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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF TRACT NO. 02-1006 FOR MILL CREEK

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF TRACT NO. 02-1006 FOR MILL CREEK

This Declaration of Covenants, Conditions, and Restrictions for of Tract No. 02-1006 for Mill Creek, is made on this ______day of ______20__, by the Mill Creek Summer Homeowners Association.

RECITALS

A. Unless otherwise expressly provided for in the provisions of the Governing Documents or exclusively dictated by grammatical correctness, any capitalized words and/or phrases, when used herein, shall have the specified meanings given to them in the provisions of **ARTICLE II** of the Declaration, entitled, "**DEFINITIONS**."

B. Mill Creek LLC was the owner of that certain real property described as lots 1 through 25, inclusive, 28 through 84, inclusive, 86 through 98, inclusive, 100 through 102, inclusive, 108 through 109, inclusive, 118 through 136, inclusive, and "LOT A" through "LOT E," inclusive, all of which are shown, designated, and described on that certain map entitled "**TEHAMA COUNTY FINAL TRACT MAP** # 02-1006 that was filed for Record in the office of the County Recorder of Tehama County, California, on May 18, 2005, in Book 2708 of Maps at Page 264, as Document No 010960.

C. Mill Creek LLC is no longer in existence and has been cancelled as an entity, without successors or assigns. Enforcement of this Declaration of Covenants, Conditions and Restrictions is and continues to be within the authority and direction of the Mill Creek Summer Home Owners Association, California, Secretary of State Entity Number: C0600096 (Association).

D. When this Declaration was originally recorded, Mill Creek LLC was defined as the Declarant. To the extent the term "Declarant" is set forth herein in reference to any right, power or duty of this Declaration hereunder, such right, power or duty is to be exercised by the Mill Creek Summer Home Owners Association for the benefit of the Mill Creek Summer Home Owners Association Members, as provided in section 5.1.

E. It is the intent of the Association, in order to promote the efficient preservation of the values and amenities in and on the Property, to establish a common plan ("Common Plan") which is defined by the provisions that are set forth in the Governing Documents, for the subdivision, improvement, and development of the Property together with any additional real property that may be annexed to the Development and become subject to the provisions of the Governing Documents and desires to secure the harmonious and uniform development of the Property in accordance with the Common Plan.

ARTICLE I DECLARATION

A. The Association declares that the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used, sold, improved, and occupied subject to the declarations, limitations, restrictions, easements, covenants, conditions, servitudes, liens, and charges that are contained in the provisions of the Declaration as well as any amendments thereto, all of which are declared and agreed to be imposed as equitable servitudes in furtherance of a planned development as described in the provisions of California Civil Code sections 1350 through 1372, inclusive, or any compatible superseding statutes, for the subdivision, improvement, protection, maintenance, and sale of Lots within the Property and all of which are declared and agreed to be for the purpose of enhancing, maintaining, and protecting the value and attractiveness of the Property.

B. All of such limitations, restrictions, easements, reservations, covenants, conditions, servitudes, liens, and charges shall run with the land, shall be binding on and inure to the benefit of all of the parties having or acquiring any right, title or interests in the Property, are for the benefit of the Property and shall be binding on and inure to the benefit of the successors in interests of such parties.

C. The Association further declares that it is the express intent that the provisions of the Declaration satisfy the requirements set forth in the provisions of California Civil Code section 1353. In the event California Civil Code section 1353 is amended or superseded by another, similar provision of the California statutes, the Declaration shall be deemed amended, without the necessity of further Owners' approval, to correspond to the amended or successor Civil Code provision.

ARTICLE II DEFINITIONS

- 2.1 <u>ARCHITECTURAL REVIEW COMMITTEE</u> "Architectural Review Committee" shall mean and refer to the committee of persons appointed and acting pursuant to the provisions of Section 12.2 of the Declaration, entitled, "APPOINTMENT AND MAKEUP OF ARCHITECTURAL REVIEW COMMITTEE."
- 2.2 <u>ARCHITECTURAL RULES</u> "Architectural Rules" shall mean and refer to the rules and regulations that have been adopted by the Architectural Review Committee with the approval of the Board, all in accordance with the provisions of Section 12.4 of the Declaration, entitled, "STANDARDS AND PROCEDURES FOR THE ARCHITECTURAL RULES," which interpret and implement the provisions of the Governing Documents by setting forth the guidelines, standards, and procedures for the review and approval of proposed Improvements by the Architectural Review Committee.
- 2.3 <u>ARTICLES</u> "Articles" shall mean and refer to the Association's Articles of Incorporation and any amendments thereto.
- 2.4 <u>AS-BUILT PLANS</u> "As-Built Plans" shall mean and refer to any drawings showing, describing, and designating the precise locations of any of the Major Components, Improvements, and/or easements located within the Development.
- 2.5 <u>ASSESSMENT(S)</u> "Assessment(s)" shall mean and refer to any Regular or Special Assessment which is made or levied by the Board against an Owner and its, his, or her Lot in accordance with the provisions of **ARTICLE VII** of the Declaration, entitled, "ASSESSMENTS."

- 2.6 <u>ASSOCIATION</u> "Association" shall mean and refer to the "MILL CREEK SUMMER HOME OWNERS ASSOCIATION," a California nonprofit mutual benefit corporation, and its successors and assigns, the Members of which shall be the Owners of Lots.
- 2.7 <u>ASSOCIATION RULES</u> "Association Rules" shall mean and refer to the rules, regulations, and policies regulating the use and enjoyment of the Development, which may from time to time be adopted by the Board.
- 2.8 **<u>BOARD OF DIRECTORS</u>** "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.
- 2.9 <u>**BUDGET**</u> "Budget" shall mean and refer to a written, itemized estimate of the income and Common Expenses of the Association in the performance of its functions under the provisions of the Governing Documents.
- 2.10 **<u>BYLAWS</u>** "Bylaws" shall mean and refer to the Association's bylaws and any amendments thereto.
- 2.11 <u>CERTIFICATE OF COMPLIANCE</u> "Certificate of Compliance" shall mean and refer to that certain certificate that is issued by the Board or the Architectural Review Committee, as the case may be, in accordance with the provisions of Section 12.6 of the Declaration, entitled, "CERTIFICATE OF COMPLIANCE."

2.12 COMMON AREA –

- A. "Common Area" shall mean and refer to all of the real property owned by the Association for the common use and enjoyment of the Members and shall include, upon conveyance to the Association, "LOT A" through "LOT E," inclusive, all of which are shown, designated, and described on the Subdivision Map as well as any plot of land and/or easement that may be conveyed to the Association and designated as "Common Area."
- B. Unless the context clearly indicates a contrary intent, any reference in the provisions of the Governing Documents to the "Common Area" shall include any Major Components that are located thereon.
- 2.13 <u>COMMON EXPENSE(S)</u> "Common Expense(s)" shall mean and refer to any use of the funds of the Association authorized by the provisions of **ARTICLE VII** of the Declaration, entitled, "**ASSESSMENTS**," and **ARTICLE VIII** of the Bylaws, entitled, "**POWERS AND DUTIES OF THE BOARD**," and includes, but is not limited to:
 - 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, Major Components or any portion of any Lot that the Association is obligated to maintain or repair.
 - B. All expenses or charges reasonably incurred to procure insurance for the protection of the Association, the Members, and/or the Board.

- C. Any amounts reasonably necessary for Reserve Funds, the replacement of a Major Component, or to cure a shortfall caused by the nonpayment of Assessments.
- 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 for in the provisions of the Governing Documents.
- 2.14 **<u>CONTRACT BUYER(S)</u>** "Contract Buyer(s)" shall mean and refer to a buyer that purchases a Lot under contractual provisions which provide for the payment of the purchase price to be made in installments and for the conveyance of title to such Lot to be made on the completion of such payments.
- 2.15 <u>COUNTY</u> "County" shall mean and refer to the County of Tehama, California, the County in which the Development is located and its various departments, divisions, employees, and representatives.
- 2.16 **DECLARANT** When this Declaration was originally recorded, Mill Creek LLC was defined as the Declarant. To the extent the term "Declarant" is set forth herein in reference to any right, power or duty of this Declaration hereunder, such right, power or duty is to be exercised by the Mill Creek Summer Home Owners Association for the benefit of the Mill Creek Summer Home Owners Association Members, as provided in section 5.1.
- 2.17 <u>**DECLARATION**</u> "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions of Tract No. 02-1006 for Mill Creek as it may from time to time be amended or modified.
- 2.18 **<u>DEVELOPMENT</u>** "Development" shall mean and refer to any real property that is subject to the Governing Documents and any Improvements that are located on such real property.
- 2.19 **<u>DIRECTORS</u>** "Directors" shall mean and refer to the Members of the Board of Directors.
- 2.20 <u>DUE PROCESS REQUIREMENTS</u> "Due Process Requirements" shall mean and refer to all of the requirements of the provisions of Section 3.12 of the Declaration, entitled, "**REQUIREMENTS TO COMPLY WITH DUE PROCESS**."
- 2.21 **ELIGIBLE MORTGAGE HOLDER(S)** "Eligible Mortgage Holder(s)" shall mean and refer to any mortgage holder, including, but not limited to, any Institutional First Mortgagee who has requested a notice from the Association pursuant to the terms and conditions set forth in the provisions of Section 11.14 of the Declaration, entitled, "**NOTICES TO ELIGIBLE MORTGAGE HOLDERS**."
- 2.22 **<u>FINAL SUBDIVISION PUBLIC REPORT</u>** "Final Subdivision Public Report" shall mean and refer to a final subdivision public report for the Development that has been issued by the Commissioner of the California Department of Real Estate pursuant to the California Subdivided Lands Act.
- 2.23 **<u>FISCAL YEAR</u>** "Fiscal Year" shall mean and refer to the twelve (12) month accounting period of the Association.

- 2.24 <u>**GOVERNING DOCUMENT(S)**</u> "Governing Document(s)" is a collective term that shall mean and refer to the Declaration, the Articles and the Bylaws, as well as any Architectural and/or Association Rules.
- 2.25 **<u>IMPROVEMENT(S)</u>** "Improvement(s)" includes, but is/are not limited to, the construction, installation, alteration, or remodeling of any buildings, walls, roofs, foundation, decks, swimming pools, landscaping, landscape structures, skylights, solar heating equipment, spas, antennas, utility lines as well as any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects that are restricted to the interior of any Residence.
- 2.26 **<u>INVITEE(S)</u>** "Invitee(s)" shall mean and refer to any person(s) within the Development at the express or implied invitation of an Owner for business purposes, mutual advantage, or purely social purposes.
- 2.27 <u>LOT(S)</u> "Lot(s)" shall mean and refer to any portion of the Property that is shown, designated, and described on the Subdivision Map as 1 through 25, inclusive, 28 through 84, inclusive, 86 through 98, inclusive, 100 through 102, inclusive, 108 through 109, inclusive, and 118 through 136, inclusive., When appropriate within the context of the provisions of the Governing Documents, the term "Lot(s)" shall also include any Residence together with any other Improvements constructed or to be constructed thereon.
- 2.28 <u>MAJOR COMPONENT(S)</u> "Major Component(s)" shall mean and refer to any constituent element(s) of the Development that the Association is obligated to maintain, such as, but not limited to, the Private streets, street signs, and open space.
- 2.29 <u>MEMBER(S)</u> "Member(s)" shall mean and refer to every person or entity holding a Membership.
- 2.30 <u>MEMBERSHIP</u> "Membership" shall mean and refer to the state or status of being a Member of the Mill Creek Summer Home Owners Association.

2.31 <u>MORTGAGE(S); MORTGAGEE(S); INSTITUTIONAL MORTGAGEE(S); FIRST</u> MORTGAGE(S); AND FIRST MORTGAGEE(S) –

- A. "Mortgage(s)" shall mean and refer to a mortgage or deed of trust encumbering a Lot, the Common Area or any portion thereof.
- B. "Mortgagee(s)" shall mean and refer to the beneficiary under a deed of trust and any guarantor or insurer of a Mortgage.
- C. "Institutional Mortgagee(s)" shall mean and refer to a Mortgagee that is a bank, savings and loan association, mortgage company, or other entity which is chartered or licensed under any Federal or State laws and whose principal business is lending money on the security of real property, investing in such loans, or any insurance company, as well as any Federal or State agency or instrumentality, including, without limitation, the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation.
- D. "First Mortgage(s)" or "First Mortgagee(s)" shall mean and refer to one having priority as to all of the other Mortgages or holders of Mortgages encumbering the same Lot, the Common Area or any other portions thereof.

- 2.32 <u>NOTICE OF COMPLETION</u> "Notice of Completion" shall mean and refer to a written notice, which has been signed and verified by the fee titleholder of real property that a certain work of improvement on such real property has been completed. Any such Notice of Completion shall be in compliance with the provisions of California Civil Code section 3093 or any compatible superseding statutes.
- 2.33 <u>**OWNER(S)**</u> "Owner(s)" shall mean and refer to each person or entity holding a Record fee ownership interest in a Lot, including, but not limited to, the Declarant and any Contract Buyer, as well as, except where the context otherwise requires, the family, Tenants, and Invitees of an Owner. "Ownership" shall not include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation.
- 2.34 **PRIVATE** "Private" is used as descriptive of that certain portion of the Common Area, which consists of the streets, traditionally recognized as being public in nature.
- 2.35 **PROPERTY** "Property" shall mean and refer to all of those certain plots of real property that are shown, designated, and described on the Subdivision Map as 1 through 25, inclusive, 28 through 84, inclusive, 86 through 98, inclusive, 100 through 102, inclusive, 108 through 109, inclusive, 118 through 136, inclusive, and "LOT A" through "LOT E, inclusive, together with any additional real property that may later be annexed to the Development and become subject to the provisions of the Governing Documents.
- 2.36 **<u>RECORD; RECORDING; RECORDED; RECORDATION</u> "Record," "Recording," "Recorded," and "Recordation" shall mean and refer to the entering of any document in the Official Records of the County.**
- 2.37 **<u>REGULAR ASSESSMENT(S)</u>** "Regular Assessment(s)" shall mean and refer to any Assessment that is levied by the Board in accordance with the provisions of Section 7.4 of the Declaration, entitled "**REGULAR ASSESSMENTS**."

2.38 **<u>RESERVE ACCOUNT</u>** –

- A. "Reserve Account" shall mean and refer to the bank account into which any Reserve Funds are deposited together with any funds received and not yet expended or disposed of from either a compensatory damage award or a settlement to the Association, or from any person for injuries to property, real or personal, arising from any construction or design defects.
- B. The latter funds shall be separately itemized from the Reserve Funds.
- 2.39 **<u>RESERVE ACCOUNT REQUIREMENTS</u>** "Reserve Account Requirements" shall mean and refer to the estimated Reserve Funds that the Board has determined are required to be available at a specified time.
- 2.40 **<u>RESERVE FUNDS</u>** "Reserve Funds" shall mean and refer to that portion of each annual Regular Assessment that has been set aside in such amounts as the Board, in its discretion, deems appropriate to meet the cost of any future repair, replacement, or addition to the Major Components.

- 2.41 **<u>RESIDENCE(S)</u>** "Residence(s)" shall mean and refer to a private, single-family dwelling, including, but not limited to, any garages associated therewith, that are or are to be constructed on a Lot.
- 2.42 <u>SPECIAL ASSESSMENT(S)</u> "Special Assessment(s)" shall mean and refer to any Assessment or Assessments, as the case may be, that is/are levied by the Board in accordance with the provisions of Section 7.6 of the Declaration, entitled "SPECIAL ASSESSMENTS – PURPOSE OF AND PROCEDURE FOR LEVYING."
- 2.43 <u>SUBDIVISION MAP</u> "Subdivision Map" shall mean and refer to that certain Recorded final Subdivision Map for the Development, entitled, "<u>TEHAMA</u> COUNTY FINAL TRACT MAP # 02-1006" and is more fully described in Paragraph B. of the "RECITALS" Section of the Declaration.
- 2.44 <u>**TENANT(S)**</u> "Tenant(s)" shall mean and refer to any person(s) or entity(ies) who has/have the occupation or temporary possession of a Lot under the provisions of a lease or rental agreement, which may be either oral or written, or as a guest of the Owner of such Lot.
- 2.45 **<u>VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS</u> "Violation of a Provision of the Governing Documents" shall mean and refer to any single transgression or breach of any provision of the Governing Documents that occurs on any particular day.**

ARTICLE III PROPERTY RIGHTS, RIGHTS OF ENJOYMENT AND EASEMENTS

3.1 PERSONS SUBJECT TO THE GOVERNING DOCUMENTS.

- A. All present and future Owners, their family members, agents, employees, representatives, Tenants, Invitees, licensees, customers, clients, and patients shall be subject to and shall comply with each and every term and 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 (1) or more of such classes of person, i.e., Owners, Tenants, Invitees, etc.
- B. The acceptance of a deed to any Lot, the entering into a lease, sublease, rental agreement, or contract of sale with respect to any Lot, or the occupancy of any Residence shall constitute the consent and agreement of such Owner, Tenant, or occupant that each and all of the provisions of the Governing Documents, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with each and every one of the provisions of the Governing Documents.

3.2 NONEXCLUSIVE EASEMENTS.

- A. Every Owner has a nonexclusive easement of appropriate use, enjoyment, ingress, egress, and support in, on, over, and throughout the Common Area as well as any Improvements or Major Components that may be located on such area, as is applicable.
- B. Each such nonexclusive easement shall be appurtenant to the Owner's respective Lot and shall pass with the title to such Lot.

- C. All such nonexclusive easements shall be subject to the following rights and restrictions:
 - 1. The right of the Board to limit the number of any Tenants, guests, and/or Invitees as well as to adopt and enforce the Association and/or Architectural Rules.
 - 2. The right of the Board, in accordance with the provisions of the Governing Documents, to borrow money for the purpose of improving, repairing, or maintaining the Common Area as well as any Major Component and in aid thereof, to Mortgage any or all of said property.
 - a. Provided, however, that the rights of any such Mortgagee in said property shall be subordinate to the rights of the Owners hereunder; and
 - b. Further provided that any such indebtedness shall be considered a Common Expense of the Association for purposes of a Special Assessment.
 - 3. The right of the Board to assign, rent, license, or otherwise designate and control the use of any assigned parking and storage spaces within, and any other Major Components situated upon, the Common Area and charge reasonable fees for their use.
 - 4. The right of the Association to suspend the prerogative of a Member to use any Major Component and/or the Common Area as provided for in the provisions of Section 5.6 of the Declaration, entitled, "**RIGHT TO IMPOSE SANCTIONS FOR A VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS**."
 - 5. The right of the Board to adopt and enforce Association Rules concerning the control and use of the Private streets and the emergency access easement that are located on or across the Common Area, including, but not limited to, the right to regulate the kind of vehicles and their speed together with any parking of vehicles within such Private streets and emergency access easement.
 - 6. The Board is authorized to delegate to a municipality or any other governmental entity that may have jurisdiction as well as to contract with any private security company to exercise its authorized rights in connection with such Private streets and emergency access easement.
 - 7. The Private streets and emergency access easement within the Development shall also be subject to any emergency vehicle access easements and/or any public or Private utility easements that are shown, designated, and described on the Subdivision Map.

3.3 **BLANKET UTILITY EASEMENT**.

A. There is hereby created a blanket easement through, on, across, over, and under all of the Property for ingress, egress, installation, replacing, repairing, and maintaining all of the sidewalks as well as the Private and/or public utilities, as the case may be, including, but

not limited to, water, sewer, gas, telephone, drainage, electricity and any master television antenna or cable television system.

- B. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain the necessary equipment and underground facilities on and within the Common Area.
- C. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated within the Development except as initially designed and approved by the Declarant or thereafter approved by the Board of Directors.

3.4 **<u>RIGHTS OF ENTRY OR USE</u>**.

Each Lot and/or the Common Area, as the case may be, shall be subject to the following rights of entry and use:

- 1. The right of the Board or its agents to enter any Lot to cure any Violation of a Provision of the Governing Documents, provided that, (i) the Association has complied with the Due Process Requirements, except in the case of an emergency, and (ii) that within the time limit constraints of the Due Process Requirements such Owner has not acted to cure such Violation of a Provision of the Governing Documents.
 - a. The Board shall be entitled to levy a Special Assessment for its costs of effecting such cure against the Owner.
 - b. The rights of entry and cure shall be immediate in the case of an emergency originating upon or threatening any Lot, whether or not the Owner of the Lot being entered is present.
- 2. The right of the Board, its officers, agents, employees, and any contractor selected by the Board to enter in or cross over the Common Area as well as any of the Lots to perform its obligations and duties under the provisions of the Governing Documents, which include, but are not limited to, its obligations or duties with respect to the construction, maintenance, and repair of the Common Area, including, but not limited to, the watering, planting, cutting, removing and otherwise caring for any landscaping, together with the cleaning, repairing, replacing, and otherwise maintaining, or causing to be maintained, any underground utility lines serving the Lots. The rights of entry and cure shall be immediate in case of an emergency originating upon or threatening any Lot, whether or not the Owner of the Lot being entered is present.
- 3. The right of an Owner or Owner's representatives to enter the Lot of any other Owner for purposes of performing installations, alterations, or repairs to mechanical or electrical services, including installation of television antenna and related cables, which are reasonably necessary to the use and enjoyment of its, his, or her Lot.
 - a. A request for any such entry must be made in advance and entry must be at a time convenient of the Owner whose Lot is being entered upon.

- b. The rights of entry and cure shall be immediate in the case of an emergency, whether or not the Owner of the Lot being entered is present.
- 4. The right of the Association and the Owners, or their representatives, to enter upon adjoining Lots for access to slopes and drainage ways located thereon, when such access is essential for the maintenance or stabilization of such slopes and/or drainage ways, provided request for any such entry is made in advance and that such an entry is at a time convenient to the Owner whose Lot is being entered upon. The rights of entry and cure shall be immediate in case of an emergency, whether or not the Owner of the Lot being entered is present.

3.5 MINOR ENCROACHMENTS.

- A. Each Lot shall have and is hereby granted an appurtenant easement, not to exceed five (5) feet from any point on the property line of any such Lot, over all adjoining Lots, including the Common Area, for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement, or the shifting of structures together with any other reasonable cause, as long as such encroachment remains.
- B. However, in no event shall such a valid easement for encroachment exist in favor of a Lot if the encroachment occurred due to the willful misconduct of the Owner of such a Lot.
- C. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners, and each of them, hereby agree that under such circumstances any minor encroachments over adjoining Lots and/or the Common Area, as the case may be, that do not exceed five (5) feet from any point on the property line of any such Lot shall be permitted and that there shall also be valid easements for the maintenance of the encroachments as long as such encroachments shall exist. Such appurtenant easements shall be for the purpose of, but not limited to, overhanging roofs and eaves, fireplace structures as well as extended windows.

3.6 **<u>POWER TO GRANT EASEMENTS</u>**.

- A. The Board shall have the power as well as the right to grant and convey in the name of the Association, as to any real property to which the Association holds title, to any Owner or other party, easements and rights-of-way in, on, over, or under the Common Area for the purpose of access, ingress, and egress to real property, constructing, erecting, operating, or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines, or pipes as well as any similar public or quasi-public improvements or facilities.
- B. Each Owner, in accepting a deed to a Lot, expressly consents to such easements and rights-of-way and authorizes and appoints the Board as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easement of rights-of-way. If the Association takes title through foreclosure, it would then be an owner of the lot.
- C. However, no such easement can be granted if it would permanently interfere with the use, occupancy or enjoyment by any Owner of its, his, or her Lot unless it was approved by

the vote or written consent of not less than seventy-five percent (75%) of the Owners as well as their Eligible Mortgage Holders.

3.7 **<u>OTHER EASEMENTS</u>**.

Each Lot and its Owner as well as the Association, as the case may be, is declared to be subject to all of the easements, dedications, and rights-of-way that have been granted or reserved in, on, over, and under the Property.

3.8 EMERGENCY ACCESS AND RIGHT-OF-WAY.

The Property, each Owner, and the Association, as the case may be, is/are declared to be subject to any emergency vehicle access easements and public right-of-way easements over the Private streets and emergency access easement.

3.9 **<u>PUBLIC SERVICE EASEMENT.</u>**

There shall be and the Association hereby reserves and covenants for itself as well as all of the future Owners, easements for public services, including, but not limited to, the right of the police and fire departments to enter upon any part of the Development for the purpose of carrying out their official duties.

3.10 **DELEGATION OF USE**.

- A. Any Owner may delegate its, his, or her rights of use of the Development to members of its, his, or her family, Tenants, employees, and Invitees and to such other persons as may be permitted by the provisions of the Governing Documents.
- B. If an Owner has sold its, his, or her Lot to a Contract Buyer or has leased or rented it, the Owner shall not be entitled to delegate any right to the use and enjoyment of the Development that are appurtenant to such a Lot while such Owner's Lot is occupied by any such Contract Buyer or Tenant. Instead, the Contract Buyer or Tenant, as the case may be, while occupying such Lot, shall be entitled to use and enjoy such rights and can delegate such rights of use and enjoyment in the same manner as if such Contract Buyer or Tenant were an Owner.
- C. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of the Owners. No such delegation shall relieve an Owner from liability to the Association or to the other Owners for payment of Assessments or compliance with the performance of the covenants, conditions, and restrictions that are contained in the provisions of the Governing Documents.
- D. Any lease, rental agreement, or contract of sale entered into between an Owner and a Tenant or Contract Buyer shall contain a provision that requires compliance by such Tenant or Contract Buyer with all of the covenants, conditions, and restrictions contained in the provisions of the Governing Documents. Such provision shall categorically state that it is for the express benefit of the Association and each Owner.
- E. The Association and each Owner shall have a right of action directly against any Tenant or Contract Buyer of an Owner, as well as against the Owner, for a Violation of a

Provision of the Governing Documents to the same extent that such right of action would exist against such Owner.

3.11 **REQUIREMENTS TO COMPLY WITH DUE PROCESS.**

Before the Board imposes any monetary penalties, suspensions of Membership rights, or Common Area use privileges against any Member for a Violation of a Provision of the Governing Documents, or before the Board exercises any entry rights that may be provided for in the provisions of the Governing Documents, the Board must act in good faith and satisfy the following requirements:

- 1. Such Member shall be given a ten (10) day prior written notice, which for the purposes of this Section 3.12 shall be hereinafter referred to as the "Action Notice," by either first-class mail or personal delivery. The Action Notice must:
 - a. State that the Board is contemplating entry into its, his, or her Lot or that the Board is meeting to consider disciplining such Member, whichever is applicable.
 - b. Contain the nature of the alleged Violation of a Provision of the Governing Documents or the necessity for any such entry, whichever is applicable.
 - c. State the date, time, and place of the meeting or any such entry.
 - d. Advise the Member of its, his, or her right to attend any such meeting and to address the Board or to discuss any such contemplated entry with the Board.
- 2. If the Action Notice is given by mail, it must be sent to the address of the Member that is currently shown in the Association's records.
- 3. If, after complying with all of the above procedures, the Board decides to impose such discipline or the Board determines to make such entry, then, within fifteen (15) days of any such decision or determination, the Board shall notify the Member, in writing, by either first-class mail or personal delivery, of the disciplinary action to be taken or the entry to be made, as the case may be.
- 4. No disciplinary action shall be taken or entry made until the Board has fulfilled all of the requirements that are called for in the provisions of this Section 3.11.

ARTICLE IV COVENANTS AND USE RESTRICTIONS

4.1 FOREST SERVICE HANDBOOK.

The Association may, from time to time, use the standards that are contained in the pages of the "FOREST SERVICE HANDBOOK VALLEJO, CA FSH 2709.11 – HANDBOOK R5 **Supplement No. 2709.11-2000-1Effective September 7, 2000**" as a guide. The Association may also promote and seek the compliance by the Owners and Tenants with these standards.

4.2 ANIMALS.

- A. The Board shall have the right to establish and enforce sensible rules and regulations imposing standards for the reasonable control and keeping of animals in, upon and around the Development to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Development by the Owners, their family members, agents, employees, representatives, Invitees, Tenants, licensees, customers, clients, patients, and Contract Buyers. Such rules shall include, but not be limited to, a prohibition against maintaining, breeding, or raising animals for commercial purposes and in unreasonable numbers.
- B. Each person bringing or keeping an animal within the Development shall be liable to other Owners, their family members, agents, employees, representatives, Invitees, Tenants, licensees, customers, clients, patients, and Contract Buyers for any damage to person or property caused by any such animal.
- C. All construction of structures intended to house and/or contain animals shall be created in accordance with the minimum standards required by the current building codes of the County for outbuildings and improvements of such a nature as well as in a manner that will provide for the control of the animals and shall be approved by the Architectural Review Committee. All such structures shall be maintained in a clean, sanitary, workable, and attractive condition.
- D. Animal owners shall be responsible for the prompt disposal of animal waste deposited by animals under their control on any portion of the Property.

4.3 ANTENNA AND EXTERNAL FIXTURES.

- With the exception of Lot 1, which shall be excluded from the requirements of the provisions of this Section 4.3, and as provided for in the provisions of Subsections 4.3B, 4.3C and 4.3D, below, no clothesline, basketball standard or other external fixture other than those originally installed by the Declarant or approved by the Architectural Review Committee and any replacement thereto, shall be constructed, erected, or maintained on or within a Lot or any structure located thereon.
- B. No wiring, insulation, air conditioning, solar panel, or other machinery or equipment other than that originally installed by the Declarant or approved by the Architectural Review Committee and their replacements, shall be constructed, erected, or maintained on or within a Lot or any structure thereon.
- C. Each Owner shall have the right to maintain a television and radio antenna within the completely enclosed portions of its, his, or her Residence. The establishment of any television antenna, radio pole, antenna, or satellite dish on the exterior of an Owner's residence or otherwise on an Owner's separate interest or Lot shall be subject to consideration by the Architectural Review Committee, and any such item may only be installed upon approval by the Architectural Review Committee.

D. Roof-mounted solar panels shall be allowed for Residences, provided that they are designed with minimal visual impact. Architectural design and elevation plans for a project proposing roof-mounted solar panels shall be reviewed and approved by the Architectural Review Committee for architectural compatibility with existing and other planned developments in the vicinity.

4.4 CHANGING GRADES, SLOPES, AND DRAINAGE.

- A. No change in the established grade or elevation of a Lot or an easement and no change in the established slope or ratio of the cuts and fills which alters established drainage patterns shall be permitted without the prior written consent of the County and the Board.
- B. For the purposes hereof, established drainage patterns are defined as the drainage patterns existing at the time the grading of said Lot was completed in conformity with the grading and drainage plan heretofore approved by the County.

4.5 **<u>COMPLIANCE WITH LAW.</u>**

- A. Nothing shall be done or kept on any Lot or in the Common Area that might increase the rate of, or cause the cancellation of, any insurance for the Development, or any portion of the Development, without the prior written consent of the Board.
- B. No Owner shall permit anything to be done or kept in its, his, or her Lot that violates any covenant, restrictions, law, ordinance, statute, rule, or regulation of the provisions of the Governing Documents and/or any local, county, state, or federal body.
- C. No Owner shall allow its, his, or her furniture, furnishings, or other personal items to remain within any portion of the Common Area except as may otherwise be permitted by the Board or the Association Rules.

4.6 **FENCES AND WALLS**.

With the exception of Lot 1, which shall be excluded from the requirements of the provisions of this Section 4.6, no fences, ornamental screens, or walls of any nature or kind, including, but not limited to, retaining walls, shall be altered, removed, erected, or maintained on or around any portion of any Lot except those authorized and approved by the Architectural Review Committee and the Board.

4.7 GAS OR LIQUID STORAGE.

With the exception of propane tanks, no tank for the storage of gas or liquid shall be installed on or within the Development unless such installation is done by the Declarant or has been approved by the Board or the Architectural Review Committee, whichever is applicable.

4.8 HOUSE NUMBERS.

A. With the exception of Lot 1, which shall be excluded from the requirements of the provisions of this Subsection 4.8A, all house numbers shall be viewable from the access road which passes in front of the Residence so numbered, and mounted horizontally on the Residence, unless the driveway is more than fifty feet (50') in length, or the

Residence cannot be viewed from said access road, in which case, the number shall be installed at the intersection of the driveway, and the access road, so that they are visible to the people traveling in either direction on the access road. The number shall not be less than three inches (3") in height, and mounted on a contrasting background. If not mounted on the Residence, they must be installed on a non-decaying post at least three feet (3') high, but in no case, above four feet (4') in height.

B. Lot 1 shall meet or exceed Tehama County Ordinance 1537 Sections 9.14.040, 9.14.048, 9.14.049, 9.14.050.

4.9 **<u>INDEMNIFICATION</u>**.

Each Owner, by acceptance of its, his, or her deed, agrees personally and for its, his, or her Invitees, to indemnify each and every other Owner, and to hold such indemnified Owner(s) harmless from, and to defend them against, any claim of any person for personal injury or property damage occurring within the Lot of the indemnifying Owner, except to the extent:

- 1. That any such injury or damage is covered by insurance in favor of the Association or the indemnified Owner, whichever is applicable; or
- 2. The injury or damage occurred by reason of the willful or negligent act or omission of the Association, an indemnified Owner, or any Invitees of an indemnified Owner.

4.10 **LEASING OR RENTING**.

- A. For the purposes of the provisions of this Section 4.10 the Development shall be considered as being designed and intended as an Owner-occupied, residential development. Therefore, an Owner shall be responsible for any Violation of a Provision of the Governing Documents by a Tenant or any other occupant of its, his, or her Lot.
- B. With the exception of Lot 1, which shall be excluded from the requirements of the provisions of this Subsection 4.10B, no Owner shall rent, lease, or otherwise delegate the use and occupation of its, his, or her Lot except upon all of the following terms and conditions:
 - 1. No Lot may be leased or rented for a period of more than fourteen (14) days per calendar year;
 - 2. The lease or rental must apply to the entire Lot including its appurtenant rights excluding only the Owner's voting rights;
 - 3. Any property lease or rental agreement is subject to the oversight of the MCSHA Board.

4.11 <u>LEGAL REMEDIES FOR OWNER NONCOMPLIANCE WITH THE PROVISIONS OF</u> <u>THE GOVERNING DOCUMENTS</u>.

A. Subject to the requirement of the provisions of Section 5.16 of the Declaration, entitled "LIMITATIONS ON THE AUTHORITY OF THE BOARD OR THE **ASSOCIATION**," Subsections 5.16B through 5.16P, inclusive, any Owner being in Violation of a Provision of the Governing Documents shall give rise to a cause of action in the Association and any aggrieved Owner, as the case may be, for the recovery of damages or for injunctive relief, or both.

- B. Nevertheless, the objective of the provisions of the Governing Documents is to promote and seek voluntary compliance by the Owners and Tenants with the environmental standards and property use restrictions contained herein.
- C. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action, the Owner or Tenant responsible for such Violation of a Provision of the Governing Documents shall receive a written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent provisions of the Governing Document.
- D. Said notice shall describe the noncomplying condition, request that the Owner or Tenant correct the condition within a reasonable time, which time shall be specified in the notice, and advise the Owner or Tenant of its, his, or her appeal rights.

4.12 MACHINERY AND EQUIPMENT.

- A. With the exception of Lot 1, which shall be excluded from the requirements of the provisions of this Subsection 4.12A and except as provided for in the provisions of Subsection 4.12B., below, no machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Lot except such machinery or equipment that is usual or customary in connection with the use, maintenance, or repair of a Residence or appurtenant structures within the Development or that has been approved by the Architectural Review Committee.
- B. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to Lot 1 except such machinery or equipment that is normally associated with a properly conducted resort operation or that has been approved by the Architectural Review Committee.

4.13 MAINTENANCE – OWNER RESPONSIBILITY.

- A. Except as provided for in the provisions of Section 5.9 of the Declaration, entitled, "MANAGEMENT AND MAINTENANCE OF THE DEVELOPMENT," each Owner shall be responsible for maintaining the structures located upon its, his, or her Lot, including the equipment and fixtures in the structure and its walls, roof, ceilings, windows, and doors in a clean, sanitary, workable, and attractive condition.
- B. However, each Owner has complete discretion as to the choice of furniture, furnishings, and interior decorating; except that windows can be covered only by drapes, shutters, blinds, or shades and cannot be painted or covered by foil, cardboard, or other similar materials.
- C. Each Owner shall also be responsible for the maintenance, repair, and replacement of all plumbing, electrical, heating, air conditioning and gas lines, conduits, apparatus, and

equipment servicing its, his, or her Lot as well as repair, replacement and cleaning of the windows and glass of its, his, or her structure.

- D. In addition, each Owner when requested to do so by the Board, shall have the Improvements of its, his, or her Lot inspected for termites and, if their presence is discovered, immediately take appropriate corrective measures.
- E. If an Owner is required to make any repair or if the Owner desires to construct any Improvement or install any fixture or equipment that will affect the exterior appearance of the Lot and/or any structure on the Lot, the prior written approval of the Architectural Review Committee must first be obtained.
- F. Such written approval of the Architectural Review Committee need not be obtained to make emergency repairs, provided that the structure so affected is restored to its original condition at the Owner's expense.
- G. Each Owner shall also be responsible for the maintenance of all of the exterior landscaping, if any, that is located on its, his, or her Lot. Any other provision in the Governing Documents notwithstanding, any Owner shall maintain the landscaping on its, his, or her Lot in a safe, neat, and orderly manner.

4.14 MONUMENTS.

Any monuments that have been installed in the Development by the Declarant shall be maintained by the Association and shall not be altered or removed by anyone without the approval of the Board.

4.15 OFFENSIVE CONDUCT; NUISANCE.

- A. No noxious or offensive activities including, but not limited to, the repair of automobiles or other motorized vehicles, shall be conducted within the Development.
- B. Nothing shall be done on or within the Development that may be or may become an annoyance or nuisance to the residents of the Development, or that in any way interferes with the quiet enjoyment of occupants of Lots.
- C. Unless otherwise permitted by the Board, no Owner shall serve food or beverages, cook, barbecue, or engage in similar activities except within such Owner's Lot.

4.16 **OUTSIDE LAUNDERING AND DRYING**.

No exterior clotheslines shall be erected or maintained within the Development and there shall be no exterior drying or laundering of clothes on balconies, patios, porches, or other outside areas.

4.17 **PARKING RESTRICTIONS**.

A. The Association may, in accordance with the provisions of Vehicle Code section 22658.2, or any compatible superseding statutes, install a sign at each vehicular entrance to the Development containing a statement that public parking is prohibited and that all vehicles not authorized to park in the Development will be removed at the vehicle

owner's expense. Any such sign shall contain the telephone number of the local traffic law enforcement agency and shall be not less than seventeen (17) inches by twenty-two (22) inches in size, with its lettering no less than one (1) inch in height.

- B. No motor vehicle shall be constructed, reconstructed, or repaired within the Development and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored in the Development unless screened from the view of any street or other Lot, provided, however, that the provisions of this Section 4.17, shall not apply to emergency vehicle repairs.
- C. In addition and in compliance with the above-cited Vehicle Code, the Association may cause the removal of any vehicle wrongly parked on the Property, including a vehicle owned by the occupant of a Lot.
 - 1. If the identity of the vehicle owner is known or readily ascertainable, the Board, within a reasonable time, must notify the owner of such vehicle, by first-class mail, of said removal.
 - 2. If the identity of the owner of such vehicle is not known or readily ascertainable, the Board must send a written report of such removal, by mail, to the California Department of Justice in Sacramento if the vehicle has not been returned to its owner within one hundred twenty (120) hours.
 - 3. Immediately after any such vehicle has been removed, the Board must notify the local traffic law enforcement agency of said removal.
 - 4. Any such notice must include a description of the vehicle, the license plate number and the address from where the vehicle was removed.
 - 5. However, any vehicle may be removed without notice if it is parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, if it occupies without proper authority a parking space designated for the handicapped or if it interferes with an entrance or exit of the Development.

4.18 **RESIDENTIAL USE**.

- A. With the exception of Lot 1, which shall be excluded from the requirements of the provisions of this Section 4.18, the Lots shall be used solely for the construction of one (1) permanent residential dwelling together with any customary appurtenances that are designed for single-family purposes in conformity with the requirements imposed by rural living, applicable zoning, or other governmental regulations.
- B. The total square footage of all of the structures that are located on any Lot shall not exceed twenty-five hundred (2,500) square feet.
- C. None of the Lots shall be used, caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes, except for the following:

- 1. Any type of home occupation provided that the proposed occupation meets the following criteria:
 - a. Any such occupation shall be conducted within no more than one (1) room of the Residence, excluding garages and artist studios;
 - b. There shall be no structural alterations of the exterior of the Residence to accommodate any such home occupation and the existence of said occupation shall not be apparent beyond the boundaries of the structure within which it is conducted;
 - c. No displays or advertising signs shall be permitted on the premises;
 - d. There shall be no more than two (2) customers, patients, clients, students, or other persons served by said occupation upon the premises at any one (1) time;
 - e. If so required by local ordinance, the County shall have issued a business license for said occupation; and
 - f. Said occupation shall be strictly secondary and subordinate to the primary residential use and shall not change or detrimentally affect the residential character of the Residence, Property, or neighborhood.

4.19 **RESTRICTION ON FURTHER SUBDIVISION AND SEVERABILITY**.

No Lot shall be further subdivided by parcel, tentative, or final map, Record of survey, or in any other manner without prior written approval of the Board.

4.20 SEPTIC SYSTEMS.

Each Lot shall have its own individual, on site, septic waste disposal system, which shall be designed, located, constructed and repaired in accordance with the requirements, standards, and recommendations of the Tehama County Code.

4.21 SETBACKS.

- A. All Lots shall provide for setback of structures that accommodates a fire defensible space, which is in accordance with the provisions of Tehama County Ordinance 1537, Article V., Section 9.14.071(a).
- B. There shall be a minimum thirty foot (30') setback from all property lines and/or the center of a road for each and every building and accessory building that is located on any parcels of land that are located within the Development, which are one (1) acre in size or larger.

4.22 **<u>SIGNS</u>**.

A. With the exception of Lot 1, which shall be excluded from the requirements of the provisions of this Section 4.22, no advertising signs or billboards shall be displayed on

any Airspace Unit or posted within or upon any portion of the Association and/or the Undivided Interest Common Area without the written approval of the Board, except that Owners may display on their real property any signs which are reasonably located in plain view of the public, are of reasonable dimensions and design, are in reasonable numbers, and do not adversely affect public safekeeping, including, but not limited to, traffic safety, which advertise the following:

- (1) Any information that is required by legal proceedings;
- (2) That the property is for sale, lease, or exchange by the owner or his or her agent;
- (3) Directions to the property;
- (4) The owner's or agent's name; or
- (5) The owner's or agent's address and telephone number.
- B. Nothing in this section limits any authority which a person or any appropriate local governmental entity may have to limit or regulate the display or placement of a sign on a private or public right-of-way.

4.23 **<u>TEMPORARY LIVING QUARTERS</u>**.

- A. With the exception of Lot 1, which shall be excluded from the requirements of the provisions of this Section 4.23, no boat, truck, trailer, van, camper, recreational vehicle, or tent shall be used as a living area while located within the Development.
- B. However, trailers or temporary structures may be used for a limited time when major construction is occurring on a Lot. Any such use is subject to conditions set by the Architectural Review Committee and must be approved by the Architectural Review Committee. Such trailers or temporary structures will be promptly removed upon completion of all construction or at the direction of the Architectural Review Committee.

4.24 **<u>TIME SHARING PROHIBITED.</u>**

- A. With the exception of Lot 1, which shall be excluded from the requirements of the provisions of this Section 4.24, no Lot or any portion nor combination thereof, shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program, or arrangement, including, without limitation, any so called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement.
- B. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess a Lot, or any portion thereof, rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time.
- C. The provisions of this Section 4.24 shall not be construed to limit the personal use of any Lot, or any portion thereof, by any Owner or its, his, or her social or familial guests.

4.25 **TRASH DISPOSAL**.

- A. With the exception of Lot 1, which shall be excluded from the requirements of the provisions of this Section 4.25, no trash, garbage, rubbish, or other waste material shall be allowed to accumulate on any Lot unless stored in an appropriate sanitary, covered disposal container that is located within an enclosed area adjacent to the Owner's Residence and screened from the view of any street or Lot.
- B. An exception being that on the scheduled day for trash pickup, such receptacles may be located in the places specifically designated for pick-up purposes.
- C. Any extraordinary accumulation of rubbish, trash, garbage, or debris, such as, but not limited to, debris generated upon vacating the premises or during the construction of modifications and Improvements, shall be removed from the Development to a public dump or trash collection area by the Owner or Tenant on whose Lot such accumulation exists, at its, his, or her expense.
- D. The Board shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed of in a manner inconsistent with the provisions of this Section 4.25.
- E. No toxic or hazardous materials, such as, but not limited to, fuels, oils, other petroleum products, chemicals, detergents, or cleaners shall be disposed of within the Development by dumping them on the surface of the ground, in drainage ways, waterways, or adjacent to the Property.

4.26 **TREE MAINTENANCE**.

The cutting down of trees larger than four inches (4") at the chest height of an average adult male is only permissible under the following conditions:

- a. Individual trees which are located within an area to be impacted by a County approved structural addition.
- b. For the purpose of tree health and public safety provided that:
 - 1. A Registered Professional Forester licensed to do business in the State of California has identified dead, dying, or diseased trees as defined by the California State Forest Practice Act rules and regulations.
 - 2. A Registered Professional Forester licensed to do business in the State of California has recommended the thinning of individually selected trees to improve the health and the vigor of the residual trees, and/or to achieve community fire safe objectives.
 - 3. A Registered Professional Forester licensed to do business in the State of California has identified trees which, for whatever reasons, pose a hazard to public health and safety.

4.27 UNALLOCATED TAXES.

- A. 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 and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two (2) installments.
- B. Each such installment shall be due thirty (30) days prior to the due date such tax is to be paid to the taxing authority.

ARTICLE V POWERS AND DUTIES OF THE ASSOCIATION

5.1 **INCORPORATION**.

The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. At the Recording of the first Lot sale to an Owner other than the Declarant, the Association shall be charged with the duties and invested with the powers set forth in the provisions of the Governing Documents.

5.2 ACTION THROUGH DESIGNATED OFFICERS.

Except as to the matters requiring the approval of the Owners as set forth in the provisions of the Governing Documents, the affairs of the Association, including the exercise of its powers and duties, shall be conducted by the Board, such officers as the Board may elect or appoint, or such persons or entities with delegated authority under the provisions of Section 5.7 of the Declaration, entitled, "**RIGHT OF THE BOARD TO DELEGATE ITS POWERS AND DUTIES**."

5.3 **<u>STATEMENT OF ASSOCIATION POWERS.</u>**

- A. The Association shall have all the powers granted to it by the provisions of section 383 of the California Code of Civil Procedure and of sections 1350 through 1373, inclusive, of the California Civil Code together with all the powers of a nonprofit mutual benefit corporation that has been organized under the provisions of the General Nonprofit Mutual Benefit Corporation Law of California, or any compatible superseding statutes, subject only to such limitations on the exercise of its powers as are set forth in the provisions of the Governing Documents.
- B. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under the provisions of the Governing Documents, and to do and perform any act that may be necessary or proper for, or incidental to, the exercise of any of such express powers of the Association, including, but not limited to, the acts enumerated in the provisions of Sections 5.4 through 5.7, inclusive, of the Declaration.

5.4 ASSESSMENT RIGHTS.

The Board shall establish, fix, and levy Assessments against the Owners, and collect and enforce payment of such Assessments in accordance with the provisions of the Governing Documents.

5.5 THE RIGHT TO ESTABLISH ASSOCIATION RULES.

- A. The Board may adopt, amend, and repeal Association Rules as it considers appropriate. The Association Rules shall regulate the use and enjoyment of the Development.
- B. A copy of the current Association Rules as adopted, amended, or repealed shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Development.
- C. If any provision of the Declaration, the Articles, or the Bylaws is inconsistent with or materially alters any Association and/or Architectural Rule, the provisions of the Declaration, the Articles, or the Bylaws shall control to the extent of any such inconsistency.

5.6 <u>**RIGHT TO IMPOSE SANCTIONS FOR A VIOLATION OF A PROVISION OF THE**</u> <u>**GOVERNING DOCUMENTS.**</u>

- A. In addition to any other enforcement rights described in the provisions of the Governing Documents or authorized by law and subject to the Due Process Requirements, the Board may take any of the following actions against any person or entity, whose act or failure to act is a Violation or a threatened Violation of a Provision of the Governing Documents:
 - 1. Impose monetary penalties, including late charges and interest;
 - 2. Suspend voting rights in the Association;
 - 3. Suspend use privileges for the Common Area; and
 - 4. Commence a legal action for damages, injunctive relief, or both.
- B. The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board.
- C. Any legal action may be brought in the name of the Association in its own behalf as well as in behalf of any Owner who so consents and the prevailing party in such action shall recover costs and reasonable attorney's fees.
- D. The Board may take more than one (1) of the foregoing enforcement actions against any Violation or threatened Violation of a Provision of the Governing Documents, provided that any suspension of use privileges shall not exceed thirty (30) days, unless such suspension is for delinquent Assessments and a monetary penalty shall not exceed five hundred dollars (\$500.00), excluding late charges imposed for delinquent payments, for any Violation of a Provision of the Governing Documents.
- E. The Board, in its sole discretion, may resolve or settle any dispute, including any legal

action under such terms and conditions as it considers appropriate.

- F. The Board shall have the power to adopt a schedule of reasonable fines and monetary penalties for a Violation of a Provision of the Governing Documents, provided that any such schedule is distributed to each Member by personal delivery or first-class mail.
- G. If any Member who is being disciplined so requests, the Board must meet in executive session and the Member is entitled to attend.
- H. The Board may not cause a forfeiture or abridgement of an Owner's rights to the full use and enjoyment of its, his, or her Lot except by the judgment of a court that has the appropriate jurisdiction, a decision arising out of an arbitration proceeding or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay Assessment fees duly levied by the Association.
- I. The enforcement of monetary penalties is subject to the restrictions described in the provisions of Section 7.6 of the Declaration, entitled, "SPECIAL ASSESSMENTS PURPOSE OF AND PROCEDURE FOR LEVYING."
- J. If any Owner fails to cure a default within sixty (60) days after written notice to that Owner of such default, the Board shall give the notice required by the provisions of Section 11.6 of the Declaration, entitled, "**DEFAULT NOTICE REQUIREMENT**," to any Eligible Mortgage Holder of Record who holds a Mortgage against such Owner's Lot.

5.7 **<u>RIGHT OF THE BOARD TO DELEGATE ITS POWERS AND DUTIES.</u>**

- A. The Board and the officers of the Association shall have the power to delegate their authority and powers to committees, officers, or employees of the Association or to a manager employed by the Association, provided that the Board shall not delegate its responsibility to:
 - 1. Make expenditures for capital additions or Improvements chargeable against the Reserve Funds;
 - 2. Conduct hearings concerning compliance by an Owner or its, his, or her Tenant, lessee, or Invitee with the provisions of the Governing Documents;
 - 3. Make a decision to levy monetary fines, impose Special Assessments against individual Lots, temporarily suspend an Owner's rights as a Member or otherwise impose discipline;
 - 4. Make a decision to levy Regular or Special Assessments; or
 - 5. Make a decision to bring suit, Record a claim of lien, or institute foreclosure proceedings for default in the payment of Assessments.

5.8 **<u>DUTIES</u>**.

In addition to the duties described in any other provision of the Governing Documents, the Association shall have the duties set forth in the provisions of Sections 5.9 through 5.19, inclusive, of the Declaration.

5.9 MANAGEMENT AND MAINTENANCE OF THE DEVELOPMENT.

- A. The Board shall manage and maintain in good condition and repair the Major Components and the Common Area, including, but not limited to, any Improvements that may be located thereon, as well as the Association's personal property together with any personal and/or real property that the Association may acquire or is made subject to its management and maintenance responsibilities of the Association.
- B. No person or entity other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter, or maintain any Improvements upon, or create any excavation or fill or change the natural or existing drainage of any portion of, the Common Area that is managed or maintained by the Association.
- C. No person shall remove any shrub or other vegetation from, or plant any shrub or other vegetation upon, the Common Area without the express approval of the Board.

5.10 CONTRACTING FOR GOODS AND SERVICES.

The Board shall enter into such contracts for services or materials as may be necessary to perform its duties, including any contracts with the Declarant, subject to the provisions of any and all of those Sections in the Governing Documents that have application thereto.

5.11 PAYMENT OF TAXES AND ASSESSMENTS.

- A. The Board shall pay all real and personal property taxes, Assessments and all other taxes levied against the Association, the Common Area or any personal property owned by the Board.
- B. Such taxes and Assessments may be contested or compromised by the Association, provided they are paid or that a bond insuring payment is posted before the sale or disposition of any property to satisfy the payment of such taxes.

5.12 **SECURING INSURANCE COVERAGE**.

The Board shall obtain and maintain the insurance described in the provisions of Sections 9.1, 9.2, 9.5, and 9.6 of the Declaration, entitled "LIABILITY INSURANCE," "FIRE AND CASUALTY INSURANCE," "DIRECTOR AND OFFICER LIABILITY INSURANCE," and "WORKER'S COMPENSATION, DEMOLITION, AND OTHER ASSOCIATION INSURANCE," respectively.

5.13 PREPARATION AND DISTRIBUTION OF FINANCIAL STATEMENTS, REPORTS, AND COPIES OF THE GOVERNING DOCUMENTS.

The Board shall prepare and distribute the following financial statement, reports, and copies of Governing Documents as indicated:

- 1. A Statement of Activity summarizing by category the financial dealings of the Association for the preceding fiscal year shall be presented to the Members at the Annual Meeting.
- 2. A current Statement of Financial Position of Association finances shall be presented to the Members at the Annual Meeting.
- 3. A Proposed Operating Budget for the ensuing fiscal year shall be presented to the Members for approval at the Annual Meeting.

5.14 ENFORCEMENT OF BONDED OBLIGATIONS.

- A. If the Association is the obligee under a bond or other security arrangement, hereinafter referred to as the "Bond," to secure performance of a commitment of the Declarant, or its successors or assigns, to complete the Common Area Improvements which were not completed at the time a Final Subdivision Public Report was issued, the Board shall consider and vote on the question of taking action to enforce the obligations that are secured by such Bond on any Common Area Improvement for which a Notice of Completion has not been filed by the later of:
 - 1. Sixty (60) days after the completion date specified for such Improvement in the planned construction statement ("Planned Construction Statement") appended to the Bond; or
 - 2. Thirty (30) days after the expiration of any written extension given by the Board.
- B. If the Board fails to consider and/or vote on the action to enforce the obligations under a Bond, or if the Board decides not to initiate action to enforce the obligations under a Bond, then, on receipt of a petition signed by the Owners who represent not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligation under such Bond, whichever is applicable.
 - 1. The Board shall give a written notice of the meeting to all of the Owners entitled to vote on such a matter, in the manner provided for in the provisions of the Governing Documents for a notice of a special meeting of Owners.
 - 2. The meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt of such a petition.
 - 3. At the meeting, the vote in person or by proxy of the majority of the Owners entitled to vote, other than the Declarant, in favor of taking action to enforce the obligations under the Bond shall be considered the decision of the Association

and the Board shall implement this decision by initiating and pursuing any appropriate action in the name of the Association.

C. Upon satisfaction of the Declarant's obligation to complete the Common Area Improvements, the Association shall acknowledge in writing that it approves the release of the Bond, and shall execute any other documents as may be necessary to effect the release of the Bond. The Association shall not condition its approval of the release of the Bond upon the satisfaction of any condition other than the completion of the Common Area Improvements as described on the Planned Construction Statement. Any dispute between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall be submitted to arbitration, at the request of either party, as provided by 10 California Code of Regulations section 2792.9(b)(2).

5.15 **OTHER DUTIES**.

The Board shall perform such other acts as may be reasonably necessary to exercise its powers or perform its duties under any of the provisions of the Governing Documents or any Board resolutions.

5.16 **LIMITATIONS ON THE AUTHORITY OF THE BOARD OR THE ASSOCIATION**.

- A. The Board shall not take any of the following actions, unless it has the assent of a simple majority of the Members, who constitute a quorum consisting of fifty-one percent (51%) of the voting power of the Association residing in Members other than the Declarant. Such assent shall have been granted by a vote at a meeting of the Association or, after complying with the provisions of Corporations Code section 7513, or any compatible superseding statutes, by a written ballot without a meeting:
 - 1. Incur aggregate expenditures for capital Improvements to the Common Area in any Fiscal Year that are in excess of five percent (5%) of the Budgeted Common Expenses for such Fiscal Year;
 - 2. Sell, during the Fiscal Year, property of the Association having an aggregate fair market value greater than five percent (5%) of the Budgeted Common Expenses for the Fiscal Year;
 - 3. Pay compensation to the Directors or to the officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse any Director and/or officer of the Association for expenses incurred in carrying on the business of the Association; or
 - 4. Enter into a contract with a third (3rd) person for such person to furnish goods and/or services for or to, as the case may be, the Common Area and/or the Association, for a term longer than one (1) year, with the following exceptions:
 - a. A management contract, the terms of which have been approved by the Federal Housing Administration or the Veterans Administration;

- b. A contract with a public utility company if the rate charged for the materials or services are regulated by the Public Utilities Commission, provided, the term does not exceed the shortest term for which the supplier will contract at the regulated rate;
- Prepaid casualty or liability insurance policies that do not exceed three
 (3) years in duration, provided, the policy allows for a short rate cancellation by the insured;
- d. Lease agreements for equipment that do not exceed five (5) years in duration;
- e. Agreements for cable television services and equipment or satellite dish television services and equipment, not exceeding five (5) years in duration;
- f. Agreements for the sale or lease of burglar alarm and/or fire alarm equipment, installation, and services that do not exceed five (5) years in duration; and
- g. Agreements for a term that does not exceed three (3) years in duration, which are subject to termination by the Association, without cause, penalty, or other obligation, after being in force for no longer than one (1) year, upon the giving of a ninety (90) day written notice of termination to all of the other parties to any such agreement.
- B. Notwithstanding anything herein to the contrary, but subject to the provisions of Subsection 5.16E, below, the Board shall not institute any significant legal proceedings, including any arbitration or judicial reference proceeding, for the purposes of the provisions of this Section 5.16, being collectively hereinafter referred to as the "Significant Legal Proceeding(s)," against any person without providing the Members with at least one hundred and twenty (120) days' prior written notice, which, for the purposes of the provisions of this Section 5.16, is hereinafter referred to as the "Proceedings Notice," of the Association's intentions to institute such Significant Legal Proceedings. The Proceedings Notice shall describe the purpose of such Significant Legal Proceeding, the parties to the Significant Legal Proceeding, the anticipated cost to the Association, including attorney fees, to process such Significant Legal Proceeding, the source of the funds to process such Significant Legal Proceedings (Reserve Funds, Special or Regular Assessments, etc.), and any suggested information that should be disclosed to third parties, such as, but not limited to, prospective purchasers and lenders, while such Significant Legal Proceeding is being prosecuted.
- C. For the purposes of this Section 5.16, "Significant Legal Proceeding" shall mean a legal proceeding in which it is reasonable to anticipate that any of the following events might occur:
 - 1. The levy of a Special Assessment to fund all or any portion of a legal proceeding;
 - 2. The expenditure of more than five percent (5%) of the then current Reserve Funds in connection with a legal proceeding in an amount in excess;

- 3. The amount of the claim of a legal proceeding that is or will be in excess of twenty thousand dollars (\$20,000.00); or
- 4. A material adverse effect on the ability to sell and/or refinance the Lots will occur during the period a legal proceeding is being prosecuted.
- D. If the proposed Significant Legal Proceeding is against Mill Creek LLC, any other developer, or any contractor, subcontractor, architect, engineer, or materials supplier, who is or has been, as the case may be, engaged by or on behalf of Mill Creek LLC and/or any other developer, for the design or alleged damage of or to, as the case may be, the Development or any elements thereof, the notice shall also specify each of the following, unless not required by reason of the provisions of Civil Code sections 1375(g)(1)(E) or 1375(g)(2)(D), or any compatible superseding statutes:
 - 1. That a meeting will take place to discuss problems that may lead to the filing of a Significant Legal Proceeding together with the time and place of such meeting; and,
 - 2. The known options available to address the problems.
- E. Notwithstanding the foregoing, the Proceedings Notice shall not be required to commence and pursue any action to collect delinquent Assessments as described in the provisions of Section 7.12 of the Declaration, entitled, "ASSOCIATION'S POWER TO ESTABLISH ASSESSMENT LIEN," or to enforce any Common Area completion Bond as described in the provisions of Section 5.14 of the Declaration, entitled, "ENFORCEMENT OF BONDED OBLIGATIONS."
- F. If the Board, in good faith, determines that there is insufficient time to provide prior notice to the Members, as required herein, before the expiration of any applicable statute of limitations or before the loss of any significant right of the Association, the Board may take the necessary steps to commence a Significant Legal Proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter and not later than thirty (30) days following the commencement of such Significant Legal Proceeding, the Board shall provide the Members with a Proceedings Notice.
- G. If the proposed Significant Legal Proceeding is brought by the Association or any Owner or any combination of same, against Mill Creek LLC, other developer or any contractor, subcontractor, architect, engineer, or materials supplier, who is or who has been, as the case may be, engaged by or on behalf of, the Declarant and/or any other developer, for the design or alleged damage of or to, as the case may be, the Development or any elements thereof, the Association and/or any Owner or any combination thereof, hereinafter referred to as the "Complaining Party," shall send the Declarant and/or any other developer, contractor, subcontractor, architect, engineer, or materials supplier, as the case may be, hereinafter referred to as the "Responding Party," a thirty (30) day written notice of the nature of the dispute, the facts giving rise to its claim and its, his, or her intent to initiate litigation, hereinafter referred to as the "Litigation Notice."
- H. The Litigation Notice shall name a mediator. The Responding Party shall be obligated to pay any fee to initiate mediation; however, the cost of mediation, including any attorney's fees, shall ultimately be borne as determined by the parties if the mediation

results in a settlement of the dispute. If the Responding Party does not agree with the Complaining Party's choice of a mediator, the Responding Party, within ten (10) days of the Responding Party's receipt of the Litigation Notice, shall request the American Arbitration Association to select a mediator from its panel. If the Responding Party has not made such a request of the American Arbitration Association within the ten (10) day time requirement, the mediator that was selected by the Complaining Party shall serve. Within thirty (30) days after the mediator is chosen, the parties shall schedule and attend a mediation session and make a good faith effort to resolve their dispute. If the mediation session does not resolve the dispute or if the Responding Party refuses to attend, the dispute shall be submitted to and conclusively determined by binding arbitration in accordance with the provisions of Subsections 5.16I through 5.16P, inclusive, below.

- I. Neutral and impartial individuals shall be appointed to serve as arbitrator(s), with such arbitrator(s) to be appointed within a reasonable period of time, which in no event shall be more than sixty (60) days from the administrator's receipt of a written request from a party to arbitrate a claim or dispute. In selecting the arbitrator(s), the provisions of section 1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in the provisions of the above referenced code section. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association.
- J. The arbitration shall be conducted in Tehama County, California.
- K. The parties shall submit to the arbitration all written, documentary, or other evidence, and give any oral testimony that is reasonably necessary for a proper resolution of the dispute. Copies of all of the written submittals shall be provided to the arbitrator(s) and the parties on each side. The arbitrator(s) shall conduct such hearings as he, she, or they consider necessary, may require the submission of briefs or points and authorities, and may submit written questions to the parties. The parties shall respond to such questions in writing. If a question is addressed to less than all of the parties, copies of the question and the answer thereto shall be served on the other parties.
- L. At the arbitration hearing, any party may present any relevant evidence and the formal rules of evidence applicable to judicial proceeding shall not govern. Evidence shall be admitted or excluded at the sole discretion of the arbitrator(s).
- M. The procedures that are set forth in the provisions of this Section 5.16 for the resolution of disputes ("Dispute Resolution Procedure") is intended to be implemented in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. sections 1-16), which is designed to encourage the use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings. Therefore, the Dispute Resolution Procedure is to be interpreted and enforced as authorized by the above referenced Federal Arbitration Act. Parties interpreting the provisions of this Subsection shall follow the federal court rulings, such as, but not limited to, <u>Allied-Bruce Terminix Companies, Inc. v. Dobson</u>, 115 S.Ct. 834 (1995), which provide, without limitation, that the Federal Arbitration Act (1) is a congressional declaration of a liberal federal policy favoring an alternative to law suits for the resolution of disputes, notwithstanding substantive or procedural state policies to the contrary, (2) requires that federal and state courts rigorously enforce agreements for alternative dispute resolution, and (3) requires that the scope of any issues subject to

alternative dispute resolution be resolved in favor of such alternative dispute resolution. Any references in the provisions of the Governing Documents to California Code sections are not to be interpreted as a waiver of rights created under the above referenced federal cases and/or Federal Arbitration Act.

- N. The arbitration shall proceed with due dispatch and a decision shall be rendered within a reasonable time after appointment of the arbitrator(s) and presentation of the facts and evidence. The arbitrator's(s') decision shall be in writing and in a form sufficient for entry of a judgment in any court of competent jurisdiction in the state of California.
- O. The arbitrator(s) shall be authorized to render any and all of the recognized remedies that are available in the law or equity for any cause of action that is the basis of any such arbitration. In no event shall an arbitrator's(s') award include a component for punitive or exemplary damages. The Responding Party shall be obligated to pay any fee that is required to initiate such arbitration; however, the costs of the arbitration proceeding, including, but not limited to, any attorney's fees, shall be borne as ultimately determined by the arbitrator(s).
- P. Provided that, if the Complaining Party and the Responding Party have entered into a settlement agreement or the matter has otherwise been resolved, as soon as is reasonably practical thereafter, the Board shall provide a written notice, which may from time to time be amended or modified, to each of the current Members of such resolution. Such notice shall include each of the following items:
 - 1. A general description of the damages, as of the date of such notice, that the Board reasonably believes will be repaired or replaced;
 - 2. A good faith estimate, as of the date of such notice, when the Board believes that the damage will be repaired or replaced; and
 - 3. The status of any claims that will not be repaired or replaced and that were either expressed in a primary list of the defects that where sent to the Members or that were otherwise claimed and disclosed to the Members.

5.17 **LIMITATION ON LIABILITY OF OFFICERS AND DIRECTORS**.

- A. Subject to the provisions of Subsection 5.17B., below, no Director, officer, committee member, employee, or other agent of the Association, including the Declarant or any agent of the Declarant when acting in such capacity, all of whom, for the purposes of the provisions of this Section 5.17, being collectively and individually hereinafter referred to as the "Released Party(ies)," shall be personally liable to any of the Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities for their failure to provide any service required under the provisions of the Governing Documents, provided that such Released Party(ies) has/have, upon the basis of such information as may be possessed by the Released Party(ies), 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 ordinary prudent person in a like position would use under similar circumstance.
- B. Without limiting the generality of the foregoing, such standard of care and limitation of

liability shall extend to such matters as the establishment of the Budget, the funding of the Reserve Accounts, the repair and maintenance of the Common Areas as well as the Major Components together with the enforcement of the provisions of the Governing Documents.

- C. No person who suffers bodily injury, including, without limitation, emotional distress or wrongful death, as a result of the tortuous act or omission of a volunteer Director or officer of the Association shall recover damages from such Director and/or officer if all of the following conditions are satisfied:
 - 1. The Board member or officer is an Owner of no more than two (2) Lots;
 - 2. The act or omission was performed within the scope of the volunteer Director's and/or officer's Association duties;
 - 3. The act or omission was performed in good faith;
 - 4. The act or omission was not willful, wanton, or grossly negligent;
 - 5. The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one (1) or more policies of insurance that included coverage for general liability of the Association and individual liability of the Directors and officers of the Association for negligent acts or omissions in their official capacities, with minimum coverage for both types of insurance being not less than five hundred thousand dollars (\$500,000.00).
- D. The payment of the actual expenses incurred by a Director and/or officer of the Association in the execution of that person's Association duties shall not affect that person's status as a volunteer Director and/or officer of the Association for the purposes of the provisions of this Section 5.17. However, any Director and/or officer of the Association who receives direct or indirect compensation from the Declarant or from a financial institution that acquired a Lot as a result of a judicial or nonjudicial foreclosure proceeding is not a volunteer.
- E. The provisions of this Section 5.17 are intended to reflect the protections accorded to volunteer Directors and officers of community associations under the provisions of California Civil Code section 1365.7. In the event said Civil Code section 1365.7 is amended or superseded by another compatible provision of the California statutes, the provisions of this Section 5.17 shall be deemed amended, without the necessity of further Owner approval, to correspond to such amended or successor Civil Code provisions.

5.18 <u>DELIVERY OF DOCUMENTS AND INSPECTION OF ASSOCIATION BOOKS AND</u> <u>RECORDS.</u>

A. The Declarant and its successors and assigns, shall, commencing no later than ninety (90) days after the close of escrow on the sale of the first (1st) Lot in the Development, other than to the Declarant, deliver or cause to be delivered, as soon as they are readily obtainable, one (1) copy of each of the documents listed in the provisions of Subsection 5.18B., below, that have application to the Development, or to the Association, at the Association office or at such other location as the Board may from time to time designate

by written notification to the Declarant, provided that, such obligation shall terminate upon the earliest to occur of the following events:

- 1. The conveyance of the last Lot in the Development that is covered by a Final Subdivision Public Report to an Owner other than the Declarant; or
- 2. Five (5) years from the date of expiration of the most recent Final Subdivision Public Report covering the Development or any portion thereof.
- B. The documents to be delivered, if applicable, are:
 - 1. The Recorded Subdivision Map(s) for the Development.
 - 2. The deeds and easements executed by the Declarant conveying the Common Area or other interest to the Association.
 - 3. The Recorded Declaration, including any amendments thereto.
 - 4. The filed Articles, if any, and any amendments thereto.
 - 5. The Bylaws, including any amendments thereto.
 - 6. Any Architectural and/or Association Rules together with any other rules regulating the use of an Owner's interest in the subdivision or use of the Development, which have been promulgated by the Association.
 - 7. Any plans that have been approved by any agency that has the jurisdiction to approve same, for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be As-Built Plans, bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.
 - 8. All Notice of Completion certificates issued for Common Area Improvements, other than residential structures.
 - 9. Any bond or other security devise of which the Association is the beneficiary.
 - 10. Any written warranty being transferred to the Association that covers any of the Common Area equipment, fixtures, Major Components, or Improvements.
 - 11. Any insurance policy procured for the benefit of the Association, its officers, the Board, or the Common Area.
 - 12. Any lease, rental agreement, or contract to which the Association is a party.
 - 13. The Members register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Board and of committees of the Board.

- 14. Any other instrument that has not been described above, whose provisions establish or define the common, mutual and/or reciprocal rights, or responsibilities of the Members.
- C. Any Owner, or such Owner's duly appointed representative, shall have access to any of the above referenced documents, books of account and minutes from any meeting of the Owners, the Board, with the exception of any minutes of an executive session of the Board, or any committee of the Board in order to inspect and copy such records and/or documents for any purpose reasonably related to its, his, or her interest as an Owner.
- D. Access shall be at any reasonable time at the office of the Association or such other place within the Development as the Board prescribes.
- E. The Board shall establish rules regarding the notice the Owner must give to the custodian of the records to obtain access, the hours and days of the week when the records may be inspected and copied and the charges imposed by the Association for copying records requested by an Owner.

5.19 **LITIGATION**.

Subject to the provisions in Section 5.16 of the Declaration, entitled, "**LIMITATIONS ON AUTHORITY OF THE BOARD OR THE ASSOCIATION**," and California Civil Code section 1354, or any compatible superseding statutes, the Board has the authority to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to:

- 1. The enforcement of the provisions of the Governing Documents;
- 2. Damage to the Common Area;
- 3. Damage to any separate interest which the Association is obligated to maintain or repair; or
- 4. Damage to a separate interest which arises out of, or is integrally related to, the Common Area or a separate interest that the Association is obligated to maintain or repair.

ARTICLE VI PROVISIONS DECLARING MEMBERSHIP AND VOTING RIGHTS

6.1 MEMBERSHIP APPURTENANT TO OWNERSHIP.

- A. Each Owner shall be a Member.
- B. Membership shall be appurtenant to each Lot and the holding of an ownership interest in the fee title to a Lot shall be the sole qualification for Membership; provided that no Owner shall hold more than one (1) Membership even though such Owner owns an interest in more than one (1) Lot.

- C. Membership shall terminate automatically when the Owner no longer holds an ownership interest in a Lot.
- D. Membership may not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except on a transfer of title to a Lot and then only to the transferee.
- E. Any attempt to make a prohibited transfer shall be void.
- F. Any transfer of title to a Lot shall transfer automatically the appurtenant Membership to the transferee.
- G. Any party that holds an interest in a Lot merely as security for the performance of an obligation shall not be a Member.
- H. Each Member shall have the right, duties, and obligations as set forth in the provisions of the Governing Documents.

6.2 **<u>VOTING SYSTEM</u>**.

Except as may otherwise be provided for in the provisions of the Governing Documents, all matters requiring approval of the Members shall be deemed approved if the Members who hold a majority of the total voting power of the Association assent to them by written consent or, either in person or by proxy, by their affirmative vote at any duly called regular or special meeting.

6.3 **VOTING RIGHTS**.

- A. Each Lot shall be entitled to one (1) vote. If more than one (1) Member owns an interest in a Lot, the vote attributed to such Lot shall be cast in compliance with the provisions of Section 6.4 of the Declaration, entitled "JOINT OWNERSHIP VOTES."
- B. Voting rights shall vest either at the time Assessments are levied against a Lot or as provided for in any subsidization plan that has been approved by the California Department of Real Estate for use in the Development.

6.4 **JOINT OWNERSHIP VOTES**.

- A. The vote that is attributed to each Lot may not be cast on a fractional basis.
- B. If the Lot has more than one (1) Owner and the Owners are unable to agree as to how the vote should be cast, the vote shall be forfeited on the matter in question.
- C. If one (1) Owner casts the vote attributed to a Lot, the vote shall conclusively bind all of the Owners of that Lot.
- D. If more than one (1) Owner casts the vote attributed to a Lot in any manner in which only one (1) vote could be cast for that Lot, the votes cast by such Owners shall not be counted and shall be considered void.

ARTICLE VII ASSESSMENTS

7.1 ASSESSMENTS – AGREEMENT TO PAY.

Each Owner by the acceptance of a deed that conveys an ownership interest in title to a Lot, covenants and agrees for each Lot in which such an interest is held, to pay to the Association any Regular and/or Special Assessments levied in accordance with the provisions of the Governing Documents, and to allow the Board to enforce any Assessment lien established in accordance with such provisions by nonjudicial proceedings under a power of sale or by another means that may be authorized by law.

7.2 ASSESSMENTS AS THE PERSONAL OBLIGATION OF AN OWNER.

- A. Each Assessment and/or installment, together with any late charge, interest, collection costs, and/or reasonable attorney's fees that are associated with same, shall be the personal obligation of the Owner at the time such Assessment, installment, late charge, interest, collection cost, and/or reasonable attorney's fee is levied.
- B. If there is more than one (1) Owner of a particular Lot, each Owner shall be jointly and severally liable.
- C. The personal obligation for any delinquent Assessments or installments and related sums shall not pass to an Owner's successor in interest unless expressly assumed by such successor in interest.
- D. No Owner may be relieved from the obligation to pay any Assessments, installments, late charge, interest, collection cost, and/or reasonable attorney's fee by waiving the use or enjoyment of all or any portion of the Common Area or the Owner's Lot, or by abandoning such Lot.

7.3 <u>SCOPE OF ASSESSMENT – AUTHORITY</u>.

The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members, to improve, replace, repair, operate, and maintain the Common Area, the landscaping, the Major Components as well as any Association personal property, wherever such items may be located, to provide funds necessary for the performance of the duties of the Association as set forth in the provisions of the Governing Documents and to further any other purpose that is for the common benefit of the Members in promoting their use and enjoyment of the Property.

7.4 **<u>REGULAR ASSESSMENTS</u>**.

- A. Not more than ninety (90) days nor less than sixty (60) days before the beginning of each and every Fiscal Year, the Board shall meet for the purpose of establishing a Regular Assessment for the forthcoming Fiscal Year.
- B. At such meeting the Board shall review the proposed Budget for such Fiscal Year and consider any written comments received from the Members and Mortgagees as well as

any other pertinent information that has been made available to the Board for such Budget review purposes.

- C. After making any adjustments that the Board considers appropriate, the Board, subject to the restrictions provided for in the provisions of Subsections 7.4E and 7.4F, below, if there is an increase in the amount of the Regular Assessment over the Regular Assessment that was levied for the previous Fiscal Year, having either complied with the provisions of Subsection 5.13A.2 of the Declaration or, in the alternative, at a meeting of the Association, obtained the assent of a simple majority of the Members who constitute a quorum consisting of fifty-one percent (51%) of the voting power of the Association, shall establish the Regular Assessment for the forthcoming Fiscal Year.
- D. The Board may not establish a Regular Assessment for any Fiscal Year that is more than one hundred and twenty percent (120%) of the Regular Assessment for the immediately preceding Fiscal Year.
- E. Unless the Association is exempt from federal and state income taxes, including without limitation an exemption under the provisions of Internal Revenue Code section 23701t, or any compatible superseding statutes, all Reserve Funds, to the extent possible, shall be designated and accounted as capital contributions to the Association and the Board shall take such steps as may be reasonably necessary under federal and state tax laws to prevent the Reserve Funds from being taxed as income of the Association, including, but not limited to, if necessary, maintaining the Reserve Funds in segregated accounts and not commingling such funds with the general operating funds.
- F. Notwithstanding any other provisions in the Governing Documents to the contrary, the Board may not impose a Regular Assessment for any Fiscal Year that is more than twenty percent (20%) above the Regular Assessment for the Association's immediately preceding Fiscal Year.
- G. The foregoing restrictions on Assessment increase do not apply to increases necessary for emergency situations. For the purposes of the provisions of this Section 7.4, an emergency situation is any one (1) of the following:
 - 1. An extraordinary expense required by an order of a court of law having jurisdiction of the matter for which such extraordinary expense has been occasioned.
 - 2. An extraordinary expense necessary to repair or maintain the Development, or any part of it that the Association is responsible to maintain, when a threat to personal safety on the Property is discovered.
 - 3. An extraordinary expense necessary to repair or maintain the Development, or any portion of it that the Association is responsible to maintain, which could not have been reasonably foreseen by the Board in preparing and distributing the Budget for the immediately preceding Fiscal Year, provided that before the imposition or collection of any Assessment that is to be levied under the provisions of this Subsection 7.4G.3., the Board must pass a resolution which shall contain written findings as to the necessity of any such extraordinary expense and why such extraordinary expense was not or could not have been

reasonably foreseen in the Budget process for the preceding Fiscal Year. The Board shall then distribute such resolution to all of the Members with the notice of the Regular Assessment.

7.5 **<u>RESERVE FUNDS</u>**.

- A. Each Regular Assessment shall include a portion for the Reserve Funds.
- B. Reserve Funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be Directors or one (1) officer of the Association, who is not a Director, and a Director, shall be required to withdraw money from the Reserve Account.
- C. Reserve Funds may not be expended for any purpose other than repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of the Major Components.
- D. Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from the Reserve Account 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 Account.
- E. The transferred funds shall be restored to the Reserve Fund within one (1) year of the date of the initial transfer, provided that the Board, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Development, may provisionally delay the restoration.
- F. The Board shall exercise prudent fiscal management in maintaining the integrity of the Reserve Account and shall, if necessary, levy a Special Assessment to recover the full amount of any Reserve Funds within the time limits required.
 - This Special Assessment shall be subject to the Assessment increase restrictions set forth in the provisions of Section 7.6 of the Declaration, entitled, "SPECIAL ASSESSMENTS – PURPOSE OF AND PROCEDURE FOR LEVYING," Subsections 7.6F and 7.6G, and California Civil Code section 1366, or any compatible superseding statutes.
 - 2. The Board may, at its discretion, extend the date the payment of the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy available to them for enforcing the collection of an unpaid Special Assessment as so extended.
- G. At least once every three (3) years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the Major Components as part of the Reserve Account Requirements, and of the Development if the current replacement value of the Major Components is equal to or greater than one-half (1/2) of the Budget, excluding the Reserve Account for that period.

- 1. The Board shall review this study annually and shall consider and implement the necessary adjustments to the Board's analysis of the Reserve Account Requirements as a result of that review.
- 2. The study shall, at a minimum, include:
 - a. Identification of the Major Components as of the date of the study that have a remaining useful life of less than thirty (30) years;
 - b. Identification of the probable remaining useful life of each of those Major Components that have been identified in the provisions of Subsection 7.5G.2a., above, as of the date of the study;
 - c. An estimate of the cost of repair, replacement, restoration, or maintenance of each of the Major Components that have been identified in compliance with the provisions of Subsection 7.5G.2a., above, during, and at the end of its useful life; and
 - d. An estimate of the total annual contribution necessary to defray the costs to repair, replace, restore, or maintain each of the Major Components identified in compliance with the provisions of Subsection 7.5G.2a., above, during, and at the end of their useful lives after subtracting the total of the Reserve Funds as of the date of the study.
- H. If the Board elects to use Reserve Funds or to temporarily transfer money from the Reserve Account to pay for litigation, the Board shall, in the next available mailing to all of the Members in compliance with the provisions of California Corporations Code section 501b, or any compatible superseding statutes, notify the Members of such a decision and of the availability of an accounting of these expenses.
 - 1. The Board shall make an accounting of any expenses related to such litigation on at least a quarterly basis.
 - 2. The accounting shall be made available for inspections by the Members at the Association's office.

7.6 SPECIAL ASSESSMENTS – PURPOSE OF AND PROCEDURE FOR LEVYING.

- A. Subject to the restrictions described in the provisions of Subsections 7.6F and 7.6G, below, the Board may levy a Special Assessment if, for any particular Fiscal Year in which the Board, in its sole discretion, determines that for any reason, including, but not limited to, any unanticipated delinquencies, the costs of necessary and unforeseen construction, or any unexpected repairs to or the placement of a Major Component, the Association's available funds are or will become inadequate to meet the estimated Common Expenses, including, but not limited to, the maintenance of appropriate Reserve Funds.
- B. The Board shall determine the amount necessary to meet such shortfall and if the amount is approved by a majority vote of the Board, it shall become a Special Assessment.
- C. The Board, in its sole discretion, may levy such entire Special Assessment immediately or levy it in installments over a period of time the Board considers appropriate.

- D. Unless the Association is exempt from federal or state income taxes, including, without limitation, any exemption under the provisions of Internal Revenue Code section 528 and Revenue and Taxation Code section 23701t, or any compatible superseding codes, the Board shall take such steps as may be reasonably necessary to prevent any such Special Assessment from being included in the Association's income for federal and state income tax purposes, including, if necessary, depositing the funds received from any such Special Assessment in a segregate account, not commingling such funds with any other funds of the Association and using such funds solely for the purpose for which they were levied.
- E. After compliance with the Due Process Requirements, the Board may impose a monetary penalty and levy a Special Assessment against a particular Lot to reimburse the Association for costs incurred in repairing damage to the Common Area, Major Components, or any personal property that is owned by the Association, for which the Owner was allegedly responsible, or in bringing the Owner or the Owner's Lot into compliance with the provisions of the Governing Documents; provided, however, such Special Assessments may not become a lien against the Owner's Lot that is enforceable by a power of sale under the provisions of Civil Code sections 2924, 2924b, and 2924c, or any compatible superseding statutes. The restriction on enforcement is not applicable to late payment penalties for delinquent Assessments or charges imposed to reimburse the Association for the loss of interest or for collection costs, including reasonable attorney's fees, for delinquent Assessments.
- F. Notwithstanding any other provisions in the Governing Documents, the Board may not levy any Special Assessment that, either by itself or in the aggregate with other Special Assessments levied for the same Fiscal Year, would be in excess of five percent (5%) of the Budgeted gross expenses of the Association for such Fiscal Year, without the approval of a majority of the votes at a meeting of the Members at which a quorum is present.
- G. The restriction contained in the provisions of Subsection 7.6F, above, shall not apply in the following circumstances:
 - 1. An Assessment levied against a particular Lot to reimburse the Association for any costs incurred in bringing the Owner and/or the Lot into compliance with the provisions of the Governing Documents.
 - 2. Increases necessary for emergency situations. An emergency situation is one (1) of the following:
 - a. An extraordinary expense required by an order of a court of law having jurisdiction of the matter for which such extraordinary expense is occasioned.
 - b. An extraordinary expense that is necessary to repair or maintain the Development, or any portion thereof that the Association is responsible to maintain, when a threat to personal safety on the Property is discovered.
 - c. An extraordinary expense necessary to repair or maintain the Development or any portion thereof that the Association is responsible to maintain, which could not have been reasonably foreseen by the Board in preparing and distributing the Budget for the current Fiscal Year,

provided that, before the imposition or collection of any such Special Assessments under the provisions of this Subsection 7.6G.2.c., the Board must pass a resolution containing written findings as to the necessity of such an extraordinary expense as well as why such an extraordinary expense was not or could not have been reasonably foreseen in the Budget process for the current Fiscal Year and shall distribute the resolution to all of the Members with the notice of such Special Assessment.

3. Any Special Assessment levied to restore Reserve Funds under the provisions of California Civil Code section 1365.5(c), or any compatible superseding statutes.

7.7 <u>ALLOCATION OF REGULAR AND SPECIAL ASSESSMENTS</u>.

- A. The Regular and Special Assessments levied by the Board shall be allocated among the Lots as follows: except as otherwise provided herein, an Assessment shall be allocated among each Lot subject to the Assessment by dividing the total amount of the Assessments by the total number of Lots subject to such Assessment.
- B. Special Assessments levied against a particular Lot or an Owner, as the case may be, to reimburse the Association for costs incurred in bringing such Owner and/or Lot into compliance with the provisions of the Governing Documents shall not be subject to the allocation provisions that are contained in Subsection 7.7A.1, above.

7.8 **ASSESSMENT PERIOD**.

- A. Unless the Board determines otherwise, the Association's Fiscal Year shall be a calendar year and the Regular Assessment period shall commence on July 1 of each year and shall terminate on June 30 of the following year.
- B. Each Regular Assessment shall be payable in equal monthly installments unless the Board adopts some other method for payment. The first (1st) Regular Assessment and all Special Assessments shall be adjusted according to the number of months remaining in the Fiscal Year and shall be payable in equal monthly installments unless the Board adopts some other method of payment.

7.9 NOTICE OF INCREASE IN ASSESSMENTS.

The Board shall provide notice by first-class mail to all of the Owners who are subject to any such Assessments, of any increase in a Regular or Special Assessment, not less than thirty (30) nor more than sixty (60) days prior to any such increased Assessments or installments thereof, as the case may be, becoming due.

7.10 DUE DATE, LATE CHARGES, AND INTEREST.

A. At least ten (10) days prior to the commencement of any Regular or Special Assessment, the Board shall give each Owner who is subject to such Assessment, a written notice of the amount of the Assessment that is about to commence and the due date, or due dates if paid installments, as well as the amount of any such installment.

- 1. Such notice need only be given once for any Assessment that is to be paid in installments.
- 2. Unless the Board specifies otherwise, the due date of any installment shall be the first day of each month.
- B. Any Assessment payment, including any installment payment, shall become delinquent if payment is not received by the Association within fifteen (15) days after its due date.
 - 1. There shall be a late charge of ten percent (10%) or ten dollars (\$10.00), whichever is greater, on each delinquent payment. A late charge may not be imposed more than once on any delinquent payment; however, it shall not eliminate or supersede any charges imposed on prior delinquent payments.
 - 2. Interest shall also accrue on any delinquent payment at the rate of twelve percent (12%) per annum. Interest shall commence thirty (30) days after an Assessment becomes due.

7.11 **DELIVERY OF REQUESTED ITEMS**.

- A. Within ten (10) days of the mailing or delivery to the Board of a written request by an Owner to do so, the Board shall provide such requesting Owner with the following items and information:
 - 1. Copies of the Governing Documents.
 - 2. Copies of all the current documents that have been distributed in accordance with the provisions of Section 5.13 of the Declaration, entitled "**PREPARATION AND DISTRIBUTION OF FINANCIAL STATEMENTS, REPORTS, AND COPIES OF THE GOVERNING DOCUMENTS**."
 - 3. Whether, to the knowledge of the Association, the Owner or the Owner's Lots is/are in Violation of a Provision of the Governing Documents.
 - 4. The amount of Regular and Special Assessments, including installment payments, that have been paid by the Owner during the Fiscal Year the request is received.
 - 5. A statement in writing from an authorized representative of the Board showing the amount of the Association's current Regular and Special Assessments and/or fees, any Assessments levied against the Owner and/or the Owner's Lot that are unpaid on the date of such statement and any monetary fines or penalties that have been levied against the Owner and are unpaid as of the date of the statement.

- 6. A copy or summary of any notice that has been previously sent to the Owner pursuant to the provisions of California Civil Code section 1363(h), or any compatible superseding statutes, which sets forth an alleged Violation of a Provision of the Governing Documents, that remains unresolved at the time of the request. Any such notice will not be deemed a waiver of the Board's right to enforce any provision of the Governing Documents against the Owner or the prospective purchaser of the Owner's Lot with respect to any such Violation of a Provision of the Governing Documents.
- 7. A copy of any preliminary list of defects that has been provided to the Members in compliance with the provisions of California Civil Code section 1375, or any compatible superseding statutes, unless the parties later enter into a settlement agreement or otherwise resolve the matter and the Association complies with the requirements of the provisions of California Civil Code section 1375.1, or any compatible superseding statutes. Such list of defects must include a statement that a final determination has not been made as of the date of such statement as to whether such list of defects is accurate and complete.
- 8. A copy of any information that has been provided to the Owner in compliance with the provisions of Subsection 5.16P. of the Declaration, above.
- 9. A notice of any change in the Association's current Regular and Special Assessments as well as its fees that have been approved by the Board, but have not yet become due and payable.
- B. The Board may charge the requesting Owner a fee to recover its reasonable costs of preparing and delivering the requested items and information.
- C. Any prospective purchaser or Mortgagee of the requesting Owner's Lot or Lots, as the case may be, may rely on the information that is contained in any statement provided to a requesting Owner under the provisions of this Section 7.11, provided that reliance may not extend to any Violation of a Provision of the Governing Documents of which the Board does not have actual knowledge at the time such items and information was provided to the requesting Owner.

7.12 ASSOCIATION'S POWER TO COLLECT AND ENFORCE ASSESSMENT LIEN.

- A. The Board has the right to collect and enforce Assessments.
- B. In addition to the enforcement powers described in the provisions of Section 5.6 of the Declaration, entitled, "RIGHT TO IMPOSE SANCTIONS FOR A VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS," and subject to the restrictions on the enforcement of monetary penalties described in the provisions of Section 7.6 of the Declaration, entitled, "SPECIAL ASSESSMENTS PURPOSE OF AND PROCEDURE FOR LEVYING," the Board may enforce any delinquent Assessments, including any delinquent installments of such Assessments, as follows:
 - 1. <u>COLLECTION OF DELINQUENT ASSESSMENTS UNDER \$1,800.00</u>: The Association may attempt to collect delinquent regular or special assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any

accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, in any of the following ways:

- a. By a civil action in small claims court, where the debt may not exceed the jurisdictional limits of the small claims court and shall be the sum of the amount owed as of the date of the filing the complaint plus, in the Court's discretion, any additional amount owed from the period the complaint was filed until satisfaction of the judgment, including late charges, fees and costs of collection, attorney's fees and interest, up to the jurisdictional limits; or
- b. By recording a lien on the owner's separate interest pursuant to Section 7.13 of the Declaration, entitled, "CREATION OF ASSESSMENT LIEN," upon which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the assessments secured by the lien are more than twelve (12) months delinquent. Prior to recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Section 14.17 of the Declaration.
- c. Any other method provided by law, except judicial or non-judicial foreclosure.
- 2. COLLECTION OF DELINQUENT ASSESSMENTS \$1,800.00 OR MORE: In addition to filing a small claims action against the Owner of the separate interest, or utilizing any other method provided by law to collect delinquent assessments which total \$1,800.00 or more (not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest), the Association may use judicial or non-judicial foreclosure, subject to the following conditions:
 - a. Prior to initiating a foreclosure on an Owner's separate interest, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Section 14.17 of the Declaration. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure;
 - b. The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the board members in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all members. The Board shall maintain confidentiality of the Owner or Owners of the separate interest by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale;

- c. The Board shall provide notice by personal service in accordance with the manner of service of summons in CCP Section 415.10, et seq. to an Owner of a separate interest who occupies the separate interest or to the Owner's legal representative, if the Board votes to foreclose upon the separate interest. The Board shall provide written notice to an Owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the owner's separate interest may be treated as the Owner's mailing address.
- d. A non-judicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the separate interest may be redeemed from a foreclosure sale ends 90 days after the sale. In addition to the requirements of Section 2924f of the California Civil Code, a notice of sale in connection with the Association's foreclosure of a separate interest shall include a statement that the property is being sold subject to the right of redemption.
- C. The Board may commence and maintain a lawsuit directly on the debt without waiving its right to establish a lien against the Owner's Lot for any such delinquency.
- D. In any action instituted by the Board to collect a delinquent Assessment together with any accompanying late charges or interest, as the case may be, the prevailing party shall be entitled to recover their costs and reasonable attorney's fees.

7.13 CREATION OF ASSESSMENT LIEN.

- A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366 of the Civil Code, shall be a debt of the Owner of the separate interest at the time the assessment or other sums are levied. Subject to the provisions of Section 7.6 of the Declaration, entitled "SPECIAL ASSESSMENTS PURPOSE OF AND PROCEDURE FOR LEVYING," the Board may impose a lien against the Owner's Lot for the amount of any delinquent Assessment or Assessments as well as any installments thereof, late charges, interest plus any costs of collection including attorney's fees. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due, the association shall notify the owner of record in writing by certified mail of the following:
 - 1. A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, including, but not limited to, items on such statement which indicate the principal owed, any late charges, interest and any attorney fees, as well as the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. a statement that the Owner of the separate interest 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."

- 2. 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.
- 3. The right to request a meeting with the Board. An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed pursuant to this section. The Association shall provide the Owners the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner. Payment plans may incorporate any Assessments that accrue during the payment plan period. Payment plans shall not impede the Association's ability to record a lien on the Owner's separate interest to secure payment of delinquent Assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.
- 4. The right to dispute the Assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program under Section 14.17 of the Declaration.
- 5. The right to request alternative dispute resolution with a neutral third party pursuant to Section 14.17 of the Declaration before the Association may initiate foreclosure against the Owner's separate interest, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.
- B. After compliance with the notice requirements that are provided for in the provisions of Subsection 7.13A.1, above, the Board may impose a lien against the delinquent Owner's Lot in the amount of the delinquent Assessment(s) and/or delinquent installment, as the case may be, plus any costs of collection, late charges and/or interest by Recording a notice of delinquent Assessment ("Notice of Delinquent Assessment") with the Tehama County Recorder. The amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366 of the California Civil Code, shall be a lien on the Owner's separate interest in the common interest development from and after the time the Association causes to be recorded with the county recorded of the county in which the separate interest is located a Notice of Delinquent Assessment.
 - a. The Notice of Delinquent Assessment shall state the following:
 - (1) The amount of any delinquent Assessment(s) and other sums that have been imposed in accordance with the provisions of

California Civil Code section 1366 or any compatible superseding statute;

- (2) A legal description of the Lot against which such delinquent Assessment(s) together with any other sums have been levied;
- (3) The name of the Owner of such Lot; and
- (4) If the lien is to be enforced by a non-judicial foreclosure, the name and address of the trustee authorized by the Board to enforce such lien by nonjudicial foreclosure and sale.
- b. The Notice of Delinquent Assessment shall be signed by any officer of the Association or any employee or agent of the Association who has been authorized to do so by the Board.
- c. The itemized statement of charges owed by the Owner shall be recorded together with the Notice of Delinquent Assessment.
- d. A copy of the Notice of Delinquent Assessment shall be mailed in the manner required by the provisions of Civil Code section 2924b, or any compatible superseding statutes, to all of the Record Owner(s) of such Lot, no later than ten (10) days after the Recording of the Notice of Delinquent Assessment.
- e. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the pro forma operating budget pursuant to Civil Code Section 1365. The Owner's request shall be in writing, and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.
- C. A lien created pursuant to this section shall be prior to all other liens recorded subsequent to the notice of Assessment, except where the Declaration provides for the subordination thereof to any other liens and encumbrances.
- D. Any payments made on a delinquent Assessment(s) shall be applied first (1st) to the principal owed and only after the principal owed is paid in full shall payments be applied to any interest or collection costs. On payment in full of the sums specified in a Notice of Delinquent Assessment, the Association shall cause to be recorded with the County Recorder release of the lien that was created by such Notice of Delinquent Assessment.

7.14 FORECLOSURE UNDER ASSESSMENT LIEN.

- A. Prior to initiating a foreclosure for delinquent Assessments, the Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to Section 14.17 of the Declaration. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.
- B. Once the Board determines that it will commence with judicial or non-judicial foreclosure, and after following the procedures set forth above for the providing of notice, the Association may proceed with foreclosure.
- C. After the expiration of thirty (30) days following the Recording of the Notice of Delinquent Assessment, the Board may enforce any lien that was created by such Recording by the filing of an action in any court of competent jurisdiction for judicial foreclosure or, in the alternative, by non-judicial foreclosure as provided for in the provisions of California Civil Code sections 2924, 2924b, 2924f, 2924g, 2924h, and 2924j or any compatible superseding statutes.
- D. If the Board elects to proceed with a non-judicial foreclosure, then in addition to the requirements of Section 2924 of the Civil Code, a Notice of Default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in CCP Section 415.10, et seq. The Owner's legal representative shall be the person whose name is shown as the Owner of a separate interest in the Association's records, unless another person has been previously designated by the Owner as his or her legal representative in writing and mailed to the Association in a manner that indicates that the Association has received it.
- E. Any foreclosure sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of California Civil Code section 2934a.
- F. The Board may bid at the sale and, if it has been the successful bidder, may hold, lease, mortgage, or convey the acquired Lot.
- G. If the default is cured before completing a judicial foreclosure, or prior to the sale that would result from such a foreclosure, including the payment of all costs and expenses incurred by the Board, the Board shall Record a notice of satisfaction and release of lien and, on receipt of a written request by the current Owner, a notice of rescission of the declaration of default and demand for sale.

7.15 TRANSFER OF A LOT BY SALE OR FORECLOSURE.

The following rules shall govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Lot.

- 1. Except as provided for in the provisions of Section 11.2 of the Declaration, entitled, "**SUBORDINATION**," the sale or transfer of any Lot shall not affect any Assessment lien that was duly Recorded with respect to that Lot prior to such sale or transfer and the Association can continue to foreclose its lien in spite of any change in ownership.
- 2. The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Lot under a foreclosure sale or exercise of a power of sale by the holder of a prior encumbrance, but not by a deed or assignment-in-lieu of foreclosure. A "prior encumbrance" means any Mortgage or lien Recorded prior to the Association's Assessment lien.
- 3. Except as provided for in the provisions of Section 11.2 of the Declaration, entitled, "**SUBORDINATION**," no sale or transfer of the fee title of all or any portion thereof, of a Lot as the result of a foreclosure, an exercise of a power of sale or otherwise, shall relieve any new Owner of such Lot from the liability for any Assessments that are thereafter levied or from the lien thereof.
- 4. Any Assessments, late charges, interest, and associated costs of collection that are lost as a result of a sale or transfer covered by the provisions of this Section 7.15 shall be deemed to be a Common Expense collectible from the Owners of all of the Lots including any person or persons who acquire(s) such Lot and its, his, her, or their heirs, successors and assigns, as the case may be.
- 5. No sale or transfer of a Lot as the result of a foreclosure, an exercise of a power of sale, or otherwise that is occasioned by a senior encumbrance or lien, shall affect the Association's right to maintain an action against the foreclosed previous Owner of the Lot personally, to collect the delinquent Assessments, late charges, interest, and associated costs of collection incurred by said Owner prior to any sale or transfer resulting from such actions.
- 6. The provisions of Section 7.14 of the Declaration, entitled, "**FORECLOSURE UNDER ASSESSMENT LIEN**," and this Section 7.15 are intended to reflect the California law concerning community association Assessment lien priority in effect as of the effective date of the Declaration. In the event that the applicable California laws are revised, the provisions of this Section 7.15 and the above referenced Section 7.14 may be modified by an action of the Board to conform to the new statutory provisions concerning this subject matter without submitting same to a vote of the Owners.

7.16 PAYMENT OF A DISPUTED CHARGE UNDER PROTEST.

A. If a dispute exists between the Owner of a separate interest and the Association regarding any disputed charge or sum levied by the Association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits of small claims court, the Owner of the separate interest may, in addition to pursuing dispute resolution, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any, pursuant to Section 1366 of the Civil Code, and commence an action in small court.

B. Nothing in this section shall impede an Association's ability to collect delinquent Assessments as provided in Sections 1367.1 and 1367.4 of the California Civil Code.

7.17 **REVERSAL OR RELEASE OF LIEN.**

- A. If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the Notice of Delinquent Assessment is recorded a lien release or Notice of Rescission and provide the Owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or Notice of Rescission.
- B. If it is determined, either through the Association's "meet and confer" program or through dispute resolution, that the Association has recorded a lien for a delinquent Assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the Notice of Delinquent Assessment, and costs of recordation and release of the lien, and pay all costs related to the dispute resolution.

ARTICLE VIII MUTUAL WATER COMPANY

8.1 MUTUAL WATER COMPANY MEMBERSHIP.

- A. The Mill Creek/Lassen Mutual Water Company ("Mutual Water Company") has been formed under the general non-profit corporate law of the State of California, for the purpose of operating a water system to serve the development.
- B. Each Owner by the acceptance of a deed that conveys an ownership interest in the fee title of a Lot, thereby agrees to become, and shall become, a member in the Mutual Water Company.
- C. Each and every Owner also agrees to be bound by the articles of incorporation and bylaws of the Mutual Water Company as well as by the properly executed acts and decisions of the board of directors and officers of the Mutual Water Company.

8.2 MUTUAL WATER COMPANY ASSESSMENTS – AGREEMENT TO PAY.

- A. Each and every Owner agrees to pay the Mutual Water Company whatever dues or assessments are levied by its board of directors ("Water Board") or officers of the Mutual Water Company, for the operation and maintenance of the water system.
- B. When a shareholder in the water company has been delinquent in paying his or her water company account for one (1) month, or more, and such shareholder has been billed for the amount due, the water company will send a notice of delinquency to such shareholder by certified mail to the address on record. Such notice will include the amount due,

including the accumulated delinquent fees, the shareholders right to appeal to the Water Board, and shall state the restoration fee if entitlement is lost.

- C. Any loss of entitlement must be done in good faith and in a fair and equitable manner.
- D. If the shareholder appeals to the Water Board, the Water Board shall decide the amount due, if any.
- E. If the shareholder fails to respond within one (1) month after the Water Board's decision, the Water Board will declare the shareholder to be no longer in good-standing, no longer entitled to vote, and may have his/her water shut-off.
- F. Action for collection of delinquent accounts shall be taken after a reasonable time, and in addition to the amount due, the Water Company shall be entitled to recover the accumulated delinquent fees, restoration of entitlement fee, and all collection costs, including reasonable attorney fees.
- G. After payment in full, the shareholder shall be reinstated in good standing, his or her voting rights in the Water Company restored, and the water to his or her Lot turned on.

8.3 <u>SEVERANCE OF THE MUTUAL WATER COMPANY MEMERSHIP PROHIBITED.</u>

- A. An Owner shall not be entitled to sever its, his, her or their fee title interest in a Lot from its, his, her or their membership in the Mutual Water Company for any purpose.
- B. Neither a fee interest in a Lot or its Owner's (s') membership in the Mutual Water Company can be separately sold, conveyed, encumbered, hypothecated, or otherwise dealt with.

8.4 **LIMITATION ON INTERESTS CONVEYED**.

- A. After the initial sale of a Lot to an Owner(s) other than the Declarant, any conveyance of the fee title interest in a Lot or any portion of such interest, by an Owner shall convey the Mutual Water Company membership that is appurtenant to such fee title interest or portion thereof.
- B. However, nothing contained in the provisions of this Section 8.4 shall preclude an Owner from creating an estate for life, an estate for years, a co-tenancy, or a joint tenancy in the fee title interest of a Lot with any other person, persons, entity or entities.

ARTICLE IX INSURANCE

9.1 **LIABILITY INSURANCE**.

A. The Board shall obtain and maintain a comprehensive public liability insurance policy insuring the Association, any manager and the Owners and occupants of Lots as well as their respective family members, Tenants, and Invitees together with the agents and employees of each, against any liability incident to the ownership or use of the Common Area or any other Association-owned or maintained real or personal property and

including, if obtainable, a cross liability or severability of interest endorsement insuring each insured against liability to each other insured.

- B. The limits of such insurance shall not be less than two million dollars (\$2,000,000.00), covering all claims for debt, personal injury, and property damage arising out of a single occurrence.
- C. 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 developments similar in construction, location, and use.

9.2 FIRE AND CASUALTY INSURANCE.

- A. The Board shall obtain and maintain a master or blanket policy of fire and casualty insurance coverage for the full insurable value of all of the Improvements within the Common Area, if any, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies of this nature.
 - 1. If available, the policy shall contain the following endorsements or their equivalent: agreed amount, inflation guard, increased cost of construction, contingent liability from operation of building laws, extended coverage, theft, vandalism, malicious mischief, a special form endorsement, and a determinable cash adjustment clause or similar clause to permit cash settlement covering the full value of the Improvements in case of partial destruction and a decision not to rebuild or replace, and such other endorsements as the Board, in its discretion, shall elect.
 - 2. The policy shall name as insured, the Association and the Owners, and all Mortgagees as their respective interests may appear and may contain a loss payable endorsement in favor of the Trustee described in the provisions of Section 9.3 of the Declaration, entitled, "**PROVISION APPOINTING TRUSTEE**."
- B. The policy shall be primary and noncontributing with any other policy of insurance covering the same loss.
- C. The Association shall not carry an earthquake endorsement without the approval of a majority of the total voting power of the Members.
 - 1. If the Members elect to require the Association to obtain an earthquake endorsement, the endorsement may be subsequently cancelled on vote of a majority of the total voting power of the Members.
 - 2. If cancelled, the Board shall make reasonable efforts to notify the Members of the cancellation at least thirty (30) days before the effective date of any such cancellation.
- D. Subject to any restrictions imposed by any Mortgagees, the Board shall have the power and right to deviate from the insurance requirements contained in the provisions of this

Section 9.2 in any manner that the Board, in its sole discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in the provisions of this Section 9.2, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefore at least thirty (30) days before the effective date of the reduction.

- E. The Association, the Board and officers of the Association shall have no liability to any Owner or Mortgagee if, after a good faith effort:
 - 1. The Board is unable to obtain any insurance required hereunder because the insurance is no longer available;
 - 2. If available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or
 - 3. The Members fail to approve any Assessment increase needed to fund the insurance premiums.

9.3 **PROVISION APPOINTING TRUSTEE**.

- A. All fire and casualty insurance proceeds payable under the provisions of Section 9.2 entitled, "**FIRE AND CASUALTY INSURANCE**," for losses to any real and/or personal property, may be paid to a Trustee to be held and expended for the benefit of the Association, the Owners, any Mortgagees and others, as their respective interests shall appear.
- B. The Trustee shall be a commercial bank or other financial institution, with trust powers in the County, which agrees in writing to accept such trust.
- C. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for in the provisions of the Governing Documents.

9.4 **PROVISION TO ADJUST LOSSES**.

- A. The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute any releases in favor of an insurer.
- B. Each and every Owner, by acceptance of a deed to a Lot, irrevocably appoints the Board as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing, and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto, and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

9.5 **DIRECTOR AND OFFICER LIABILITY INSURANCE**.

To the extent insurance is available, the Board shall purchase and maintain insurance in an amount up to one million dollars (\$1,000,000.00), on behalf of any Director, officer, or member of a committee of the Association, for the purposes of the provisions of this Section 9.5, collectively hereinafter referred to as the "Agents," against any liability asserted against or incurred by the Agents in such capacity or arising out of the Agents' status as such, regardless of whether the Association would have the power to indemnify the Agents against such liability under applicable law.

9.6 <u>WORKER'S COMPENSATION, DEMOLITION, AND OTHER ASSOCIATION</u> <u>INSURANCE</u>.

- A. The Board may purchase and maintain demolition insurance in adequate amounts to cover the razing, in case of total or partial destruction, of the Major Components and a decision not to rebuild, as well as a policy of flood insurance.
- B. The Board shall also purchase and maintain worker's compensation insurance, to the extent it is required by law, for all employees of insured contractors of the Association.
- C. The Board shall also purchase and maintain fidelity bonds and/or insurance, in an amount not less than one hundred and fifty percent (150%) of each year's estimated Common Expenses, which shall contain an endorsement that covers any person who may serve without compensation, if reasonably practical, sufficient to meet the requirements of any Institutional First Mortgagee.
- D. The Board shall also purchase and maintain such insurance on personal property owned by the Association, together with any other insurance, that it deems necessary or, where practical, that is required by any Institutional First Mortgagee.

9.7 **<u>OWNER'S LIABILITY INSURANCE</u>**.

- A. An Owner may carry personal liability and property damage insurance with respect to its, his, or her Lot that it, he, or she desires.
- B. However, any such policy shall include a waiver of subrogation clause acceptable to the Board and to any Eligible Mortgage Holder that encumbers such Owner's Lot.

9.8 **DAMAGE OR DESTRUCTION OF THE COMMON AREA**.

A. If there is a total or partial destruction of any of the Major Components, such Major Components shall be promptly rebuilt, unless, within ninety (90) days from the date of such destruction, the Owners then holding at least seventy-five percent (75%) of the total voting power, at a duly constituted meeting of the Members, determine that repair or reconstruction shall not take place.

If such a meeting is called, the Board shall solicit and obtain bids from at least two (2) reputable contractors for the cost of repairing and/or reconstructing such Major

Components in accordance with the original construction plans and shall present this information to the Owners at said meeting.

- B. If the Major Components are to be rebuilt, all of the Owners shall be obligated to contribute their proportionate share of any funds that are required over and above the available insurance proceeds, to cover the cost of such repair or reconstruction.
 - 1. Said proportionate share shall be determined by dividing the full amount of any additional funds that are required by the total number of Lots in the Development.
 - 2. If any Owner fails to pay its, his, or her proportionate share, the Board may levy a Special Assessment against the Lot of such Owner, which may be enforced under the lien provisions contained in Sections 7.13 and 7.14, inclusive, of the Declaration, entitled, "CREATION OF ASSESSMENT LIEN," and "FORECLOSURE UNDER ASSESSMENT LIEN," respectively, or in any other manner provided for in the provisions of the Governing Documents or by law.

9.9 **DAMAGE OR DESTRUCTION OF A RESIDENCE**.

- A. If all or any portion of any Residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of the Lot on which such Residence is located to rebuild, repair, or reconstruct such Residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.
- B. Any Owner who has suffered such damage shall apply to the Architectural Review Committee for approval of plans of the reconstructing, rebuilding, or repairing of its, his, or her Residence.
 - 1. Application for such approval shall be made in writing to the Architectural Review Committee together with full and complete plans, specifications, working drawings, and elevations showing the proposed reconstruction and the end result thereof.
 - 2. The Architectural Review Committee shall grant such approval only if the design proposed by the Owner would result in a finished Residence that will be in harmony with the exterior design of other Residences within the Property.
- C. The Owner or Owners of any damaged Residence(s) and the Architectural Review Committee shall be obligated to proceed with all due diligence hereunder to discharge their respective obligations.
- D. Unless a waiver or modification of these requirements is obtained from the Architectural Review Committee in accordance with the provisions of Section 12.5 of the Declaration, entitled, "VARIANCES," the Owner(s) shall commence reconstruction or removal of the damaged or destroyed structure within six (6) months after the damage occurs and complete reconstruction within eighteen (18) months after such damage occurs.

9.10 **INSURANCE REVIEW AND NOTICE**.

- A. Notwithstanding anything herein to the contrary, but subject to the provisions of Sections 5.12 and 5.13 of the Declaration, entitled, "SECURING INSURANCE COVERAGE" and "PREPARATION AND DISTRIBUTION OF FINANCIAL STATEMENTS, REPORTS, AND COPIES OF THE GOVERNING DOCUMENTS," respectively, the Board shall periodically, but in no event less than every three (3) years, review all of the insurance coverage maintained by the Association and make such adjustments to the policies' terms and conditions as the Board may consider to be in the best interests of the Association.
- B. The review shall include an appraisal by a qualified appraiser of the current replacement costs of all of the covered property under the Association's policies, unless the Board is satisfied that the current dollar limit of the property policies, coupled with the amount of the actual Reserve Funds on hand, is equal to or greater than said current replacement costs.

ARTICLE X CONDEMNATION

10.1 **<u>CONDEMNATION</u>**.

- A. If an action for condemnation of all or any portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by the vote or written consent of at least fifty-one percent (51%) of all of the Owners who are eligible to vote and with the prior written consent of seventy-five percent (75%) of all of the Eligible Mortgage Holders, the Common Area, or any portion of it, may be sold and conveyed to the condemning authority by the Board or its designees who is/are acting as the attorney-in-fact of all of the Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot, grants to the Board and which shall be coupled with the interest of all of the other Owners, at a price that is deemed fair and equitable by the Board.
- B. On any sale occurring under the provisions of Subsection 10.1A, above, the proceeds of such sale shall be distributed equally to each Owner and their Mortgagees as their respective interests may appear.
- C. If the Common Area, or any portion thereof, is not sold but is instead taken under a judgment by a court of competent jurisdiction, the award for such a taking shall be apportioned among the Owners and their respective Mortgagees, by the terms of the judgment of condemnation and if not so apportioned, then any such award shall be distributed in equal shares to each Owner.

ARTICLE XI PROTECTION OF MORTGAGEES

11.1 MORTGAGE PERMITTED.

Any Owner may encumber its, his, or her Lot with a Mortgage.

11.2 **SUBORDINATION**.

- A. Any lien created or claimed under the provisions of the Governing Documents is expressly made subject to and subordinate to the rights of any First Mortgage that encumbers all or a portion of the Development and that has been made in good faith and for value.
- B. No such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgage of such Mortgage expressly subordinates its interest, in writing, to such lien.
- C. If any Lot is encumbered by a First Mortgage that has been made in good faith and for value, the foreclosure of any lien created in accordance with the provisions of the Governing Documents for Assessments or any installments thereof, shall not operate to effect or impair such Mortgage.
- D. Any Assessment or other charges that are subsequently levied against such Lot and/or Owner, may include any previously unpaid Assessments, or portions thereof, that were levied against the foreclosed Lot, provided all of the Owners, including the foreclosurepurchaser and its, his, her, or their successors and assigns, are required to pay their proportionate share as provided for in the provisions of Subsection 7.6A

11.3 MORTGAGEE'S RIGHT TO EXAMINE BOOKS AND RECORDS.

Institutional First Mortgagees shall have the right to examine the books and records of the Association and any Eligible Mortgage Holder shall have the right to require the submission of financial data concerning the Association including annual audit reports, Budgets, and operating statements as furnished to the Owners.

11.4 **PRIORITY IN DISTRIBUTION OF INSURANCE AND CONDEMNATION PROCEEDS.**

- A. The provisions of Section 10.1 of the Declaration, entitled, "CONDEMNATION," notwithstanding, no Owner or any other party shall have priority over any right of an Institutional First Mortgagee of a Lot pursuant to the provisions of their Mortgage in the case of a distribution to the Owners of insurance proceeds or a condemnation award for losses occasioned by the taking of any portion of a Lot or the Common Area.
- B. Any provision in the Governing Documents to the contrary is to such extent void.
- C. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Institutional First Mortgagees, naming the Mortgagees as their interests may appear.

11.5 **STATUS OF AMENITIES**.

- A. All of the Common Area and the Major Components, as may be appropriate, shall be available for the use of the Owners.
- B. All such Common Area and/or Major Components shall be owned by the Owners in undivided interests or by the Association, free of encumbrances except for any easements granted for public utilities or other public purposes consistent with the intended use of such Common Area and/or Major Components by the Owners or by the Association, as the case may be.

11.6 **DEFAULT NOTICE REQUIREMENT**.

If any Owner has committed a Violation of a Provision of the Governing Documents and such Violation of a Provision of the Governing Documents is not cured within sixty (60) days after a written notice of such Violation of the Provision of the Governing Documents to the responsible Owner, the Association shall give to any Eligible Mortgage Holder of such Owner notice of such default and of the fact that a sixty (60) day period after receipt of the above referenced notice has expired.

11.7 PAYMENT BY MORTGAGEES.

- A. Mortgagees of Lots may, jointly or severally, pay taxes or any other charges which are in default and which may, or have become, a charge against the Common Area.
- B. Such Mortgagees may also pay any overdue premiums on insurance policies or secure new insurance coverage on the lapse of a policy that covers any property of the Association.
- C. Upon making any such payments, such Mortgagees shall be owed immediate reimbursement from the Association.
- D. This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees and upon request of any Mortgagee the Association shall execute and deliver to such Mortgagee a separate written agreement embodying the terms of the provisions of this Section 11.7.

11.8 **LIEN NOT INVALIDATED**.

No Violation of a Provision of the Governing Documents shall invalidate the lien of any Mortgage that has been made in good faith and for value. Notwithstanding the text in the preceding sentence in this Section 11.8, all of the covenants, conditions, and restrictions contained in the Governing Documents shall be binding on any Owner whose title is derived through foreclosure sales, trustee's sale or otherwise.

11.9 <u>MORTGAGEE NEED NOT CURE A VIOLATION OF A PROVISION OF THE</u> <u>GOVERNING DOCUMENTS</u>.

Any Mortgagee who acquires title to a Lot by foreclosure, by deed in lieu of foreclosure or by assignment in lieu of foreclosure shall not be obligated to cure any Violation of a Provision of the Governing Documents that is non-curable or of a type that is not practical or feasible to cure.

11.10 STATUS OF LOAN TO FACILITATE RESALE.

Any First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure, by deed in lieu of foreclosure or by any assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protection of Mortgages under the provisions of the Governing Documents.

11.11 **<u>RIGHT TO APPEAR AT MEETINGS</u>**.

Because of its, his, or her as the case may be, financial interest in the Development, any Mortgagee may appear, but cannot vote, at meetings of the Members as well as of the Board to draw attention to a Violation of a Provision of the Governing Documents that has not been corrected or that has been made the subject of remedial proceedings or a Special Assessment.

11.12 **<u>RIGHT TO FURNISH INFORMATION</u>**.

Any Mortgagee can furnish information to the Board concerning the status of its, his, or her Mortgage.

11.13 RIGHT OF FIRST REFUSAL INAPPLICABLE TO MORTGAGE.

- A. No right of first (1st) refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey the Owner's Lot shall be granted to the Association without the written consent of any subsequent Mortgagee of such Lot.
- B. Under any circumstances, a right of first refusal or option to purchase a Lot that may be granted to the Association or other person, firm or entity, shall not impair the rights of any First Mortgagee of such Lot to:
 - 1. Foreclose or take title to a Lot pursuant to the remedies provided for in the provisions of the Mortgage;
 - 2. Accept a deed or assignment in lieu of foreclosure in the event of default under the such Mortgage; or
 - 3. Sell or lease a Lot acquired by the Mortgagee through a foreclosure or pending foreclosure, as the case may be, of its, his, or her Mortgage.

11.14 NOTICES TO ELIGIBLE MORTGAGE HOLDERS.

- A. An Eligible Mortgage Holder will be entitled to written notice of certain occurrences upon a request in writing to the Association from said Eligible Mortgage Holder identifying its, his, or her name and mailing address together with the Lot number(s) or address(es) of the Lot or Lots encumbered by its, his, or her Mortgage, asking that the Association provide it, him, or her, as the case may be, with a notice of the occurrence of any of the following events:
 - 1. Condemnation or casualty loss which affects a material portion of the Development or any Lot on which there is a Mortgage held by such Eligible Mortgage Holder;
 - 2. Violation of a Provision of the Governing Documents and/or delinquency in the payment of an Assessment or charge which is owed by an Owner of a Lot subject to a Mortgage held by such Eligible Mortgage Holder that has remained uncured for a period of sixty (60) days;
 - 3. Lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
 - 4. Proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders as delineated in this **ARTICLE XI**.
- B. The Association shall discharge its obligation to notify an Eligible Mortgage Holder by sending the written notices required herein to such requesting parties, at the addresses given on its, his, her, or their current requests for any such notice, in the manner prescribed by the provisions of Section 14.11 of the Declaration, entitled, "NOTICES AND COMMUNICATION."

11.15 <u>CONTROL IF MORTGAGEE PROTECTION CONFLICTS WITH OTHER</u> <u>PROVISIONS OF THE GOVERNING DOCUMENTS</u>.

In the event of any conflict between any of the provisions of Sections 11.1 through 11.16, inclusive, of the Declaration and any other provisions of the Governing Documents, the provisions of Sections 11.1 through 11.16, inclusive, of the Declaration shall control.

ARTICLE XII ARCHITECTURAL CONTROL

12.1 **PROVISION FOR ARCHITECTURAL APPROVALS**.

A. No Improvement of any kind shall be commenced, erected or maintained within the Development, nor shall any exterior addition, change, or alteration be made to the exterior of any Residence until the plans and specifications showing the nature, color, kind, shape, height, including front, side and rear elevations, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee as to quality of workmanship and materials, harmony of external

design and location in relation to the surrounding structures, setback lines, topography, and finish grade elevations.

B. It is expressly understood and agreed that the Architectural Review Committee shall be entitled to apply both subjective and objective criteria when considering such submitted plans and specifications, so long as the Architectural Review Committee does so reasonably and in good faith.

12.2 APPOINTMENT AND MAKEUP OF ARCHITECTURAL REVIEW COMMITTEE.

- A. The Board shall appoint not less than three (3) nor more than five (5) Members to serve on the Architectural Review Committee.
- B. Members of the Architectural Review Committee serve at the pleasure of the Board.

12.3 <u>SUBMISSION OF PLANS; ACTION BY THE ARCHITECTURAL REVIEW</u> <u>COMMITTEE</u>.

- A. When a proposed work of Improvement is submitted to the Architectural Review Committee for review, the Architectural Review Committee shall grant the requested approval only if the Architectural Review Committee, in its sole discretion, finds that all of the foregoing provisions have been satisfied:
 - 1. The Owner's plans and specifications:
 - a. Conform to the provisions of the Governing Documents that are in effect at the time said plans are submitted to the Architectural Review Committee;
 - b. Will result in the construction of an Improvement that is in harmony with the external design of other structures and/or landscaping within the Development; and
 - c. Will not interfere with the reasonable enjoyment of any other Owner of its, his, or her Lot.
 - 2. The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standard prevailing within the Development, together with the overall plan and scheme of the subdivision as well as the purpose of the provisions of the Governing Documents.
- B. Though it is recognized that the Architectural Review Committee's determination to approve or disapprove an Improvement will, of necessity, be subjective to some degree, the members of the Architectural Review Committee shall act reasonably and in good faith.
- C. Factors commonly considered by the Architectural Review Committee in reviewing proposed Improvements include, but are not limited to, the following:

- 1. The quality of workmanship and materials to be used in the proposed Improvement;
- 2. The harmony of the proposed Improvement's exterior design, finish materials, and color with that of the existing structure; and
- 3. The proposed location of the Improvement in relation to existing topography, finished grade elevations, roads, Common Areas, and other structures.
- D. The Architectural Review Committee shall be entitled to determine that a proposed Improvement, or any component thereof, is unacceptable in the context of a particular Lot, even if the same or a similar Improvement/component has previously been approved for use at another location or locations within the Development.
- E. Factors that may cause the Architectural Review Committee to reject a proposal that was previously approved at another site include, but are not limited to, the following:
 - 1. Poor drainage;
 - 2. Visibility from roads, Common Area, or Lots;
 - 3. Proximity to other Residences or Major Components; or
 - 4. A prior adverse experience with the product or design of the proposed Improvement or any component thereof.
- F. Appeals from the decisions of the Architectural Review Committee may be made to the Board, which may elect, in its sole discretion, to hear the appeal or, in the alternative, to affirm the decision of the Architectural Review Committee. The provisions of the Association Rules shall contain procedures to process appeals pursuant to this section.

12.4 STANDARDS AND PROCEDURES FOR THE ARCHITECTURAL RULES.

- A. The Architectural Review Committee may, from time to time, subject to review by the Board, adopt, amend, and repeal the Architectural Rules.
- B. The Architectural Rules shall provide guidelines for the architectural design, placement of any work of Improvement, color schemes, exterior finishes, and materials, as well as any similar features, which are recommended for use within the Development, including, but not limited to, those found in the provisions of the "FOREST SERVICE HANDBOOK VALLEJO, CA FSH 2709.11 SPECIAL USES HANDBOOK RS Supplement No. 2709.11 2000-1 Effective September 7, 2000.".
- C. The Architectural Rules shall not be in derogation of the minimum standards required by the provisions of the Governing Documents.
- D. In the event of any conflict between the Architectural Rules, Declaration, Articles, and/or Bylaws, the provisions of the Declaration, Articles, and/or Bylaws, whichever is/are applicable, shall prevail.

12.5 VARIANCES.

The Board or the Architectural Review Committee shall be entitled to allow reasonable variances with respect to the provisions of this Section 12.5 or any restrictions specified in the provisions of **ARTICLE IV** of the Declaration, entitled, "**COVENANTS AND USE RESTRICTIONS**," that have application to architectural design, in order to overcome any practical difficulties, to avoid any unnecessary expense, or to prevent any unjustifiable hardships, provided that such grant will not in any way relieve the requesting Owner from complying with any and all of the requirements of any governmental or quasi-governmental agency or authority and the following conditions are met:

- 1. If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under the provisions of the Governing Documents, the Board or the Architectural Review Committee must conduct a hearing on such proposed variance after giving at least ten (10) days' prior written notice to all of the Owners whose Lots are within one hundred (100) feet of the Lot to which the variance will apply.
 - a. Such Owners shall have thirty (30) days from the receipt by them of such notice in which to submit to the Board or the Architectural Review Committee, whichever is applicable, their written comments, or objections with respect to such variance.
 - b. No decision shall be made concerning the proposed variance until the above reference thirty (30) day period has expired.
- 2. The Board or the Architectural Review Committee, whichever is applicable, must make a good faith determination that:
 - a. The requested variance does not constitute a material deviation from the overall plan and scheme of the Development or from any provision of the Governing Documents and that the proposal allows the overall architectural objectives of the Development to be substantially achieved despite such variance;
 - b. The proposed variance relates to a requirement of the provisions of the Governing Documents that it is unnecessary or burdensome under the circumstances; and
 - c. The proposed variance, if granted, will not result in a material detriment or create an unreasonable nuisance with respect to any other Lot, the Common Area, or an Owner.

12.6 **<u>CERTIFICATE OF COMPLIANCE.</u>**

- A. Within thirty (30) days after a written demand is delivered to the Board or the Architectural Review Committee, as the case may be, by an Owner and upon payment to the Association of any reasonable fee, if applicable, which may be fixed from time to time by the Board, the Board or the Architectural Review Committee, whichever is applicable, shall issue a Certificate of Compliance, which shall be executed by two (2) Directors or two (2) members of the Architectural Review Committee, as the case may be, certifying, with respect to any Lot that is specified in the above referenced demand and is owned in fee by the applicant Owner(s), that as of the date of such Certificate of Compliance, either:
 - 1. All of the Improvements made, as well as any other work that has been completed on such Lot, complies with the provisions of the Governing Documents and any variances that may have been issued are in compliance with the provisions of Section 12.5 of the Declaration, entitled, "VARIANCES;" or
 - 2. That any such Improvements and/or other work do not so comply, in which event the Certificate of Compliance shall also identify the non-complying Improvements and/or other work and shall set forth with particularity the basis of such noncompliance.
- B. Any purchaser from such Owner, or anyone deriving any interest in such Lot through the Owner, shall be entitled to rely on such Certificate of Compliance with respect to the matters therein set forth, such matters being conclusive as between the Association, all of the Owners, and any persons deriving any interest in such Lot through them.

ARTICLE XIII AMENDMENT OF DECLARATION

13.1 PROCESS TO AMEND OR REVOKE THE PROVISIONS OF THE DECLARATION.

- A. The Declaration may be amended or revoked in any respect by the vote or written consent of a simple majority of the voting power of the Members.
- B. However, if any provision of the Governing Documents requires a greater or lesser percentage of the voting power of any class of the Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of the Members shall be required to amend or revoke such provision.
- C. Also, if the consent or approval of any governmental authority, Eligible Mortgage Holder or other person, firm, agency, or entity is required under the provisions of the Governing Documents with respect to any amendment to or revocation of any provision of the Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.
- D. Any amendment or revocation to a provision of the Declaration shall be evidenced by an instrument that has been certified by the Secretary or other duly authorized officer of the Association, makes the appropriate reference to the provision of the Declaration that has

been amended or revoked, as the case may be, as well as any other prior amendments to the Declaration that have been made in compliance with the provisions of this **ARTICLE XIII**, is appropriately acknowledged and has been Recorded in the Office of the County Recorder of the County.

13.2 <u>CONTROL IF THE PROVISIONS OF ARTICLE XII CONFLICT WITH ANY</u> MORTGAGEE PROTECTION OR OTHER PROVISIONS OF THE DECLARATION.

To the extent any provision of Sections 13.1 through 13.6, inclusive, of the Declaration conflict with the provisions of Sections 11.1 through 11.16, inclusive, or any other provisions of the Declaration, except those contained in the provisions of Section 13.3 of the Declaration, entitled, "COMPLIANCE WITH THE PROVISIONS OF BUSINESS AND PROFESSIONS CODE SECTION 11018.7," the provisions of Sections 11.1 through 11.16, inclusive, or any other conflicting provisions, shall control.

13.3 <u>COMPLIANCE WITH THE PROVISIONS OF BUSINESS AND PROFESSIONS CODE</u> <u>SECTION 11018.7</u>.

All amendments to or revocations of the provisions of the Declaration shall comply with all of the applicable provisions of California Business and Professions Code section 11018.7, or any compatible superseding statutes.

13.4 <u>RELIANCE ON AMENDMENTS TO OR REVOCATIONS OF THE PROVISIONS OF THE DECLARATION</u>.

Any amendments to and/or revocations of the provisions of the Declaration that have been perfected in accordance with the provisions of the Declaration, may be presumed valid by anyone relying on them in good faith.

13.5 <u>CONFORMING WITH THE MORTGAGEE REQUIREMENT PROVISIONS OF THE DECLARATION</u>.

- A. It is the intent of the Association that the provisions of the Governing Documents, together with the Development in general, shall now and in the future, meet all of the requirements necessary to purchase, guarantee, insure, or subsidize any Mortgage of a Lot by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, and the Veterans Administration.
- B. The Board and each Member shall take any action or shall adopt any resolutions that are reasonably required by any Mortgagee to conform to the provisions of the Governing Documents and/or the Development and to the Mortgage requirements of any of the above referenced entities or agencies.

13.6 LOT 1 OWNER'S APPROVAL REQUIRED FOR CERTAIN AMENDMENTS

Notwithstanding any other provision of the Governing Documents, no amendment, change, modification, or termination of the following provisions of the Declaration, <u>as they pertain to Lot 1</u> <u>only</u>, shall be effective until approved in writing by the Owner(s) of Lot 1:

1. Section 4.3, entitled "ANTENNA AND EXTERNAL FIXTURES"

- 2. Section 4.6, entitled "FENCES AND WALLS"
- 3. Section 4.8, entitled "HOUSE NUMBERS."
- 4. Section 4.10, entitled "LEASING OR RENTING," Subsection 4.10B.
- 5. Section 4.12, entitled "MACHINERY AND EQUIPMENT"
- 6. Section 4.18, entitled "**RESIDENTIAL USE**"
- 7. Section 4.22, entitled "SIGNS"
- 8. Section 4.23, entitled "TEMPORARY LIVING QUARTERS."
- 9. Section 4.24, entitled "TIME SHARING PROHIBITED"
- 10. Section 4.25, entitled "TRASH DISPOSAL"
- 11. Section 13.6, entitled "LOT 1 OWNER'S APPROVAL REQUIRED FOR CERTAIN AMENDMENTS."

13.7 COUNTY APPROVAL REQUIRED FOR CERTAIN AMENDMENTS.

Notwithstanding any other provision of the Declaration, no addition, amendment, change, modification, or termination of the conditions, covenants and restrictions of the Declaration, which establish, provide for, regulate or relate to matters imposed on the Development by the Conditions of Approval for Tentative Tract Map No. 02-1006, shall be effective for any purpose until approved in writing by the County.

13.8 CHANGE IN USE OF LOT 1.

As set forth in the grant deed for Lot 1, Assessor's Parcel Number 015-100-37 is subject to the provisions of this Declaration. Any change in use of Lot 1 is subject to Board approval.

ARTICLE XIV GENERAL PROVISIONS

14.1 **<u>BINDING EFFECT</u>**.

The Governing Documents shall inure to the benefit of and be binding on the successors and assigns of the Declarant and the heirs, personal representatives, grantees, Tenants, and assigns of the Owners.

14.2 CONFLICTS WITH OTHER DOCUMENTS.

If there are conflicts or inconsistencies between the provisions of the Declaration and either the Articles of Incorporation, the Bylaws, the Association Rules, or the Architectural Rules, the provisions of the Declaration shall prevail.

14.3 **<u>CUMULATIVE REMEDIES</u>**.

Each remedy provided for in the provisions of the Governing Documents shall be cumulative and not exclusive. Failure to exercise any remedy provided for in the provisions of the Governing Documents shall not, under any circumstances, be construed as a waiver of such remedy.

14.4 EASEMENTS RESERVED AND GRANTED.

Any easements referred to in the provisions of the Governing Documents shall be deemed reserved or granted, or both reserved and granted, by reference to the appropriate provisions of the Governing Documents in any deed to any Lot.

14.5 **<u>HEADINGS</u>**.

The headings used in the provisions of the Declaration are for convenience only and are not to be used to interpret the meaning of any such provisions.

14.6 **INCORPORATION OF EXHIBITS**.

The exhibits referred to in the text are attached to the Declaration and incorporated by reference.

14.7 **LIBERAL CONSTRUCTION**.

The provisions of the Governing Documents should be liberally construed to effectuate their purpose of creating a Common Plan for the development of a Planned Development and for the maintenance of the Common Area and Lots, as well as the operation of the Association.

14.8 **NO DISCRIMINATORY RESTRICTIONS**.

No Owner shall execute or cause to be recorded any instrument that imposes a restriction upon the sale, leasing or occupancy of its, his, or her Lot on the basis of race, sex, marital status, national ancestry, color, or religion.

14.9 **<u>NO FIXED TERM</u>**.

The Declaration shall continue in full force and effect until the Declaration is revoked pursuant to **ARTICLE XIII** of the Declaration, entitled, "**AMENDMENT OF DECLARATION**."

14.10 NOTICES AND COMMUNICATION.

Unless otherwise expressly stated in the provisions of the Governing Documents, all notices and/or communications that may be required by the provisions of the Governing Documents shall comply with the following guidelines: any communication and/or notice of any kind permitted or required in the provisions of the Governing Documents shall be in writing and may be served, as an alternative to personal service, by mailing the notice as follows:

- a. If to a Member, to the street address of such Member's Lot or to such other address that such Member may from time to time designate in writing to the Board.
- b. If to the Association, to the Mill Creek Summer Home Owners Association at the principal office of the Association, or to such other address as the Board may from time to time designate in writing to the Members.

14.11 **NOTIFICATION OF SALE**.

- A. Concurrently with the consummation of the sale of any Lot under circumstances where the transferee becomes an Owner of the Lot, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale.
- B. Such notification shall set forth the name of the transferee and its, his, or her Mortgagee and transferor, the common address of the Lot purchased by the transferee, the transferee's and the Mortgagee's mailing address and the date of the deed conveying an interest in such Lot to the transferee.
- C. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the Manager, if any, shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor.
- D. Mailing addresses may be changed at any time upon written notification to the Board.
- E. Notices shall be deemed received forty-eight (48) hours after they have been mailed, if mailed to the transferee or its, his, or her transferor, if the Board has received no notice of transfer, as above provided, by certified mail, return receipt requested, at the mailing address above specified.
- F. Notices shall also be deemed received twenty-four (24) hours after being sent by telegram or upon personal delivery to any occupant of the Lot over the age of twelve (12) years.

14.12 NUMBER; GENDER.

The singular shall include the plural and the plural the singular unless the context requires the contrary. The masculine, feminine, and neuter shall each include masculine, feminine, or neuter as the context requires.

14.13 **OWNER'S ACCESS TO BOOKS**.

Any Owner may, at any reasonable time and upon reasonable notice to the Board or the Manager, as the case may be, at its, his, or her own expense, cause an audit or inspection to be made of the books and financial records of the Association.

14.14 SEVERABILITY OF PROVISIONS.

The provisions of the Declaration shall be deemed independent and severable and the invalidity, partial invalidity, or unenforceability of any provision or provisions shall not invalidate any other provisions.

14.15 VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS AS NUISANCE.

Every act or omission in Violation of a Provision of the Governing Documents shall constitute a nuisance and, in addition to all other remedies that may be available, may be abated or enjoined by an Owner, any Director, the manager, if any, or the Association.

14.16 **DISPUTE RESOLUTION.**

- A. <u>MEET AND CONFER PROCESS</u>. The Association has established a fair, reasonable and expeditious procedure for resolving a dispute between the Association and a Member involving their rights, duties and liabilities within the Association. This section is intended to comply with California Civil Code Section 1363.810, et seq.
 - 1. Either party to a dispute contemplated in this section may invoke the meet and confer procedure as provided below.
 - a. The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.
 - b. A Member of the Association may refuse a request to meet and confer. The Association may not refuse a request to meet and confer.
 - c. The Board shall designate a Board member to meet and confer.
 - d. The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.
 - e. A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association.
 - f. A Member of the Association may not be charged a fee to participate in the process.
 - 2. An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:
 - a. The agreement is not in conflict with law or the governing documents of the common interest development or Association; and
 - b. The agreement is either consistent with the authority granted by the Board of Directors to its designee or the agreement is ratified by the Board of Directors.
- B. <u>ALTERNATIVE DISPUTE RESOLUTION</u>. Subject to the restrictions set forth herein, neither the Association, nor an Owner or Member may file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution ("ADR").
 - 1. The ADR process set forth herein is only applicable to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure. This process does not apply to the filing of a small claims action.

- 2. Except as set forth herein, the ADR process does not apply to an assessment dispute.
- 3. To initiate the ADR process, either party to a dispute shall send a "Request for Resolution." The Request shall state a brief description of the dispute, a request for ADR, a notice that the responding party shall respond within 30 days of the request, and, if the responding party is the Owner of a separate interest, a copy of Article 2 of Civil Code Division 2, Part 4, Title 6, Chapter 7 ("Alternative Dispute Resolution").
- 4. Service of the Request shall be by personal delivery, first class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the responding party with actual notice of the request.
- 5. A party on whom a Request is served has 30 days to accept or reject the request. If a party does not accept a request within that period, the request is deemed rejected by the party.
- 6. If the responding party accepts the Request, the parties shall complete the ADR process within 90 days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.
- 7. Section 1115, et seq. of the Evidence Code applies to any ADR process initiated by a Request for Resolution.
- 8. The costs of the ADR shall be borne by the parties.
- 9. If a Request is served before the end of the applicable time limitation for commencing an enforcement action, the time limitation is tolled during the following periods:
 - a. The period provided for response to a Request; and
 - b. If the Request is accepted, the period provided for completion of the ADR, including an extension stipulated to by the parties.
- 10. The party initiating an enforcement action subject to Article 2 (ADR) must file with its initial pleading a certificate stating either (1) ADR has been completed in compliance with Article 2; and/or (2) one of the other parties to the dispute did not accept the terms offered for ADR; and/or (3) preliminary or temporary injunctive relief is necessary. Failure to file this certificate is grounds for a demurrer or motion to strike.
- 11. The Association shall annually provide its Members a summary of the provisions of Article 2 (ADR) that specifically references this article. The summary shall include the following language: "Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 1369.520 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing

documents or the applicable law." The summary shall be provided either at the time the pro forma budget is distributed or in the matter prescribed in Section 5016 of the Corporations Code. The summary shall also include a description of the Association's "meet and confer" program.

Declarant has executed the Declaration as of the _____ day of _____, 20___.

Mill Creek Summer Homeowners Association

By: _____

ACKNOWLEDGMENT STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me,

a Notary Public in and for said County and State, personally appeared _____

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.

Signature of Notary

} SS.