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WHEN RECORDED, MAIL TO:**

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3200 Douglas Boulevard, Suite 300  
Roseville, CA 95661**

  
**PLACER, County Recorder**  
**RYAN RONCO**  
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(Space Above For Recorder's Use)

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

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

The Declaration of Covenants, Conditions and Restrictions for Sterling Pointe Estates, executed by Sterling Pointe Estates, a California general partnership (the "**Declarant**"), and Recorded in the Official Records of Placer County, California, on July 3, 1997, as Document No. 97-0038968-00 (the "**Original Declaration**"), which affects all of the Development described and commonly known as Sterling Pointe Estates, is hereby amended and restated in its entirety to read as follows:

**RECITALS**

A. The Declarant was the original owner of that certain real property located in the County of Placer, State of California, which is more particularly described in Exhibit "A-1", attached hereto and incorporated herein by reference (the "**Original Property**"). It was the desire and intent of the Declarant to improve the Original Property as a residential real estate common interest development consisting of sixty (60) residential Lots and lettered Common Area Lots which would commonly be known as "**Sterling Point Estates**" (which, at times, is referred to herein as the "**Development**"). It was the further intention of the Declarant to convey the real property and improvements constructed thereon which comprise the Development, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration that is referenced above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development

B. Subsequently, by approval of the Owners of Lots within the Original Property, four additional Lots, designated as Lots 61 through 64, were added to the Development pursuant to that certain Notice of Annexation and First Amendment to Conditions, Covenants & Restrictions (Sterling Pointe) that was recorded in the Official Records of Placer County, California on October 23, 2009 as Document No. 2009-0091161-00 (the "**Notice of Annexation**").

C. It was the further intention of the Declarant to sell and convey residential Lots to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes (collectively, the "**Covenants**") between Declarant and such Owners which are set forth in the Original Declaration, as amended and restated in its entirety by this Declaration. The Covenants are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Development as a "planned development" as that term is defined in Civil Code section 4175. Finally, it was the intention of the Declarant that the "**Common Areas**" and "**Common Facilities**" of the Development should be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Association's Members, their tenants,

lessees, guests and invitees, all subject to the terms and conditions set forth in this Declaration and the other Governing Documents of the Development.

D. On April 1, 2017, the Owners of Lots representing a simple majority of the Voting Power of the Members of the Association voted by mailed secret ballot in accordance with Civil Code sections 5100 through 5145 and Section 12.03 of the Original Declaration to amend and restate the Original Declaration, as previously amended by the Notice of Annexation, in its entirety. It was the intention of the Owners to replace the Original Declaration, in its entirety, with the Recordation of this Declaration, without, however, affecting or changing the priority of the Declaration in the chain of title to Lots within the Development. The Owners' action to amend and restate the Original Declaration as set forth herein and the fact that the requisite percentage of affirmative votes required in the Original Declaration was achieved, is attested by the execution of this Declaration by duly authorized officers of the Association, as required by section 4270(a)(2) of the California Civil Code. As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Development and shall be binding upon all parties having or acquiring any right, title or interest in the Development or any portion thereof, and shall inure to the benefit of each Owner thereof.

## **ARTICLE I DEFINITIONS**

Section 1.01.     **"Annual Budget Report"** means and refers to the compilation of documents that the Association must provide to its Members on an annual basis (thirty (30) to ninety (90) days prior to the end of the fiscal year) pursuant to Civil Code section 5300.

Section 1.02.     **"Annual Policy Statement"** means and refers to the information, statements and notices that the Association must provide to its Members on an annual basis (thirty (30) to ninety (90) days prior to the end of the fiscal year) pursuant to Civil Code section 5310.

Section 1.03.     **"Architectural Control Committee"** or **"Committee"** means the committee created in accordance with Article V, below.

Section 1.04.     **"Architectural Rules"** means and refers to any rules adopted by the Board of Directors pursuant to Section 5.05, below, and Civil Code section 4765, subparagraphs (a)(1) and (c) which pertain to the procedures and design criteria that apply to Improvement projects that require prior review and approval by the Association pursuant to Article V, below.

Section 1.05.     **"Articles"** means the Articles of Incorporation of the Association, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 1.06.     **"Assessment"** means any Regular, Special, Special Individual or Emergency Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV, below, and Civil Code section 5600 et seq.

Section 1.07.        **"Association"** means the Sterling Pointe Estates Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns. The Association is an "association" as defined in Civil Code section 4080.

Section 1.08.        **"Association Capital Replacement Projects"** means and refers to any project undertaken by the Association for the major repair or replacement of any Major Capital Improvements within the Development that are included in the Association's Reserve Study and funded by Member contributions to the Association's Reserve Accounts (as part of the Regular Assessment or by levy of a Special Assessment if necessary).

Section 1.09.        **"Association Rules"** means the rules, regulations and policies adopted by the Board of Directors, pursuant to Section 3.07, below, as the same may be in effect from time to time.

Section 1.10.        **"Board of Directors" or "Board"** means the Board of Directors of the Association.

Section 1.11.        **"Bylaws"** means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.12.        **"Common Area"** means all real property owned by the Association for the common use and enjoyment of the Owners and their tenants, guests, and invitees. The Common Area parcels are as follows:

(a)        Lot A at the northern entrance to the Development, which shall be maintained by the Association as an entryway with landscaping and an entry monument.

(b)        The private roadways within the Development, namely: Sterling Pointe Court and Lots B, C, D and E, and Largo Vista Court. Sterling Pointe Court is maintained by the County as part of the County Service Area and Largo Vista Court are maintained by the Permanent Road Division;

(c)        Lot H which shall be a natural open space area. It is intended that Lot H will be conveyed by the Association to an entity of the State of California for inclusion of Lot H in the Folsom Lake Recreation Area. If Lot H is not accepted by the State of California, it shall be maintained by the Association as natural open space. As of the recordation date of this Declaration Lot H remains as Association Common Area.

Section 1.13.        **"Common Expense"** means any use of Association funds authorized by Article IV, below, 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, Common Facilities and any portions of the Lots that the Association is obligated to maintain or repair; (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors and insurance of Residences constructed or to be constructed on Lots 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 any portions of the Lots that the

Association is obligated to maintain or replace, 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 of Directors as provided in this Declaration, the Bylaws, and the other Governing Documents of the Development.

Section 1.14.     **"Common Facilities"** means the entrance monumentation on Lake Forest Drive at the entrance to the Development, the private roadways within the Development and the landscaped areas on Lot "A", and its related irrigation system and electrical system.

Section 1.15.     **"Conditions of Approval"** means and refers to the following tentative subdivision map conditions of approval that were imposed by Placer County on the Development: (i) Conditional Use Permit 1325 for Sterling Pointe CCRs\_7a\_SPEOA.docx -37-02Oct2013 SCR Estates; and (ii) Conditions of Approval – Minor Land Division --- "Cliff Parcel Map" (PMLD20050157. The Cliff Parcel Map Conditions of Approval pertain to Lots 61 through 64 and the Conditional Use Permit 1325 Conditions of Approval pertain to the other 60 Lots in Sterling Pointe Estates.

Section 1.16.     **"County"** means the County of Placer, State of California, and its various departments, divisions, employees and representatives.

Section 1.17.     **"County Service Area" or "CSA"** means Placer County Service Area Number 28, Zone 132.

Section 1.18.     **"Covenants"** shall have the meaning given to that term in Recital "C", above.

Section 1.19.     **"Declarant"** means and refers to the original project developer of STERLING POINTE ESTATES, namely, Sterling Pointe Estates, a California general partnership.

Section 1.20.     **"Declaration"** means this instrument, as it may be amended from time to time. The **"Original Declaration"** means and refers to the document referenced in the Preamble to this Declaration, together with all amendments and annexations thereto adopted prior to adoption of this Declaration.

Section 1.21.     **"Development"** means the common interest development that was created on the Property pursuant to the Original Declaration (as amended and restated herein) and the other Governing Documents for Sterling Pointe Estates. At times herein, the terms "Development and "Sterling Pointe Estates" are used interchangeably.

Section 1.22.     **"Emergency Assessment"** means an Assessment that the Master Association is authorized and empowered to impose under the limited circumstances defined in California Civil Code section 5610 and Section 4.05, below.

Section 1.23.     **"Equestrian Staging Area"** means the area shown as Lot "G" on the Subdivision Map, which the Declarant conveyed to the County as an equestrian staging area.

Section 1.24.        **"General Notice"** and **"General Delivery"** are used in this Declaration when notice can be provided to the Members by any of the following methods:

- (a) any method of delivery that constitutes "Individual Notice" (if a particular Member requests to receive General Notices in that manner, then Individual Notice must be used);
- (b) inclusion of the notice in a newsletter, or similar Association document;
- (c) posting a copy of the printed document in a prominent location that is accessible to all Members, so long as the location has been designated for the posting of General Notices by the Association in its Annual Policy Statement; and
- (d) if the Association has a broadcast television program site for the purpose of distributing information on Association business, that site can be used for General Notices.

Section 1.25.        **"Good Standing"** is a term that is used in the Bylaws and in this Declaration to determine those Members who constitute part of the Voting Power of the Association and are therefore eligible to vote in the election of directors or with respect to any other matter or action that requires the consent or approval of the Members. In order to be in Good Standing, a Member must be current in the payment of all Assessments levied against the Member's Lot and not be subject to any suspension of voting privileges as a result of any disciplinary proceeding conducted in accordance with the due process and disciplinary hearing procedures of the Declaration and Civil Code sections 5900 et seq. Good Standing shall also be a prerequisite for being a candidate for election to the Board of Directors and for continued service on the Board, once elected to office. Finally, Good Standing shall also be a prerequisite for being appointed to the Architectural Control Committee (See Section 5.02, below).

Section 1.26.        **"Governing Documents"** is a collective term that means and refers to this Declaration and to the Articles, the Bylaws and the Association Rules.

Section 1.27.        **"Improvement"** is a term that is used herein to define the types of construction or improvement projects undertaken by Owners that must first be reviewed and approved by the Association's Board of Directors or duly appointed Architectural Control Committee pursuant to Article V, below. Specifically, the term "Improvement" means and includes, without limitation, any proposal to construct or to undertake major repairs or replacements to any Residence, garage, fence, wall, gazebo, tool sheds, outbuildings or other accessory buildings, spa, swimming pool, tennis courts, basketball courts or other structure, signs, mailboxes, newspaper tubes and any landscaping or alteration thereof (except for routine trimming, replanting and maintenance of existing landscaping) visible from any Lot or from any street within the Development.

Section 1.28.        **"Individual Notice"** or **"Individual Delivery"** means that a notice or document from the Association to its Members must be delivered to the Members by one of the following methods:

- (a) first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by any express service carrier (addressed to the Member at his or her address appearing on the Association's records);
- (b) e-mail, facsimile or other electronic means so long as the recipient has consented to receiving notice in that fashion. That consent may be revoked in a writing delivered to an officer of the Association or to the Association's manager or management company;
- (c) if a Member has identified a secondary address for delivery of documents included in the Annual Budget Report or notices pertaining to Assessments or Assessment collections, the Association must deliver an additional copy of those notices to the secondary address that is identified.

Section 1.29.     **"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 1.30.     **"Major Capital Improvements"** means and refers to any major component of the Development for which the Association has the maintenance, repair, and replacement responsibility under this Declaration. If a Major Capital Improvement has a useful life of thirty (30) years or less, it must be included in the Association's Reserve Study (see Section 4.09(d)(i) below).

Section 1.31.     **"Majority of a Quorum"** means the vote of a majority of the votes cast at a meeting or by secret or written ballot when the number of Members attending the meeting in person or by proxy or casting secret or written ballots equals or exceeds the minimum quorum requirement for valid Member action, as specified in the Bylaws or by statute.

Section 1.32.     **"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 1.33.     **"Mortgage"** means a mortgage or deed of trust encumbering a Lot or other portion of the Development. A **"Mortgagee"** and **"Mortgage Holder"** shall include the beneficiary under a Mortgage and any guarantor or insurer of a Mortgage. An **"Institutional Mortgagee"** or **"Institutional Holder"** is a Mortgagee that is a bank or savings and loan Association, or established mortgage company or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency. A **"First Mortgagee"** or a **"First Mortgage"** is one having priority as to all Mortgages or holders of Mortgages encumbering the same Lot or other portions of the Development.

Section 1.34.     **"Notice of Annexation"** means and refers to the instrument that is more particularly identified in Recital "B", above.

Section 1.35.     **"Notice of Delinquent Assessment"** means and refers to the notice that the Association may Record in accordance with Civil Code section 5675 to impose a lien on the Lot of an Owner who is delinquent in the payment of Assessments. The required contents of the Notice of Delinquent Assessment are set forth in Section 4.10(b)(v), below.

Section 1.36.     **"Open Space and Riparian Protection Easements"** mean those areas shown on the final Subdivision Map for the Development on Lots 15 through 19, inclusive, 21, 26 through 28, inclusive, 32, 33, and 56 through 59, inclusive, described on "Exhibit C", which are reserved for the protection of Elderberry shrubs and of riparian areas.

Section 1.37.     **"Open Space Area"** means the area shown as Lot H on "Exhibit A-1" which Declarant has conveyed or shall convey to the Association for maintenance as an open space area. It is intended that Lot H will be conveyed by the Association to an entity that will maintain it as natural open space.

Section 1.38.     **"Operating Rule"** shall be as defined in Section 3.07(c), below. A **"Rule Change"** is also defined in that Section of this Declaration

Section 1.39.     **"Owner"** means any person, firm, corporation or other entity which owns a fee simple interest in any Lot. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust. Except where the context otherwise requires, the term "Owner" shall include the family, guests, tenants and invitees of an Owner.

Section 1.40.     **"Owner of Record"** includes an Owner and means 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 1.41.     **"Park"** means the area shown as Lot "F" on the Subdivision Map which Declarant has conveyed or shall convey to the County for maintenance as a public park site.

Section 1.42.     **"Perimeter Fence"** means the fence: (a) on the boundaries of Lots 28 through 35, inclusive, and 52 and 53 that adjoin Lot "H"; (b) on the boundaries of Lots 36, 48, 50, 51 and 52 that adjoin the Equestrian Staging Area; and (c) on the boundary of Lot 12 that adjoins the Park (Lot "F").

Section 1.43.     **"Permanent Road Division"** means and refers to Sterling Point Estates Permanent Road Division No. 8, created by Board of Supervisors' Resolution 2008-133, pursuant to the Permanent Road Division Law (Streets & Highways Code section 1160 et seq.). A permanent road division allows property owners to assess themselves, via a special tax, and to have the County provide specific, limited, maintenance services to roads that would not otherwise be maintained by the County and which are not part of the County's Maintained Mileage System. The Sterling Pointe Permanent Road Division applies to Rim Rock Circle, Old Quarry Court, Drambuie Court, Lago Vista Court, and Woodgate Court.

Section 1.44.      **"Pre-Lien Notice"** means and refers to the notice required by Civil Code section 5660 which must be sent by certified mail to any Owner of Record who is delinquent in the payment of Assessments as a prerequisite to the Association's right to Record a Notice of Delinquent Assessment. The required contents of the Pre-Lien Notice are set forth in Section 4.10(b)(i), below.

Section 1.45.      **"Private Streets" or "Streets"** means the streets, drives, circles, courts, ways, and associated designated visitor or guest parking spaces, shown as Lots B, C, D and E and Sterling Pointe Court on the Subdivision Map. Sterling Pointe Court and Lake Forest Drive are maintained by the County CSA.

Section 1.46.      **"Property"** means all parcels of real property (Common Area and Lots) described in Exhibit "A", together with all Common Facilities, and other improvements located thereon, and all appurtenances thereto.

Section 1.47.      **"Record", "Recorded" and "Recording"** mean and refer, with respect to any document, the recordation or filing of such document in the Office of the County Recorder.

Section 1.48.      **"Regular Assessment"** means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.02, below.

Section 1.49.      **"Reserves" and "Reserve Accounts" "Reserves" and "Reserve Accounts"** mean and refer to those funds, if any, that the Board of Directors of the Association has identified and set aside in one or more Reserve Accounts for use to defray the future repair or replacement of, or additions to, the Major Capital Improvements within the Development that the Association is obligated to maintain, repair and eventually replace. The obligation of common interest owner associations to contribute funds in Reserve Accounts is set forth in California Civil Code sections 5550 through 5570. However, within the Development there are currently no Major Capital Improvements that the Association must maintain that would require the regular evaluation and funding of capital replacement Reserves, given the fact that the private roads within the Development are maintained pursuant to the Permanent Road Division. The Board of Directors has made the reasonable determination that the annual budget of the Association need not include a component for Reserves to fund Major Capital Improvements unless and until the County ceases to provide road maintenance services with respect to the private roads within the Development.

Section 1.50.      **"Residence"** means a private, single-family dwelling of constructed or to be constructed on a Lot.

Section 1.51.      **"Scenic Setback and Natural Area Easements"** mean those areas shown on the final subdivision map for the Development on Lots 1, 2, 4, 5, 29 through 36, inclusive, and 47, 48, 50, 51, 54 and 60, described on the Subdivision Map Exhibit "D", which are reserved for scenic setbacks and natural areas.

Section 1.52.      **"Single Family Residential Use"** means occupancy 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 1.53.      **"Special Assessment"** means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.03, below.

Section 1.54.      **"Special Individual Assessment"** means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.04, below.

Section 1.55.      **"Subdivision Map"** means the final subdivision map for "Sterling Point Estates" which was filed for record in the Office of the Placer County Recorder in Book "T" of Maps, Page 93.

Section 1.56.      **"Voting Power"** means and refers to 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 Section 1.24, above.

## **ARTICLE II PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS**

Section 2.01.      **Declaration Regarding the Development Comprising the Development.**

(a)      **Property Subject to Declaration.** In subjecting the real property comprising the Development to the Original Declaration, as amended and restated herein, it was the intent of the Declarant, as interpreted and modified by action of the Association and its Members, that such property should and will 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 Development and the sale of residential Lots within the Development; (ii) be for the benefit and protection of the Development and to enhance the desirability, value and attractiveness of the property and improvements comprising the Development; (iii) be for the benefit of the Owners; (iv) run with the land and be binding upon all parties having or acquiring any right, title or interest in the Development or any portion thereof; (v) inure to the benefit of every portion of the Development and any interest therein; and (vi) inure to the benefit of and be binding upon each Owner, or any successor in interest to an Owner who should subsequently obtain or hold an interest in any portion of the real property comprising the Development.

(b)      **Binding Effect on Successors In Interest.** Each conveyance, transfer, sale, assignment, lease or sublease made by any Owner of a Lot in the Development shall be deemed to incorporate by reference all of the provisions of this Declaration. All present and future Owners, tenants and occupants 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 Common Area.

(a) Fee Title in Association. Prior to the approval of this Declaration, the Declarant conveyed fee simple title to the Common Areas of the Development to the Association.

(b) Rights of Owners in Common Areas. The interest of each Lot Owner in and to the use and enjoyment 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 and Owner's Lot shall transfer the appurtenant right to use and enjoy the Common Area and Common Facilities. 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 within 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) The right of the Association to adopt Association Rules relating to use and enjoyment of the Common Areas and Common Facilities of the Development 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 right to use the Common Facilities, other than roads.

(b) 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;

(c) The right of the Association to dedicate or transfer 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 to by the Members. No such dedication or transfer shall be effective unless it has the prior written authorization of a majority of each class of Members and a written instrument evidencing such dedication or transfer and such written authorization has been

recorded in the County; provided, however, no such dedication shall impair the ingress and egress to any individual Residence Unit within the Development.

(d) The right of the Association to grant permits, licenses and easements over the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Development.

Section 2.04. Delegation of Use.

(a) Delegation of Use and Leasing of Residences. Any Owner may delegate his or her rights to use and enjoy the Common Area to his family members, tenants, lessees or contract purchasers who reside in the Residence. However, any rental or lease may only be to a single family for Single-Family Residential use. Any rental or lease of a Residence shall be subject to the provisions of this Declaration and the other the Governing Documents, all of which shall be deemed incorporated by reference in the Lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and 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.

(b) Requirements That Must Be Observed In All Residential Leases. The following specific limitations shall apply to all leases or tenancies of a Residence within the Development: (i) no Residence may be leased or rented for a period of less than ninety (90) days; (ii) the rental shall apply to not less than an entire Residence including its appurtenant rights (except voting rights in the Association which may not be transferred to a tenant or lessee); and (iii) any rental shall be evidenced by a written lease or rental agreement which shall provide that the tenancy is subject to the terms of the Governing Documents and that any failure of the tenant to comply with the terms of any Governing Document relating to residential leases, property use restrictions or the use and enjoyment of any portion of the Common Areas and Common Facilities shall constitute a default under the lease or rental agreement and shall entitle the Owner to terminate the tenancy upon thirty (30) days' written notice. The Owner-lessor's right to terminate a lease or rental agreement on account of the tenant's violation of the Governing Documents shall in no way restrict the right of the Association or any Owner to enforce the Governing Documents in accordance with Article XIII, below, when the Owner's tenant is violating the Governing Documents.

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

(d) Incorporation of Governing Documents by Reference. Any rental or lease of a Residence shall be subject to the provisions of the Governing Documents all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and 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. In lieu of providing prospective tenants or lessees with complete copies of the Governing Documents, if the Association has produced a disclosure document that is limited to presenting those Governing Document provisions that are germane to the rental of Residences, such as property use restrictions or rules relating to Common Facilities access and usage, that limited disclosure document shall satisfy this subparagraph (d).

(e) Discipline of Lessees. Subject to subparagraph (f) below, if 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 the imposition of fines and penalties against the Owner or tenant.

(f) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to any portion of the Development or to preserve the rights of quiet enjoyment of other Owners and residents, 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, and Civil Code section 5855.

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, tenant or lessee residing on the Owner's Lot. Each Owner, contract purchaser or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights to use and enjoy the Development and the relationship that each such person bears to the Owner, contract purchaser or tenant.

(b) Contract Purchasers. A contract seller of a Lot (i.e., an Owner who contracts to sell his or her Lot pursuant to an Agreement where title transfers to the buyer only upon payment in full) must delegate his or her voting rights as a Member and his or her right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(c) Notification to Prospective Purchasers Regarding Governing Documents (Civil Code section 4525).

(i) Documents that Must be Provided to Prospective Purchasers. As more particularly provided in California Civil Code section 4525, 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 of the Association, including any Association Rules;

(B) a copy of the most recent documents distributed by the Association pursuant to California Civil Code sections: 5300 ("**Annual Budget Report**"), 5305 (a year-end review of the Association's financial statement); 5310 ("**Annual Policy Statement**") (see Article XII of the Bylaws). The documents required by Civil Code sections 5300 and 5300 can be summary or full reports unless a Member has requested a copy of the full report in all instances. The full or summary reports required by Civil Code sections 5300 and 5310 must be delivered to the Members by Individual Delivery and if a summary report is provided it must include a general description of the content of the report and instructions (in at least 10-point boldface type on the first page of the summary) on how to request a complete copy of the report at no cost to the Member (Civil Code section 5320);

(C) a true statement ("**delinquency statement**") in writing from an authorized representative of the 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 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 true 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 section 5650 et seq.

(D) a copy or a summary of any notice previously sent to the Owner pursuant to Civil Code section 5855, that sets forth any alleged violations of the Governing Documents that remain unresolved at the time of the request;

(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 to the prospective purchaser;

(F) if requested by the prospective purchaser, a copy of the minutes of the meetings of the Association's Board of Directors (other than executive session minutes) that were conducted over the previous twelve (12) months and approved by the Board.

(ii) When Must the Requested Documents Be Provided and in What Format In accordance with Civil Code section 4530, 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 (or any other recipient authorized by the Owner) with copies of the

requested items. The items required to be made available pursuant to this subparagraph (c) may be maintained in electronic form and the requesting parties shall have the option of receiving them by electronic transmission or in machine readable storage media if the Association maintains the requested items in electronic form and may be posted on the Association's Internet Website. The Association may charge a reasonable fee for this service based upon the Association's actual cost to procure, prepare, and reproduce the requested items. Upon receipt of a written request, the Association shall provide, on the form prescribed by Civil Code section 4528, a written or electronic estimate of the fees that will be assessed for providing the requested information. No additional fees may be charged by the Association for the electronic delivery of requested documents.

(iii) Fees and Disclosures Associated With the Furnishing of Documents Pursuant to Civil Code section 4525. Fees for documents required to be provided by Civil Code section 4525 shall be distinguished from other fees, fines, or assessments billed as part of the transfer or sales transaction. Delivery of the documents required by this subparagraph (c) shall not be withheld for any reason nor subject to any condition except the payment of the fees allowed pursuant to Civil Code section 4530(b)(1).

The Association shall provide a recipient authorized by the Owner of a Lot with a copy of the completed form specified in Civil Code section 4528 (listing charges for providing Association documents) at the time the required documents are delivered.

(d) Payment of Assessments and Discharge of Assessment Liens. Each Owner shall pay, when due, each Regular, Special, Emergency, and Special Individual Assessment levied against the Owner and his or her Lot and shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot. See Section 4.10(b), below.

(e) Compliance with Association Rules. Each Owner and tenant observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to Section 3.07, 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 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**

#### **STERLING POINTE ESTATES OWNERS ASSOCIATION**

Section 3.01.      Association Membership. The Sterling Pointe Estates Owners Association, is a California nonprofit mutual benefit corporation (the "**Association**"), that was formed to own, manage and maintain the Common Areas and Common Facilities of the Development and to perform the other duties and obligations set forth in this Declaration and the other Governing Documents. Every Owner of a Lot in the Development is a Member of the Association and the membership is appurtenant to, and may not be separated from, ownership of the Lot or Lots. Sole or joint ownership of a Lot shall be the sole qualification for membership in the Association. Each Owner shall remain a Member until his or her ownership in all Lots in the Development ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or receipt of a deed in lieu thereof.

Section 3.02.      One Class of Membership. The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

Section 3.03.      Voting Rights of Members. As more particularly set forth in Article IV of the Bylaws, each Member shall be entitled to one vote for each Lot owned by that Member. When more than one person holds an interest in any Lot, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Lot. Voting rights may be temporarily suspended under those circumstances described in Section 13.06, below.

Section 3.04.      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 in accordance with Civil Code sections 5600 et seq. and 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 3.05.      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 which it is appurtenant and then, only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Lot shall pass automatically to the purchaser upon the recordation of a deed evidencing the transfer of title. In the case of an encumbrance of such Lot, a Mortgagee does not have membership rights until the Mortgagee becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use pursuant to Section 2.04, above, do not thereby become Members, although the tenant and his or her family and guests shall, at all times, obligated to comply with all Governing Documents.

Section 3.06. 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 of the Development 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. With the exception of those matters requiring approval of the Members under the Governing Documents or California law, the affairs of the Association shall be conducted and all corporate powers shall be exercised by the Board of Directors and such officers and agents as the Board may elect, hire or appoint.

The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in Article IX of the Bylaws.

(b) Association's Limited Right of Entry.

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

- (A) Obligations to enforce the architectural and land use restrictions of Articles V and VIII, below;
- (B) Any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or
- (C) To make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, any portion of the Development or the Owners or residents in common.

(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, Residences or Common Area. The Association's work may be performed under such circumstances whether or not the Owner or resident is present.

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

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

Section 3.07. 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 ("**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 and guidelines of the Architectural Control Committee adopted pursuant to Section 5.05, below (iii) regulation of pet ownership, parking, signs, collection and disposal of refuse and other matters subject to regulation and restriction under Article VIII, 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, (vii) and any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents. Once the authority to appoint members of the Architectural Control Committee is vested solely in the Board of Directors of the Association, the Association Rules shall also include the Architectural 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 thereunder. 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 4340 through 4370 (governing the adoption of Operating Rules, as defined in Civil Code sections 4340(a) and 4355(a)).

(b) Distribution of Rules. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be delivered to each Owner by General Notice: (i) within fifteen (15) days after a new Association Rule is adopted or an existing Association Rule is amended (in which case only the new Rule or amendment need be

distributed); or (ii) within ten (10) days following receipt of a written request from an Owner for a copy of the Rules.

(c) Adoption and Amendment of Rules.

(i) Requirement of Prior Notice to the Members of Certain Operating Rules or Amendments Thereto. California Civil Code sections 4340(a) and 4355(a) define 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. Civil Code section 4340(b) further defines a **"Rule Change"** as any adoption, amendment, or repeal of an Operating Rule by the Board of Directors. Civil Code section 4355(a) identifies seven (7) types of Operating Rules (and Rule Changes involving such Operating Rules) that must first be provided to the Members by General Notice 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 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 Architectural Rules);
- (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 disputes;
- (F) Any procedures for reviewing and approving or disapproving a proposed physical change to an Owner's Lot or Residence or Lot, from and after the time when the Association is solely responsible for appointing all members of the Architectural Control Committee and
- (G) Any procedures for the conduct of elections.

Specifically excluded by Civil Code section 4355(b) 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 by the Board 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) a decision

establishing the amount of a Regular or Special Assessment; (iv) 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 (v) 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 4365 gives Members owning five percent (5%) or more of the Lots in the Development the right to demand a special vote of the Members 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 vote to rescind an Operating Rule or Rule Change is tendered to the Association, the Board shall conduct a special vote on whether to reverse the Rule Change pursuant to the rules for conducting a secret ballot vote of the Members pursuant to Civil Code sections 5100 through 5130.

So long as a quorum of the Members cast ballots, the Operating Rule or Rule Change can be reversed on the affirmative vote of a Majority of a Quorum of the Members, with each Member having one 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 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 by General Notice of the results of the Member vote challenging the Operating Rule or Rule Change. See Civil Code section 4365.

(ii) Minimum Content for Election Rules. Civil Code section 5105 requires associations to adopt rules regarding the conduct of elections that do all of the following:

(A) Access to the Media. 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) Access to Common Facilities. 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) Candidate Qualifications. 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) Voter Qualifications. 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) Selection of Inspectors of Election. Specify a method of selecting one or three inspectors of election by the Board of Directors.

(F) Appointment of Assistants to the Inspector of Elections. 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 4730, 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. In addition, no Association Rule or other Governing Document can prohibit, or impose conditions that have the effect of prohibiting the use of low water-using plants as a group or restricting compliance with any water-efficient landscape ordinance adopted pursuant to Government Code section 65595(c) or any regulation or restriction on the use of water that is adopted pursuant to California Water Code section 353 or 375.

(d) 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 3.08.      Limitation on Liability of the Association's Directors and Officers.

(a) Claims Regarding Breach of Duty. In accordance with Corporations Code section 7231, 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. In accordance with Civil Code section 5800, 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 member of the Board or volunteer officer of the Association shall recover damages from such Board member or officer if all of the following conditions are satisfied:

- (i) The Board member or officer owns no more than two (2) Lots;
- (ii) The act or omission was performed within the scope of the volunteer Board member'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 (\$500,000.00)

The payment of actual expenses incurred by a Board member or officer in the execution of such person's Association duties shall not affect such person's status as a volunteer Board member or officer for the purposes of this Section 3.08. 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 5800 and should not be construed to expand or limit the fiduciary duties owed by a Board member or officer. 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.

## **ARTICLE IV ASSESSMENTS**

### Section 4.01. Assessments Generally.

(a) Covenant to Pay Assessments. Each Owner of a Lot, by acceptance of a deed therefore (whether or not it shall be so expressed in such deed) covenants and agrees to pay to the Association any (i) Regular Assessments, (ii) Special Assessments (iii) Emergency Assessments, and (iv) Special Individual Assessments duly levied by the Association in accordance with this Article IV.

(b) Extent of Owner's Personal Obligation for Assessments. In accordance with Civil Code section 5650(a), 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 or at 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, the new Owner shall not be personally liable for delinquent Assessments of prior Owners of the same Lot unless the new Owner expressly assumes the personal liability of a prior Owner. However, if the acquired Lot is conveyed subject to a valid lien for delinquent Assessments and related costs of collection (i.e. the lien is not removed from the chain of title to the subject Lot prior to close of escrow in the sale of the Lot), 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, 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 Civil Code section 5650(b), shall be a lien on the Owner's Unit 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 Civil Code section 5675(a) and Section 4.10(b)(v), 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. As provided in Section 4.10(b)(x), below, and Civil Code section 5725(b), certain Special Individual Assessments are prohibited by law from being recovered through the use of non-judicial foreclosure remedies.

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

(e) Limitation on Amount of Assessments. In accordance with Civil Code section 5600(b), 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.

(a) Preparation of Annual Budget and Annual Budget Report. Through the Annual Budget Report process that is described in this Section 4.02 and Section 12.05 of the Bylaws, the Board of Directors shall establish the "**Regular Assessment**" that will be imposed on the Owner/Members and collected in accordance with this Article IV. Specifically, in accordance with Civil Code section 5300(a), not less than thirty (30) days nor more than ninety (90) days before the end of the Association's fiscal year, the Board shall distribute, by Individual Delivery, an Annual Budget Report to the Members which presents a pro forma operating budget, showing the estimated revenue and expenses of the Association on an accrual basis, and the other financial information and disclosures required by Civil Code section 5300(b). Based on the information and analysis that is presented in the Annual Budget Report the Association shall advise its Members, by Individual Notice, of any increase in the Regular Assessment not less than thirty (30) nor more than sixty (60) days prior to the increased Regular Assessment becoming due.

(b) Establishment of Regular Assessment; Board/Membership Approval Requirements. The total Common 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 the Board's authority to increase the Regular Assessment in any particular fiscal year shall be subject to the following two limitations:

(i) Annual increases in Regular Assessments for any fiscal year may not be imposed by the Board unless: (i) the Board has made a timely distribution of an Annual Budget Report that includes the information required by subparagraphs (2), (4), (5), (6), (7) and (8) of Civil Code section 5300(b); or (ii) the Board has obtained the approval of a Majority of a Quorum of the Members for the Assessment increase in accordance with Section 4.08, below (Civil Code section 5605(a)); and

(ii) Except as provided in Section 4.05, below (relating to Emergency Assessments), the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the prior approval of a Majority of a Quorum of the Members for the Assessment increase in accordance with Section 4.08, below. (Civil Code section 5605(b)).

(c) 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.

(d) 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, Emergency, 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), 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.

(e) 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 its Members, by Individual Notice 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 required by Civil Code section 5730 which Members with general information regarding Assessments, foreclosure rights, payment of Assessments and payment plans; (ii) the form required by Civil Code section 5570 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 replacement reserve and reserve account funding requirements; and (iii) the statement that is required by Civil Code section 5310(a)(7)) 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 any of the methods authorized by Civil Code section 4040 (i.e., by any form of notice that constitutes Individual Delivery).

(f) 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 any fiscal year, then, except as prohibited by Section 4.02(a), above, 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) Additional Capital Improvements or Other Extraordinary Non-Recurring Expenditures. The Board may also levy Special Assessments for additional capital improvements within the Common Areas (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) or to defray the costs of any other extraordinary, non-recurring action or undertaking which the Board, in its discretion, determines to be to the advantage and in the best interests of the Members as a whole. The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, replacement and repair of the Common Areas or the existing Common Facilities through Regular Assessments and to maintain adequate insurance on the Common Areas, the Common Facilities, and certain Lot improvements (that the Association is obligated to insure), in accordance with Article X, below.

(iii) Requirements for Special Assessments Levied to Fund Multi-Year Projects. Typically Special Assessments shall only be imposed to fund a specific capital improvement project during a particular fiscal year. However, if the Board determines that a Special Assessment should be levied to fund a portion of a capital project which will, or is likely to, entail work and/or funding in more than one fiscal year, this fact and a detailed disclosure of the intended scope and estimated costs of the project shall also be included in the Association's annual budget disclosures for the year in which the Special Assessment is imposed.

(iv) Major Capital Repair and Reconstruction Projects. As more particularly provided in Section 10.03, below, the Board shall be entitled to levy a Special Assessment to fund uninsured major repairs or reconstruction of Common Areas, subject to the membership approval requirements of said Section 10.03.

(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 (5%) percent of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied (Civil Code section 5605(b)); 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.

(i) When levied by the Board or approved by the Members as provided above, Special Assessments shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4.02(c), above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be provided to each

Owner, by Individual Delivery, not less than thirty (30) nor more than sixty (60) days prior to the Special Assessment becoming due. Civil Code section 5615.

(ii) 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 the same manner as the payment of Regular Assessments 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. Special Assessments levied pursuant to subparagraph (a)(iii), above, shall be payable in such reasonable installments as shall be established at the time the Special Assessment is levied. Special Assessments levied pursuant to subparagraph (a)(iv) and Section 10.03, below, shall be due as a separate debt of each Owner and a lien against the Owners' Lots at such time as required by the repair or reconstruction project. The Association must provide Individual Notice to the Members of any Special Assessment not less than thirty (30) nor more than sixty (60) days prior to the due date for payment of 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, and, if appropriate, 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 Areas or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Areas or the Common Facilities 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 tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred by the Association 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. If the Association's insurance provides coverage for the damage, the Owner who caused the damage shall remain responsible for the payment of any applicable insurance deductible.

(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) to otherwise bring the Owner, his or

her tenants, 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 attorney's fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment. The Association's Special Individual Assessment authority hereunder shall extend to the collection of any reasonable fines or penalties imposed against an Owner pursuant to Article XIII, below.

(iii) Required Maintenance of Lots. If any Lot is maintained so as to become a nuisance, structural, fire or safety hazard for any reason, including without limitation, the accumulation of trash, the Association shall have the right to enter said Lot, correct the condition and recover the cost of such action through the imposition of a Special Individual Assessment against the offending Owner. Any entry on to a Lot by the Association or its agents shall be undertaken in strict compliance with Section 3.06(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 4.04, 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)(x), below, and Civil Code section 5725. 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. In accordance with Civil Code section 5610, the requirement of a membership vote to approve: Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment or 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 ("**Emergency Assessments**") that the Board deems necessary to address emergency situations ("**Emergency Situations**"). 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 (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of Assessment.

(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 in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4.02(c), above. The Emergency Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner. An Emergency Assessment shall be due as a separate debt of the Owner and shall be payable in full to the Association within thirty (30) days after the mailing of the notice of the Emergency Assessment or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Emergency Assessment. If an Emergency Assessment is not paid on or before the due date, the Assessment may be enforced in the manner provided in Section 4.10, below.

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 tenants, guests and invitees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Areas and Common Facilities. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby), except as limited by subparagraph (c), above) 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.

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 that is dedicated and accepted by a local public authority;
- (b) The Common Areas 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 (Civil Code section 5605). 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 procedures described in Section 7.05 of the Bylaws and Civil Code sections 5115 through 5125.

Section 4.09. Maintenance of Expenditure 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 5510(a) 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. In accordance with Civil Code section 5510(b), except for temporary transfers of monies from reserve funds that are permitted pursuant to subparagraph (d)(iii), below, the Board of Directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components of the Development that the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established.

(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) Limitations on Association's Authority to Assign or Pledge Assessment Obligations. In accordance with Civil Code section 5735, 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 or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association. However, the restrictions imposed by this subparagraph (e) shall not restrict the right or ability of the Association to assign any unpaid obligations to a former Member to a third party for purposes of collection.

Section 4.10. Collection of Assessments; Enforcement of Liens. In accordance with Civil Code section 5650(b), 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 Civil Code section 5650(b) or comparable successor statutes. Once an Assessment becomes delinquent, the Association may elect to apply one or both of the following remedies:

(a) Enforcement of An Owner's Personal Obligation to Pay Assessments. In accordance with Civil Code section 5700, 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 the Association 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.

In accordance with Civil Code sections 5675 and 5705 through 5720, and except as otherwise provided in Civil Code section 5725 and subparagraph (b)(x), below (which imposes limitations on the right of the Association to utilize non-judicial foreclosure remedies to collect certain 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 attorney's fees), late charges and interest by taking the following steps:

(i) Issuance of Pre-Lien Notice; Contents. In accordance with Civil Code section 5660, 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 "***Pre-Lien 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 Owner of the Lot has the right to inspect the Association records, pursuant to Civil Code section 5205, 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 subparagraph (iv), below, and Civil Code section 5665 in order to discuss entering into a payment plan to retire the delinquency.

(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 sections 5900 through 5915;

(F) The right of the noticed Member to request alternative dispute resolution (ADR) with a neutral third party pursuant to Civil Code sections 5925 through 5945 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. Civil Code section 5655 sets forth the following requirements that must be observed when an Owner tenders payment on account of delinquent Assessments: (A) Any payments made by a delinquent Owner toward the delinquent Assessments that are in arrears shall first be applied to the Assessments that are owed at the time

the payment is made; (B) 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; (C) 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; and (D) 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 or to Participate in ADR. In accordance with Civil Code section 5670, 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 sections 5900 through 5910.

(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 Pre-Lien 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 or more Members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to record a lien on the Owner's Lot to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(v) Association Assessment Lien Rights.

(A) Creation of Association's Assessment Lien; Contents of Notice of Delinquent Assessment. Except as provided in subparagraph (x), below (relating to limitations on the right of the Association to use foreclosure remedies to collect Special Individual Assessments), the amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with Civil Code section 5650 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***" pursuant to Civil Code section 5675. The Notice of Delinquent Assessment shall state the amount of the Assessment and other sums imposed in accordance with Civil Code section 5650(b), a legal description of the Owner's Lot against which the Assessment and other sums are levied, and the name of the record owner of the Owner's Lot against which the lien is imposed. In order for the lien to be imposed by non-judicial foreclosure as provided in subparagraphs (vii) and (viii), 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 itemized statement of the charges owed by the Owner that is required by subparagraph (b)(i)(B), of this Section 4.10 and Civil Code section 5660(b) shall be recorded together with the Notice of Delinquent Assessment. 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 and shall be sent by certified mail to all Owners of Record of the lien Lot in accordance with subparagraph (C), below.

(B) Board Decision to Record a Lien; Open Meeting. In accordance with Civil Code section 5673, 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 (Civil Code section 5673). If the Association fails to abide by the notice and other procedures set forth in subparagraph (b), above, the Association must recommence the required notice process, with any resulting additional costs being borne solely by the Association (Civil Code section 5690).

(C) Requirements for Tendering Copy of the Association's Lien to Affected Owners. 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 its Recordation (Civil Code section 5675(e)). 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 and Notices of Default, required by Civil Code sections 4040(b) and 5260(b) to the secondary address that is specified.

(vi) Priority of Assessment Liens. A lien created pursuant to subparagraph (v), above, or subparagraph (x), 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. Civil Code section 5680.

(vii) Enforcement of Association Assessment Liens. Subject to the limitations set forth in this Section 4.10(b) and in particular this subparagraph (vii), after the 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). Prior to initiating a foreclosure on an Owner's Lot, 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 (Civil Code section 5900 et seq.) or alternative dispute resolution in accordance with Civil Code section 5925 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, rather than a non-judicial, foreclosure (Civil Code section 5705(b)). The decision to initiate foreclosure of a lien for delinquent Assessments shall be made only by the Board of Directors and may not be delegated to an agent of the Association.

The Board's decision to initiate foreclosure shall require the affirmative vote of a majority of the directors and the vote shall be conducted in an executive session. That vote shall be recorded in the minutes of the next open meeting of the Board, however, in order to protect the confidentiality of the Owner or Owners whose Lot and Residence is being foreclosed, the minutes shall only identify the action by reference to the parcel number of the property, rather than identifying the Owner(s) by name. The vote must be conducted at least thirty (30) days prior to any public sale (Civil Code section 5705(b)).

If the Board votes to commence foreclosure proceedings to collect delinquent assessments pursuant to this subparagraph (vii) and (viii), below, the Board shall provide notice of that decision by personal service (in the manner required for service of a summons pursuant to Code of Civil Procedure sections 415.10 et seq.) to an Owner of the Lot who occupies the Residence on the Lot or to the Owner's legal representative. If the Owner does not occupy the Residence that is 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 Residence may be treated as the Owner's mailing address. Civil Code section 5705(d).

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 mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Civil Code sections 2924(c) and 2924(d). In addition to the requirements of Civil Code section 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with Code of Civil Procedure section 415.10. As used herein, the Owner's legal representative shall be the person whose name is shown as the Owner of the liened Lot and Residence on the records of the Association unless another person has been previously designated by the Owner as his or her legal representative in writing and mailed to the Association in a manner that indicates that the Association has received the designation.

(viii) Minimum Thresholds For Use Exercise of Foreclosure Remedies.

In accordance with Civil Code section 5720, debts for Assessments 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, attorney's fees, and interest, equals or exceeds \$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: (aa) a civil action in small claims court; (bb) by recording a lien on the Owner's Lot (subject to the restrictions on foreclosure of that lien); or (cc) any other manner provided by law, other than judicial or non-judicial foreclosure.

(ix) Foreclosed Owner's Rights of Redemption.

A non-judicial foreclosure by the Association of an Owner's interest in his or her Lot and Residence 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 subparagraph (ix) (which reflects Civil Code section 5715(b)) ends ninety (90) days after the sale. In addition to the requirements of Civil Code section 2924f, a notice of sale in connection with the

Association's foreclosure of a Lot in the Development shall include a statement that the property is being sold subject to the right of redemption created by Civil Code section 5715(b).

Limitation on Authority to Use Lien and Foreclosure Remedies to Collect Special Individual Assessments. Civil Code section 5725 provides that the following categories of Special Individual Assessments may be collected through the use of lien and foreclosure remedies in accordance with subparagraphs (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 5650(b).

(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 (Civil Code section 5685(b)). 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 5900 et seq. or alternative dispute resolution with a neutral third-party pursuant to Civil Code section 5925 et seq., the Association shall also be obligated to promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the issuance of the notices prescribed by Civil Code section 5660 and costs of recording the lien release that are authorized under Civil Code section 5720(b), and all costs incurred in the mediation or alternative dispute resolution process. Civil Code section 5685(c).

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 with a copy of the lien release or notice that the delinquent Assessment has been satisfied (Civil Code section 5685(a)).

(xi) Effect of Failure to Adhere to Statutory Lien and Foreclosure Procedures. If the Association fails to comply with the notice and other pre-lien procedures set forth in this Section 4.10(b) and California Civil Code sections 5650 through 5685 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. Civil Code section 5690.

The provisions of this Section 4.10(b) are intended to comply with the requirements of Civil Code sections 5650 through 5690, as in effect on the date that this Declaration is recorded in the Official Records of Placer County, California. 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 Lots 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 Mortgagee 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 the Lot (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring 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 Lots in the Development, including the person who acquires the Lot that is the subject of the foreclosure 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, interests, 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 Owner's Lot that is prior and superior to all other liens except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto (under current law association assessment liens are subordinate to other liens and encumbrances recorded prior to recordation of the Association's Notice of Delinquent Assessment); 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 the Lot pursuant to the exercise of a power of sale or a

judicial foreclosure involving a default under such first Mortgage or other prior encumbrance, in accordance with Civil Code section 5680.

Section 4.13. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed.

Section 4.14. Property Taxes and Other Governmental Assessments. Each Owner shall be obligated to pay any taxes or assessments levied by the County Assessor against his own Lot and personal property. To the extent not assessed to or paid directly by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Common Area or other property owned by the Association.

## **ARTICLE V ARCHITECTURAL CONTROL**

Section 5.01. Approval of Improvements by the Architectural Control Committee.

(a) Approval Generally. Before commencing construction or installation of any Improvement within the Development, as defined in Section 1.22, above, the Owner planning such Improvement must submit a written request for approval to the Association's Architectural Control Committee. The Owner's request shall include structural plans and specifications satisfying the requirements of Section 5.05, below, and which are also consistent with any applicable minimum improvement standards set forth in Article VI, below. 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 to approve, disapprove or conditionally approve the proposed Improvement on the criteria described in Section 5.06, below. No Owner shall apply for a building permit or commence construction until all of the plans and specifications for the proposed Improvements have been reviewed and approved by the Committee.

(b) Preliminary Approval. Any Owner proposing to construct any structure or other improvement on a Lot requiring the prior approval of the Architectural Control Committee may apply to the Committee for preliminary approval by submission of preliminary drawings of the proposed structure or improvement in accordance with the Committee rules. The purpose of this section is to allow an Owner who proposes to make substantial improvements to his Lot an opportunity to obtain guidance from the Committee concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final architectural approval. Applications for preliminary approval shall be considered and disposed of by the Committee as follows:

Within thirty (30) days after receipt by the Committee of proper application for preliminary approval, the Committee shall consider and act upon such request. The Committee shall grant the approval only if the proposed structure or improvement, to the extent its nature and characteristics are shown by the application, would be entitled to a final approval on the

basis of a full and complete application. Failure of the Committee to act within said 30-day period shall constitute approval. In granting or denying approval, the Committee may give the applicant such directions concerning the form and substance of the final application for approval as the Committee may deem proper or desirable for the guidance of the applicant.

Any preliminary approval granted by the Committee shall be effective for a period of ninety (90) days from the date of the issuance thereof. During that period, any application for final approval which consists of proposed structures or improvements in accordance with the provisions of the preliminary approval, and is otherwise acceptable under the terms of these restrictions, may be approved by the Committee.

In no event shall any preliminary approval be deemed to be an approval authorizing construction of the requested structures or improvements or any other improvements, structures or alterations not reviewed preliminarily.

(c) Modifications to Approved Plans Must Also Be Approved. Once a proposed work of Improvement has been duly approved by the Architectural Control Committee, no material modifications shall be made in the approved plans and specifications therefor 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 effect on other aspects or components of the work, the Committee, in its discretion, may order the Owner and his or her contractors and agents to cease working not only on the modified component of the Improvement, but also on any other affected component.

If it comes to the knowledge and attention of the Association, the Architectural Control 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 5.11, below, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper architectural review and approval is obtained.

Section 5.02. Composition of the Architectural Control Committee. The Architectural Control Committee shall be composed of three (3) Members of the Association appointed by the Board of Directors. Committee members shall serve for two year terms of office. Reasonable efforts shall be made to appoint individuals to the Committee who possess a background in design, land use planning, engineering, architecture, law or some other field related to the functions to be performed by the Architectural Control Committee. Only Owners of Lots in the Development are eligible to serve on the Committee and members of the Board may serve as members of the Committee. The Board also has the discretion to act as the Committee upon a determination to do so by a majority vote of the Board.

Section 5.03. Duties of the Committee. The Architectural Control Committee shall have the duty to consider and act upon the proposals and plans for Improvements submitted to it pursuant to this Declaration, to adopt Guidelines pursuant to Section 5.05, below, and to carry out all other architectural review duties imposed upon it by this Declaration.

Section 5.04. Meetings of the Committee. The Committee shall meet from time to time as necessary to properly perform the architectural review functions described herein. The vote or written consent of a majority of the members of the Committee shall constitute the action of the ARC. The Committee shall keep and maintain a written record of all actions taken.

The Applicant for an Improvement project shall be entitled to appear at any meeting of the Committee at which his or her proposal has been scheduled for review and consideration. The Applicant shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer and/or contractor, if any. Other Owners whose Lots 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 the review of architectural matters shall be communicated before the date of the meeting to any Applicant whose application is scheduled to be heard.

Section 5.05. Requirements for Approval; Approval; Construction.

(a) Plans. Final plans for approval shall be prepared by a duly licensed architect or other person approved by the Architectural Control Committee. Plans shall be submitted in a writing signed by the Owner or that Owner's authorized agent, and shall include, where appropriate, the following:

- (i) Plot plans, showing the location of all structures and showing grade elevations and drainage;
- (ii) Building plans, including floor, foundation and roof plans, with all materials therefor;
- (iii) Exterior elevations, surfaces and sections, structural design and salient exterior details;
- (iv) Exterior color schemes; and
- (v) Landscaping plans showing type, location, size and elevation of trees, bushes, shrubs, plants, hedges and fences.

(b) Submission of Plans. All plans shall be submitted for approval together with a reasonable processing fee to the Committee. The plans and request for approval shall be deemed submitted as of the date when they are actually received by the Committee, return receipt requested, with postage fully prepaid, or personally delivered and received by a member of the Committee.

(c) Approval Criteria. Approval of an Owner's plans shall be based, among other things, on:

(i) Compliance by the Owner or that Owner's authorized agent with all laws and ordinances of governmental agencies having jurisdiction, including, without limitation, all applicable building or construction setbacks and height limitations. Owner's architect or the governmental agency having jurisdiction shall submit to the Committee a certificate indicating that such improvements do comply;

(ii) Adequacy of site dimensions;

(iii) Adequacy of structural design and material;

(iv) Conformity and harmony of external design with neighboring structures;

(v) Effect of location and use of improvements and landscaping on neighboring property, improvements, landscaping operations and uses;

(vi) Relation of topography, grade and finished ground elevation of the property being improved to that of neighboring property;

(vii) Proper facing of main elevations with respect to nearby streets, preservation of view and aesthetic beauty;

(viii) Conformity with such rules and regulations as may be adopted by the Committee in accordance with this Article; and

(ix) Conformity of the plans to the purpose and general plan and intent of this Declaration.

While it is recognized that the Committee's determination will, of necessity, be subjective to some degree, the ARC shall act reasonably and in good faith and shall consider such factors as the quality of workmanship and materials proposed for the Improvement project. Any decision on a proposed improvement project shall be made in good faith and may not be unreasonable, arbitrary, or capricious (Civil Code section 4765(a)(2)). Furthermore, in spite of the discretion conferred on the Committee pursuant to this Article V, no decision 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 (Civil Code section 4765(a)(3)).

Decisions on proposed improvement projects shall be in writing and if a proposed project is not approved the Committee'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 Committee's decision by the Board of Directors (Civil Code section 4765(a)(4)). 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. In accordance with Civil Code section 4765(c), 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 Architectural Control Committee may condition approval upon the adoption of modifications in the Owner's plans and specifications or observance of restrictions as to noise abatement or similar mitigating conditions applicable to the Improvement and the Committee, in its discretion, may condition approval on the Owner's receipt of approval from other Owners whose Residences could potentially be adversely affected by the Improvement.

(d) Approval or Disapproval by the Committee. Decisions of the Committee and the reasons therefor other than applications for preliminary approval, pursuant to Section 5.01(b), above, shall be transmitted by the Committee to the applicant within forty-five (45) days after receipt by the Committee of all materials required by the Committee. Any application submitted pursuant to this Declaration shall be deemed approved, unless written disapproval or a request for additional information or materials by the Committee shall have been transmitted to the applicant within forty-five (45) days after the date of receipt by the Committee of all required materials.

(e) Right to Appeal Committee Decisions to the Board of Directors. If a proposed Improvement project is disapproved by the Committee and the applicant is unwilling to make changes to the plans and specifications that may be recommended by the Committee as a condition of approval, the applicant shall have the right to seek reconsideration of the Committee's decision by the Board of Directors, so long as a written request for an appeal is submitted to the Board of Directors within five (5) days following receipt of the Committee's denial (Civil Code section 4765(a)(5)). The appeal to the Board shall contain a reasonably detailed explanation of the basis for the appeal and the changes, if any, that the Owner-applicant is willing to make to the plans, as submitted to the Committee. Unless otherwise requested by the Owner-applicant, the Board's hearing of the applicant's appeal shall be conducted by the Board in an open session. Any reconsideration by the Board does not constitute a process of dispute resolution within the meaning of Civil Code section 5905, and therefore the obligations of common interest associations to provide fair, reasonable and expeditious dispute resolution procedures pursuant to Civil Code sections 5900-5920 do not expressly apply to the Board's hearing process, although the Association remains obligated to reach decisions regarding proposed Improvement projects in good faith and in the absence of arbitrary or capricious action.

(f) Construction in Accordance with Plans. All improvements work approved by the Committee shall be constructed in accordance with the approved plans. The improvement work approved by the Committee shall commence within six months after the date of approval or the approval shall cease and be of no effect.

Section 5.06. Architectural Guidelines. The Architectural Control Committee may, from time to time and with approval of the Board of Directors, adopt, amend and repeal architectural guidelines relating to Improvement projects, which shall be known as "***Architectural Guidelines***". The Architectural Guidelines shall interpret and implement the provisions hereof by setting forth: (a) any standards and procedures for Architectural Control Committee review; (b) guidelines for architectural design, the placement of any work of Improvement on a Lot, or color schemes, exterior finishes and materials and similar features

which are recommended or required for use in connection with particular Improvement projects within the Development; (c) the criteria and procedures for requesting variances from any property use restrictions that would otherwise apply to the proposed Improvement under the Governing Documents (see Section 5.12 (variances) below); and (d) the minimum requirements regarding the content of plans and specifications which must be submitted with respect to any request for design review and approval. Notwithstanding the foregoing, no Architectural Guideline shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Guidelines and this Declaration, the provisions of the Declaration shall prevail.

Among other things, in accordance with Civil Code section 4765(a)(1) the Architectural 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. In accordance with Civil Code section 4735, the Architectural Guidelines may not prohibit or include conditions that have the effect of prohibiting the use of low water-using plants as a group or which has the effect of prohibiting or restricting compliance with any water-efficient landscape ordinance adopted or in effect pursuant to Government Code section 65595(c) or any regulation or restriction on the use of water adopted pursuant to California Water Code sections 353 or 375.

Section 5.07. Proceeding With Work. Upon receipt of approval of an Improvement project from the Architectural Control Committee, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement of construction of the Improvement pursuant to the approval. In all cases, work on an Improvement project shall commence within one (1) year from the date of such approval and shall be completed within six (6) months thereafter or such other period (longer or shorter) as may be specified by the Committee in its approval of the project. If the Owner fails to comply with this Section, any approval given pursuant to this Article shall be deemed revoked unless the Committee, upon written request of the Owner, tendered prior to the expiration of the initial one-year period, extends the time for commencement or completion. No such extension shall be granted except upon a finding by the 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 Improvement project within the time specified in the extension request.

Section 5.08. Failure to Complete Work. Unless the Architectural Control Committee grants the Owner an extension of time to complete the project or specifies a different completion deadline as a condition of approval of the proposed project, construction, reconstruction, refinishing or alteration of any such Improvement must be completed within six (6) months 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 Committee shall proceed in accordance with the provisions of Sections 5.10(c) and (d) below as though the failure to complete the Improvement was a noncompliance with approved plans.

Section 5.09. Inspection of Work by the Committee. The Architectural Control Committee at any time may inspect any improvement for which approval of plans is required under this Declaration; provided, however, that the Committee's right of inspection shall terminate 60 days after the work of improvement shall have been completed and the respective Owners have given written notice to the Committee of such completion. If, as a result of such inspection, the Committee finds that such improvement was done without obtaining the approval of the plans therefor or was not done in substantial compliance with the plans approved by the Committee, it shall notify the Owner in writing of the failure to comply with the Declaration within 60 days from the inspection, specifying the particulars of noncompliance. The Committee shall have the authority to require the Owner to take such actions as may be necessary to remedy the noncompliance.

Section 5.10. Enforcement of Architectural Compliance Matters.

(a) Enforcement Rights, Generally. In addition to other enforcement provisions set forth in Article XIII, the Architectural Control Committee shall have enforcement rights with respect to matters required to be submitted to and approved by it and shall have the authority to order an abatement 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 that it does not conform to the plans and specifications submitted to the Committee. 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.

(b) Approval of Any Particular Plan or Proposal is Not a Waiver. The approval by the Architectural Control Committee of any plans, drawings or specifications for any work of Improvement done or proposed, or for any other matter requiring the Committee's approval under this Article, 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 or Common Facilities, previous adverse experience with a particular Improvement or component thereof, and other factors may be taken into consideration by the Architectural Control Committee in reviewing a particular submittal.

Section 5.11. Variances. The Architectural Control Committee may authorize variances from compliance with any of the stated design restrictions or architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require. Such variances must be evidenced in writing and must be signed by at least two of the three members of the Committee. If variances are granted, no violation of the Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive any of the terms and provisions of the Declaration for any purpose except as to the particular improvement and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of all or any portion of the Development. In considering the granting of variances, the Committee, in its discretion, shall have the right to solicit input from any immediately neighboring Lot Owners who may, in the reasonable determination of the members

of the Committee, be adversely impacted by a granting of the proposed variance, although the ultimate decision on the variance request shall remain with the Committee.

Section 5.12. Certificate of Compliance. Within thirty (30) days after written demand is delivered to the Architectural Control Committee by any Owner, the Architectural Control Committee shall provide the Owner with a Certificate of Compliance certifying (with respect to any Lot owned by the Owner-applicant) that as of the date thereof, either: (a) all Improvements made and other work completed by the 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 the Lot through the Owner, shall be entitled to rely on the Association's compliance certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

Section 5.13. Limitation on Liability. Neither the Association nor the Board or the Architectural Review Committee (if any) or 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 work, whether or not pursuant to approved plans, drawings or specifications; or (c) the execution and filing of a certificate of compliance pursuant to Section 5.13, 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.

Section 5.14. Compliance With Governmental Regulations. Review and approval by the Architectural Control Committee of any proposals, plans or other submittals 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 Owner who desires to construct, install or modify the Improvement.

## **ARTICLE VI MINIMUM IMPROVEMENT REQUIREMENTS**

Unless a variance is requested from, and granted by, the Architectural Control Committee in accordance with Section 5.12, above Improvements constructed on any Lot shall conform to the following minimum improvement standards:

Section 6.01. Approval by Architectural Control Committee. No Improvement, as defined in Section 1.26 above, shall be erected, altered or placed on any Lot until plans, specifications and a plot plan showing the location of structures on the Lots have been submitted to the Architectural Control Committee for review and approval as described in Article V, above.

Section 6.02. Licensed Contractors. Residential structures shall all be constructed by a contractor licensed under the laws of the State of California and the Architectural Control committee shall not approve any construction plans or designs unless the contractor preparing the plans is duly licensed.

Section 6.03. General Design Features for Residences.

(a) New Construction. All buildings erected on any Lot shall be of new construction. However, this section shall not prevent the use of used brick or other materials that may be attractive and preservative of property values.

(b) Replacement Construction. In the event that any Owner plans construction of a Residence on a Lot after destruction of an existing Residence or for any other reason ("**Replacement Construction**"), such Owner shall comply with the provisions of Sections 5.01(b) ("**Preliminary Approval**") and Section 5.05(c) ("**Approval Criteria**").

(c) Type and Character of Design. Exterior design of all the improvements on any Lot shall be compatible with the overall atmosphere of the Sterling Pointe Development. Approval of such exterior design shall be in the sole discretion of the Architectural Control Committee. No mobile home, modular unit or factory built home shall be placed, installed or constructed upon any Lot. No Residence may be constructed which utilizes and "A-frame" or "geodesic dome" design.

(d) Height Limits; Home Size. No structure within the Development shall exceed 36 feet in height. Each Residence shall have a total floor area (excluding decks, patios, balconies and garages) of at least 3,000 square feet, unless the Owner's architect and/or engineer determines that the building envelope dictates a slightly smaller home, in which case the minimum size shall be no less than 2,600 square feet.

(e) Setback Requirements. All structures shall be constructed in compliance with the setback restrictions described below:

- (i) The front yard setback for all Lots shall be 50 feet. Where a Lot is located on a corner, the front yard setback established by this subsection shall apply to both road frontages.
- (ii) The rear yard setback for all Lots except Lots 52 and 53 shall be 25 feet. The rear yard setback for Lots 52 and 53 shall be 100 feet.
- (iii) The side yard setback for all Lots shall be 25 feet.
- (iv) Except with respect to Lots 52 and 53, no structural encroachment into the Folsom Lake watershed shall be permitted within the building setback line shown on Exhibit "A-2" or any filed subdivision map of the Development. In addition, any structures constructed on Lots that extend into the Folsom Lake watershed, other than Lots 52 and 53, shall be positioned in such a manner as to ensure that all sewers, roof drains and other impervious surfaces are drained to the Miner's Ravine watershed.

(f) Scenic Setback and Natural Area Easements. All improvements within the Development shall comply with the requirements set forth in Sections 9.04, 9.05 and 8.21 regarding the Scenic Setback and Natural Area Easements and Open Space and Riparian Protection Easements.

(g) Landscaping. Every Owner of a Lot within the Development shall be responsible for installing as part of the construction of the Residence Unit, landscaping on those portions of the Lot which are visible from any street or portion of the Common Area within the Development. Prior to the commencement of installation, landscaping plans shall be submitted to and approved by the Committee pursuant to the provisions of Sections 6.02, 6.03 and 6.04. Such plans shall include the size, type and location of all plants, materials and sprinkler systems. In the event that the Owner fails to install such landscaping properly, the Association or the Committee may cause the appropriate work to be done and shall be entitled to reimbursement for the costs thereof from the Owner. If the Owner fails to reimburse the Association or the Committee, the Association may exercise any of the enforcement provisions of Article XIII. At least fifteen (15) days prior to the date any work is to be done, written notice must be hand-delivered or mailed by first-class mail to the Owner at his or her last address as shown by the Association's records. The notice shall recite the nature of any work to be performed, the reasons therefor, and the date, time and place at which the Owner may be heard by the Board, either orally or in writing, regarding the propriety of the work. The hearing may be held at any regular or special meeting of the Board, but shall not be held less than five (5) days prior to the date the work is to be done.

Section 6.04. Solar Heating Systems. Subject to limitations imposed by California law (see particularly California Civil Code sections 714, 714.1 and 4700(b), the Architectural Control Committee shall be entitled to adopt, as part of the Architectural Guidelines, reasonable regulations regarding the installation of solar heating systems. These rules may include limitations on placement and design of such systems to the extent necessary to avoid an unsightly appearance from neighboring Lots or Common Area.

Section 6.05. Antennae, External Fixtures, and Other Similar Equipment. No television or radio pole, antenna or satellite dish shall be constructed, erected or maintained on any Lot or any structure on it if such fixture is visible from any street within the Development unless the same has first been reviewed and approved by the Architectural Control Committee. No flag pole, clothesline, basketball standard or other exterior fixture, other than those originally installed by Declarant or any Builder, and any replacements, shall be constructed, erected or maintained on any Lot or any structure on it if such fixture is visible from the front yard of any other Lot or from any street within the Development unless the same has first been reviewed and approved and placement by the Architectural Control Committee. The Committee may not prohibit any video or television antenna or satellite dish which has a diameter or diagonal measurement of 36 inches or less and which is installed so as to not be visible from the Common Area or any street. Except as provided in Section 6.02, above, and with the exception of any chimneys, vent stacks, air conditioning or other items or equipment upon or projecting from the roof which are installed by Declarant or any Builder as part of the initial improvements, and their duplicate replacements, no such item shall be constructed, erected or maintained upon the roof of any Residence or other structure within the Development unless the same has been determined not to be visible from any street or as otherwise specifically approved by the Architectural Control Committee.

Section 6.06. Installation of Landscape Improvements. All yards within a Lot, including rear and side yards, shall be landscaped in a reasonable manner to enhance the appearance of the Lot within a period of six (6) months after the date of occupancy of the Residence Unit on that Lot, or within one (1) year after the close of escrow on the Owners acquisition of the Lot from the Declarant, whichever occurs first.

Section 6.07. Utility Installations. No lines, wires or cables for the communication or transmission of electrical current or power, including telephone, television, data transmissions, and radio signals shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in underground conduits (including cable drawn through a conduit or pre-manufactured cable in duct) or cable concealed in, under or on buildings, cabinets or other structures initially approved by Declarant, or subsequently approved by the Architectural Control Committee.

Section 6.08. No Guarantee of Continued Views. Neither the Declarant, the Association, the Architectural Control Committee, nor any Owner shall have any responsibility to create or preserve any view in any direction from any Lot. Each Owner has acquired his or her Lot subject to the possibility that the view from such Lot existing at the time of purchase from the Declarant.

Section 6.09. 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 Residences. The issue of whether a nuisance exists shall be determined by the Architectural Control Committee in its sole discretion.

Section 6.10. Garages and Driveways. The residential improvements on each Lot shall include a garage to accommodate at least two cars. Carports shall not be allowed. At least one garage door in each Residence shall be equipped with a garage door opener. Each Lot must have a concrete driveway.

Section 6.11. Permitted Roofing Materials and Specifications. All Residences shall have a roof pitch not less than 4' in 12. No flat roofs, except in the case of French Mansard designs, shall be permitted. No tar and gravel or rock roofs shall be permitted without the review and approval of the Architectural Control Committee.

Section 6.12. Private Driveways. There shall be no driveway access from Lots 3, 8, 12, 13, 17, 19, 39, 43 or 59 onto Lomida Lane/Lake Forest Drive, unless special circumstances regarding design and topographic features are demonstrated to the satisfaction of Placer County that warrant access onto the major street. Access to Lot 60 shall be restricted to the easterly 100 feet of that Lot. The Placer County Development Review Committee may regulate other driveway locations within the Development as necessary to maintain proper access control and for sight distance constrains.

Section 6.13. Building Envelopes for Certain Lots. All improvements on Lots 1, 27 through 37, inclusive, 46 through 48, inclusive, 50, 51 and 54 requiring a building permit shall be confined to the building envelope shown on the final subdivision map.

Section 6.14.      Protection of Folsom Lake Watershed (Lots 52 and 53. Lots 52 and 53 may be subject to special construction requirements imposed by Placer County to protect the Folsom Lake watershed.

Section 6.15.      Drainage and Erosion Control During Construction. In designing and constructing Improvement on any Lot, the Owner and the Owner's contractor shall provide for adequate drainage and erosion control. After construction the Owner shall properly maintain all drainage and erosion control facilities, as provided in Section 7.05, below.

Section 6.16.      Restrictions on the Installation of Wood-Burning Stoves. Only EPA-Phase II certified devices, including wood-burning stoves and inserts, or EPA-exempt wood-burning devices, shall be installed in Residences within the Development. Masonry fire places must have installed UL listed natural gas fireboxes or meet EPA Phase II emissions standards. The emission potential from each Residence in the Development may not exceed 7.5 grams per hour.

## **ARTICLE VII ASSOCIATION AND OWNER MAINTENANCE RESPONSIBILITIES**

Section 7.01.      Association Maintenance Responsibilities.

(a)      Entry Way. The Association shall maintain or provide for the maintenance of Lot A, including landscaping and any entrance pilaster structures and appurtenances thereto that may be erected on Lot A.

(b)      Private Streets. The Association shall maintain and repair or provide for the maintenance and repair of Lots B, C, D, E, and Lago Vista Court which shall be maintained as Private Streets, including street lights and any other appurtenances to the Private Streets constructed on Lots B, C, D and E. The Association may install on the Private Streets speed bumps, crosswalks, speed limit signs and other devices intended to control the speed of traffic within the Development.

(c)      Landscaping. The Association shall provide gardening services to maintain and replace as necessary all the landscaping within the Common Area. The sprinkling and electrical systems originally installed in such areas in connection with the landscaping improvements shall also be operated and maintained by the Association.

Section 7.02.      Owner Maintenance Responsibilities. Each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot, including without limitation, the following:

(a)      Maintenance of the Owner's Residence. Each Owner shall maintain the interior and exterior of his Residence and shall be entirely responsible for the painting, decorating, cleaning and maintenance thereof, including all personal property and fixtures therein.

(b) Utility Connections. Utility lines and connections, including sewer, electrical, plumbing, telephone and gas lines, which are located within a Lot and provide service to the Residence located upon that Lot, shall be maintained and repaired by the Owner of the Lot in question and/or the utility company involved, rather than by the Association.

(c) Fence Maintenance. Each Owner shall maintain, repair and replace any fences constructed on such Owner's Lot. If an Owner fails or refuses to fully and faithfully comply with this Section 5.03, Declarant or the Association shall have the right to enter upon that Owner's Lot, upon reasonable notice and at a reasonable hour, and perform such work as may be necessary to fulfill the requirements of this section, charging costs to the Owner.

(d) Drainage Channels and Drainage Easements. Each Owner shall maintain any drainage channels or drainage easements on such Owner's Lot, as appropriate, to reduce potential or actual mosquito breeding habitat. The implementation of mosquito breeding control measures within Lots A, B, C, D, E, and Sterling Pointe Court shall be the responsibility of the Association, as per the Conditions of Approval.

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

(a) Association Maintenance Necessitated by Owner Negligence. If the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder, is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by insurance policies maintained by the Association or the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment 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 for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt of the Association's notice. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3.06(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 and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of the Association's work.

Section 7.05. Drainage Courses and Improvements. In connection with the initial construction of the Development, the Declarant has installed a storm drainage system as shown on the plans of Sterling Pointe Estates, a copy of which are on file at Placer County's Department of Public Works.

(a) Definitions. As used in this section, the term "drainage pattern and system" includes, but is not necessarily limited to, underground drain pipes and patterns of drainage over the Development and roofs from and to adjoining properties and improvements, whether installed by Declarant or occurring naturally or otherwise.

(b) Maintenance by Owners; Prohibition On Interference with Drainage. The Owner of each Lot shall continuously maintain landscaped areas on such Owner's Lot, including any drainage facilities, in such a manner as to maintain established slope ratios, prevent erosion or sliding problems, reduce potential or actual mosquito breeding habitat and facilitate the orderly discharge of storm water through the natural and installed drainage pattern and system. There shall be no other interference with the established drainage pattern over any Lot or Common Areas, unless an adequate alternative provision is made for proper drainage and the project is approved by the Architectural Control Committee.

All slopes or terraces on any Lot shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining property. No structure, planting or other material shall be placed or permitted to remain, or other activities undertaken, on any slope or other area within a Lot that might damage or interfere with such natural or established drainage pattern and system and without approval of the Architectural Control Committee Owners shall not alter the grade of the Owner's Lot.

(c) Drainage Rights. The Owner of each Lot shall have the right to use the natural and established drainage pattern and system, for the purpose of drainage of that Owner's Lot and improvements thereon; provided, however, that the right of drainage shall not include the right to discharge pollutants or other noxious or offensive matter. Water from any Lot and the improvements thereon may drain or flow into adjacent streets. Water shall be allowed to drain or flow onto adjacent Lots to the extent provided for by the natural or established drainage pattern and system.

(d) Drainage Fees. The Conditions of Approval require notification to Owners and prospective purchasers of Lots regarding the annual drainage fee assessments that are levied pursuant to the Placer County "Dry Creek Watershed Interim Drainage Improvement Ordinance", as revised from time to time (Placer County Ordinances, Chapter 15, Article 15.32).

Section 7.06. Maintenance Obligations of the County Service Area. At the inception of the Development the Declarant caused to be formed a County Service Area on June 17, 1997 which includes, the Property.

(a) Services Provided by the CSA. The County Service Area levies assessments on the Owners and other property owners in the CAS to fund the following services:

- (i) Maintain public roads within the Development (Lomida Lane);
- (ii) Maintain public street lighting within the Development;
- (iii) Maintain public storm drainage facilities within public easements within the Development;

- (iv) Maintain public equestrian trails within the Development and on Lots G and H;
- (v) Maintain public water quality protection facilities for both the Common Area and the Lots;
- (vi) Maintain the Park located on Lot F, including the baseball diamond, parking area, picnic tables and all other facilities located on the park site;
- (vii) Maintain the Equestrian Staging Area, including the access road, parking facilities, restrooms, picnic facilities and drainage facilities on Lot G. Maintenance shall include the prevention of horse manure accumulation.
- (viii) Maintain all portions of the Perimeter Fence, except those that border along the Folsom Lake State Recreation Area (which shall be maintained by the State), including, without limitation, boundary fencing within the Lot H open space and the Lot G parcel and the adjacent private residential Lots, and the collection of fees for park maintenance;
- (ix) Provide weekly refuse collection from all public facilities;
- (x) Collect fees for park maintenance; and
- (xi) Collect fees for regional storm drainage facilities and maintenance pursuant to the "Dry Creek Watershed Interim Drainage Improvement Ordinance," including any future revisions thereof.

(b) Cessation of CSA. If the CSA is ever abolished by the Placer County Board of Supervisors or is otherwise not able to function, the Association shall be responsible for all services previously provided by the CSA. In such event, the Association shall increase the amount of Regular and Special Assessments to cover the costs of providing the services previously provided by the CSA as a Common Expense of the Association.

## **ARTICLE VIII USE OF PROPERTY AND RESTRICTIONS**

In addition to the restrictions established by law or Association Rules promulgated by the Board of Directors pursuant to Section 3.07, above, the following restrictions are hereby imposed upon the use of Lots, Residences, Common Areas and other parcels within the Development:

Section 8.01. Use of Lots Restricted to Single Family Residential Use. No Lot, nor any portion thereof, shall be used for any purpose other than Single-Family Residential Use. Lots of less than one acre are restricted to one residential dwelling. Except as provided in Section 8.02, below, no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, mining, drilling or other such nonresidential purpose.

Section 8.02. Permitted Business and Professional 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. Furthermore, no restrictions contained in this Section shall be construed in such a manner so as to prohibit any Owner from:

- (a) maintaining his or her personal library in his or her Residence;
- (b) keeping his or her personal business records or accounts therein;
- (c) handling his or her personal or professional telephone calls or correspondence therefrom;
- (d) leasing or renting his or her Residence in accordance with Section 2.04, above;
- (e) conducting a home business through the use of computers, facsimile transmissions and other electronic media, so long as the business involves no signage, unusual noise or customer traffic; or
- (f) conducting any other activities on the Owner's Lot otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization so long as any such activity does not involve exterior signage or create customer traffic within the Development.

The uses described in subparagraphs (a) through (f), above, are expressly declared to be customarily incidental to the principal residential use of Lots within the Development and are therefore not in violation of this Section 8.02.

Section 8.03. Common Area Uses and Restrictions. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any structural improvement upon, or shall make or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree or shrub or plant any tree, shrub or other vegetation upon Common Area or any landscaped area maintained by the Association. There shall be no obstruction of the Common Area, and nothing may be stored on the Common Area without the prior written consent of the Board. No skateboard or unlicensed vehicle may be used on the Common Area at any time.

Section 8.04. Window Coverings. No sheets, pillow cases, aluminum foil or other material other than materials designed specifically as window coverings may be used as window coverings.

Section 8.05. Clotheslines. No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes on any Lot in a manner which is visible from any neighboring Lot, Common Area, or from any street within the Development. Subject to the foregoing and in accordance with Civil Code section 4750.10, Owners and residents shall be permitted to maintain a clothesline or a laundry drying rack (i.e., an apparatus designed for laundry to dry or air) in the backyard of the Owner's Lot.

Section 8.06. Ancillary or Accessory Structures. No structures of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding, shall be used on any Lot at any time as a Residence, either temporarily or permanently.

Section 8.07. Temporary Sanitation Facilities. No chemical toilet or other privy not properly connected to the public sewer system shall be erected, maintained or used upon any portion of the Development, with the exception of a temporary privy that may be permitted by the Architectural Control Committee during the course of any construction.

Section 8.08. Fences and Other Screening Structures. No fences, awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Development except those existing as part of the Declarant's or any Builder's original construction and their duplicate replacements, or those which are installed or authorized and approved by the Architectural Control Committee or the Board.

Section 8.09. Water Supply; Back Flow Prevention Devices. No well or other water supply source not properly connected to the public water system shall be constructed, maintained or used upon any portion of the Development. Back flow prevention devices shall be provided on domestic water service lines as required by the Placer County Water Agency.

Section 8.10. Signs. No advertising signs or billboards shall be displayed on any Lot or posted within or upon any portion of the Common Area except that Owners may post on their Lots any signs required by legal proceedings and a single "For Rent," "For Lease" or "For Sale" sign of reasonable dimensions. The Architectural Control Committee, in its discretion, shall be entitled to regulate or prevent altogether, the erection and maintenance of Owner's, agents or broker's directional signs along roadways or on any Common Areas within the Development. Political signs pertaining to elections and ballot measures may be maintained on an Owner's Lot, but only for a reasonable period of time in advance of the election and the signs shall be taken down immediately upon conclusion of the election.

Section 8.11. Animals. The following restrictions shall apply to the maintenance of animals on Lots within the Development:

(a) Generally. Except as expressly permitted by this Section 8.07, no animals, reptiles, rodents, livestock or poultry shall be kept on any Lot or elsewhere within the Development. A reasonable number of dogs, cats or other household pets ("***Permitted Animals***") may be kept for personal enjoyment and use. Permitted Animals may not be kept, bred or raised for commercial purposes or in unreasonable quantities, as determined by the Board, or in violation of any other provision of this Declaration or the Association Rules. Permitted Animals belonging to Owners or their licensees, tenants or invitees shall be kept within an enclosure or within an enclosed yard or shall be on a leash being held by a person capable of controlling the animals. Each person bringing or keeping a pet on the Development shall be absolutely and strictly liable to other Owners, their family members, guests, invitees, tenants and contract purchasers, and their respective family members, guests and invitees, for any injury to persons or damage to property caused by any pet brought on or kept on the Development by such person or by members of his family, guests or invitees.

(b) Livestock Other Than Permitted Animals. In order to protect the Folsom Lake watershed, no horses, cows, pigs or other livestock (collectively "***livestock***") shall be raised, bred or kept for any purpose on Lots 27 through 37, inclusive, 46 through 48, inclusive, and 50 through 55, inclusive. Horses may be maintained in a manner that does not otherwise violate the provisions of this Declaration on Lots 2 through 14, inclusive, and 56 through 64, inclusive.

(c) Authority to Regulate Nuisance Animals. The Board can prohibit maintenance of any animal on a Lot which, in the sole and exclusive opinion of the Board, constitutes a nuisance or health hazard to any other Owner. The Association Rules can also include provisions that further defined what constitutes a "reasonable number" of Permitted Animals, depending on such factors as the size of the animal, the goal of confining pets to an Owner's Lot, demonstrated characteristics of the breed of the animal, and so forth.

Section 8.12. Trash; Prohibition on Dumping. Each Owner and resident shall subscribe to weekly refuse collection services from the refuse collection franchise holder as required by Placer County Code Section 9.24(2). All garbage and trash shall be placed and kept in covered containers. In no event shall such containers be kept where they are visible from the Common Area or any neighboring Lot, except as may reasonably be necessary in connection with the collection thereof by the refuse collector. No portion of any Lot shall be used for the storage of building materials or other materials except in connection with construction that has been approved by the Architectural Control Committee and by the County (to the extent that County approval is required).

There shall be no dumping of trash or other materials of any kind, including, without limitation, yard clippings, tree branches, oil, chemicals, paint or pesticides, within the Development or onto any portion of the adjacent Park, the Equestrian Staging Area or the Open Space Area.

Section 8.13. Firearms. No firearms of any type shall be discharged and no hunting of any type shall be allowed within the Development.

Section 8.14. Vehicles and Parking. Each Owner shall be entitled to the exclusive use of the garage located upon his or her Lot and each Owner shall generally make use of the Owner' garage for parking any vehicle(s) that the Owner or the Owner's tenant brings to the Development. To assure appropriate use of garages within the Development, the following restrictions shall be strictly enforced:

(a) Garages. No garage shall be remodeled, enclosed or structurally improved for use as a recreation room, workshop, storage space, hobby facility or for any other use or facility which would interfere with its use of the bays in the garage for the accommodation of the number of full-sized passenger vehicles which the garage is originally designed to accommodate.

(b) Recreational Vehicles. No Recreational Vehicle of any type nor any commercial vehicle, inoperable vehicle, or farm vehicle shall be kept or parked in any driveway, sidewalk or yard area within a Lot or upon the Common Area. Garages or a lattice, fence, wall or other enclosure located in a yard to the side or rear of a Residence and approved by the Architectural Control Committee may be used for storing or parking any Recreational Vehicle if such vehicle is completely enclosed by the garage or other enclosure and cannot be viewed from the street or any other Lot. Any parking spaces designated for use by guests may not be used for storing or parking any Recreational Vehicle. As used herein "***Recreational Vehicle***" means any van, boat, motorcycle, camper, trailer, motor home or other vehicle which is commonly referred to as an "RV" or is generally used for recreational rather than passenger purposes.

(c) No Obstruction of Access. No one shall interfere with or otherwise restrict the free rite of passage of the Owners, their agents, servants, tenants, guests and employees over driveways or passages leading to each Resident's garage.

(d) Authority to Establish Additional Vehicle and Parking Rules. In order to prevent or eliminate any parking problems within the Development, or to further define and enforce the restrictions of this Section, the Board of Directors shall have the power and authority to establish additional Association Rules, restrictions and penalties and to impose fines or towing procedures for repeated violations of the parking restrictions, as determined by the Board.

Section 8.15. Open Burning; Wood Burning. An Air Pollution Control District Burn Permit shall be required for any open burning on any Lot.

Section 8.16. Offensive Activities; Nuisances. No noxious or offensive activity shall be carried on within the Development, nor shall anything be done or placed thereon which may be or become a nuisance or cause unreasonable embarrassment, disturbance or annoyance to other Owners in the enjoyment of their property, or in the enjoyment of Common Areas. Without limiting any of the foregoing, no Owner shall permit noise, including but not limited to, the barking of dogs and the excessive playing of outdoor music systems, to emanate from such Owner's Lot, which would unreasonably disturb another Owner's quiet enjoyment of his or her Lot or of the Common Area.

Section 8.17. Water Supply; Back Flow Prevention Devices. No well or other water supply source not properly connected to the public water system shall be constructed, maintained or used upon any portion of the Development. Back flow prevention devices shall be provided on domestic water service lines as required by the Placer County Water Agency.

Section 8.18. Landscaping.

- (a) Generally. Unless there has been prior written approval by the Architectural Control Committee, no Owner shall: (1) alter the grade of the land within such Owner's Lot; or (2) alter any open yard area or Common Area.
- (b) Installation. All yards within a Lot, including rear and side yards, shall be landscaped in a reasonable manner to enhance the appearance of the Lot within a period of six months after the date of occupancy of the Residence Unit on that Lot, or within one year after the close of escrow on the Owner's acquisition of the Lot from Declarant, whichever occurs first.

Section 8.19. Tree Protection Restrictions. The Conditions of Approval include the following provisions relating to the preservation of native oak trees:

- (a) Oak Trees. Removal of oak trees that are six inches or greater in diameter at breast height is prohibited unless prior written approval is granted by the Board. Evidence of such approval shall be submitted to the Placer County Planning Department prior to the issuance of any building and/or grading permits. Each Owner shall design or cause to be designed all improvements to such Owner's Lot in a manner that minimizes the necessity of oak tree removal.
- (b) All Trees. Efforts shall be made to save trees within the Development where feasible, including, without limitation, the use of retaining walls, planter islands, pavers or other techniques commonly associated with tree preservation. During construction, all trees that are determined to be saved shall be fenced at their driplines with a four-foot tall, brightly colored synthetic mesh material fence. In addition, a sign, one-foot by two-feet in size, shall be attached to the fence and shall state: "This Tree to be Saved." No development on any Lot, including grading, will be allowed until this provision is satisfied. Any encroachment into the driplines of trees to be saved, by structures or construction activities, must first be approved by the Board. See also Section 18.08, below.

Section 8.20. Restrictions Regarding Open Space and Riparian Easements and Scenic Setback and Natural Area Easements.

- (a) Generally. All portions of Lots within the Open Space and Riparian Easement Areas and Scenic Setback and Natural Area Easement Areas (collectively, the "Easement Areas") shall be subject to the restrictions in this section which shall be enforced by the Association. The placement of any fill materials, lawn clippings, oil, chemicals or trash of any kind within the Easement Areas shall be prohibited. No grading, vegetation removal or alteration shall be permitted in the Easement Areas, including domestic landscaping and fencing. Trimming or other maintenance activities are allowed within the Easement Areas only for the purposes of fire prevention, elimination of diseased growth or thinning necessary for the

maintenance of natural vegetation, and then only with the written consent of the Placer County Development Review Committee.

(b) Scenic Setback and Natural Area Easements. No structures, grading or tree removal shall be permitted within the Scenic Setback and Natural Area Easement Areas without the prior approval of the County Planning Commission. The natural vegetation within such areas shall be maintained to the maximum extent possible to insure adequate wildlife habitat protection. The restrictions in this section shall be enforced by the Association.

Section 8.21. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence or appurtenant structures within the Development.

Section 8.22. Diseases and Pests. No Owner shall permit anything or condition to exist upon his or her Lot which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

Section 8.23. Parking and Vehicle Restrictions. The following parking and vehicle restrictions shall apply within the Development:

(a) Each Owner shall generally make use of his garage for parking any vehicle(s) which he brings to the Development. To assure appropriate use of garages within the Development, the following restrictions shall be strictly enforced:

(i) No garage shall be remodeled, enclosed or structurally improved for use as a recreation room, workshop, storage space, hobby facility or for any other use or facility which would interfere with its use for the accommodation of the number of full-sized passenger vehicles which the garage is originally designed to accommodate.

(ii) No Recreational Vehicle of any type nor any commercial vehicle, inoperable vehicle, farm vehicle or aircraft shall be kept or parked in any driveway, sidewalk or yard area within a Lot or upon the Common Area. Garages or a lattice, fence, wall or other enclosure located in a yard to the side or rear of a Residence Unit and approved by the Architectural Control Committee may be used for storing or parking any Recreational Vehicle if such vehicle is completely enclosed by the garage or other enclosure and cannot be viewed from the street or any other Lot. Any parking spaces designated for use by guests may not be used for storing or parking any Recreational Vehicle. As used herein "Recreational Vehicle" means any van, boat, motorcycle, camper, trailer, motor home or other vehicle which is commonly referred to as an "RV" or is generally used for recreational rather than passenger purposes.

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

Section 8.24.      Use of Private Streets in Common Area. Private streets within the Development shall not be used for recreational purposes, including “joy riding” or racing. Motorcycles, mopeds, and cars shall be allowed on such private streets only for ingress and egress.

Section 8.25.      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's/resident and for any property damage caused by such children.

Section 8.26.      Activities Affecting Insurance. Nothing shall be done or kept on any Lot or within any Residence or the Common Area which will increase the rate of insurance relating thereto on any policy maintained by the Association (see Article X, below) without the prior written consent of the Association and no Owner shall permit anything to be done or kept on his or her Lot or within his or her Residence or the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Residence or any part of the Common Area.

Section 8.27.      Prohibition on Further Subdivision of Lots. 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 portions of the Development.

Section 8.28.      Variances. Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article VIII, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Board shall follow the procedures set forth in Section 5.12, above, for the granting of architectural variances.

Section 8.29.      Enforcement of Property Use Restrictions. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under 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 appeal rights.

## **ARTICLE IX EASEMENTS**

Section 9.01.      Street Easements. Each Owner and the Association shall have and is hereby granted a nonexclusive easement for street, roadway and vehicular traffic purposes over and along the private streets and paved parking areas within the Development.

Section 9.02.      Blanket Utility Easement. There is hereby created a blanket easement upon, across, over and under all 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 on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on the 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 on the Development.

Section 9.03.      Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any management company or contractor selected by the Association to enter in or to cross over the Common Area and any Lot to perform the Association's duties of maintenance and repair of the Lots, Common Area, or Common Facilities provided, however, that any entry by the Association or its agents onto any Lot and the roof or exterior of any Residence shall only be undertaken in strict compliance with Section 3.06(b), above.

Section 9.04.      Open Space and Riparian Protection Easements. Declarant hereby reserves easements in favor of the Association over those areas on Lots 15 through 19, inclusive, 21, 26 through 28, inclusive, 32, 33, and 56 through 59, inclusive, shown on the final subdivision map for the Development as "Open Space and Riparian Protection Easements," for the protection of Elderberry shrubs, which are the habitat of the Valley Elderberry Longhorn Beetle, and of riparian areas. The Open Space and Riparian Protection Easements shall be subject to the restrictions set forth in Section 8.19, above.

Section 9.05.      Scenic Setback and Natural Area Easements. Declarant hereby reserves easements in favor of the Association over those areas on Lots 1, 2, 4, 5, 29 through 36, inclusive, and 47, 48, 50, 51, 54 and 60 shown on the final subdivision map for the Development as "Scenic Setback and Natural Area Easements," for the preservation of scenic views and natural areas. The Scenic Setback and Natural Area Easements shall be subject to the restrictions set forth in Section 8.19, above.

Section 9.06.      CSA Easements for Maintenance and Repair. Declarant hereby reserves for the benefit of the County Service Area an easement in and to every Lot and the Common Area within the Development for the limited purpose of maintaining and repairing adjoining areas for which the CSA is responsible pursuant to Section 7.06, above. Such easements shall continue for the benefit of the Association in the event that the CSA is ever abolished by the Placer County Board of Supervisors or is otherwise not able to function.

Section 9.07.      Open Space Area. The Open Space Area (Lot H) has been restricted to maintenance as a natural, open space area. The Association may convey Lot H to an entity that will maintain it as a natural, open space area.

Section 9.08.      Other Easements Shown on Subdivision Map. Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Development and each Lot and Common Area as shown on the Subdivision Map.

Section 9.09.      Priority of Easements. Wherever easements granted to the County are, in whole or in part, coterminous with any other easements, the easements of the County shall have and are hereby granted priority over the other easements in all respects.

## **ARTICLE X INSURANCE**

Section 10.01.      Types of Insurance Coverage. The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance:

(a)      Fire and Casualty Insurance. A policy of fire and casualty insurance naming as parties insured the Association 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, of 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 Property Damage Insurance. 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 non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(c) Flood Insurance. If the Development is located within an area which has special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP). The policy shall cover the same property as that required to be insured under Section 10.01(a), above, and shall be in no less an amount than the lesser of the following: the maximum coverage available under the NFIP for all buildings and other insurable property within any portion of the Common Areas located within a designated flood hazard area; or 100% of current "replacement cost" of all such buildings and other insurable property.

(d) Directors' and Officers' Liability Insurance. A policy or policies of insurance providing individual liability protection to persons serving as directors, officers or committee members of the Association from claims arising out of or pertaining to negligent acts or omissions of such persons in their official capacities. The limits of such insurance shall be not less than One Million Dollars (\$1,000,000).

(e) 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 (100%) percent of each year's estimated annual operating expenses and shall contain an endorsement for any person who may serve without compensation.

(f) Worker's Compensation Insurance. Worker's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, the Board and Manager, if any, from liability in connection with the Common Area. All insurance and bond coverage required by Section 5.06, paragraph A, shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) by any party, without at least 10 days' prior written notice to the Association.

Section 10.02. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by section 10.01 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 hereinabove 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 Section 10.06, 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. The 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 section 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, 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. 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 Sacramento region. In accordance with Civil Code section 5300(b)(9), 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 as part of the Annual Budget that is distributed to the Members no earlier than ninety (90) days and no sooner than thirty (30) days prior to the end of the Association's fiscal year. To the extent that any of the information required to be disclosed pursuant to this paragraph is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Members. The summary distributed pursuant to this Section 10.07 shall contain in at least 10-point boldface type, the statement required by California Civil Code Section 5300(b)(9)

In accordance with Civil Code section 5810, the Association shall, as soon as reasonably practical, notify the Members by Individual Notice if any of the policies described in this Article X that the Association is obligated to maintain have lapsed, been canceled, and are not immediately renewed, restored or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described in this paragraph, the Association shall immediately notify the Members if replacement coverage will not be in effect by the date the existing coverage will lapse. The Association shall, as soon as reasonably practicable, provide Individual Notice to all Members if any of the policies described in the Annual Budget Report pursuant to Section 5300 have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the Association receives any notice of nonrenewal of a policy described in the Annual Budget Report pursuant to Section 5300, the

Association shall immediately notify the Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

Section 10.08. 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 X 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 (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.

## **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 11.01, 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, reconstruction and restored. The proceeds available from insurance shall be deemed sufficient if the estimated cost of repair or replacement (as established pursuant to Section 11.01, above) do not exceed available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association for the year in which the determination of sufficiency is required. Any funds required in excess of the insurance proceeds shall be funded by imposition of a Special Assessment against all Owners (Section 4.03, above).

Section 11.03. Common Facilities; Insurance Proceeds Insufficient in an Amount Exceeding Association Special Assessment Authority. 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 less than the total estimated cost of repair, and the short-fall exceeds five percent (5%) of the Association's budgeted common expenses, then the Association must submit the issue to the Members to determine whether: (a) to repair, reconstruct and restore the damaged or destroyed

Common Facilities and specially assess all Owners for such additional funds as may be needed for such purpose; or (b) not to repair, reconstruct or restore the damaged or destroyed Common Facilities but rather to utilize the insurance proceeds available for such reconstruction, together with any other sums otherwise available to the Association for such purpose, to demolish and remove the damaged or destroyed Improvements from the Common Area and to level and landscape the sites thereof and apply any balance of such proceeds and/or funds as the Members and their first mortgagees may determine. The alternative favored by a Majority of a Quorum of the Members shall prevail. The quorum for this vote shall be a simple majority of the voting power of the Members.

Section 11.04. Damage or Destruction of Residences. In the event of damage or destruction by fire or other casualty affecting a Residence, the Owner thereof shall, within six (6) months thereafter, either:

- (a) Diligently commence to rebuild the Residence in accordance with the terms hereof, including, without limitation, the architectural review provisions of Article V, above; or
- (b) Clear and level the Lot, removing all wreckage, debris and remains of the Residence therefrom and leaving the same in a level, clean condition.

## **ARTICLE XII CONDEMNATION**

Section 12.01. Common Area. 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 or Parcels, 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.

Section 12.02. Lots. If the taking involves individual Lots, the Owner directly affected shall represent and negotiate for himself with respect to the damages and compensation for such taking. Within 90 days of the taking, the Association shall determine, upon the vote or written assent of 75% of the Members, whether or not the taking so affects the affected Lots and improvements thereon that they cannot be restored or replaced. Upon making the determination, the following provisions shall apply:

- (a) Restoration. If the Association determines that the Lots and improvements thereon can be restored, the award shall be distributed to the Board as trustee and the Board shall restore the Lots and improvements, and distribute any excess award as provided in Section 10.01 above, that is, to the Lot Owners and their Mortgagees, as their interests appear. In the event that

the award is not sufficient to cover the cost of rebuilding or restoring, the Owners of such Lots shall be obligated to contribute such funds as shall be necessary to pay their proportionate share of the cost of rebuilding or restoration, over and above the award. The proportionate share of each such Owner or Owners shall be the amount by which the cost of repair or restoration on his Lot exceeds that Owner's share of the total award. If any Owner fails to pay his proportionate share, the Association may levy a Special Assessment against the Lot or such Owner, which may be enforced under the lien provisions contained in Article 7 or in any other manner provided in this Declaration.

(b) No Restoration. If the Association determines that the Lots and improvements thereon cannot be restored, the Board shall, within 30 days of the award, determine the allocation of the award between the Common Area and the affected Lots and shall distribute the compensation to the Owners and the Mortgagees, as their interests appear.

### **ARTICLE XIII BREACH AND DEFAULT**

#### **Section 13.01. Association Standing and Enforcement Rights, Generally.**

(a) Association Standing to Represent the Owners/Members. In accordance with Civil Code section 5980, the Association has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without necessity of joining the Members in matters pertaining to:

- (i) Enforcement of the Governing Documents; and
- (ii) Damage to the Common Area

(b) 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 Residence, or any portion of the Common Area or Common Facilities, to comply with any provision of this Declaration or any rule, regulation, decision or resolution of the Board of Directors, Bylaws, or Articles of the Association, all as may be amended from time to time, may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, or its officers or Board of Directors.

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. 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 procedures include an action

brought in any court of competent jurisdiction as well as any internal dispute resolution (IDR) and/or alternative dispute resolution (ADR) procedures implemented pursuant to the Governing Documents or pursuant to California Civil Code sections 5855 (Board meetings to consider the levy of a fine or other Member discipline) and 5900 through 5915 (Internal Dispute Resolution) or 5925 through 5960 (Alternative Dispute Resolution). In any enforcement procedure, such as mediation 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 statute.

Section 13.04. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one (1) 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 13.05. 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, the Board, or any of its officers or agents.

Section 13.06. Rights and Remedies of the Association.

(a) Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey the 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 section 5900 through 6000, 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). Upon adoption of a fine schedule and later at any time the schedule is revised,

the Association shall distribute a copy of the schedule to its Members as part of the Association's Annual Policy Statement prepared in accordance with Civil Code section 5310 and delivered to the Members by any means constituting "individual delivery" under Civil Code section 4040. See the Association Bylaws at Section 13.01. Prior to imposition of a fine, the Board shall comply with the procedures for providing written notice to the Member (by personal delivery or Individual Delivery) and an opportunity for a hearing before the Board in accordance with Civil Code section 5855 and subparagraph (d), 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)(x), 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 Association's Right to Suspend Member Privileges. The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph (iii), below.

(ii) Monetary penalties imposed by the Association. In accordance with Civil Code section 5725, the following limitations apply to the collection of any monetary penalty, including a fine or Special Individual Assessment levied against a Member pursuant to this Declaration:

(A) A monetary charge imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area and/or the Common Facilities that is caused by a Member or the Member's guest or tenant may become a lien against the Member's Lot enforceable by the sale of the Lot under sections 2924, 2924b, and 2924c of the Civil Code.

(B) A monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for the late payments, may not be characterized nor treated in the Governing Documents as an

Assessment that may become a lien against the Member's Lot that is enforceable by the sale of the Lot under sections 2924, 2924b, and 2924c of the Civil Code.

(iii) Notice and Hearing Requirements for Disciplinary Actions. In accordance with Civil Code section 5855, no disciplinary action, penalty or temporary suspension of rights shall be imposed pursuant to this Article XIII unless the Owner alleged to be in violation is given at least ten (10) days prior notice by personal delivery or Individual Delivery that the Board of Directors will be meeting to consider imposing such discipline. In accordance with Civil Code section 5855(c), the notice shall include, at a minimum, the date, time, and place of the meeting, the nature of the alleged violations for which the Owner may be disciplined, and a statement that the Owner has a right to attend and address the Board at the hearing. The Board shall meet in executive session if requested by the Owner who is the subject of the disciplinary action (Civil Code sections 5855(b) and 4935(b)). If disciplinary action is taken, the Board shall notify the accused Owner with written notification of the decision, by either personal delivery or Individual Delivery within fifteen (15) days following the Board's action.

In accordance with Civil Code section 5855(d), disciplinary action shall not be effective against an Owner unless the Board fulfills the requirements of this subparagraph (iii). The Association shall also adopt hearing and disciplinary procedures that comply with the requirements set forth in Civil Code section 5910.

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 as soon thereafter as reasonably possible.

(e) Inapplicability of Section 13.06(d) Procedures to Assessment Collection Actions. The notice and hearing procedures set forth in this 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 the prior notification and other procedural requirements set forth in Section 4.10, above, and any other notice, hearing and/or dispute resolution requirements or procedures as may be specifically applicable by law to Association assessment collection. See Civil Code sections 5650 through 5740.

(f) Rules Regarding Disciplinary Proceedings. The Board, or an appropriate committee appointed by the Board to conduct and administer disciplinary hearings and related proceedings, shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings, so long as such rules meet the minimum requirements of section 5910 of the Civil Code. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

Section 13.07. 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 (\$5,000.00)), the Association shall first comply with the provisions of California Civil Code sections 5925 through 5950 relating to alternative dispute resolution. The Association's own notice and hearing procedures may be drafted to satisfy these statutory requirements.

## **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 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 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 Association and its successors 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 or 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 Therefore. 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, above. 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 50 or more Lots; and (ii) at the requesting entity's expense when the Development consists of fewer than 50 Lots and no audited statement is available; and
- (c) Receive a written notice of all meetings of the Association 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 Article XIX, below (Amendments), 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) responsibility for maintenance, repair and replacement of the Common Area;
- (iv) convertibility of Lots into Common Area and vice versa;
- (v) annexation or de-annexation of property to or from the Development;
- (vi) insurance or fidelity bonds;
- (vii) leasing of Lots;
- (viii) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot;
- (ix) 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;
- (x) restoration or repair of the Development (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;
- (xi) any action to terminate the legal status of the Development after substantial destruction or condemnation occurs; or
- (xii) any provisions that expressly benefit Mortgagees, insurers or guarantors.

(b) Termination. In addition to the approvals required by Article XIX, 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. Quality of Future Improvements. All intended Improvements in any future phase of the Development shall be consistent with the Improvements in the first phase in terms of quality of construction. The requirements of this Section are solely for the benefit of, and may be enforced only by, the Federal National Mortgage Association.

Section 14.14. Declaration to Conform With Mortgagee 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 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: | STERLING POINTE ESTATES, 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) |

Nothing in this Section 15.01 is intended to preclude the use of any other means of delivering notices to Members or Owners (other than by personal service or mail) if other methods of delivery are authorized by this Declaration, by Civil Code Sections 4040 through 4050.

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. General Rules Regarding Delivery of Notices. In accordance with Civil Code sections 4050 and 4055, the following general rules shall apply to the provision of notices:

- (a) If a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail.
- (b) If a document is delivered by electronic means, delivery is complete at the time of transmission.

If the Association or a Member has consented to receive information by electronic delivery, and a provision of the Davis-Stirling Act requires that the information be in writing, that requirement is satisfied if the information is provided in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

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

Except as specifically provided herein, 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 of the Declaration, Generally. 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 the Members. 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 (b) through (h), of the Association Bylaws

- (b) Additional Approvals For Amendments to Particular Provisions:
- (i) Mortgagee Approvals. Mortgagee approvals shall be required to amend any of the provisions described in Article XIV, above.
  - (ii) Approval by the County. The following provisions of this Declaration reflect conditions of approval for the Development imposed by the County and may only be amended with the prior consent of the County: Any provision that makes reference to the Conditions of Approval.

### **ARTICLE XVIII NOTIFICATIONS TO FUTURE OWNERS**

The Conditions of Approval for the Sterling Pointe Estates development require that future Owners be notified of the following:

Section 18.01. State Responsibility Area. The Development is located in what is known as a “State Responsibility Area” and as such, the Development is subject to fire protection regulations established by the California State Board of Forestry. Those regulations include provisions that are applicable to residential construction.

Section 18.02. Public Equestrian Trail Easement. The Subdivision Maps show a ten foot (10’) wide public equestrian trail easement that is adjacent to the public rights-of-way along one side of Lomida Lane, Lake Forest Drive and Sterling Pointe Court.

Section 18.03. Public Access Easement to the Lot “G” Equestrian Facility. The Conditions of Approval require unencumbered public access over Sterling Pointe Court, between Lomida Lane/Lake Forest Drive and Lot “G” equestrian facility for so long as the need exists, as determined by Placer County.

Section 18.04. Requirement for Subscription to A Weekly Refuse Collection Service. The Conditions of Approval require residents to subscribe to a weekly refuse collection service from the local refuse collection franchise holder (Placer County Code section 9.24(2) and by the Association for all nonresidential structures that generate any refuse within the Development.

Section 18.05. Archaeological Sites and Cultural Resources. Archaeological sites and cultural resources located within any Common Areas or on any Residential Lot within the Development may not be disturbed, damaged, or removed without the express written consent of the County Development Review Committee.

Section 18.06. Use of the Lot F Park Site. The Lot F (the “Recreation Lot”) baseball diamond is a public facility and may be used for regularly scheduled athletic events.

Section 18.07. Notification Regarding Restriction on the Maintenance of Horses. The Conditions of Approval require notification to the Owners that the keeping of any livestock, including cattle or horses, is prohibited on Lots that are located within the Folsom Lake Watershed (i.e., on Lots 27 through 37, 46 through 48, 50 through 55, and Lot I. Livestock may be maintained on Lots 13, 14, 27, 56 through 60 and 2 through 12.

Section 18.08. Oak Tree Preservation. The Conditions of Approval require notification to Owners and prospective purchasers, that removal of oak trees (6" dbh or greater) is prohibited unless prior approval is granted by the Association. Evidence of said approval shall be submitted to the satisfaction of the Placer County Planning Department prior to the issuance of any building and/or grading permits. Every effort shall be made to design site improvements to minimize the necessity for oak tree removal.

Section 18.09. Notification Regarding Potential Impacts and Inconveniences Associated With the Rural Environment. The Conditions of Approval require notification to Owners and potential purchasers of Lots that the property surrounding the Sterling Point Estates development is rural in character, that the presence of livestock on such surrounding property is to be expected, that the Sterling Pointe Estates development has made provision for public equestrian trails and a public equestrian staging area as part of the subdivision improvements, and that livestock-related odors, insects, noise, and dust may result from the equestrian use within the subdivision and the presence of livestock in the surrounding area.

Section 18.10. Notification Regarding Need for a Burn Permit. The Conditions of Approval require Owners to be notified that an Air Pollution Control District Burn Permit is required for any open burning in association with the development of any Lot.

## **ARTICLE XIX GENERAL PROVISIONS**

Section 19.01. 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, 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 term of this Declaration shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial 60-year term or any such 10-year extension period, a recordable written instrument, approved by 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 19.02. 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 19.03. 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 California Statutes shall be to the referenced statute as in effect on the date that this Declaration is recorded in the Official Records of the County. 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.

(g) Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the rule against perpetuities or any related rule of law, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be: (a) those which would be used in determining the validity of the challenged interest; plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

DATED: 3/31, 2017.

**STERLING POINTE ESTATES OWNERS  
ASSOCIATION**, a California nonprofit mutual benefit corporation

By: Rita S. Jackson (President)

By: Earl A. Trestrail (Secretary)

Signatures on File - Sterling Pointe Estates Owners Association

## ACKNOWLEDGMENT

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

State of California  
County of Placer )

On March 31, 2017 before me, Alex Sandvik Notary Public  
(insert name and title of the officer)

personally appeared Rita Sue Jackson, Earl Alonzo Trestrail,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose  
names(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Alex Sandvik (Seal)

Signatures on File - Sterling Pointe Estates Owners Association