent manner so as to maintain the overall attractiveness and aesthetics of the Development.

Section 7.03. Association Recovery of Costs of Certain Repairs and Maintenance.

(a) Association Maintenance Caused by Owner Negligence. If the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder, is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 4.04, above.

(b) Owner Defaults in Maintenance Responsibilities. If an Owner fails to perform maintenance or repair functions on the Owner's Lot, the Association may give written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3.07(b), above, to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 13.06, below.

Section 7.04. Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

Section 7.05. Drainage Structures, Ditches and Swales.

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

(b) Except as provided in subparagraph (a), above, each Owner shall keep drainage courses on his or her Lot free and clear of all obstructions, and shall, in cooperation with contiguous property Owners (including the Association and the Declarant as to any contiguous parcels owned by them), maintain all such drainage ditches, swales and culverts common to their Lots in good order.

(c) No Owner or resident shall alter or obstruct a natural drainage course, or materially add to the natural water volume of said drainage course without making adequate provisions with respect to neighboring Lots and Common Areas. Any such alterations,

ARTICLE VIII
USE OF DEVELOPMENT AND RESTRICTIONS

In addition to the restrictions established by law or additional rules and regulations set forth in the 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 Development:

Section 8.01. Common Areas. The Common Areas shall be preserved as open space and used for recreational purposes and other purposes incidental and ancillary to the use of Lots. Such use shall be limited to the private use for aesthetic and recreational purposes by the Members, their tenants, families and guests, subject to the provisions of the Governing Documents. No Improvement, excavation or work which in any way alters any Common Area or Common Facility from its natural or existing state on the date such Common Area or Common Facility shall be made or done except by the Association and then only in strict compliance with the provisions of this Declaration.

Section 8.02. Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or Common Area nor shall anything be done within the Development which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including, but not limited to barking dogs, the operation of excessive noisy air conditioners, stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from an Owner's Lot or from activities within the Common Area, which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Lot or the Common Area.

Section 8.03. Temporary Structures. No structure of a temporary character, trailer, mobile home, camper, tent, shack, garage or other outbuilding shall be used on any Lot at any time as a Residence, either temporarily or permanently.

Section 8.04. Household Pets. The following restrictions regarding the care and maintenance of pets within the Development shall be observed by each Owner and resident:

(a) Not more than two (2) common household pets (not counting birds in cages that are kept indoors and fish in aquariums) may be kept on each Lot so long as the same are not kept, bred or maintained for commercial purposes. No other animals, livestock, or poultry of any kind shall be kept, bred or raised on any Lot or in any Residence.

(b) Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners.

(c) No dog shall be left chained or otherwise tethered in front of a Lot or in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets in the Development.

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

(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 Development to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Development by the other Owners and residents.

Section 8.05. Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are visible from neighboring property shall be erected or maintained on any Lot except:

- (a) signs required by legal proceedings;
- (b) no more than one identification sign for individual Residences;
- (c) no more than one "for sale" sign for the individual Lot on which the sign is located;
- (d) other signs, such as open house or garage sale signs, or signs advising of the existence of security or surveillance services, or "no solicitation" signs, the nature, size, number, and location of which have been approved in advance and in writing by the Neighborhood Design Committee or are in accordance with written guidelines which may be developed and approved by the Neighborhood Design Committee;
- (e) signs of the Declarant located on any Lot, on any property owned by the Declarant, on any Common Area or on any other portion of the Development; provided, however, that once a Lot has been sold by Declarant to a third party, no signs permitted by this subparagraph (e) may be erected or maintained on the Lot without the consent of its Owner; and
- (f) signs posted by the Association within any portion of the Common Area.

Section 8.06. Business Activities. No business or commercial activities of any kind whatsoever shall be conducted in any Residence garage or out building or in any portion of any Lot without the prior written approval of the Board; provided, however, the foregoing restriction shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents or the Declarant's activities in connection with the development, sale and marketing of the Development. Furthermore, no restrictions contained herein shall be construed in such a manner so as to prohibit any Owner from: (a) maintaining his or her personal library in his or her Residence; (b) keeping his or her personal business records or accounts therein; (c) handling his or her personal or professional telephone calls or correspondence therefrom; (d) leasing or renting his or her Residence in accordance with (and subject to the limitation imposed by) Section 2.04, above; or (e) conducting any other activities

Section 8.07. Garbage. No rubbish, trash, or garbage shall be allowed to accumulate on Lots. Any trash that is accumulated by an Owner outside the interior walls of a Residence shall be stored entirely within appropriate covered disposal containers and facilities which shall be 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 Development to a public dump or trash collection area by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this section. If Residences within the Development are subject to a weekly trash collection service, each resident's trash container(s) shall be placed at the curb no sooner than the evening before the scheduled trash collection day and shall be returned to a location on the Owner's Lot that is screened from the view of other residents no later than the evening of the scheduled trash collection date.

Section 8.08. Storage. Storage of personal property on any Lot shall be entirely within enclosed storage areas. There shall be no woodpiles or storage piles accumulated on top, or outside, of any enclosed storage area. The Association shall have the right to establish and maintain on the premises appropriate storage yards and storage buildings for the maintenance of materials and equipment used by the Association in connection with its planting, building, repair, maintenance and preservation of the structures, gardens and other Improvements within the Common Areas, and any portion of the Lots which the Association is obligated to repair and maintain.

Section 8.09. Burning. There shall be no exterior fires whatsoever except for barbecue fires located only upon Lots and contained within receptacles designed for such purpose. No Owner or resident shall permit any condition to exist on his or her Lot, including, without limitation, trash piles, or weeds, which create a fire hazard or is in violation of local fire regulations.

Section 8.10. Machinery and Equipment. No power tools, machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence or appurtenant structures within the Development.

Section 8.11. Diseases and Pests. No Owner shall permit any thing or condition to exist upon his or her Lot which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

Section 8.12. Parking and Vehicle Restrictions.

(a) All driveways and garages shall be maintained in a neat and orderly condition and garage doors shall be kept in a closed condition except as necessary to permit ingress and egress of vehicles or to clean or work in the garage. The garages are to be used for the parking of standard passenger vehicles and trucks not to exceed three-quarter tons in gross weight, boats or similar items for storage purposes and shall not be converted to living quarters or work shops which will preclude the parking of vehicles. Designated guest parking areas within the Common Areas within the Common Area are to remain open for use by guests only and are not to be used by Owners or other residents, either permanently or temporarily, for the parking of their passenger vehicles or the storage of boats, trailers or similar items. No vehicle shall be parked or left on any street except within specified parking areas so designated by the Board. Streets in the Development are designated as fire lanes and as such must remain open and unobstructed for access by fire trucks and other emergency vehicles and personnel. Accordingly, Condition of Approval No. 51 provides that on-street parking shall only be permitted in the four designated parking spaces at the east end of Joyce Drive and in the single parking space on Joyce Drive between Lots 13 and 14. On-street parking in other areas along any of the access roadways is not permitted as parked vehicles would encroach on a 20' clear width of roadway. The Association shall post and maintain at the entrance to the Development signs required by Vehicle Code Section 22658.2 to permit the towing of improperly parked vehicles as well as standard City "no parking" signs or designated as fire lanes and marked in accordance with the requirements of the Fire Department and the California Fire Code. It shall be the duty of the Association to enforce these fire lane access restrictions.

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

(c) Campers, boats, trailers, motorcycles, commercial vehicles and trucks in excess of three-quarter tons are not to be parked in any carports, parking areas or otherwise, other than within enclosed garages except for periods not to exceed 48 hours for the purpose of loading and unloading; provided, however, that campers, trailers and recreational vehicles may be parked for periods not to exceed twenty (24) hours in parking areas designated by the Board for such use.

(d) The Board shall have the authority to tow, 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.

(e) The Board shall have the authority to promulgate such further rules and restrictions regarding parking and vehicles within the Development as may be deemed prudent and appropriate.

(f) Parking shall not be permitted within the Development except within garages, and designated parking areas.

(g) Garage doors shall be kept in a closed position except when necessary to provide ingress or egress to and from the garage or to provide ventilation to individuals working in the garage area.

Section 8.13. Children. Each Owner and resident shall be accountable to the remaining Owners and residents, their families, visitors, guests and invitees, for the conduct and behavior of their children and any children temporarily residing in or visiting the Owner/resident and for any property damage caused by such children.

Section 8.14. Activities Affecting Insurance. Nothing shall be done or kept on any Lot or within the Common Area which will increase the rate of insurance relating thereto without the prior written consent of the Association and no Owner shall permit anything to be done or kept on his or her Lot or the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Residence or any part of the Common Area.

Section 8.15. Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof and no Owner of a Lot within the Development shall be entitled to sever that Lot from the Common Area portion of the Development.

Section 8.16. Variances. Upon application by any Owner, the Neighborhood Design Committee shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article, if specific application of the restriction will, in the sole discretion of the Committee, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Committee shall follow the procedures set forth in Section 5.13 for the granting of architectural variances.

Section 8.17. Enforcement of Development Use Restrictions. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of any architectural or property use infraction that does not necessitate immediate corrective action under Section 13.06, below, the Owner or tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her right to be heard on the matter.

ARTICLE IX EASEMENTS.

Section 9.01. Blanket Utility Easement. There is hereby created a blanket easement upon, across, over, along, and under all private streets and Common Areas of the Development 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 within the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Development except as initially designed and approved by the Declarant or thereafter approved by the Board of Directors. The easements provided for in this Section shall in no way affect any other Recorded easement recorded earlier in time with respect to any portion of the Development.

Section 9.02. Maintenance Easements. An easement is hereby granted to the Declarant and the Association, their officers, agents, employees, and to any management company selected by the Declarant or the Association to enter in or to cross over the Common Area and any Lot to perform the Association's duties of maintenance and repair of the Lots, Common Area, or Common Facilities provided for herein.

Section 9.03. Easements in Favor of Declarant in Common Area. For so long as Declarant is subject to a bond for uncompleted Common Facilities, Declarant shall have an easement for ingress to and egress from the Common Areas for the purpose of completing Improvements thereon or for the performance of necessary repair work.

Section 9.04. Easements as Shown on the Subdivision Map. Ownership of Lots and Common Areas in the Development shall be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Development and each Lot as shown on the Subdivision Map.

Section 9.05. Priority of Easements. Wherever easements granted to the City are, in whole or in part, coterminous with any other easements, the easements of the City shall have and are hereby granted priority over said other easements in all respects.

ARTICLE X INSURANCE

Section 10.01. Types of Insurance Coverage. The Association shall, at the discretion of the Board of Directors, purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent they are 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;
- (ii) Loss or damage from theft, vandalism or malicious mischief; and
- (iii) Such other risks, perils or coverage as the Board of Directors may determine.

Such policy or the endorsement made a part thereof shall, to the extent available, provide that the insurer issuing the policy agrees to abide by the decision of the Association made in accordance with the provisions of Article XI, below, as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Facilities.

(b) Public Liability and Development Damage Insurance. To the extent such insurance is reasonably obtainable, 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 including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000) 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 nonowned 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) Director's and Officer's Liability Insurance. To the extent such insurance is reasonably obtainable the Association shall maintain individual liability insurance for its directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least One Million Dollars (\$1,000,000).

(d) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase with Common Funds 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, 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

Section 10.02. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 10.01, above, 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 herein above described. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

Section 10.03. 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 10.04. Trustee. All insurance proceeds payable under Section 10.01, above, and subject to the rights of the Mortgagees under Article XVI, below, may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank in the County that agrees in writing to accept such trust.

Section 10.05. 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 Sections 10.01, above. 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 10.06. Distribution to Mortgagees. Subject to the provisions of Article XIV, below, any Mortgagee has the option to apply insurance proceeds payable on account of a Lot in reduction of the obligation secured by the Mortgage of such Mortgagee.

Section 10.07. Policies Obtained by Declarant. It is contemplated that Declarant may contract for the insurance coverage contemplated by this Article prior to or concurrently with obtaining financing for the development of the Development, and any such obligations or commitments for the payment of premiums or expenses with respect thereto shall become an obligation of the Association, shall be treated as a Common Expense, and shall be paid out of the Common Funds as provided herein.

Section 10.08. Annual Review of Association Insurance and Disclosure to Members. The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three (3) years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners' associations operating in similar common interest developments in the greater Nevada County region. In accordance with California Civil Code section 1365(e), annually the Association shall distribute to its Members a summary of the Association's property, general liability, and flood insurance (if any), such distribution to be made within sixty (60) days prior to the beginning of the Association's fiscal year.

Section 10.09. Board's Authority to Revise Insurance Coverage. The Board shall have the power and right to deviate from the insurance requirements contained in this Article IX in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article X, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available; or, if available, the insurance 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.

Section 10.10. Insurance of Residences. Each Owner shall be solely responsible for insuring his or her Residence and Lot and any personal property located therein or thereon. The Association shall have no liability or responsibility for the adequacy of such insurance.

ARTICLE XI DAMAGE OR DESTRUCTION

Section 11.01. Common Facilities; Bids and Determination of Available Insurance Proceeds. In the event any Common Facilities are ever damaged or destroyed, then, and in such event, as soon as practicable thereafter the Board of Directors shall: (a) obtain bids from at least two reputable, licensed contractors, which bids shall set forth in detail the work required to repair, reconstruct and restore the damaged or destroyed portions of the Common Facilities to substantially the same condition as they existed prior to the damage and the itemized price asked for such work; and (b) determine that amount of all insurance proceeds available to the Association for the purpose of effecting such repair, reconstruction and restoration.

Section 11.02. Common Facilities; Sufficient Insurance Proceeds. Subject to the provisions of Section 110.01, above, if, in the event of damage to or destruction of any portion of any Common Facility, the insurance proceeds available to the Association are sufficient to cover the costs of repair, reconstruction and restoration, then the Association may cause such facilities to be repaired, reconstructed and restored in substantially the same condition in which they existed prior to the loss.

Section 11.03. Common Facilities; Insurance Proceeds Insufficient in an Amount Exceeding Five Percent (5%) of Association's Budgeted Common Expenses. In the event that any Common Facility is totally or substantially damaged or destroyed or, if, in the event of damage to or destruction of only a portion of the Common Facilities, the insurance proceeds available to the Association are insufficient in an amount exceeding five percent (5%) of the Association's budgeted gross expenses for the year in which the loss occurs, so as to require a Special Assessment to cover the estimated cost of repair, reconstruction and restoration, then the proposal for imposition of the Special Assessment shall be presented to the owners for approval in accordance with Sections 4.03 and 4.08, above. The proposition shall be presented to the Owners in a form which permits them to choose between (a) funding the Special Assessment to

Section 11.04. Damage or Destruction of Residences.

(a) Obligation to Rebuild. 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 said Residence to rebuild, repair or reconstruct said Residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

(b) Neighborhood Design Committee Approval. Any Owner who has suffered damage shall apply to the Neighborhood Design Committee for approval of plans for the reconstruction, rebuilding, or repair of his or her Residence. Application for such approval shall be made in writing together with full and complete plans, specifications, working drawing and elevations showing the proposed reconstruction and the end result thereof. The Neighborhood Design Committee shall grant such approval only if the design proposed by the Owner would result in a finished Residence in harmony with the exterior design of other Residences on the Development.

(c) Time Limitation for Reconstruction. The Owner or Owners of any damaged Residence(s), the Neighborhood Design Committee shall be obligated to proceed with all due diligence hereunder, and the Owner(s) shall commence reconstruction within three (3) months after the damage occurs and complete reconstruction within six (6) months after the damage occurs, unless an extension of these time limitations is obtained from the Neighborhood Design Committee in accordance with Article V, above.

**ARTICLE XII
CONDEMNATION**

If all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected Lots, shall be payable to the Association as trustee for all Owners and mortgagees according to the loss or damages to their respective interest in the Common Area. The Association, acting through its Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation, settlement and litigation of the issues with respect to the taking and compensation affecting the Common Area. Each Owner hereby designates and appoints each Association as his or her attorney-in-fact for such purposes.

ARTICLE XIII BREACH AND DEFAULT

Section 13.01. 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 Declarant, any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

Section 13.02. Nuisance. Without limiting the generality of the foregoing Section 13.01, 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 13.03. 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 13.04. Attorneys' Fees. Reasonable attorneys' fees and costs shall be awarded to the prevailing party in any procedure to enforce the Governing Documents or a party's rights arising under the Governing Documents. Such enforcement procedure includes an action brought in any court having jurisdiction over any alternative dispute resolution procedure implemented pursuant to the Governing Documents or to California Civil Code section 1354, as it may be renumbered and revised from time to time. In any enforcement procedure, such as mediation, conducted pursuant to California Civil Code sections 1363.810-1363.840, in which there is no agreement between all of the parties that attorneys will represent them, recoverable costs are limited to attorneys' fees and costs incurred in providing the notices required under such statutes.

Section 13.05. 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 13.06. Rights and Remedies of the Association (Governing Document Enforcement).

(a) Rights Generally. Except as otherwise provided in Section 13.07, below (“Assessment Collections”) and 13.08, below (“Declarant Disputes”), 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 Association Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreation Common Facilities or suspension of the Owner's voting rights as a Member of the Association; provided, however, the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section.

The decision of whether it is appropriate or necessary for the Association to take 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 pursuant to California Civil Code sections 1363.810-1363.840 and 1369.510-1369.580 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). In the event a fine schedule is adopted (and whenever a change in a previously adopted schedule is made), the Board shall distribute the schedule to the Members by personal delivery or first class mail. Prior to imposition of a fine, the Board shall comply with the procedures for notice to the Member and an opportunity for a hearing before the Board in accordance with Civil Code section 1363(h) and Section 13.06(d)(iii), below. Once imposed, a fine or penalty may be collected as a Special Individual Assessment, subject to the limitation on the use of lien and foreclosure remedies stated in Section 4.10(b), above.

(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) Limitations on Forfeiture or Abridgement of Rights. The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and

(ii) Monetary Penalties Imposed by the Association. Monetary penalties imposed by the Association: (A) for 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 not be characterized nor treated as an Assessment which may become a lien against the Member's Lot enforceable by a sale of the Lot in nonjudicial foreclosure; provided, however, 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 attorneys' fees) in the Association's efforts to collect delinquent Assessments.

(iii) Hearings and Summary Enforcement Rights. No penalty or temporary suspension of rights shall be imposed pursuant to this Article unless the Member alleged to be in violation is given at least ten (10) days prior notice of the Board's intention to impose a penalty or discipline the Member (see subparagraph (iv), below). Notwithstanding the foregoing, under circumstances involving conduct that constitutes: (A) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (B) a traffic or fire hazard; (C) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (D) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors, or its duly authorized agents, may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five (5) days following the Association's disciplinary action), or on its own initiative, conduct a hearing on the matter.

(iv) Conduct of Hearings and Notice. Disciplinary hearings may be before the Board or its duly appointed Covenants Committee and shall be scheduled at a date which is at least ten (10) days, but no more than thirty (30) days, following the date that notice of the hearing is given to the Owner. The notice shall be given by either first-class mail or by personal delivery and shall set forth the date, time and location of the hearing, a general description of the violation and a notice that the Member has a right to attend the hearing and address the Board or its duly designated Covenants Committee.

If the Board or its Covenants Committee imposes discipline on a Member, the Board shall provide the Member with a written notification of the action taken, within fifteen (15) days following the Association's action. That notice shall be given either by personal delivery or by first-class mail. In no event shall the effective date of any disciplinary action commence sooner than five (5) days following conclusion of the hearing unless: (i) the hearing merely affirms summary disciplinary action initiated pursuant to the immediately preceding paragraph; or (ii) earlier commencement is necessary to preserve the quiet enjoyment of other residents or to prevent further damage to, or destruction of, the Development or any portion thereof.

(v) Rules and Procedures. The Board, or an appropriate committee appointed by the Board to conduct and administer disciplinary hearings and related proceedings and shall adopt rules and procedures, consistent with Civil Code section 1363.820, that further elaborate and refine the procedures for conducting Member disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

(vi) Appointment of a Covenants Committee. Acting pursuant to Section 10.01 of the Association's Bylaws, the Board of Directors may, but shall not be obligated to, establish a committee to hear and decide cases involving alleged violations of the Governing Documents (the "Covenants Committee"). If no committee is established, the Board shall perform this function. The Covenants Committee shall review written complaints from Lot Owners, the Association's property manager, or the Neighborhood Design Committee (for violations other than those relating to specific Improvement projects, which shall remain within the jurisdiction of the Neighborhood Design Committee) of alleged violations of the Governing Documents or Association Rules, and, when determined appropriate, conduct hearings and make findings regarding the alleged violation(s).

The decisions of the Covenants Committee, if established, shall be appealable by the affected Owner(s) to the Board of Directors within ten (10) calendar days following receipt of the 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 Covenants 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 from the Covenants Committee shall be set forth in the Association Rules.

(vii) Court Actions. Court actions to enforce the Governing Documents may only be initiated on behalf of the Association by resolution of the Board. Prior to the filing of any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either such action coupled with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000)), the Association shall first comply with the provisions of California Civil Code sections 1369.510-1369.580 relating to alternative dispute resolution procedures for common interest owner association and Governing Document enforcement disputes.

Section 13.07. Assessment Collection Actions. The notice and hearing procedures set forth in Section 13.06 shall not apply to any actions by the Association or its duly authorized agents to collect delinquent assessments. Assessment collections shall be subject to Section

Section 13.08. Dispute Resolution Procedure (Declarant Disputes).

(a) Claims and Disputes Subject to this Section. Any claim, dispute or other controversy between the Association and/or any Owner(s) and the Declarant or any director, officer, shareholder, partner, employee or agent of the Declarant (collectively the “Declarant” for purposes of this Section 13.08 relating to: (i) deficiencies in the original construction, design, specifications, surveying, planning, landscaping, supervision, testing or observation of construction by the Declarant, its employees, agents and contractors (individually and collectively, “Defect Claims”) or (ii) claims relating to breach of contract, fraud or misrepresentation (“Other Declarant Claims”; Defect Claims and Other Declarant Claims being collectively referred to as “Claims”) shall be subject to the dispute resolution procedures and arbitration procedures set forth in this Section 13.08. Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the Claim shall be considered communications undertaken in the course of effecting a settlement or compromise and as such shall not be admissible as the admission on the part of any representative or agent of that party to be utilized for any such purpose in any action or proceeding.

Declarant, the Association and each Owner covenant that each shall forbear from commencing any litigation without complying with the procedures described in this Section 13.08. If any party breaches the foregoing covenant, the other party may obtain an appropriate order compelling the breaching party to comply with the procedures described in this Section 13.08. Notwithstanding the foregoing, any party may file a lawsuit and take such other action as may be necessary in order to toll the running of any applicable statute of limitations, provided that the party immediately shall stay any further proceedings under the legal action and shall comply with the provisions of this Section 13.08. The provisions of this Section 13.08 shall not apply to any action taken by the Association to enforce delinquent Assessments for which the Declarant is liable. Assessment collection actions in which the Declarant is the defaulting party shall be governed by Section 4.10, above.

(b) PRE-ARBITRATION DISPUTE RESOLUTION PROCEDURES. WITH RESPECT TO DEFECT CLAIMS, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS OR DISPUTES PURSUANT TO CALIFORNIA CIVIL CODE SECTION 895, ET SEQ., AS HEREAFTER AMENDED (WHICH RELATES TO DEFECTS IN RESIDENTIAL HOME CONSTRUCTION), SHALL BE SUBJECT TO THE NON-ADVERSARIAL PROCEDURES SET FORTH IN CALIFORNIA CIVIL CODE SECTION 910 THROUGH 938 PRIOR TO THE INITIATION OF ANY ARBITRATION OR SMALL CLAIMS COURT PROCEEDING AGAINST THE DECLARANT. IN ADDITION, NOTHING CONTAINED HEREIN SHALL BE DEEMED A WAIVER OR LIMITATION OF THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTIONS 1368.4, 1375, 1375.05 OR 1375.1 (WHICH ALSO PERTAIN TO DISPUTES BETWEEN RESIDENTIAL HOME BUILDERS AND ASSOCIATIONS IN COMMON INTEREST DEVELOPMENTS). ONLY IN THE EVENT THAT THESE PROCEDURES ARE NOT SUCCESSFUL IN RESOLVING THE CLAIM SHALL THE

(c) ARBITRATION OF DISPUTES:

(i) AGREEMENT TO ARBITRATE. IT IS AGREED THAT ANY "OTHER DECLARANT CLAIMS," AS DEFINED IN SUBPARAGRAPH (a) ABOVE, AND ANY "DEFECT CLAIMS" THAT ARE NOT RESOLVED PURSUANT TO THE NON-ADVERSARIAL, PRE-ARBITRATION PROCEDURES SET OF SUBPARAGRAPH (b), ABOVE, CLAIMS BETWEEN AN OWNER AND THE DECLARANT SHALL BE RESOLVED BY BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT (TITLE 9 OF THE UNITED STATES CODE).

(ii) RULES FOR THE ARBITRATION PROCEEDING. CLAIMS SHALL BE RESOLVED IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (the "AAA"), THE AAA'S SUPPLEMENTARY PROCEDURES FOR CONSUMER/RESIDENTIAL CONSTRUCTION DISPUTES (COLLECTIVELY, THE "RULES") AND THE TERMS OF THIS AGREEMENT. IF THE MATTER PROCEEDS TO ARBITRATION, DISCOVERY SHALL BE ALLOWED PURSUANT TO CODE OF CIVIL PROCEDURE §1283.05. ARBITRATION OF ANY MATTER PURSUANT TO THIS CLAUSE SHALL NOT BE DEEMED A WAIVER OF THE ATTORNEY/CLIENT OR ATTORNEY/WORK PRODUCT PRIVILEGE IN ANY MANNER.

(iii) ARBITRATOR. THE DISPUTE CONSTITUTES A CLAIM WHICH SHALL BE HEARD AND DETERMINED BY A SINGLE NEUTRAL ARBITRATOR WHO HAS EXPERTISE IN THE AREA OF THE DISPUTE. THE ARBITRATOR SHALL BE APPOINTED WITHIN A PERIOD OF TIME, WHICH IN NO EVENT SHALL BE MORE THAN SIXTY (60) DAYS FROM THE ADMINISTRATOR'S RECEIPT OF A WRITTEN REQUEST FROM A PARTY TO ARBITRATE THE CLAIM OR DISPUTE. IN SELECTING THE ARBITRATOR, THE PROVISIONS OF §1297.121 OF THE CODE OF CIVIL PROCEDURE SHALL APPLY. AN ARBITRATOR MAY BE CHALLENGED FOR ANY OF THE GROUNDS LISTED IN §1297.121, OR IN §1297.124 OF THE CODE OF CIVIL PROCEDURE IF THE PARTIES CANNOT MUTUALLY AGREE ON AN ARBITRATION AGENCY, THE DISPUTE SHALL BE DETERMINED BY SUBMISSION TO BINDING ARBITRATION WITH THE AMERICAN ARBITRATION ASSOCIATION.

(iv) JOINDER OF PARTIES. THE PARTIES MAY JOIN OTHER PARTIES AS PROVIDED IN THE RULES. FOR EXAMPLE, THE SELLER MAY INCLUDE ITS SUBCONTRACTORS AND SUPPLIERS OR OTHER PARTIES IN THE ARBITRATION. SEE ALSO CIVIL CODE SECTION 916(e).

(v) LOCATION OF ARBITRATION. THE VENUE OF THE ARBITRATION MAY BE IN THE BUYER'S RESIDENCE IF THE BUYER AGREES TO THAT LOCATION, BUT OTHERWISE THE ARBITRATION SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED. UNLESS THE PARTIES AGREE

(vi) AWARD. THE ARBITRATOR IS AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR IN EQUITY FOR THE CLAIMS. THE AWARD OF THE ARBITRATOR SHALL BE ACCOMPANIED BY DETAILED WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW. ANY AWARD RENDERED BY THE ARBITRATOR MAY BE CONFIRMED, ENTERED AND ENFORCED IN ANY COURT HAVING JURISDICTION OVER THE MATTER.

(vii) CONFIDENTIAL. EXCEPT AS MY BE REQUIRED BY LAW OR FOR CONFIRMATION OF THE AWARD, NEITHER PARTY NOR THE ARBITRATOR MAY DISCLOSE THE EXISTENCE, CONTENT OR RESULTS OF THE ARBITRATION HEARING WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER PARTY.

(viii) FEES. ANY FEE TO INITIATE ARBITRATION SHALL BE ADVANCED BY SELLER, BUT THE COSTS AND FEES OF ARBITRATION SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATOR(S).

(ix) SMALL CLAIMS COURT. THIS PROVISION SHALL NOT APPLY TO ANY CLAIM THAT CAN BE PROPERLY BROUGHT BY THE BUYER WITHOUT LEGAL COUNSEL IN SMALL CLAIMS COURT. HOWEVER ANY APPEAL FROM THE SMALL CLAIMS JURISDICTION TO A HIGHER COURT SHALL BE GOVERNED BY THIS PROVISION.

(x) STATUTES OF LIMITATION. THE ARBITRATION MUST BE FILED WITHIN THE APPLICABLE STATUTE OF LIMITATIONS APPLICABLE TO THE CLAIM. IF THE PRE-LITIGATION DISPUTE RESOLUTION PROCEDURES OF CIVIL CODE SECTIONS 910, ET SEQ. APPLY TO THE CLAIM, APPLICABLE STATUTE OF LIMITATIONS MAY BE TOLLED PURSUANT TO THOSE PROCEDURES (CIVIL CODE SECTIONS 927 AND 928).

ARTICLE XIV PROTECTION OF MORTGAGEES

Section 14.01. Assessment Lien Subordinated. Any lien created or claimed under the provisions of Article IV, above, shall be subject and subordinate to the lien of any first Mortgage given in good faith and for value. No such Mortgagee who acquires title to any Lot by judicial foreclosure or by exercise of power of sale contained in the Mortgage shall be obligated to cure any breach of this Declaration by a former Owner of such Lot or shall be liable for any unpaid Assessments made against the Lot which accrued prior to the date the Mortgagee acquired such title. No lien created or claimed under the provisions of Article IV, above, shall in any way defeat, invalidate or impair the rights of any Mortgagee under any such Recorded Mortgage.

Section 14.02. Amendment of This Declaration. Except where an amendment has been approved in accordance with Section 14.12, below, no amendment of this Declaration shall affect any of the rights of the holder of any Mortgage described in Section 14.01, above, which is made in good faith and for value, if such Mortgage is Recorded and notice of the delivery and Recording thereof is given to the Association prior to the Recording of such amendment.

Section 14.03. Default by Owner; Mortgagee's Right to Vote. In the event of a default by any Owner under a Mortgage encumbering such Owner's Lot, the Mortgagee under such Mortgage shall, upon: (a) giving written notice to the defaulting Owner; (b) Recording a "Notice of Default" in accordance with California Civil Code section 2924; and (c) delivering a copy of such Recorded Notice of Default to the Association, have the right to exercise the vote of the Owner at any regular or special meeting of the Association held only during such period as such default continues.

Section 14.04. Breach; Obligation After Foreclosure. No breach of any provision of this Declaration by Declarant, the Association or any Owner shall impair or invalidate the lien of any Recorded Mortgage made in good faith and for value and encumbering any Lot. The Declarant, the Association or their successor and assigns shall be obligated to abide by all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes provided for in this Declaration as it may be amended from time to time with respect to any person who acquires title to or any beneficial interest in any Lot through foreclosure, trustee's sale or otherwise.

Section 14.05. Exchange of Information. The Association shall, at the written request of any Mortgagee, insurer or guarantor, notify such party of:

- (a) Any condemnation or casualty loss that affects either a material portion of the Development or the Lot(s) securing the Mortgage;
- (b) Any delinquency of sixty (60) days or more in the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage.
- (c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action of the Association that requires the consent of a specified percentage of Eligible Mortgagees (see Section 14.12(a), below, for definition of "Eligible Mortgagee").

To be entitled to receive this information, the Mortgagee, insurer or guarantor must send a written request to the Association, stating both its name and address and the number or address of the Lot(s) securing the Mortgage.

Any Mortgagee of any Lot is hereby authorized to furnish to the Board of Directors, upon written request by the Board therefor, the amount of any unpaid balance of any indebtedness secured by a lien of a Mortgage and the amount and due date of any delinquent payment or payments of such indebtedness.

Section 14.06. Certain Restrictions Affecting the Association. Notwithstanding any other provisions of this Declaration, without the prior written consent of at least sixty-seven percent (67%) of the Owners or sixty-seven percent (67%) of the first Mortgagees, such percentage to be based upon the total of number of Lots so mortgaged, with each such Mortgagee entitled to one vote for each Lot, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or any Improvements thereon (except that the granting of any easement for public utilities, or for other public purposes consistent with the intended use of the Development, shall not be deemed a "transfer" as that term is used in this subparagraph (a));

(b) Change the method provided for in this Declaration of determining the Assessments or other charges which may be assessed against an Owner or the method of allocating distributions of hazard insurance proceeds of condemnation awards;

(c) By act or omission, change, waive or abandon the scheme of maintenance and repair of the Development, or the enforcement thereof, as provided for in this Declaration;

(d) Fail to maintain fire and extended coverage insurance on the Common Facilities in the amount and against the risks provided for in Section 10.01; and

(e) Use any insurance proceeds received as a result of the loss or damage to the Common Facilities for any purpose other than the repair, replacement or reconstruction of such Common Facilities.

Section 14.07. Right of First Mortgagees to Make Certain Payments and Right of Reimbursement Therefor. The holders of first Mortgages on the Lots shall have the right (but not the obligation), jointly or singly: (a) to pay taxes or other Assessments or charges which are in default and which may or have become a lien or charge against the Common Facilities; (b) to pay overdue premiums on casualty insurance policies for the Common Facilities; and (c) to secure and pay for new casualty insurance coverage on the Common Facilities upon the lapse of any such policy, in the amount and against the risks provided for in Section 10.01. Any first Mortgagee making such payment shall be entitled to immediate reimbursement therefor from the Association. Upon the request of any first Mortgagee, the Association shall, by separate instrument, signed by the president or any vice president and the secretary, evidence its agreement to the provisions of this section as the same affects the Mortgage held by such Mortgagee.

Section 14.08. Right to Examine Books and Records of the Association. All Mortgagees, insurers and guarantors of any Mortgages on any Lot shall have the right, upon written request to the Association, to:

(a) Examine current copies of the Governing Documents and the Association's books, records and financial statements, during normal business hours;

(b) Require the Association to provide an audited statement for the preceding fiscal year: (i) at no expense to the requesting entity when the Development consist of fifty (50) or more Lots; and (ii) at the requesting entity's expense when the Development consist of fewer than fifty (50) Lots and no audited statement is available; and

(c) Receive written notice of all membership meetings and designate a representative to attend all such meetings.

Section 14.09. Notices to First Mortgagees. The Association shall furnish to the holder of any first Mortgage on any Lot or on the Common Area, upon written request by the first Mortgagee, thirty (30) days prior written notice of: (a) abandonment or termination of the Association; (b) the effective date of any proposed material amendment to the Declaration; (c) the effectuation of any decision by the Association to terminate professional management, if any, and assume self-management of the Development; (d) any condemnation or eminent domain proceeding; and (e) any extensive damage to or destruction of any Improvements located in or on the Common Area.

Section 14.10. Superiority of Mortgage to Condemnation Proceeds. If any Lot, or portion thereof, or the Common Area, or any portion thereof, is made the subject of any condemnation or eminent domain proceeding, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of said Lots or Common Area with respect to any distribution of the proceeds of any condemnation award or settlement.

Section 14.11. Superiority of Mortgage to Insurance Proceeds. In the event of any substantial damage to or destruction of the Improvements on any Lot, or on any part of the Common Area, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of said Improvements with respect to any distribution of any insurance proceeds relating to such damage or destruction.

Section 14.12. Approval of Material Amendments or Termination.

(a) Material Amendments. In addition to the approvals required by Section 17.01 and Section 17.02, below, Eligible Mortgagees who represent at least fifty-one percent (51%) of the votes of Lots that are subject to Mortgages held by Eligible Mortgagees must approve any amendment to this Declaration of a material nature. An Eligible Mortgagee is the beneficiary of a first Mortgage who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees. A change to any of the following would be considered as material:

- (i) voting rights;
- (ii) assessments, assessment liens or the priority of assessment liens;
- (iii) reserves and responsibility for maintenance, repair and replacement of the Common Area;
- (iv) convertibility of Lots into Common Area and vice versa;

- (v) insurance or fidelity bonds;
- (vi) leasing or rental of Residences in the Development;
- (vii) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot;
- (viii) a decision by the Association to establish self-management when professional management had been required previously by the Governing Documents or by an Eligible Mortgagee;
- (ix) restoration or repair of the Development (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;
- (x) any action to terminate the legal status of the Development after substantial destruction or condemnation occurs; or
- (xi) any provisions that expressly benefit Mortgagees, insurers or guarantors.

(b) Termination. In addition to the approvals required by Section 176.01 and Section 17.02, below, Eligible Mortgagees who represent at least sixty-seven percent (67%) of the votes of Lots that are subject to Mortgages held by Eligible Mortgagees must approve any proposed termination of the legal status of the project for reasons other than substantial destruction or condemnation of the Development.

(c) Implied Approval. Each Eligible Mortgagee which receives notice of a proposed amendment or termination of this Declaration by certified or registered mail, with a "return receipt" requested, shall be deemed to have approved the amendment or termination if the Eligible Mortgagee fails to submit a response to the notice within thirty (30) days of receiving the notice.

Section 14.13. Declaration to Conform With Mortgage Requirements. It is the intent of this Article that this Declaration, the Articles of Incorporation, the Bylaws and the Development in general, shall now and in the future meet all requirements of any institutional Mortgagee intending to secure its Mortgage by a Lot or necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Veterans' Administration.

**ARTICLE XV
NOTICES**

Section 15.01. 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 Declarant: | Nevada County Habitat for Humanity. Attn: Debbie Arakel, Executive Director, P.O. Box 2997, Grass Valley, California 95945. (or to such other address as Declarant may from time to time designate in writing to the Association). |
| 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: | The Heritage Oaks Association, at 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 15.02. 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 15.03. Deposit in United States Mails. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered four (4) days after deposit in the United States mail in the County.

**ARTICLE XVI
NO PUBLIC RIGHTS IN THE DEVELOPMENT**

Nothing contained in this Declaration shall be deemed to be gift or dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

ARTICLE XVII
AMENDMENT OF DECLARATION

Section 17.01. Amendment Before Close of First Sale. Before the close of escrow for the first sale of a Lot in the Development to a purchaser other than the Declarant, this Declaration may be amended or revoked in any respect by the execution of an instrument amending or revoking the Declaration signed by Declarant and any Mortgagee of record, provided the consent or approval of the Commissioner of the California Department of Real Estate is first obtained to the extent required by California law. The amending or revoking instrument shall make appropriate reference to this Declaration and shall be Recorded.

Section 17.02. Requirements for Approval of Amendments After Close of First Sale. After the close of escrow for the first sale of a Lot in the Development to a purchaser other than the Declarant, this Declaration may be amended or revoked in any respect upon compliance with the following provisions:

(a) Member Approval Requirements. Any amendment shall be approved by the vote or assent by written ballot of the holders of not less than fifty-one percent (51%) of the Voting Power of each class of Members. If a two (2) class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership, as provided in the Association's Bylaws, any amendment thereof will require the vote or assent by written ballot of both: (i) fifty-one percent (51%) of the total Voting Power of the Association; and (ii) the vote of fifty-one percent (51%) of the total Voting Power held by Members other than the Declarant. Notwithstanding the foregoing, 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. Any vote to amend any provision of this Declaration shall be conducted in accordance with the procedures pertaining to the use of secret ballots that are set forth in Section 7.05, subparagraphs (c) through (i), of the Association Bylaws.

(b) City of Grass Valley Approval Requirements. The following provisions of this Declaration reflect Conditions of Approval for the Development and may only be amended or deleted with the prior approval of the City of Grass Valley: 1.07, 1.12, 2.04, 7.01, 8.12 and this subparagraph (b).

(c) Declarant Approval Requirements. The following provisions of this Declaration may only be amended or deleted with the prior approval of the Declarant for so long as the Declarant owns any Lots in the Development or is the holder of a Habitat Note (whichever occurs later in time): 1.14, 1.19, 2.04, 5.01, 9.03, 13.08, 18.03, and this subparagraph (c).

(d) Mortgagee Approval Requirements. Mortgagee approval of any proposed material amendment shall be required in accordance with Section 14.12, above.

Section 17.03. Department of Real Estate. An amendment to this Declaration, Bylaws, or other governing instruments of the Association shall require immediate notification of the California Department of Real Estate in accordance with section 2800 of the Commissioner's

Section 17.04. Effective Date of Amendment. The amendment will be effective upon the Recording of 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 17.01 or 17.02 (as the case may be) have been satisfied. 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 17.05. Business and Professions Code Section 11018.7. All amendments or revocations of this Declaration shall comply with the provision of California Business and Professions Code section 11018.7 to the extent said section is applicable.

Section 17.06. Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

ARTICLE XVIII GENERAL PROVISIONS

Section 18.01. 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, Declarant, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of sixty (60) years from the date of the Recording of this Declaration. After the expiration of the initial term, 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 sixty (60) year term or any such 10-year extension period, a written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association terminating the effectiveness of this Declaration, is Recorded.

Section 18.02. Limitation of Restrictions on the Declarant. The Declarant is undertaking the construction of a planned unit development and related improvements on the Property. The completion of that work and the sale, rental and other disposal of Lots and Residences is essential to the establishment and welfare of Heritage Oaks as a residential community. In order that said work may be completed and said Development be established as a fully occupied residential community as rapidly as possible, for a period of five (5) years following sale of the first Lot within the Development or until the Declarant no longer owns any Lots within the Development, whichever occurs first, nothing in this Declaration shall be interpreted or construed to prevent Declarant, its contractors, subcontractors, or representatives from:

(a) Doing on the Development or any Lot whatever is reasonably necessary or advisable in connection with the completion of said work;

(b) Erecting, constructing and maintaining on any part or parts of the Development such structures, including without limitation, sales offices and model homes, as may be reasonable and necessary for the conduct of its business of completing said work and disposing of same in parcels by sale, lease or otherwise;

(c) Conducting on any part of the Development the Declarant's business of completing said work, establishing a plan of ownership and disposing of the Lots by sale, lease or otherwise; or

(d) Maintaining such sign or signs on the Development as may be necessary or appropriate for the construction, sale, lease or disposition of Lots and Residences.

Section 18.03. Termination of Any Responsibility of the Declarant. In the event the Declarant shall convey all of its rights, title and interest in and to the Development to any partnership, individual or individuals, corporation or corporations, the Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations shall be obligated to perform all such duties and obligations of the Declarant.

Section 18.04. Statutory References. In the event that any statute in this Declaration, whether stated by code and number, or named by body of law, is amended, repealed, renumbered, or renamed, all references to such statute or body of law shall refer to the amended, repealed, renumbered, or renamed statutory provisions.

Section 18.05. Construction.

(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 Development 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.

(f) References to State Statutes. Any references in this Declaration to State of California statutes shall be to the referenced statute as in effect on the date that this Declaration is Recorded. In the event that any referenced statute is subsequently amended or superseded, all such references shall thereupon mean and refer to the referenced statute as so amended, modified or superseded, so long as the amended statute continues to regulate or pertain to the same subject matter.

Section 18.06. Notice of Airport in Vicinity of the Development. As required by the Davis-Stirling Common Interest Development Act, California Civil Code, Title 6, sections 1350 through 1376, Owners are hereby notified that the Development are located in the vicinity of the Nevada County Airport and are therefore within what is known as an airport influence area. For that reason, the Development may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you. For purposes of this Section, an “airport influence area,” also known as an “airport referral area,” is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission. This statement, which is required by law to be included in this Declaration, that the Development is located in an airport influence area does not constitute a title defect, lien or encumbrance.

Section 18.07. Notification Regarding Affordable Housing Requirements. Notice is hereby given that all Residences within the Development are subject to a Restrictive Covenant that is being recorded in the Official Records of Nevada County, concurrently with the recordation of this Declaration. The Restrictive Covenant provides that the Property and all Residences in the Development must remain occupied by Low Income Household Persons only, and may only be used to provide and to remain as Low Income Housing, pursuant to the provisions of 42 United States Code 5301 (24 CFR 570, Subpart 1, and 25 California Code of Regulations, sections 7050 et seq. The Restrictive Covenant has a term of forty-five (45) years from the date of its recordation (the “Restrictive Period”). During the Restrictive Period, if any Owner of a Residence desires to sell his or her property, the Owner must first notify Nevada County Habitat for Humanity who may then exercise its option to repurchase and resell the Lot and Residence to another HUD qualified Very Low or Low income buyer and the Lot or Residence will remain in the affordable housing pool. The HUD regulations define a qualified Very Low Income Buyer as a buyer whose family income does not exceed fifty percent (50%) of the Area Median Income (AMI) for Nevada County. A qualified Low Income Buyer is a buyer whose family income does not exceed eighty percent (80%) of the AMI for Nevada County. Under certain terms and conditions stated in the Restrictive Covenant an Owner may obtain relief from the affordable housing restrictions by filing with the City of Grass Valley a “Request for Release of Affordability Restrictions” if qualified low income buyers cannot be found within six (6) months from the filing of that Request for Release. Prospective purchasers are urged to

DATED: _____, 2011.

NEVADA COUNTY HABITAT FOR HUMANITY, a
California nonprofit public benefit corporation

By: _____
Debbie Arakel, Executive Director

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY
COMPRISING THE DEVELOPMENT

Lots 1 through 16, as shown on Final Map _____, filed in the Office of the Nevada County Recorder on _____, in Book ____ of Subdivisions at Page _____.

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

**SPROUL TROST, LLP
Attn: Curtis C. Sproul
3200 Douglas Boulevard, Suite 300
Roseville, CA 95661**

(Space Above for Recorder's Use)

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HERITAGE OAKS**

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