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WEINTRAUB GENSHEA CHEDIAK SPROUL  
Law Corporation  
Attn: Curtis C. Sproul, Esq.  
400 Capitol Mall, Suite 1100  
Sacramento, California 95814

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Nevada, County Recorder  
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**DOC- 2003-0040431-00**

Check Number 1848

Friday, AUG 01, 2003 09:22:00

REC \$66.00:SBS \$61.00:MIC \$1.00

AUT \$62.00:

Ttl Pd \$190.00

Nbr-0000248072

SMC/SC/1-62

**FIRST RESTATED DECLARATION**  
**OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**THE MEADOWS ASSOCIATION**

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**FIRST RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE MEADOWS**

The Declaration of Covenants, Conditions and Restrictions for THE MEADOWS, executed by Wildwood, a California corporation ("Declarant"), and Recorded on August 18, 1980, as Instrument Number 009505007, of the Official Records of Nevada County, California as amended by that First Amendment of Declaration of Restrictions, Recorded on June 3, 1999, Instrument Number 099019519 in said Official Records ("Original Declaration"), which affects all of the Development described and commonly known as The Meadows, is hereby amended and restated in its entirety to read as follows:

**RECITALS**

A. Declarant was the original owner of that certain real property ("Development") located in the Town of Truckee, County of Nevada, State of California, which is more particularly described as follows:

**Lots 1 through 49 and Common Area Roads named "Whitehorse Road", "Stallion Way", "Colt Court", "Mare Court", and "Filly Lane" and the Equestrian Trail Easements, as set forth in that subdivision map entitled "The Meadows", recorded on August 26, 1980, in Book 6 of Subdivisions, Page 44, of the Official Records of Nevada County, California.**

B. Declarant conveyed the Development, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development and all of which shall run with the Development and be binding on all parties having or acquiring any right, title or interest in the Development, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

C. It was the further intention of the Declarant to sell and convey residential Lots improved by residences originally constructed by Declarant to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which 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 section 1351(k) of the California Civil Code. Finally, it was the intention of Declarant that the "Common Areas" and "Common Facilities" be owned and maintained by the Association, but

reserved exclusively for the use and enjoyment of the Members, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

D. On \_\_\_\_\_, 2003, the Owners of Lots representing a majority of the voting power of the Members of the Association voted by written ballot to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in the Original Declaration. It was the intention of the Owners to replace the Original Declaration, in its entirety, with the Recordation of this Declaration. 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 1355(a) 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. "Architectural Committee" or "Committee" means the committee created in accordance with Article V, below.

Section 1.02. "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 1.03. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV, below.

Section 1.04. "Association" means The Meadows Association, a California nonprofit mutual benefit corporation, its successors and assigns. The Association is an "association" as defined in section 1351(a) of the California Civil Code.

Section 1.05. "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 1.06. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 1.07. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.08. "Common Area" and "Common Facilities" means all land and improvements located in the Development consisting of Roads, and the Equestrian Trail Easements, owned by the Association for the common use and enjoyment of all Owners, and as more particularly described in Recital "A", above.

Section 1.09. "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; (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 as provided in the Governing Documents.

Section 1.10. "County" means the County of Nevada, State of California, and its various departments, divisions, employees and representatives. If any portion of the Development becomes a portion of an incorporated city, then the term "County" shall be deemed to include the city in which that portion of the Development is located.

Section 1.11. "Declarant" means the original developer of the Development, namely Wildwood, A California corporation.

Section 1.12. "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 1.13 "Development" means all parcels of real property (Common Area and Lots) described in Recital "A" hereof, together with all buildings, structures, utilities, and other Improvements located thereon, and all appurtenances thereto.

Section 1.14 "Governing Documents" is a collective term that means and refers to this Declaration and to the Articles, the Bylaws and the Association Rules.

Section 1.15. "Improvement" shall be defined as set forth in Section 5.01, below.

Section 1.16. "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 1.17. "Majority of a Quorum" means the vote of a majority of the votes cast at a meeting or by written ballot when the number of Members attending the meeting in person or by proxy or casting written ballots equals or exceeds the minimum quorum requirement for Member action, as specified in the Bylaws or by statute.

Section 1.18. "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 12.06, below.

Section 1.19. "Mortgage" means any security device encumbering all or any portion of the Development, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

Section 1.20. "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 1.21. "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 1.22. "Record" means, with respect to any document, the recordation or filing of such document in the Office of the County Recorder.

Section 1.23. "Regular Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.02, below.

Section 1.24. "Residence" means a private, single-family dwelling constructed on a Lot.

Section 1.25. "Road" means any vehicular way designated on the Subdivision Map as a road, court, driveway or street.

Section 1.26. "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 1.27. "Special Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.03, below.

Section 1.28. "Special Individual Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.04, below.

Section 1.29. "Subdivision Map" means the map for any portion of the Development.

Section 1.30. "Town" means the Town of Truckee, State of California.

## **ARTICLE II**

### **Property Rights and Obligations of Owners**

Section 2.01. 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 charge reasonable admission and other fees or to limit the number of guests of Members who may use any recreational Common Facilities.

(b) The right of the Association to adopt Association Rules as provided in Section 3.07, below, regulating the use and enjoyment of the Development for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or tenant, to initiate disciplinary action against the violating owner or tenant in accordance with Section 12.06, 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.

(c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and Common Facilities;

provided, however, that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Section 4.03, below.

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds (2/3) of the voting power of the Members, and their first Mortgagees consenting to such dedication or transfer has been Recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Lot. The instrument approving the dedication may be executed in counterparts so long as each counterpart is in recordable form.

(e) All easements affecting the Common Area which are described in Article VIII, below.

Section 2.02. Persons Subject to Governing Documents. All present and future Owners, tenants and occupants of Lots within the Development shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the entering into a lease, sublease or contract of sale with respect to any Lot, or the occupancy of any Lot shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon him or her and that he or she will observe and comply with the Governing Documents.

Section 2.03. 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 or her family members, tenants, lessees or contract purchasers who reside in the Residence.

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.



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.

(b) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Development or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) the Owner has received written notice from the Board, the Association's property manager or an authorized committee of the Board detailing the nature of the lessee's/tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner; and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with Section 12.06, below.

Section 2.04. Obligations of Owners. Owners of Lots within the Development shall be subject to the following:

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

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

(A) A copy of the Governing Documents;

(B) The Association's most recent financial statement;

(C) A true statement in writing from an authorized representative of the Association as to: (1) the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees, interest, and costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold; (2) the amount of the Association's current regular and Special Assessments and fees; (3) any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement; and

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

(ii) Within 10 days of the mailing or delivery of a written request for the information described in subparagraph (c)(i), above, the Association shall provide the Owner with copies of the requested items. The Association shall be entitled to impose a fee for providing the requested items equal to (but not more than) the reasonable cost of preparing and reproducing the requested items.

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

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

(f) Joint Ownership of 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**

#### **Homeowners Association**

Section 3.01. Association Membership. Every Owner of a Lot shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Lot owned and the membership shall be appurtenant to such Lot. 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. Where Lots are owned by more than one person, the Board shall have the right, pursuant to Section 3.07, below, to adopt a rule designating the minimum percentage ownership of a Lot to qualify the Owner as a Member for purposes of using any Common Facility or for determining eligibility to serve as a director. Spouses shall be permitted to aggregate their ownership interests to determine either spouse's percentage ownership of a Lot.

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. 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 12.06, 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 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 Recording 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 he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use pursuant to Section 2.03, above, do not thereby become Members, although the tenant and his or her family and guests shall, at all times, be subject to the provisions of 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 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 Development and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in Article 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) Exterior maintenance or obligations with respect to individual Residences;

(B) Obligations to enforce the architectural and land use restrictions of Articles V and VII, below;

(C) Any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or

(D) To make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, any portion of the Development or the Owners in common.

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

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

(B) In all non-emergency situations involving routine repair and/or maintenance activities, the Association, or its agents, shall furnish the Owner or his or her lessee with at least 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 12.06, below.

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

### 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 the maintenance, repair, management and use of the Common Area and Common Facilities by Owners, their tenants, guests and invitees, or any other person(s) who have rights of use and enjoyment of such Common Area and Common Facilities; (ii) architectural control and the rules of the Architectural Committee under Section 5.05, below; (iii) the conduct of disciplinary proceedings in accordance with Section 12.06, below, (iv) regulation of parking, pet

ownership and other matters subject to regulation and restriction under Article VII, below; (v) collection and disposal of refuse; (vi) minimum standards for the maintenance of landscaping or other Improvements on any Lot; and (vii) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

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

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

(c) Adoption and Amendment of Rules. Association Rules may be adopted or amended from time to time by majority vote of the Board, provided, however, that no Association Rule or amendment thereto shall be adopted by the Board until at least 30 days after the proposed rule or rule amendment has been: (i) published in the Association newsletter, if any, or otherwise communicated to the Owners in writing; and (ii) posted in the Association's principal office. 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.

Section 3.08. 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 3.09. Limitation on Liability of the Association's Directors and Officers.

(a) Claims Regarding Breach of Duty. No director or officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Members or to any other person, for any error or omission in the discharge of his or her duties and responsibilities or for his or her failure to provide any service required under the Governing Documents; provided that such Released Party has, upon the basis of such information as he or she possessed, acted in good faith, in a

manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

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

(b) Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer 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 resides within the Development as a tenant or is an Owner of no more than two 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 one million dollars (\$1,000,000).

For purposes of provision (ii) of this subparagraph (b), the scope of the officer's or director's association duties shall include, but shall not be limited to, both of the following decisions: (A) Whether to conduct an investigation of the common interest development for latent deficiencies prior to the expiration of the applicable statute of limitations; and (B) Whether to commence a civil action against the builder for defects in design or construction.

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. The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations pursuant to California Civil Code section 1365.7 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 one or more Lots, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association: (i) Regular Assessments; (ii) Special Assessments; and (iii) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided.

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

(c) Creation of Assessment Lien. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall become a lien against the Lot to which the Assessment is appurtenant upon recordation by the Association of a Notice of Delinquent Assessment in accordance with Civil Code section 1367(b) and Section 4.10, below. Any lien for unpaid Assessments created pursuant to the provisions of this Article may be subject to foreclosure as provided in Section 4.10(b), below.

(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 Lot or other property owned by him/her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his/her Lot or any other portion of the Development.

#### Section 4.02. Regular Assessments.



(a) Preparation of Annual Budget; Establishment of Regular Assessments. Not less than 45 days nor more than 60 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities or portions of the Lots which the Association is obligated to maintain) by preparing and distributing to all Members a budget satisfying the requirements of Section 12.05 of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the Members' approval in accordance with Section 4.08, below.

(b) Establishment of Regular Assessment by Board/Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year; provided, however, that, except as provided in Section 4.05, below (emergency assessment authority), the Board of Directors may not impose a Regular Assessment that is more than 20 percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the Members' prior approval in accordance with Section 4.08, below.

(c) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), 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 Assessments 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. The assessment roll shall show, for each Lot, the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by Section 2.04(c), above, shall be conclusive upon the Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(e) Mailing Notice of Assessment. Within the time requirements specified in subparagraph (a), above, the Board of Directors shall mail to each Owner, at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year.

(f) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.03(a)(i), below, for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Board.

(g) Installment Payment. The Regular Assessment levied against each Owner and his or her Lot shall be due and payable in advance to the Association on the first day of the fiscal year or on such other date or dates as may be established from time to time by the Board of Directors. Installments of Regular Assessments shall be delinquent if not paid within 15 days following 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 that 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) Capital Improvements. The Board may also levy Special Assessments for additional capital Improvements within the Common Area (i.e., Improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of

reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article X, below.

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

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

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

#### Section 4.04. Special Individual Assessments .

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4.03, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below; provided, however, that no Special Individual Assessments may be imposed against an Owner pursuant to this section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 12.06. 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 Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, or any portions of the Lots which the Association is obligated to repair and maintain, is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

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

(iii) Required Maintenance on Lots. If any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason the Association shall have the right to enter the Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry on the property of any Owner by the Association shall be effected in accordance 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, 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 and shall be payable in full to the Association within 30 days after the mailing of notice of the Assessment.

Section 4.05. Assessments to Address Emergency Situations. The requirement of a membership vote to approve: (a) Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment; or (b) Special Assessments which, in the aggregate, exceed 5 percent 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 which are necessary to address 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, Common Facilities or any portion of the Lots which the Association is obligated to maintain where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the Lots which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to 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.

Section 4.06. Purpose and Reasonableness of Assessments . Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively: (a) to promote the recreation, health, safety and welfare of individuals residing within the Development; (b) to promote the enjoyment and use of the Development by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities and those portions of the Lots which the Association is obligated to maintain.

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

(a) Any portion of the Development dedicated and accepted by a local public authority;

(b) The Common Area and Common Facilities; and

(c) Any Lot owned by the Association (unless the Residence on the Lot is being rented during the term of the Association's Ownership).

Section 4.08. Notice and Procedure for Member Approval Pursuant to Sections 4.02 and 4.03 . If 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.

Section 4.09. Maintenance of Assessment Funds.

(a) Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code section 1365.5 and Section 12.02 of the Bylaws. Any interest received on deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

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

(c) Separate Accounts; Commingling of Funds. Except as 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 from those Assessment funds; provided, however, that receipts and disbursements of Special Assessments made pursuant to Section 4.03(a)(i), above, shall be accounted for together with the receipts and disbursements of Regular Assessments, and a separate accounting

shall be maintained for each capital Improvement for which reserve funds for replacement are allocated.

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

(d) Reserve Funds. As more particularly provided in Article XII of the Association Bylaws, the Association Board is required by law to periodically identify the major components of the Project that the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of thirty (30) years or less. In the capital reserve analysis process, the Board is also obligated to identify the probable remaining useful life of the components identified in the study and to estimate the cost of repair, replacement, restoration, or maintenance of the components during and at the end of their useful life. The information developed in this capital reserve replacement analysis is then to be used by the Board as a component of preparing the annual budget of the Association. Reserve funds of the Association shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be members of the Board of Directors or one officer who is not a member of the Board and a member of the Board, shall be required to withdraw monies; from the reserve account. The Board 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 which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund.

The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Properties, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this subparagraph (d). This Special Assessment is subject to the Member approval requirements of California Civil Code section 1366 and Section 4.03(b), above, if the aggregate amount of the Special Assessment exceeds five percent (5%) of the budgeted gross expenses of the

Association for the year in which the Special Assessment is imposed. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

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

(e) Limitations On Use of Assessments as Security for Obligations. The Association shall not voluntarily assign or pledge the Association's right to collect payments or assessments, or to enforce or foreclose 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. The limitations imposed by this subparagraph (e) shall not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection. The collection of delinquent assessments from current Members of the Association shall be subject to section 4.10, below.

Section 4.10. Collection of Assessments; Enforcement of Liens. The Association may elect to pursue one or both of the following remedies in the event of a delinquent assessment:

(a) Personal Obligation and Liability for the Payment of Assessments. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the Assessment and in such action shall be entitled to recover the delinquent Assessment or Assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in subparagraph (b), below. Furthermore, no provision of Civil Code section 1367.1 (which provisions are intended to be reflected in this Section 4.10) or of Code of Civil Procedure section 726 (commonly referred to as the "one form of action rule") prohibits actions against an Owner to recover sums for which the Association has imposed a lien or prohibits the Association from taking a deed in lieu of foreclosure.

(b) Assessment Lien Rights and Limitations Thereon. Except as otherwise provided in Section 4.04, above, with respect to the limitation on the imposition of liens for Special Individual Assessments, the Association may impose a lien against the



Owner's Lot for the amount of the delinquent Assessment or Assessments, plus any reasonable costs of collection (including reasonable attorneys fees), late charges and interest by taking the following steps:

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

(A) **A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the Lot has the right to inspect the Association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST 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, if it is determined the Assessment was paid on time to the Association.

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

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

(iii) An Owner may dispute the amounts claimed as due and owing in the Delinquency Notice by submitting to the Board a written explanation of the reasons for his or her dispute. If the Owner wishes to submit an explanation, it must be mailed to the Association within fifteen (15) days of the postmark of the Delinquency Notice. The

Board shall respond in writing to the Owner within fifteen (15) days of the date of the postmark of the Owner's explanation.

(iv) 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 (25) days of the postmark of the Delinquency Notice. The Association shall provide the Owners with the standards for payment plans, if such standards have been adopted. So long as a timely request for a meeting has been tendered, the Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request for a meeting, unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner.

(v) The amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with Civil Code section 1366 shall be a lien on the Owner's Lot from and after the time the Association causes to be recorded with the County Recorder a Notice of Delinquent Assessment, which shall state the amount of the Assessment and other sums imposed in accordance with Civil Code Section 1366, a legal description of the Owner's Lot against which the Assessment and other sums are levied, the name of the record owner of the Owner's Lot against which the lien is imposed. In order for the lien to be imposed by non-judicial foreclosure as provided in subparagraph (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 Notice of Delinquent Assessment shall be signed by any officer of the Association or by the person designated by the Association for that purpose and mailed in the manner set forth in Civil Code Section 2924b to all record owners of the Owner's Lot no later than ten (10) calendar days after recordation. Within twenty-one (21) days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder a lien release or notice of rescission and provide the Lot Owner a copy of the lien release or notice that the delinquent Assessment has been satisfied.

(vi) For so long as any Lots within "the Properties" are being sold under authority of a Department of Real Estate Public Report, a Special Individual Assessment or other monetary charge imposed by the Association: (A) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area Improvements or landscaping for which the Member or the Member's guests or tenants were responsible; or (B) as a disciplinary measure for failure of a Member to comply with the Governing Documents (except for reasonable late payment penalties, interest, and other reasonable costs of collection authorized by Civil Code section 1366) may not be characterized nor treated as an Assessment that may become a lien against the Member's Lot enforceable by the sale of the interest under Civil Code sections 2924, 2924b and 2924c. Once the Association is no longer subject to the regulatory jurisdiction

of the Department of Real Estate, a Special Individual Assessment or other monetary charge 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 may become a lien against the Member's Lot that is enforceable by sale of the Lot in non-judicial foreclosure pursuant to Civil Code sections 2924, 2924b and 2924c.

(vii) A lien created pursuant to subparagraph (v), above, 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.

(viii) Subject to the limitations of this Section 4.10(b), after the expiration of thirty (30) days following the recording of a Notice of Delinquent Assessment, the 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 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code sections 2924, 2924b and 2924c 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 2924c and 2924d.

(ix) 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 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.

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

**The provisions of this Section 4.10(b) are intended to comply with the requirements of Civil Code Section 1367.1 in effect as of January 1, 2003. If these sections are amended or rescinded in any manner, the provisions of this Section 4.10(b) automatically shall be amended or rescinded in the same manner. Civil Code Section 1367.1 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.**

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

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

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

(c) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of such Lot (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring an interest in the Lot) from liability for any Assessments which thereafter become due with respect to the Lot or from the lien thereof.

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

Section 4.12. Priorities . When a Notice of Delinquent Assessment has been Recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens or encumbrances Recorded subsequent thereto, except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

Section 4.13. Unallocated Taxes . In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to Section 4.02, above, and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two installments, thirty days prior to the due date of each tax installment.

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

## **ARTICLE V**

### **Architectural Control**

#### Section 5.01. Approval of Improvements by Board or Architectural Committee .

(a) Approval Generally. Before commencing construction or installation of any Improvement within the Development, the Owner planning such Improvement must submit a written request for approval to the Board of Directors or its duly appointed Architectural Committee, if such a committee is established pursuant to Section 5.02, below, and Article X of the Bylaws. The Owner's request shall include structural plans and specifications satisfying the requirements of Section 5.05, below. Unless the Board's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Board shall base its decision to approve, disapprove or conditionally approve the proposed Improvement on the criteria described in Section 5.06, below. If the Board establishes an architectural committee, all references in this Article to the "Board" or the "Board of Directors" shall be deemed to be references to the Architectural Committee, unless the context shows a contrary intent.

(b) Definition of "Improvement". The term "Improvement" as used herein includes, without limitation, the construction, installation, alteration or remodeling of any buildings, walls, fences, landscaping, skylights, solar heating equipment, spas, antennas, television satellite reception dishes, utility lines or any other structure of any kind; provided, however, that improvements to the interior of any Residence shall not be considered an Improvement, as defined herein, unless the interior improvement involves any structural alteration of, or intrusion into, a party wall, roof or other load bearing wall within the Residence.

(c) Modifications to Approved Plans Must Also Be Approved. Once a proposed work of Improvement has been duly approved by the Board, 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 Board. If the proposed modification will have, or is likely to have, a material affect on other aspects or components of the work, the Board, 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 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 Committee . If the Board elects to establish an Architectural Committee pursuant to Article X of the Bylaws, the Committee shall be composed of three Members appointed by the Board. In selecting Members for the Committee, the Board shall endeavor to select individuals whose occupations or education will provide technical knowledge and expertise relevant to matters within the Committee's jurisdiction. Committee members shall serve one-year terms subject to the Board's power to remove any Committee member and to appoint his or her successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. If the Board establishes a Committee, it shall have those powers which are specifically designated by the Board in the resolution establishing the Committee.

Section 5.03. Duties . The Board shall have the duty to consider and act upon the proposals and plans for Improvements submitted to it pursuant to this Declaration, to adopt Architectural Rules 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 . The Board 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 Board shall constitute the action of the Association. The Board shall keep and maintain a written record of all actions taken, and actions on architectural matters may be undertaken by the Board at its regular Board meetings.

The Applicant shall be entitled to appear at any meeting of the Board 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. Architectural and Design Standards. The Board of Directors may, from time to time, adopt, amend and repeal rules and regulations to be known as "Architectural and Design Standards." The Architectural and Design Standards shall interpret and implement the provisions hereof by setting forth: (a) the standards, procedures and costs for architectural review, including the required content of Improvement plans and specifications; (b) guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular Improvement projects within the Development; and (c) the criteria and procedures for requesting variances from any property use restrictions that would otherwise apply to the proposed Improvement under the Governing Documents (see Section 5.12, below). Notwithstanding the foregoing, no architectural rule as stated in the Arch Design Standards shall be in derogation of the minimum standards required by the Declaration. In the event of any conflict between the Architectural and Design Standards and this Declaration, the provisions of the Declaration shall prevail. If the Architectural and Design Standards is delegated to the Committee, any such delegation shall not become effective until it has been approved by the Board.

(b) (c)  
para - 2

Section 5.06. Basis for Approval of Improvements. When a proposed Improvement is submitted to the Board of Directors for review, the Board shall not request approval only if, in its sole discretion, the Board finds that all of the provisions have been satisfied.

(a) The Owner's plans and specifications: (i) conform to this Declaration to the Architectural and Design Standards in effect at the time such plans are submitted to the Board; (ii) will result in the construction of an Improvement that is in harmony with the external design of other structures and/or landscaping within the Development; and (iii) will not interfere with the reasonable enjoyment of any other Owner of his or her property, including, without limitation, the other Owner's rights to scenic and solar access free of unreasonable obstructions; and

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

The Board shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar Improvement/component has previously been approved for use at another location within the Development if factors such as drainage, topography or visibility from roads, Common Areas or other Lots or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement or its use at other locations within the Development militate against erection of the

Improvement or use of a particular component thereof on the Lot involved in the Owner's submittal.

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

Section 5.07. Time Limits for Approval or Rejection. Within 30 days after submission of plans and specifications satisfying the requirements of the Architectural and Design Standards, the Board shall arrange for a meeting to review and approve or disapprove the submitted plans and specifications. Approval may be given at this meeting if no corrections are necessary or a conditional approval may be given with correction of the plans to be verified by a resubmittal of the plans and specifications. If the Board recommends that the plans and specifications be modified and then resubmitted, the Applicant may implement such changes to the plans and within 30 days resubmit plans incorporating such changes for approval to the Board, which shall not unreasonably withhold its approval so long as the Applicant has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the Applicant within 45 days after the Owner's plans and specifications (or revisions thereto) are submitted to the Board, the plans shall be deemed to have been approved as submitted. If an Architectural Committee meeting is postponed due to the request of the homeowner then the 45 day approval period does not start until the homeowner meets with the Architectural Committee.

If the Board establishes an Architectural Committee, the Committee's decisions shall be deemed to be recommendations to the Board which shall be placed on the agenda for confirmation, modification or denial at the next scheduled Board meeting.

Section 5.08. Proceeding With Work. Upon receipt of approval of an Improvement project from the Board of Directors, 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 be completed within eighteen (18) months from the date of such approval 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 Board, upon written request of the Owner, tendered prior to the expiration of the initial eighteen (18) month, extends the time for commencement or completion. No such extension shall be granted except upon a finding by the Board 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 5.09. Failure to Complete Work . Unless the Board 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 eighteen (18) months from the date of approval, 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 Board 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 5.10. Inspection of Work by the Board . Inspection of the work relating to any approved Improvement and correction of defects therein shall proceed as follows:

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

(b) Upon the completion of any work of Improvement for which architectural approval is required under this Article, the Owner shall give the Board of Directors a written notice of completion.

(c) Within 30 days thereafter, the Board may inspect the Improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans. If the Board finds that the Improvement was not erected, constructed or installed in substantial compliance with the Owner's approved plans, then within the 30-day inspection period the Board shall give the Owner a written notice of noncompliance detailing those aspects of the project that must be modified, completed or corrected. If the violation or nonconforming work is not corrected, the Board shall have the enforcement rights and remedies set forth in Section 5.11 below.

(d) If for any reason the Board fails to notify the Owner of any noncompliance within 30 days after receipt of the Owner's notice of completion, the Improvement shall be deemed to have been constructed in accordance with the approved plans for the project, unless it can be demonstrated that the Owner knew of the noncompliance and intentionally misled the Board with respect thereto.

Section 5.11. Enforcement of Architectural Compliance Matters .

(a) In addition to other enforcement remedies set forth in this Declaration, the Board shall have enforcement rights with respect to any matters required to be submitted

to and approved by it, and may enforce such architectural control by any proceeding at law or in equity. In addition, the Board 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 Board or if it does not conform to the plans and specifications submitted to and approved by the Board. No Improvement Project for which approval is required pursuant to this Article V shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

(b) If the Owner fails to remedy any noncompliance of which notice has been given within 30 days following the date of such notification, the Board shall set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing date shall not be more than 30 days nor less than 15 days after the Board issues the notice of noncompliance to the Owner, and in the discretion of the Board, to any other interested party.

(c) At the hearing, the Owner, a representative(s) of the Board and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Board, in its discretion, may grant. If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board, at its option, may either remove the noncomplying Improvement or remedy the noncompliance, and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the Association, the Board shall recover such expenses through the levy of a Special Individual Assessment against such Owner.

(d) The approval by the Board of any plans, drawings or specifications for any work of Improvement done or proposed, or for any other matter requiring the Board'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 Board in reviewing a particular submittal.

Section 5.12. Variances. The Board of Directors, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article, or in any land use restrictions specified in Article VII to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardship to any Owner-applicant, provided all of the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise be applicable under this Declaration, the Board must conduct a hearing on the proposed variance after giving prior written notice to the Board and to all Owners residing two Lots away from the Lot where the Improvement is proposed to be erected. The notice shall also be posted in the Association's principal office within the Development and mailed to the interested Owners at least 15 days prior to the date when the Board is scheduled to act on the requested variance. No decision shall be made with respect to the proposed variance until the 15-day comment period has elapsed.

(b) If the requested variance pertains to any material Improvement or project, the Board must make a good faith written determination that the variance is consistent with one or more of the following criteria: (i) the requested variance will not constitute a material deviation from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) that the variance relates to a use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect to any other Lot or Common Area within the Development.

Section 5.13. Certificate of Compliance. Within 30 days after written demand is delivered to the Board by any Owner, the Board or its duly designated Architectural 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 5.14. Limitation on Liability. Neither the Association nor the Board or the Architectural 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 5.15. Compliance With Governmental Regulations . Review and approval by the Board 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**

### **Association and Owner Maintenance Responsibilities**

Section 6.01. Common Area . The Association shall be solely responsible for all maintenance, repair, upkeep and replacement of all portions of the Common Area. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association.

Section 6.02. Owner Maintenance Responsibilities . Each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot. The Owner shall also be responsible for the maintenance of all of the exterior landscaping on his or her Lot.

#### Section 6.03. 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 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 12.06, below.

Section 6.04. 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.

## **ARTICLE VII**

### **Use of Development 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, Common Areas and other parcels within the Development.

Section 7.01. Animals/Household Pets. The following restrictions regarding the care and maintenance of pets and animals within the Development shall be observed by each Owner and resident:

- (a) Only the following animals may be kept on any Lot:
  - (i) A reasonable number of household pets such as cats and dogs;
  - (ii) A maximum of six (6) large animals per five (5) acres, such as horses, cows or steers; and
  - (iii) A maximum number of twenty-five (25) birds and other small animals; provided, however, that the number of large animals, such as horses, cows or steers, kept on Lot 41 shall not be limited by this provision but shall, instead, be subject only to local zoning and land use ordinances.

(b) Animals shall be adequately penned, housed or corralled so as not to constitute a nuisance and to be prevented from straying onto the lands of others.

(c) No animal shall be allowed outside a fenced area unless under the immediate control of a person.

(d) Animals shall not be kept, bred or raised for commercial purposes on any Lot, without the written permission of the Association.

Section 7.02. Buildings.

(a) Type. No buildings shall be permitted on any Lot other than one (1) detached single-family private dwelling, one (1) private garage for the use of occupants of such dwelling and other usual and appropriate outbuildings, such as a guest house, agricultural equipment storage buildings and accessory structures necessarily and customarily incidental to permitted uses, such as stables, barns, employee quarters, swimming pool, and dressing rooms, all subject to local building and zoning ordinances.

(i) Guest Houses. A guest house shall only be permitted to be constructed on a Lot within the Development if the guest house is in compliance with the following restrictions:

- (A) The guest house is of an architectural design and color scheme that is compatible and in harmony with the principal residence;
- (B) The guest house does not exceed eight hundred (800) square feet;
- (C) The guest house contains no more than one (1) kitchen and one (1) bathroom;
- (D) The septic system servicing the principal residence is engineered to also accommodate a guest house, as affirmed by the Town Health Authority; and
- (E) The Owner of the Lot agrees to execute and record a restrictive covenant in the title to the Owner's Lot which prohibits any rental of the guest house.

(b) Materials. All structures shall be constructed with a substantial quantity of new materials, and no used structures shall be installed on any Lot.

(c) Location. No building or structure shall be erected or permitted on any Lot (1) nearer than fifty (50) feet to any Road right-of-way; (2) nearer than twenty (20) feet to

a Lot boundary not adjacent to a Road; or (3) within a drainage, equestrian or utility easement as shown on the Map, except as otherwise allowed by this Declaration.

(d) Size. The maximum height of any building or structure shall be thirty-five (35) feet above the building site. The principal dwelling house shall have a total living area, exclusive of garage, patio, terraces and porches, of not less than 2,400 square feet total and not less than 1,500 square feet on the first floor. At least 700 square feet of off-street parking shall be provided on each Lot.

(e) Completion. Construction on any structure or Improvement must be pursued diligently and completed within eighteen (18) months from date of commencement, unless an extension is granted by the Association. If not timely completed, it may be treated as a nuisance, and any person or entity authorized to enforce this Declaration may bring an action in court or a proceeding in arbitration to have the partially completed structure completed or removed, at the expense of the Owner, with reasonable attorneys' fees and costs to be borne by the Owner.

(f) Destroyed. Any structure or Improvement which has been totally or partially destroyed shall be repaired or removed within two (2) months of being damaged.

Section 7.03. Clothesline. No outside clothesline or other outside clothes drying or airing facilities shall be maintained on any Lot if visible from another Lot or the Common Area.

Section 7.04. Common Area. There shall be no use of the Common Area which injures, erodes or scars it, or increases the cost of maintenance thereof, or which in any way alters the Common Area.

Section 7.05. Environmental Control. No structure or Improvement shall be erected upon any Lot nor shall there be removed from any Lot any vegetation ten (10) feet or more in the height or having a trunk four (4) inches or more in diameter, nor any change be made in the terrain or topography of any Lot which changes the elevation of any part of the terrain ten (10) feet or more, without first obtaining the written approval of the Board or a committee appointed by the Board according to procedures set forth in the Bylaws.

Section 7.06. Exterior Lighting. No exterior lighting shall be installed or maintained on any Lot, other than that provided by the Association, without the prior written permission of the Association.

Section 7.07. Fences and Walls. No solid fencing. Fencing will be approved on

an individual basis and judged first and foremost on aesthetic value within the community in order to maintain an open atmosphere. All fencing shall be set back 10 feet from adjacent Meadows property lines to facilitate fire access and deer migration. Consideration for fencing shall be based on visual aesthetics, fire access, deer migration and on maintaining the visual integrity of adjacent property owners.

No V-Wire or Chain Link/Cyclone fencing allowed; however, vinyl coated chain link fencing in an earth or neutral tone may be approved for small kennels for dogs. Mitigation measures may be required to offset visual impact of kennels to adjacent Meadows' Lots.

Section 7.08. Hunting. There shall be no hunting by any means or discharge of firearms in the Development.

Section 7.09. Indemnification. Each Owner shall be liable to the Association for any damage to the Common Area arising from the negligence of that Owner or his family, contract purchasers, tenants, guests or invitees, to the extent that any such damage is not covered by insurance. Each Owner, by acceptance of his deed, agrees for himself and for the members of his family, his contract purchasers, tenants, guests or invitees, to indemnify the Association and hold it harmless from, and to defend it against, any claim by any person for personal injury or property damage occurring upon the Lot of that Owner, unless the injury or damage occurred by reason of the negligence of any other Owner or person temporarily visiting said Lot or is fully covered by insurance.

Section 7.10. Insurance. Nothing shall be done upon any Lot or the Common Area which will increase the cost of or cause the cancellation of any insurance maintained by the Association without the express written consent of the Association.

Section 7.11. Lawful Activities. No activity shall be conducted upon any Lot or the Common Area in violation of any law or ordinance.

Section 7.12. Maintenance. Each Owner shall maintain his Lot, including all structures and Improvements thereon, so as not to constitute a danger or nuisance to other Owners or their guests.

Section 7.13. Mining or Drilling. No property within the Development shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance or other mineral of any kind without the express written approval of the Association. No machinery or equipment or any kind shall be placed, operated or maintained upon any Lot, except such machinery or equipment as is usual and customary in connection with the use and maintenance of a dwelling and other permitted activities.



Section 7.14. Nuisances. No noxious or offensive activity or nuisance shall be carried on or maintained within the Development, nor shall anything be done or placed upon any property within the Development which shall cause unreasonable embarrassment, disturbance or annoyance to other Owners or their guests.

Section 7.15. Occupations and Professions. There shall be no gainful occupation, profession or trade maintained upon any Lot or the Common Area, without the written permission of the Association, and the Town or County if a special use permit is required for such use; provided, however, that this shall in no way preclude any Owner from renting or leasing his Residence so long as said tenant or lessee is obligated by a written lease agreement to abide by this Declaration.

Section 7.16. Refuse. No refuse pile, garbage or obnoxious or offensive material ("Refuse") shall be placed or suffered to remain anywhere on the Property, except in securely covered containers, and each Owner shall cause all Refuse to be removed from his Lot periodically and disposed of according to accepted sanitary practice. The Association may remove Refuse from a Lot after reasonable notice to the Owner, at the expense of the Owner. All Refuse containers, tanks and other such facilities must be underground or in walled or screened areas so that they are not visible from other Lots or the Common Area.

Section 7.17. Sewage Disposal. No structure shall be occupied for residence purposes until the same shall be connected to a sanitary sewage disposal system or, if no sanitary sewer disposal system is available, until it is provided with an individual septic tank or other equally sanitary structure for the storage or disposal of sewage, constructed, located and connected with a disposal field in a manner approved in writing by the Town or County health authority having jurisdiction thereof. No cess pool or outside toilet shall be permitted on any Lot. No Owner may perform any work, repair or maintenance to any portion of the sewage and waste water disposal system within the Development (apart from routine maintenance or repair within a Residence) without the express written consent of the Association. The Board shall be notified of any septic failure within fifteen (15) days from the date of said failure. All maintenance and repair of septic failure must be resolved within fifteen (15) days of notifying the Board of such failure.

Section 7.18. Signs. No signs whatsoever shall be erected or maintained upon any Lot, except:

- (a) Legal. Such signs as may be required by legal proceedings,
- (b) Subdivision Identification. A subdivision identification sign to be maintained on a permanent basis by the Association.

(c) Name and Address. All residential signs must be preapproved by the Architectural Control Committee.

(d) Job. During construction of any Improvement, one (1) job identification sign having a maximum face area of six (6) square feet and of the type usually employed by contractors and subcontractors;

(e) Sale. Not more than one (1) wooden "for sale" or "for rent" sign having a maximum face area of customary size and dimension;

(f) Equestrian. Signs marking equestrian trails, as erected by the Association; and

(g) Approval. Any sign which does not comply with the above but has been allowed by written permission of the Association, provided such sign complies with any applicable law.

Section 7.19. Storage. There shall be no storage of flammable liquids or gases on any Lot, except for gas for heating and cooking purposes. Storage tanks shall be screened to preclude visibility from other Lots and the Common Area.

Section 7.20. Subdivision or Severance. No part of the Common Area or any Lot shall be subdivided, except by Declarant, and no membership interest or any other right or easement shall be severed from the Lot to which it is appurtenant.

Section 7.21. Temporary Residence. Camping or temporary residence in a mobile home, trailer, camper or tent is not permitted on any Lot.

Section 7.22. Vehicles. No vehicle, mobile home, motor home, travel trailer, truck camper, house trailer, boat, boat trailer or similar equipment, shall be parked upon the Common Area. No stripped down, wrecked or junk motor vehicle shall be kept, parked, stored or maintained within the Development, except in enclosed parking or garage areas. No vehicle bearing commercial insignias or names shall be parked within the Development unless such vehicle is used as the Owner's means of transportation. There shall not be permitted within the Development riding of off-street vehicles, such as trail bikes, snowmobiles or other motor driven vehicles designed by the manufacturer for other than road use. No vehicle shall be operated in the Development in a manner which constitutes a danger or nuisance to others.

## ARTICLE VIII Easements

Section 8.01. Encroachments. If any portion of the Common Area encroaches upon a Lot, a valid easement for encroachment and for maintenance of same, so long as it stands, shall and does exist.

Section 8.02. Ingress and Egress. Declarant reserves for Lot owners, including itself, mutual and reciprocal nonexclusive easements for ingress and egress for the benefit of all Lots and the Owners and tenants thereof. Said easements shall coincide with the Roads as depicted on the Map and other instruments of record.

Section 8.03. Equestrian Trails.

(a) Use Limitations. The use of all of the "Equestrian Trail Easements" shown on the Map shall be limited to equestrian purposes only. No motorcycles, bicycles or motor vehicles shall be permitted on said easements at any time, except upon approval of the Association for maintenance purposes.

(b) Construction. There shall be no construction of any type on the surface of the Equestrian Trail Easements shown on the Map along the front or street side of each Lot, including but not limited to buildings, improvements, or structures, except landscaping, name and address identification signs, and driveway lighting may be installed on the surface of the Equestrian Trail Easement shown on the map along the front or street side of each Lot, so long as there remains at all times an unobstructed rideable passage at least thirty (30) feet in width that can be used for equestrian purposes and such thirty (30) foot unobstructed rideable passage shall be located along front or street side lot lines so that it connects to similar passages on neighboring lots, thereby allowing convenient and unobstructed equestrian access from lot to lot.

Buildings, Improvements or Structures may be installed on the surface of the Equestrian Trail Easements shown on the Map along the rear or side line of any lot, so long as there remains at all times an unobstructed rideable passage at least thirty (30) feet in width that can be used for equestrian purposes and such thirty (30) foot unobstructed rideable passage shall be located along rear lot lines so that it connects to similar passage on neighboring lots, thereby allowing convenient and unobstructed equestrian access from lot to lot. Underground construction, such as septic tank leach fields, is permitted on all of the Equestrian Trail Easements so long as the surface is restored and maintained.

(c) Maintenance. The Equestrian Trail Easements shall be maintained in a passable condition by the Owners of the respective Lots over which the Trails pass.

Section 8.04. Contiguous to Roads . Declarant hereby reserves for the Association a nonexclusive easement fifteen (15) feet wide, running along the inside of all Lot lines coincident with Road right-of-way lines for the purposes of cuts, fills, drainage and maintenance of slopes, drainage courses and Roads. The areas of any Lot affected by such easement shall be maintained continuously by the Owner of such Lot, but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken thereon which may damage or interfere with the use of such easement for the purposes described. Improvements within such area shall be maintained by the Owner, except those for which a public authority or utility company or district is responsible.

Section 8.05. Utility Easements .

(a) Interference Prohibited. Within the easements existing at the Effective Date or thereafter created for the installation and maintenance of utilities and drainage facilities, no structure, planting or other material shall be placed or permitted to remain which may damage or interfered with the installation and maintenance of utilities, or which may damage interfere, or change the director of flow of drainage facilities in the easement.

(b) Access and Maintenance. Utility easements in the Common Area shall at all times be open and accessible to public and quasi-public utility corporations and other persons erecting, constructing or servicing such utilities and quasi-utilities, and to Declarant and its successor and assigns, all of who shall have the right of ingress and egress thereto and therefrom, and the right and privilege of doing whatever may be necessary in, under and upon said locations for carrying out of any of the purposes of which said easements, reservations and rights of way are reserved or granted. The easement areas in the Common Area and all improvements located thereon other than utility facilities, shall be maintained by the Association, except for those improvements for which a public authority or utility company is responsible or has accepted responsibility.

Section 8.06. No Public Rights Created . Nothing contained in this Declaration shall be deemed to be a gift or dedication or any portion of the Development to the general public or for any public use or purpose.

## **ARTICLE IX**

### **Insurance**

Section 9.01. 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, if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost:

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

(i) Loss or damage by fire or other risks covered by the standard extended coverage endorsement.

(ii) Loss or damage from theft, vandalism or malicious mischief.

(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. To the extent such insurance is reasonably obtainable, a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Board of Directors, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than \$1 million dollars covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(c) Director's and Officer's Liability Insurance. To the extent such insurance is reasonably obtainable the Association shall maintain individual liability insurance for its directors and officers providing coverage for negligent acts or omissions in their official

capacities. The minimum coverage of such insurance shall be at least One Million Dollars (\$1,000,000.00).

(d) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this section, demolition insurance, flood insurance, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than 100 percent of each year's estimated annual operating expenses and shall contain an endorsement of any person who may serve without compensation.

Section 9.02. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 9.01, above, is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage hereinabove described. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

Section 9.03. 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 9.04. Trustee. All insurance proceeds payable under Section 9.01, above, 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 9.05. 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 9.01, 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 9.06. Insurance on Lots and Residences. An Owner may carry whatever personal liability, property damage liability, fire and casualty insurance with respect to his or her Lot, Residence and personal property as the Owner desires. The Association shall have no responsibility for the adequacy or extent of such insurance coverage.

## **ARTICLE X**

### **Damage or Destruction of Common Facilities**

Section 10.01. Destruction; Proceeds Exceed 85 Percent of the Reconstruction Costs. In the event of a partial or total destruction of improvements upon the Common Area, it shall be the duty of the Association to restore and repair the same to former condition as promptly as is practicable and in a lawful and workmanlike manner. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose, subject to the prior rights of Mortgagees whose interests may be protected by said policies. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be at least eight-five percent (85%) of the estimated cost of restoration and repair, a reconstruction assessment, with each Lot contributing an equal amount, may be levied by the Association to provide the necessary funds for such reconstruction and repair, over and above the amount of any insurance proceeds available for such purpose. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair, shall be less than eighty-five percent (85%) of the estimated cost of restoration and repair, the improvements shall not be replaced or restored unless approved by the vote or written assent of two-thirds (2/3) of the Members. Notwithstanding the foregoing, unless the first Mortgagees have given their prior written approval, the Association shall not use hazard insurance proceeds for losses to any Common Area improvements for other than the repair, replacement or reconstruction of such improvements.

## **ARTICLE XI**

### **Condemnation Affecting Common Areas**

Section 11.01. Sale by Unanimous Consent or Taking. The term "taking" as used in this Article XI shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Area, the Members hereby appoint the Board and such persons as the Board may appoint to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Area. In the event of a total taking, the Board shall retain any award in the general funds of the Association. Notwithstanding anything to the contrary herein, the distribution of any award or awards for a taking of all or any portion of the Common Area shall be subject to the prior rights of Mortgagees.

## **ARTICLE XII**

### **Breach and Default**

Section 12.01. Remedy at Law Inadequate . Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

Section 12.02. Nuisance . Without limiting the generality of the foregoing Section 12.01, 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 12.03. 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 procedure includes an action brought in any court having jurisdiction over any alternative dispute resolution procedure implemented pursuant to the Governing Documents or to California Civil Code section 1354, as it may be renumbered and revised from time to time. In any enforcement procedure, such as mediation, conducted pursuant to California Civil Code section 1354, in which there is not an 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 12.04. Cumulative Remedies . The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

Section 12.05. Failure Not a Waiver . The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure



result in or impose any liability upon the Association or the Board, or any of its officers or agents.

Section 12.06. 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 such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreation Common Facilities or suspension of the Owner's voting rights as a Member; 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 Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as exist by virtue of section 1354 of the California Civil Code 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 late charges for delinquent Assessments or fines for illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment.

(c) Definition of "Violation". A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Limitations of Disciplinary Rights.

(i) Loss of Rights; Forfeitures. The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his

or her Lot due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member 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 (ii) below.

(ii) Hearings. No disciplinary action, penalty or temporary suspension of rights shall be imposed pursuant to this Article unless the Owner alleged to be in violation is given at least ten (10) days prior notices by personal delivery or first-class mail, that the Board of Directors will be meeting to consider imposing such discipline. The notice shall contain 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.

If disciplinary action is taken, the Board shall notify the accused Owner, in writing, either by personal delivery or first-class mail, of the Board's decision within fifteen (15) days following conclusion of the hearing.

In accordance with Civil Code section 1363(h), disciplinary action shall not be effective against an Owner unless the Board fulfills the requirements of this section.

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five days following the date when the fine is levied.

The hearing shall be held no more than 15 days following the date of the disciplinary action or 15 days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing. At the hearing the accused shall be given the opportunity to be heard, including the right to present evidence and to present or question witnesses. The Board shall notify the accused Owner, in writing, of the Board's decision within five (5) business days following conclusion of the hearing. In no event shall the effective date of any disciplinary action commence sooner than five days following conclusion of the hearing unless: (i) the hearing merely affirms summary disciplinary action initiated pursuant to the immediately preceding paragraph; or (ii) earlier commencement is necessary to preserve the quiet enjoyment of other residents or to prevent further damage to, or destruction of, the Development or any portion thereof.

(e) Notices. Any notice required by this Article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice; provided, however, that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.

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

### ARTICLE XIII Protection of Mortgagees

Section 13.01. Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein shall affect, impair, defeat or render invalid the lien or charge of any mortgage or deed of trust ("Mortgage") made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot.

#### Section 13.02. Curing Defaults.

(a) Lots. A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure, or trustee's sale shall not be obligated to cure any pre-existing breach of the provisions of this Declaration.

(b) Common Area. Mortgagees may, jointly or individually, pay taxes or other charges which are in default against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area. Mortgagees making such payment shall be owed an immediate reimbursement therefore from the Association, provided that Mortgagees have given reasonable notice to the Association prior to the making of such payment(s) and the Association has failed to pay the same.

Section 13.03. Resale. It is intended that any loan to facilitate the resale of any Lot after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

Section 13.04. Relationship with Assessment Liens.

(a) Subordination. The lien and power of sale provided for the collection of delinquent assessments shall be subordinate to the lien of any mortgage which was recorded prior to the date any such assessment lien or power of sale was perfected. The foreclosure of any lien created under any provision of these Restrictions shall not operate to affect or impair the lien of such Mortgage; and (i) the foreclosure of the lien of such Mortgage, (ii) the acceptance of a deed in lieu of foreclosure of the Mortgage, or (iii) sale under a power of sale included in such Mortgage (hereinafter collectively referred to as "events of foreclosure"), shall not operate to affect or impair the assessment lien hereof, except as provided in Section (b) below.

(b) Subsequent Owner. Any Mortgagee who obtains title to a Lot by reasons of any of the events of foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot free of any lien for unpaid assessments against such Lot which accrue prior to the time such mortgagee or purchaser comes into possession of the Lot, except for liens or claims for a share of such assessments resulting from a reallocation of such assessments to all Lots within the Development. However, any such subsequent owner shall be liable for payment for assessments and charges accrued against his Lot prior to his taking title, although such Lot shall not be subject to a lien therefor.

(c) No Release. Nothing in this Section shall be construed to release any Owner from his obligation to pay for any assessment levied pursuant to this Declaration.

Section 13.05. Prior Approval of Mortgage Holders . Except upon the prior written approval of the holder(s) of at least seventy-five percent (75%) of all first mortgages, based on one (1) vote for each mortgage, the Association, the Board and the Members shall not do any of the following:

(a) Dissolve the Association or abandon or terminate the maintenance of the Common Area.

(b) Amend a material provision of this Declaration, the Bylaws or the Articles. A "material provision" is any provision which governs the following subjects:

- (i) The fundamental use and purpose for which the Development was created.
- (ii) Voting rights, powers and preferences.
- (iii) Assessments, assessment liens and subordination thereof.
- (iv) The reserve for repair and replacement of common elements.
- (v) Property maintenance obligations.

- (vi) Casualty and liability insurance.
- (vii) Reconstruction in the event of damage or destruction.
- (viii) Rights to use the Common Area.
- (ix) Any provision, which by its terms, is specifically for the benefit of first Mortgagees, or specifically confers rights on first Mortgagees.

Section 13.06. Common Area . The Common Area may not be abandoned, portioned, sold, alienated, subdivided, released, transferred, hypothecated or otherwise encumbered, without the prior approval of all first Mortgagees, provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area shall not require such approval.

Section 13.07. Rights of First Mortgagees . Any first Mortgagee shall, upon written request to the Association, be entitled to:

(a) Inspect the books and records of the Association during normal business hours.

(b) Notice of Meetings. Receive the written notice of the annual and special meetings of the Members of the Board, and the first Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give a Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting.

Section 13.08. Loan Status. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any loan secured by encumbrance on a Lot.

Section 13.09. Membership Status . The Association shall provide, to any first Mortgagee who so requests in writing, written notification of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Mortgagee's Mortgage, which default has not been cured within thirty (30) days of a request therefor by the Association.

Section 13.10. Right of First Refusal . A Mortgagee who comes into possession of a Lot pursuant to a judicial foreclosure, a deed in lieu of foreclosure, or a trustee's sale shall be exempt from any right of first refusal now or hereafter granted herein to the Association.

Section 13.11. Conflicts . In the event of any conflict between any of the provisions of this Restriction on Mortgagee Protection and any of the other provisions of

this Declaration, the Articles or the Bylaws, the provisions of this Restriction shall control.

Section 13.12. Notice of Destruction or Taking . If the Common Area or any portion thereof is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any first Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" shall mean damage exceeding Ten Thousand Dollars (\$10,000). If requested in writing by a first Mortgagee, the Association shall evidence its obligation under this Section in a written agreement in favor of such first Mortgagee.

#### ARTICLE XIV Notices

Section 14.01. 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:

The Meadows Association, at the principal office of the Association (or to such other address as the Association may from time to time designate in writing to the Owners)

Section 14.02. 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 14.03. Deposit in United States Mails . All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered four days after deposit in the United States mail in the County.

## **ARTICLE XV**

### **No Public Rights in the Development**

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

## **ARTICLE XVI**

### **Amendment of Declaration**

Section 16.01. Amendment in General. This Declaration may be amended or revoked in any respect by the vote or assent by written ballot of the holders of not less than 51 percent 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.

Section 16.02. Restatements. This section describes the methods for restating the Declaration after an amendment.

(a) General. The Board has the right, by resolution without the necessity of consent by the Owners, to restate this Declaration when it has been properly amended pursuant to its requirements for amendment. Such restatement shall be effective upon execution of the restatement by any two (2) officers of the Association and its Recordation. Upon Recordation of the restatement, the restatement shall supersede the prior declaration and its amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all Development that are subject to the Declaration as established by the Declaration initial date of Recordation.

(b) Form of Restatement. The restatement shall restate the entire text of the original document, with these exceptions: (i) changes incorporating all amendments approved the Owners; (ii) changes made to rearrange or delete the text for consistency with the approved amendments; (iii) changes made to delete material no longer legally effective or legally required, such as the provisions described in the section entitled "Amendment of Declarant Benefit Provisions"; (iv) the addition of a statement that the Board has authorized the restatement pursuant to this section; (v) changes made to delete any provision declared illegal by constitutional or statutory enactment, by regulation, or by controlling judicial opinion; and (vi) changes needed to distinguish the restatement from the original document, such as title, section, or subsection numbering changes.

Section 16.03. Mortgagee Approval. Mortgagee approval of any proposed material amendment shall be required in accordance with Article XIII, above.

Section 16.04. Effective Date of Amendment . The amendment will be effective upon the Recording of a Certificate of Amendment, duly executed and certified by the president and secretary of the Association, setting forth in full the amendment so approved and that the approval requirements of Section 16.01, above, have been duly met. If the consent or approval of any governmental authority, Mortgagee, or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

Section 16.05. Reliance on Amendments . Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## **ARTICLE XVII**

### **General Provisions**

Section 17.01. 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 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 10 years each unless, within 6 months prior to the expiration of the initial 60-year term or any such 10-year extension period, a recordable written instrument, approved by 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 17.02. 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 17.03. 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.



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(b) Restrictions Severable. Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

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

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

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

(f) References to State Statutes. Any references in this Declaration to State 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.

Dated: 6/25, 2003.

**THE MEADOWS ASSOCIATION,**  
a California nonprofit mutual benefit  
corporation

By: Bryce E. Keller  
(President) Bryce E. Keller

By: Debra Lee Griffiths  
(Secretary) Debra Lee Griffiths

## ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of NEVADA

} SS.

On JUNE 25, 2003

(DATE)

before me, T. FIDDYMENT

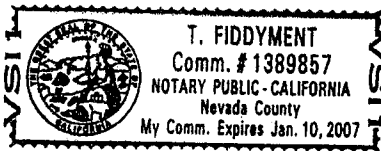
(NOTARY)

personally appeared BYRCE E. KELLER AND DEBRA LEE GRIFFITHS

SIGNER(S)

☐ personally known to me - OR -

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



WITNESS my hand and official seal.

*T. Fiddymment*  
NOTARY'S SIGNATURE

## OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

## CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL  
☒ CORPORATE OFFICER

PRESIDENT + SECRETARY  
 TITLE(S)

- ☐ PARTNER(S)  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

## DESCRIPTION OF ATTACHED DOCUMENT

DEC. OF CC & R'S  
 TITLE OR TYPE OF DOCUMENT

62  
 NUMBER OF PAGES

JUNE 25, 2003  
 DATE OF DOCUMENT

OTHER \_\_\_\_\_

SIGNER IS REPRESENTING:  
 NAME OF PERSON(S) OR ENTITY(IES)

TAE MEADOWS ASSOCIATION

RIGHT THUMBPRINT  
 OF  
 SIGNER

