

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LAKE FOREST -- WATERFORD**

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**DECLARATION  
OF  
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FOR  
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The Declaration of Covenants, Conditions and Restrictions of Lake Forest -- Waterford executed by Southfork Partnership, a California general partnership ("Declarant"), and Recorded on March 17, 1988 as Instrument No. 13194 of the Official Records of El Dorado County, California, incorporating those certain documents Recorded in the Official Records of El Dorado County July 11, 1988 in Book 2976, Page 368; November 29, 1988 in Book 3053, Page 302; July 28, 1989 in Book 3175, Page 140; August 11, 1989 in Book 3183, at Page 628; October 1, 1993, in Book 4117, Pages 136 and 137; April 14, 1989 in Book 3117, Page 683; July 25, 1989 in Book 3172, Page 319, December 4, 1989 in Book 3252, Page 704, and June 1, 1990 in Book 3362, Page 58, and as amended or subject to additional annexation ("Original Declaration"), which affects all of the Properties described and commonly known as Lake Forest -- Waterford, is hereby amended and restated in its entirety to read as follows:

**RECITALS**

A. Declarant was the original owner of that certain real property (the "Properties") located in the County of El Dorado, State of California, which is more particularly described in the Original Declaration and incorporated herein by reference.

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

C. It was the further intention of the Declarant to sell and convey residential Lots to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the

subdivision, development, sale and use of the Properties as a "planned development" as that term is defined in California Civil Code section 1351(k) for the subdivision, improvement, protection, maintenance and sale of Lots within the Lake Forest -- Waterford common interest development, all of which are agreed and declared to be for the purpose of enhancing, maintaining, and protecting the value and attractiveness of the Lake Forest -- Waterford development. Finally, it was the intention of Declarant that the "Common Areas" and "Common Facilities" be owned and maintained by the Lake Forest -- Waterford Owners Association, but reserved exclusively for the use and enjoyment of the Members, their tenants, lessees, guests and invitees, all subject to the terms and conditions of this Declaration and the other Governing Documents.

D. On MAY 17, 1999, the Owners of Lots representing more than 51 percent of the voting power of the Members of the Association voted by written ballot to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in the Original Declaration. It was the intention of the Owners to amend and restate the Original Declaration, in its entirety, with the Recordation of this Declaration. The Owners' action to amend and restate the Original Declaration as set forth herein and the fact that the requisite percentage of affirmative votes required in the Original Declaration was achieved, is attested by the execution of this First Restated Declaration by duly authorized officers of the Association, as required by California Civil Code section 1355(a). As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

## ARTICLE I Definitions

Section 1.01. "Architectural Review Committee" or "Committee" means the Committee created in accordance with Section 5.01, below.

Section 1.02. "Articles" means the Articles of Incorporation of the Association, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

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

Section 1.04. The "Association" shall mean and refer to Lake Forest -- Waterford Owners Association, a California nonprofit mutual benefit corporation.

Section 1.05. "Association Rules" means the rules, regulations and policies adopted by the Board of Directors pursuant to Section 3.07, below, as the same may be in effect from time to time. The Architectural Rules also form a part of the Association Rules (see Section 5.04, below).

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

Section 1.07. "Bylaws" mean the Association's Bylaws and any amendments thereto.

Section 1.08. "Common Areas" means and refers to all that portion of the property owned or maintained by the Association for the use and enjoyment of the Owners.

Section 1.09. "Common Expense" means any use of Association funds authorized by Article IV, below, and Article IX of the Bylaws and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area or Common Facilities; (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors; (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities, and for nonpayment of any Assessments; and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

Section 1.10. "Declarant" means the original developer of the Properties, namely Southfork Partnership, a California general partnership.

Section 1.11. "Development Agreement" shall mean the Development Agreement by and between the County of El Dorado and Southfork Partnership relative to the development known as Lake Forest, adopted by the County of El Dorado on June 30, 1987, and recorded on October 16, 1987, in Book 2841, Page 534, of Official Records of the County of El Dorado as such Development Agreement presently reads and as it may be modified or amended from time to time.

Section 1.12. "Downslope Lot" shall mean and refer to a Lot in which there is a decrease in elevation between the lowest point on the centerline of any road serving the Lot and the center point of that Lot.

Section 1.13. "FNMA" shall mean and refer to the Federal National Mortgage Association.

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

Section 1.15. The "Lake Forest Owners Association" shall mean the owners association established by the Landscape CC&Rs as hereafter defined.

Section 1.16. "Landscape CC&Rs" shall mean and refer to the Master Declaration of Covenants, Conditions and Restrictions for Lake Forest recorded on March 17, 1988, in Book 2913, Page 98, of Official Records of El Dorado County.

Section 1.17. A "Lot" shall mean and refer to any of the separate plots of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 1.18. The "Maintenance Enforcement Agreement" means the agreement between the El Dorado Hills Community Services District and the Declarant, regarding enforcement of certain landscape maintenance obligations of declarant and its successors, recorded on November 24, 1987, in Book 2862, Page 386, of the Official Records of the County of El Dorado.

Section 1.19. "Member" means any person holding a membership in the Association.

Section 1.20. A "Mortgage" means a mortgage or deed of trust encumbering a Lot or other portion of the development. A "mortgagee" and "mortgage holder" shall include the beneficiary under a deed of trust. An "institutional mortgagee" or "institutional holder" is a mortgagee that is a bank or savings and loan association, or established mortgage company or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency, and that holds a first mortgage on any Lot or on the Common Area.

Section 1.21. The "Owner" means and refers to the record owner, whether one or more person or entity, of a fee simple title to any Lot which is part of the properties.

If the Lot is subject to a recorded Land Installment Sale Contract, "Owners" shall mean and refer to the contract vendee. "Owner" shall not include those having any such interest merely as security for the performance of an obligation.

Section 1.22. "Properties" means all the property constituting the Lake Forest -- Waterford common interest development, as more particularly described in the Original Declaration.

Section 1.23. "Residence" means the improvements constructed on an individual Lot.

Section 1.24. "Scenic Corridor" refers to the medians and setback along Francisco Drive shown as Lots A, B and C on the Subdivision Map which the Lake Forest Owners Association owns and is obligated to maintain in accordance with the Landscape CC&Rs.

Section 1.25. "Subdivision Map" means the final subdivision map filed with El Dorado County for any phase of the Lake Forest -- Waterford common interest development.

Section 1.26. An "Upslope Lot" shall mean and refer to a Lot in which there is an increase in elevation between the highest point on the centerline of any road serving the Lot and the center point of that Lot.

## ARTICLE II Property Rights

Section 2.01. Owners' Easements of Enjoyment. In connection with the development of the Properties, the Declarant conveyed all Common Area parcels to the Association by grant deed. Every Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Area, if any, in all phases of the development including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with the title to every Lot. The Owner's property rights are subject to the following provisions:

(a) The right of the Association to limit the number of guests, and to adopt association rules and regulations ("Association rules") regulating the use and enjoyment of the Common Area, if any, including reasonable rules and regulations regarding parking privileges and the use of the recreational facilities situated on the Common Area, if any.

(b) The right of the Association to dedicate or transfer any part of the Common Area, if any, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless it has the prior written authorization of a majority of the Association's members and a written instrument evidencing such dedication or transfer and such written authorization has been recorded in El Dorado County; provided, however, no such dedication shall impair the ingress and egress to any individual residence unit within the properties.

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

(d) The right of the Association, or its agents, to enter any Lot to perform its obligations under this Declaration, including obligations with respect to construction, maintenance or repair for the benefit of the Common Area, if any, or the Owners in common, or to make necessary repairs that the Lot Owner has failed to perform. The right shall be immediate in case of an emergency originating in or threatening such Lot or any other Lot or Common Area and the obligation can be performed whether or not the Owner is present.

Section 2.02. Provisions Relating to the Lake Forest Owners Association and the Landscape CC&Rs. In addition to membership in the Association, all Owners of Lots within Lake Forest -- Waterford are members of the Lake Forest Owners Association, a nonprofit corporation which performs certain master association duties and responsibilities pursuant to the Landscape CC&Rs and the Maintenance Enforcement Agreement, including the following:

(a) Assessments to the Lake Forest Owners Association. The Landscape CC&Rs provide for assessments for the purpose of maintaining certain landscaped area in the Lake Forest area. Within the Properties, the areas to be maintained by the Lake Forest Owners Association established pursuant to the Landscape CC&Rs is the Scenic Corridor. As required by Section 8.05 of the Landscape CC&Rs, the Association shall collect from each Owner and remit to the Lake Forest Owners Association (as part of the Association's regular assessment) an amount that will meet the obligations of all Lake Forest -- Waterford owners under the Landscape CC&Rs. Included with each such payment shall be a list designating the number of each Lot and the amount of its assessment which is so paid.

(b) Exercise of Voting Rights for Memberships in the Lake Forest Owners Association. At its first regularly scheduled meeting each year, the Board of the Association shall appoint a representative to exercise the voting rights of all Lake Forest -- Waterford owners as members of the Lake Forest Owners Association. The appointed representative, who must be a Member in good standing, shall continue in that capacity for the balance of the year, unless sooner replaced by the Board. The appointed representative shall have the exclusive right to exercise the voting rights of all Lake Forest -- Waterford Owners unless a majority of the Association's Members vote at any regular or special meeting to have each Owner individually exercise its voting rights in the Lake Forest Owners Association. An election by the Owners to individually exercise Lake Forest Owners Association voting rights shall be effective until the next annual membership meeting. If a majority of the Members do not vote at the next annual membership meeting to continue the individual exercise of Lake Forest Owners Association voting rights, then the Board shall again have the right to appoint a representative from the membership to exercise the voting rights of all Members as members of the Lake Forest Owners Association.

(c) Maintenance Enforcement Agreement. The Properties are subject to the Maintenance Enforcement Agreement which requires Declarant or its successors to maintain the Scenic Corridor and similar areas throughout the area subject to the Landscape CC&Rs (collectively, the "Landscaped Corridor"). To perform this maintenance responsibility, a Landscape and Lighting Assessment District was formed pursuant to Streets and Highways Code section 22500, et seq., for the purpose of maintaining the Landscaped Corridor. Each Owner waives any right to protest the imposition of an annual assessment as may be reasonably required to permit the Landscape and Lighting Assessment District to maintain the Landscaped Corridor. Such annual assessment shall be in lieu of the assessment imposed pursuant to the Landscape CC&Rs.

(d) Scenic Corridor. The Scenic Corridor was conveyed by the Declarant to the Lake Forest Owners Association and shall be maintained by the Lake Forest Owners Association in accordance with the Landscape CC&Rs.

Section 2.03. Lift Station. Lot D as shown on the Subdivision Map and such other lettered lots as may be shown on the final subdivision maps for subsequent phases of the Lake Forest -- Waterford development were conveyed by the Declarant to the El Dorado Irrigation District for the construction and maintenance of a sewer lift station.

**Section 2.04. Leasing of Residences and Delegation of Rights of Use and Enjoyment.**

(a) **Leasing and Delegation of Rights, Generally.** Any Owner may delegate his or her right of enjoyment to the Common Area, if any, to the members of his or her family, his or her tenants or contract purchasers who reside in the Owner's Residence. However, any lease agreement between an Owner and a tenant shall comply with the provisions of subparagraph (b), below.

(b) **Required Terms for Lease or Rental Agreements.** The Lake Forest -- Waterford development is designed and intended as an Owner-occupied, residential development. To promote that objective, no Owner shall rent, lease or otherwise delegate the use and occupation of his or her Lot except upon all the following terms and conditions:

(i) No Lot may be leased or rented for a period of less than thirty (30) days.

(ii) The rental shall apply to not less than the entire Lot including its appurtenant rights, except its voting rights in the Association.

(iii) Any rental shall be by a written agreement which shall provide that the tenancy is subject to the terms of the Association's Governing Documents and that any failure of the tenant to comply with the terms of any Governing Document shall constitute a default under such agreement.

(iv) All Owners leasing or renting their Residences shall promptly notify the secretary of the Association in writing of the names of all tenants and members of tenant's family occupying such Residence and of the address and telephone number where the Owner-lessor and the tenant can be reached.

(c) **Discipline of Lessees.** Subject to subparagraph (d), below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances which may include actions directly against the tenant or the Owner, including, without limitation, the imposition of fines and penalties against the Owner, or both.

(d) **Due Process Requirements for Disciplinary Action.** Except for circumstances in which immediate corrective action is necessary to prevent damage or

destruction to the Properties or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) the Owner has received written notice from the Board, the Association's property manager or an authorized committee of the Board detailing the nature of the lessee's/tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner; and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with Section 14.06(d), below.

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

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

(b) Notification Regarding Governing Documents.

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

(A) A copy of the Governing Documents;

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

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

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

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

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

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

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

(g) Joint Ownership of Lots. In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(h) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Lot or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to Article IV, below.

(i) Termination of Obligations. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any

Assessments levied with respect to such Lot which become due after the date of Recording of the deed evidencing the transfer and, upon such Recording, all Association membership rights possessed by the transferor by virtue of the ownership of the Lot shall automatically cease.

**ARTICLE III**  
**The Lake Forest -- Waterford Owners' Association**

**Section 3.01. Association Membership.** Every Owner of a Lot shall be a Member of the Lake Forest -- Waterford Owners' Association. Each Owner shall hold one membership in the Association for each Lot owned and the membership shall be appurtenant to such Lot. Sole or joint ownership of a Lot shall be the sole qualification for membership in the Association. Each Owner shall remain a Member until his or her ownership in all Lots in the Properties ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed in lieu thereof.

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

**Section 3.03. Voting Rights of Members.** Each Member shall be entitled to one vote for each Lot owned by that Member. When more than one person holds an interest in any Lot, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Lot. Voting rights may be temporarily suspended under those circumstances described in Section 14.06, below.

**Section 3.04. Assessments.** The Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within the Properties and to enforce payment of such Assessments in accordance with Article IV, below. Any Assessments levied by the Association against its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

**Section 3.05. Transfer of Memberships.** Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant and then, only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Lot shall pass automatically to the purchaser upon Recording of a deed evidencing the transfer of title. In the case of an encumbrance of such Lot, a Mortgagee does not have membership rights until he or she becomes an

Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use pursuant to Section 2.04, above, do not thereby become Members, although the tenant and his or her family and guests shall, at all times, be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer of membership rights is void. If any Owner fails or refuses to transfer the membership registered in his or her name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 3.06. Powers and Authority of the Association.

(a) Powers, Generally. The Association shall have the responsibility of owning, managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its properties and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which, in the sole discretion of the Board, may be considered necessary or appropriate to the exercise of any of the express powers of the Association for the general welfare of the Owners. The specific powers of the Association, and the limitations thereon, shall be as set forth in Article IX of the Bylaws.

(b) Association's Right of Entry.

(i) Right of Entry, Generally. Without limiting the generality of the foregoing enumeration of corporation powers, the Association is hereby authorized and empowered directly or through its agents to enter any Lot when necessary to perform the Association's obligations under this Declaration, including: (i) obligations to enforce the architectural, minimum construction standards, and land use restrictions of Articles V, VI and VIII, below; (ii) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or (iii) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

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

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

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

(C) In all non-emergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner in default, the Association's entry shall be subject to observance of the notice and hearing requirements imposed in Section 14.06, below.

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

Section 3.07. Association Rules.

(a) Rule Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners ("Association Rules"). The Association Rules may concern, but need not be limited to: (i) matters pertaining to the maintenance, repair, management and use of the Common Area and Common Facilities by Owners, their tenants, guests and invitees, or any other person(s) who have rights of use and enjoyment of such Common Area and Common Facilities; (ii) architectural control and the rules of the Architectural Review Committee under Section 5.05, below; (iii) the conduct of disciplinary proceedings in accordance with Section 14.06, below; (iv) regulation of parking, pet ownership and other matters subject to regulation and restriction under Article VIII, below; (v) collection and disposal of refuse; (vi) minimum standards for the maintenance of landscaping or other Improvements on any Lot; and (vii) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

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

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

(c) Adoption and Amendment of Rules. Association Rules may be adopted or amended from time to time by majority vote of the Board. Any duly adopted rule or amendment to the Association Rules shall become effective immediately following the date of adoption thereof by the Board or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail.

Section 3.08. Breach of Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XIV, below.

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

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

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

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

- (i) The Board member or officer owns no more than two Lots;
- (ii) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;
- (iii) The act or omission was performed in good faith;
- (iv) The act or omission was not willful, wanton, or grossly negligent;
- (v) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance providing both general liability and directors' and officers errors and omissions coverage, with both types of policies and coverage being in the minimum amount of at least one million dollars (\$1,000,000).

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

#### ARTICLE IV Association Assessments

Section 4.01. Agreement to Pay. Each purchaser of a Lot by his or her acceptance of a deed, whether or not it shall be so expressed in such deed, covenants and agrees, for each Lot owned, to pay to the Association : (a) regular, annual assessments or charges; (b) special assessments for capital improvements or unusual expenses to be established and collected as hereinafter provided; and (c) fines; and (d) penalties and other

costs which may be levied against individual Lot Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the assessed Owner or the Owner's tenants and not caused by ordinary wear and tear.

**Section 4.02. Personal Obligations.** Each assessment or installment, together with any late payment penalty, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of the person or entity who was an Owner at the time such assessment, or installment, became due and payable. If more than one person or entity was the Owner of a Lot, the personal obligation to pay such assessment, or installment, respecting such Lot shall be both joint and several. The personal obligation for delinquent assessments, or delinquent installments, and other such sums, shall not pass to an Owner's successors in interest unless expressly assumed by them. No Owner of a Lot may exempt himself or herself from payment of assessments, or installments, by waiver of the use or enjoyment of all or any portion of the Common Area, if any, or by waiver of the use or enjoyment of, or by abandonment of, the Owner's Lot.

**Section 4.03. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the members of the Association, including, without limitation, the improvement, replacement, repair, operation and maintenance of the Common Areas, enforcement of the architectural review requirements, the Association Rules, the property use restrictions and other covenants and restrictions of this Declaration, and the performance of other duties of the Association as set forth in the Governing Documents.

**Section 4.04. Regular Assessments.**

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

(b) **Establishment of Regular Assessment by Board/Membership Approval Requirements.** The total annual expenses estimated in the Association's budget (less

projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year; provided, however, that, except as provided in Section 4.07, below (which relates to emergency assessments), the Board of Directors may not impose a Regular Assessment that is more than 20 percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the Members' prior approval in accordance with Section 4.08, below.

(c) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Lots within the Properties owned by the assessed Owner to the total number of Lots subject to Assessments so that each Lot bears an equal share of the total Regular Assessment.

(d) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a property Owner or as a Member. The Assessment roll (which may be maintained in the form of a computer printout) shall show, for each Lot, the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by Section 2.05(b)(i)(C), above, shall be conclusive upon the Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

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

(f) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.05(a)(i), below, for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Board.

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

Section 4.05. Special Assessments.

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

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for that fiscal year, then, except as prohibited by Section 4.04(b), above, the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.

(ii) Capital Improvements. The Board may also levy Special Assessments for additional capital Improvements within the Common Area (i.e., Improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement or repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article IX, below.

(b) Special Assessments Requiring Membership Approval. The following Special Assessments require prior membership approval in accordance with Section 4.08, below: (i) any Special Assessments which, in the aggregate, exceed 5 percent of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied; and (ii) any Special Assessments imposed pursuant to subparagraph (a)(i) of this section when the Board has failed to distribute a budget to the Members within the time specified in Section 4.04(a), below. The foregoing Member

approval requirements shall not apply, however, to any Special Assessment imposed to address any "emergency situation" as defined in Section 4.07, below.

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4.04(c), above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner.

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

#### Section 4.06. Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4.05, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below; provided, however, that no Special Individual Assessments may be imposed against an Owner pursuant to this section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 14.06, below, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

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

(iii) Required Maintenance on Lots. If any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, the Association shall have the right to enter the Lot, correct the condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry on the property of any Owner by the Association shall be effected in accordance with Section 3.06(b), above.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in subparagraph (a) of this section, such Special Individual Assessment shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to the affected Owner. The Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment.

Section 4.07. Assessments to Address Emergency Situations. The requirement of a membership vote to approve (a) Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment, or (b) Special Assessments which, in the aggregate, exceed 5 percent of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, shall not apply to Assessments which are necessary to address emergency situations. For purposes of this section, an emergency situation is any of the following:

- (i) An extraordinary expense required by an order of a court.
- (ii) An extraordinary expense necessary to repair or maintain the Common Areas and/or Common Facilities where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Areas and/or Common Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 4.04(a), above; provided, however, that prior to the imposition or collection of an assessment under this subparagraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

Section 4.08. Notice and Procedure for Assessments Requiring Member Approval Pursuant to Sections 4.04 and 4.05. If Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 4.04 and 4.05, above, the affirmative vote required to approve the increase shall be a Majority of a Quorum of the Members. The quorum required for such membership action shall be a majority of the Members.

Section 4.09. Maintenance of Assessment Funds.

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

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

(ii) reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, under funded; or (iii) credited proportionately on account of the Owners' future Regular Assessment obligations.

(c) Separate Accounts; Commingling of Funds. To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom; provided, however, that receipts and disbursements of Special Assessments made pursuant to Section 4.05(a)(i), above, shall be accounted for together with the receipts and disbursements of Regular Assessments.

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

(d) Reserve Funds. As more particularly provided in Article XII of the Bylaws, on a periodic basis the Board of Directors is obligated to cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components of the development which the Association is obligated to repair, replace, restore or maintain as part of a study of the Association's capital reserve account requirements with respect to major components having a useful life of 30 years or less. That study must be reviewed annually and adjusted, if necessary, as part of the annual budgeting process. The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund.

The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, upon making a finding supported by

documentation that a temporary delay would be in the best interests of the Properties, temporarily delay the restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this subparagraph (d). This Special Assessment is subject to the limitation imposed by California Civil Code section 1366 and Section 4.03(b), above, (relating to member approval requirements for certain Special Assessments). The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

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

Section 4.10. Estoppel Certificate. The Board or manager shall, on not less than ten (10) days' prior written request, execute, acknowledge and deliver to any Owners making such request a statement in writing stating whether or not, to the knowledge of the Association, the Owner is in default as to his or her Lot under the provisions of this Declaration; the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and the amount of any delinquent assessments, penalties, interest, attorneys fees and other charges on the Owner's Lot. The Board or manager may charge the Owner a fee to recover its reasonable costs in preparing the statement. Any such certificate delivered pursuant to this section may be relied upon by any prospective purchaser or mortgagee of the Lot, but such reliance may not extend to any default involving the payment of assessments of which the signer had no actual knowledge.

Section 4.11. Collection of Assessments; Enforcement of Liens.

(a) Delinquent Assessments. If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within 15 days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law commencing 30 days after the due date until the same is paid. In addition to the accrual of interest, the Board of

Directors is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by California Civil Code sections 1366(c) and 1366.1 or comparable successor statutes.

(b) Effect of Nonpayment of Assessments.

(i) Creation and Imposition of a Lien for Delinquent Assessments.

Subject to subparagraph (ii), below, the amount of any delinquent Regular or Special, or Special Individual Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed only when the Association Records a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth: (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this Article and California Civil Code section 1366; (B) the legal description of the Owner's Lot against which the Assessments and other sums are levied; (C) the name of the Owner of Record of such Lot; (D) the name and address of the Association ; and (E) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall Record a further notice stating the satisfaction and release of the lien thereof.

(ii) Limitation on Use of Lien and Foreclosure Remedies for Special Individual Assessments. Special Individual Assessments may only be collected through the use of lien and foreclosure remedies if the Assessment is imposed to reimburse the Association for costs incurred by the Association in the repair of damage to Common Areas and Common Facilities, to recover actual expenses incurred by the Association to gain the Member's compliance with the governing documents, or to recover delinquent assessments and other costs and charges for which a lien may be recorded pursuant to Civil Code section 1367. Special Individual Assessments imposed as a monetary penalty and as a disciplinary measure for failure of a Member to comply with the Governing Documents may not be recovered through the use of lien and foreclosure remedies.

(iii) Remedies Available to the Association to Collect Assessments. The Association may bring legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Lot or accept a deed in lieu of foreclosure. Subject to the limitations imposed by subparagraph (ii), above, foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure by the trustee designated in the Notice of Delinquent Assessment or by a trustee substituted pursuant to California Civil Code section 2934a. Any sale of a Lot by a trustee acting

pursuant to this section shall be conducted in accordance with California Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages or deeds of trust.

(iv) Nonjudicial Foreclosure. Nonjudicial foreclosure shall be commenced by the Association by Recording a Notice of Default, which notice shall state: (A) all amounts which have become delinquent with respect to the Owner's Lot and the costs (including attorneys' fees), penalties and interest that have accrued thereon; (B) the amount of any Assessment which is due and payable although not delinquent; (C) a legal description of the property with respect to which the delinquent Assessment is owed; and (D) the name of the Owner of Record or reputed Owner thereof. The Notice of Default shall also state the election of the Association to sell the Lot or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under California Civil Code section 2924c, or comparable successor statute.

The Association shall have the rights conferred by California Civil Code section 2934a to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust, and for purposes of section 2934a, the Association shall be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Association shall be entitled to employ the services of a title insurance company or other responsible person authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder.

(v) Actions for Money Judgment. In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

(vi) Curing of Default. Upon the timely curing of any default for which a notice of delinquent assessment was recorded by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee to be determined by the Association to cover the costs of preparing and filing or recording such release, together with the payment of such other costs, late payment penalties, interest or fees as shall have been incurred.

**Section 4.12. Transfer of Lot by Sale or Foreclosure.** The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Lot:

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

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

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

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

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

**Section 4.13. Priorities.** When a Notice of Delinquent Assessment has been Recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens or encumbrances Recorded subsequent thereto, except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any first Mortgage of record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value; provided, however, that such subordination shall apply only to the Assessments which have become due and payable

prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

## ARTICLE V Architectural Control

Section 5.01. Composition of Committee. The Association's Architectural Review Committee shall be comprised of three to five Members in good standing who shall be appointed by the Board of Directors and who shall serve for terms of two years. Members of the Board of Directors may serve as members of the Committee.

*Order of change  
to be approved*

Section 5.02. Approval Required. The exterior appearance of all the initial improvements on a Lot and all subsequent alterations or additions thereto shall require the prior written approval of the Architectural Review Committee. Such improvements requiring approval include any residence, garage, fence, wall, gazebo or other accessory buildings, spa, swimming pool or other structure and any landscaping or alteration thereof (except for routine trimming, replanting and maintenance of previously approved landscaping) visible from any adjacent Lot or from any street or Common Areas within the Properties. All requests for approval shall include such plans, specifications and samples of colors and materials as are appropriate to adequately depict the style, size, location, shape, kind, color and materials of the improvements in question. In the exercise of its authority, the Committee may: condition its approval of proposals and plans and specifications on such changes or conditions thereto as it deems appropriate; require submission of additional plans and specifications or other information prior to approval or disapproval of the proposed construction, alterations or additions; and require a deposit and fee payable to the Committee to accompany each application for approval. The deposit shall be refundable to the Owner, without interest, upon successful completion of the project in accordance with approved plans and specifications.

No Owner shall apply for a building permit or commence construction until all the plans and specifications for the proposed improvements have been reviewed and approved in writing by the Architectural Review Committee.

Section 5.03. Approval Procedure. No application for approval required by this Article, shall be deemed appropriately submitted unless the improvement, addition or alteration is fully described and shown by appropriate construction drawings at 1/4 inch scale, site plan indicating contour grading design at 40 scale and specifications including exterior color samples and material samples where necessary.

