

**FIRST RESTATED DECLARATION  
OF RESTRICTIONS  
FOR PINE MOUNTAIN LAKE**

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**FIRST RESTATED DECLARATION  
OF  
RESTRICTIONS  
FOR  
PINE MOUNTAIN LAKE**

That certain instrument executed by Boise Cascade Properties, Inc., a Nevada corporation, ("Declarant") entitled "Declaration of Restrictions" and recorded on July 7, 1969, in Book 279, page 7, of the Official Records of Tuolumne County, California and that certain instrument also executed by Declarant entitled "Amended Declaration of Restrictions Pine Mountain Lake, Unit No. 12" and recorded on August 14, 1970, as Instrument No. 7855, in Book 309, page 26, of the Official Records of Tuolumne County, California (collectively, "Original Declaration"), which affects all of the Properties described and commonly known as Pine Mountain Lake, 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 Tuolumne, State of California, which is more particularly described in exhibit A attached hereto 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 section 1351, subdivision (k) of the California Civil Code. Finally, it was the intention of Declarant that the "Common Area" and "Common Facilities" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

D. The original concept of Declarant in the development of Pine Mountain Lake was to create a "second-home" type of recreational development characterized by rustic informality in an attractive geographical environment. With the passage of time, Pine Mountain Lake has become a more sophisticated, common interest community comprised of permanent residents whose diverse interests and life-styles now make it imperative that existing principles governing the activities of Pine

Mountain Lake Association and its Members be redrawn to reflect current legal requirements and the needs of the community as it has evolved.

E. These revisions are designed to establish standards for property use and personal conduct compatible with the community's present conditions and environment. In order to achieve these goals and preserve the rural aesthetic atmosphere that induced so many to purchase property within Pine Mountain Lake, it is the purpose of this Declaration to (a) modify and clarify the terms of the Original Declaration so that the overall interests of the Members can best be served by adherence to architectural, environmental and procedural guidelines, and (b) enlist the wholehearted support of all the Members in the preservation of Pine Mountain Lake by affirming these restrictions and guidelines in this Declaration. These goals can be accomplished if all the Members act jointly and cooperatively in the promotion of the Members' common interest with one another in maintaining the balanced and attractive ambience now prevalent in the Pine Mountain Lake community.

F. On October 18, 1990, the Owners of fifty percent (50%) plus one of the Lots within the Properties 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 said Owners to replace the Original Declaration, in its entirety, with the recordation of this Declaration. Their 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 section 1355, subdivision (a), of the California Civil Code. 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. "Articles"** means the Articles of Incorporation of Pine Mountain Lake Association, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

**Section 2. "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 of this Declaration.

**Section 3. "Association"** means Pine Mountain Lake, Association, a California nonprofit mutual benefit corporation, its successors and assigns.

**Section 4. "Association Policies"** or "Association Rules" means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to article III, section 7 of this Declaration, as the same may be in effect from time to time.

**Section 5. "Board of Directors"** or "Board" means the Board of Directors of the Association, elected pursuant to the Bylaws.

**Section 6. "Bylaws"** means the Bylaws of the Association, as such Bylaws may be amended from time to time.

**Section 7. "Capital Improvement"** means any major addition to the Common Area or Common Facilities or any new facility or improvement undertaken by the Association that is not in existence at the date of this Declaration and which is unrelated to repairs for damage, destruction or normal wear and tear of existing Common Area or Common Facilities.

**Section 8. "Commercial Lots"** means Lots within the Properties designated by Tuolumne County Zoning Ordinance for C-1 (Light Commercial) usage as established on the Subdivision Maps.

**Section 9. "Common Area"** means all real property owned by the Association for the common use and enjoyment of the Owners. The term "Common Area" shall not refer to any real property acquired by the Association unless such property is for the common use and enjoyment of the Owners. Unless the context clearly indicates a contrary intent, any reference herein to the "Common Area" shall also include any Common Facilities located thereon.

**Section 10. "Common Expense"** means any use of Common Funds authorized by article IV hereof and article IX of the Bylaws and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities or any separate interests that the Association is obligated to maintain or repair, (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors, (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Area and Common Facilities or any separate interests that the Association is obligated to maintain or replace, and for nonpayment of any Assessments, and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

**Section 11. "Common Facilities"** means the buildings, trails, recreation improvements, roads, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area and owned by the Association, including, but not limited to:

- (a) An administration building;
- (b) A clubhouse consisting of a restaurant, bar, meeting facilities, pro shop and locker rooms;
- (c) An 18-hole golf course;
- (d) A recreational lake of approximately 205 surface acres;
- (e) A second membership building, known as the Lake Lodge, adjacent to the lake;

- (f) Guard gate facilities; and
- (g) Various parks and greenbelt areas consisting of a campground area, ponds, swimming pool, marina, beaches, tennis courts, equestrian center, fishing, picnic and play areas.

**Section 12. "County"** means the County of Tuolumne, State of California, and its various departments, divisions, employees and representatives.

**Section 13. "Covenants Committee"** means the committee appointed by the Board pursuant to article XIV, section 7 of this Declaration.

**Section 14. "Declarant"** means the original project developer of the Properties, namely Boise Cascade Properties, Inc., a Nevada corporation.

**Section 15. "Declaration"** means this First Restated Declaration of Restrictions for Pine Mountain Lake, as such Declaration may be amended from time to time. The "Original Declaration" means the documents referenced in the Preamble to this Declaration, together with all amendments and annexations thereto, adopted prior to adoption of this Declaration.

**Section 16. "Environmental Control Committee"** means the committee appointed by the Board pursuant to Article V of this Declaration.

**Section 17. "Governing Documents"** is a collective term that means this Declaration and the Articles, Bylaws, Association Policies and Association Rules, as the same may be amended from time to time.

**Section 18. "Lot"** means any parcel of real property designated by a number on the Subdivision Map for any portion of the Properties, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other improvements constructed or to be constructed on a Lot. Certain Lots within the Properties are designated as Multi-Family Lots and Commercial Lots.

**Section 19. "Member"** means any person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to article XIV, section 6 hereof.

**Section 20. "Mortgage"** means any security device encumbering all or any portion of the Properties, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

**Section 21. "Multi-Family Lots"** mean those Lots designated by Tuolumne County Zoning Ordinance to accommodate two or more residences designed for single-family residential use.

**Section 22. "Owner"** means the person, firm, corporation or other entity holding a fee simple interest of record to any Lot. Except where the context otherwise requires, the term "Owner" shall include the family, guests, tenants and invitees of an Owner.

**Section 23. "Owner of Record"** and "Member of the Association" include an Owner and mean any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

**Section 24. "Properties"** means all parcels of real property (Common Area and Lots) included within any recorded Subdivision Map for Pine Mountain Lake, together with all buildings, structures, utilities, Common Facilities, and other improvements now located or hereafter constructed or installed thereon, all appurtenances thereto.

**Section 25. "Recreational Vehicle"** means a motor vehicle originally designed, or permanently altered, and equipped for common habitation, or to which a camper has been permanently attached.

**Section 26. "Regular Assessment"** means an Assessment levied on an Owner and his or her Lot in accordance with article IV, section 2, hereof.

**Section 27. "Residence"** means a private, single-family dwelling constructed or to be constructed on a Lot. In case of a Multi-Family Lot, the term "Residence" shall mean any unit designed for occupancy by a single family.

**Section 28. "Single Family Residential Use"** means occupation and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

**Section 29. "Special Assessment"** means an Assessment levied on an Owner and his or her Lot in accordance with article IV, section 3 hereof.

**Section 30. "Special Individual Assessment"** means an Assessment made against an Owner and his or her Lot in accordance with article IV, section 4 hereof.

**Section 31. "Subdivision Map"** means the recorded map for any phase of development within the Properties.

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

***Section 1. Owners' Nonexclusive Easements of Enjoyment.*** Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area, including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees or to limit the number of Owners, tenants, guests and invitees who may use any recreational Common Facilities.
- (b) The right of the Association to adopt Association Policies and Rules as provided in article III, section 7 hereof, regulating the use and enjoyment of the Properties for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or tenant, to temporarily suspend the voting rights and/or right to use the Common Facilities, other than roads, by any Owner and/or the Owner's tenants and guests, subject to compliance with the due process requirements of article XIV, section 6 hereof.
- (c) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Common Area and Common Facilities and in aid thereof to Mortgage said property; provided, however, that the rights of any such Mortgagee in said properties shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of article IV, section 3 hereof.

***Section 2. Persons Subject to Governing Documents.*** All present and future owners, tenants and occupants of Lots within the Properties shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the entering into a lease, sublease or contract of sale with respect to any Lot, or the occupancy of any Lot shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents.

### ***Section 3. Delegation of Use.***

- (a) ***Delegation of Use and Leasing of Residences.*** An Owner may lease or rent his or her Residence provided, however, that any rental or lease may only be to a single family for Single Family Residential Use. Any rental or lease of a Residence shall be subject to the provisions of the Governing Documents, all of which shall be deemed incorporated by

reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and shall be responsible for compliance by the Owner's tenant or lessee with all of the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the Residence.

- (b) *Discipline of Tenants and Lessees.* Subject to subparagraph (c), below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances which may include suspension of the tenant's privileges to use any recreational Common Facilities or the imposition of fines and penalties against the Owner or tenant. The Association's rights hereunder shall be subject to the due process requirements of subparagraph (c), below.
- (c) *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 general 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 article XIV, section 6 hereof.
- (d) *Use of the Common Area and Common Facilities By Persons Other Than Owners.* Members of an Owner's family and other dependents, if any, residing with an owner shall have the right to use and enjoy the Common Area and Common Facilities, to the same extent as the Owner, subject to the limitations in the Governing Documents, including, without limitation, the provisions of Article VIII, section 3 hereof. Tenants, guests and invitees shall have the right to use and enjoy the Common Area and Common Facilities only to the extent provided in the Governing Documents. A contract purchaser shall have the right to use and enjoy the Common Area and Common Facilities to the same extent as an Owner.

***Section 4. Obligations of Owners.*** Owners of Lots within the Properties shall be subject to the following:

- (a) *Owner's Duty to Notify Association of Tenants and Contract Purchasers.* Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant of the Owner's Lot. Each Owner, contract purchaser or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights

to use and enjoy the Properties and the relationship that each such person bears to the Owner, contract purchaser or tenant.

- (b) *Contract Purchasers.* A contract seller of a Lot must delegate his or her voting rights as a Member of the Association and seller's right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.
- (c) *Notification Regarding Governing Documents.*
  - (i) As more particularly provided in section 1368 of the California Civil Code, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser: (A) a current copy of the Governing Documents; (B) the Association's most current financial statement; and (C) a true statement in writing from the Association ("delinquency statement") as to the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold.
  - (ii) The Association shall, within ten (10) days of the mailing or delivery of a request for the information described in subparagraph (c)(i), above, provide the Owner with a copy of the current Governing Documents, together with the financial statement and the delinquency statement referred to in the immediately preceding paragraph. The Association shall be entitled to impose a fee for providing the Governing Documents and the financial and delinquency statements equal to (but not more than) the reasonable cost of preparing and reproducing the requested materials.
- (d) *Payment of Assessments and Compliance With Rules.* Each Owner shall pay, when due, each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.
- (e) *Discharge of Assessment Liens.* Each Owner shall promptly discharge any Assessment lien that may, hereafter become a charge against his or her Lot.
- (f) *Joint Ownership of Lots.* In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

- (g) *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 this Declaration.
- (h) *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 said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

## **ARTICLE III Homeowners Association**

***Section 1. Association Membership.*** Every Owner of a Lot shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Lot owned and the membership shall be appurtenant to such Lot. Ownership of a Lot or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association 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. A person or an entity who holds an interest in a Lot merely as security for performance of an obligation is not a Member until such time as the security holder comes into title to the Lot through foreclosure or deed in lieu thereof.

***Section 2. 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. Voting Rights of Members.*** Each Member of the Association shall be entitled to one vote for each Lot owned by said 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 article XIV, section 6 hereof.

***Section 4. 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 of this declaration. Any Assessments levied by the Association on its members shall be levied in accordance with and pursuant to the provisions of this Declaration.

***Section 5. Transfer of Memberships.*** Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant and then only to the purchaser in the case of a sale, or Mortgagee in the case of an encumbrance of such Lot. The membership appurtenant to a Lot passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Lot. Tenants who are delegated

rights of use pursuant to article II, section 3 hereof do not thereby become Members, although the tenant and Members of the tenant's family shall, at all times, be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in the Owner's 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 6. Powers and Authority of the Association.***

- (a) *Powers Generally.* The Association shall have the responsibility of owning, managing and maintaining the Common Area 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 may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in Article IX of the Bylaws.
- (b) *Association's Limited Right of Entry.* The right of the Association, or its agents, when necessary, to enter any Lot to perform the Association's obligations under this Declaration, including: (i) obligations to enforce the design review, minimum construction standards, and land use restrictions of Articles V, VI and VIII hereof; (ii) any obligations with respect to construction, maintenance and repair of 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.

The Association's rights of entry under this subparagraph (b) shall be immediate in case of an emergency originating in or threatening the Lot where entry is required, or any adjoining Lots or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present. In all nonemergency situations the Association, or its agents, shall furnish the Owner or his or her lessee with at least twenty-four (24) hours' 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.

## ***Section 7. Association Policies and 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 of Lots within the Properties ("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) design review and environmental control and the rules of the Environmental Control Committee under article V, section 5, hereof; (iii) the conduct of disciplinary proceedings in accordance with article XIV, section 6 hereof; (iv) regulation of parking, pet ownership and other matters subject to regulation and restriction under Article VIII hereof; (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 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 Governing Documents, the conflicting provisions contained in the Governing Documents shall prevail.

- (b) *Distribution of Rule* A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. A copy of the Association Rules shall also be available and open for inspection during normal business hours at the principal office of the Association.
- (c) *Adoption and Amendment of Rules.* Association Rules may be adopted or amended from time to time by majority vote of the Board; provided, however, that no Association Rules or amendments thereto shall be adopted by the Board until at least thirty (30) days after the proposed rule or rule amendment has been: (i) published in the Association newsletter, if any, or otherwise communicated to the Owners in writing and (ii) posted in the Association's principal office. The notice describing the proposed rule or amendment shall also set forth the date, time and location of the Board meeting at which action on the proposal is scheduled to be taken.

Any duly adopted rule or amendment to the Association Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail.

## ***Section 8. 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, hereof. Enforcement of the rules and

regulations of the Environmental Control Committee shall also be subject to Article V, Section 12, hereof.

***Section 9. 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 their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws; provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, 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 the Common Area and Common Facilities and enforcement of the Governing Documents.

- (b) *Other Claims Involving Tortious Acts and Property Damage.* No Released Party shall be responsible to any Owner or to any member of his or her family or any of his or her tenants, guests, servants, employees, licensees, invitees or any other person for any loss or damage suffered by reason of theft or otherwise of any article, vehicle or other item of personal property which may be stored by such Owner or other person on any Lot or within any Residence or for any injury to or death of any person or loss or damage to the property of any person caused by fire, explosion, the elements or any other Owner or person within the Properties, or by any other cause, unless the same is attributable to his or her own willful or wanton act or gross negligence. It is the intent of this subparagraph to provide volunteer directors and officers with protection from liability to the full extent permitted by California Civil Code section 1365.7, or comparable superseding statute, and to the extent this provision is inconsistent with said section, the maximum protection provided by law shall prevail.

**ARTICLE IV Assessments**

***Section 1. Assessments Generally.***

- (a) *Covenant to Pay Assessments.* Each Owner of a Lot, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), covenants and agrees to pay to the Association the Regular Assessments, Special Assessments and Special Individual Assessments hereinafter provided for.
- (b) *Extent of Owner's Personal Obligation for Assessments.* Each Owner who acquires title to a Lot, (whether at a judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of the close of escrow for such sale; provided, however, that any unpaid

Assessment of a previous owner shall remain the debt of such previous Owner against whom assessed and, except as otherwise provided in sections 9 and 10 below, any lien created pursuant to the provisions of this Article IV by reason of such unpaid Assessment shall remain in force and effect as a lien on the Lot sold and may be subject to foreclosure as provided in section 9(b) hereof.

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

## ***Section 2. Regular Assessments.***

- (a) *Preparation of Annual Budget: Establishment of Regular Assessments.* Not less than 45 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) by preparing and distributing to all Association Members a budget satisfying the requirements of article XII, section 5 of the Bylaws.
- (b) *Establishment of Regular Assessment by Board/Membership Approval Requirements.* The total annual Common Expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year; provided, however, that, except as provided in subparagraph (c), below, 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 vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association (see section 7, below).
- (c) *Assessments to Address Emergency Situations.* The requirement of a membership vote to approve Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. For purposes of this subparagraph (c), 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 Area, Common Facilities or any portion of the separate interests, which the Association is obligated to maintain where a threat to personal safety is discovered.

- (iii) An extraordinary expense necessary to repair or maintain the Common Area, Common Facilities or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to subparagraph (a) above; provided, however, that prior to the imposition or collection of an assessment: under this paragraph (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.
  
- (d) *Allocation of Regular Assessment.*
  - (i) Except as otherwise provided in subparagraph (ii), below, 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; (ii) notwithstanding the equal allocation of assessments in accordance with subparagraph (i) above, Regular Assessments for Multi-Family Lots shall be allocated as follows:
    - (A) The Regular Assessment for Multi-Family Unimproved Lots shall be assessed on a per Lot basis. This assessment for Multi-Family Improved Lots shall be levied on a per Residence unit basis upon completion of construction.
    - (B) Condominium units and townhouses upon completion of construction, become, for assessment purposes, synonymous with individual Lots.
    - (C) Any other type of multi-unit Residence including commercially operated guest houses, inns, hotels, or motels, can be assessed per unit in an amount to be decided by the Directors, such per unit assessments to be in addition to that borne by the Lot or Lots occupied by those residential units. Any assessment less than a full assessment for units or occupants of these establishments shall not carry with it full rights of Lot ownership but only such privileges as the Directors by resolution may prescribe.
  
- (e) *Assessment Roll.* That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a 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 article II, section 4(c) hereof, shall be conclusive upon the Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

- (f) *Mailing, Notice of Assessment.* 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 no less than forty-five (45) days prior to the beginning of the next fiscal year.
- (g) *Failure to Make Estimate.* If, for any reason the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made from the preceding fiscal year, together with any Special Assessment made pursuant to section 3(a)(i) of this article IV 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 Association.
- (h) *Installment Payment.* The Regular Assessment shall be levied against each Owner and his or her Lot January 1 of each year. If an Owner pays his or her Regular Assessment in full, prior to February 1 of each year, the Board, in its discretion, may grant the Owner an early discount in an amount to be determined by the Board. All other payments of Regular Assessments shall be due in equal installments on the first day of each month and shall be delinquent if not paid by the 15th day of the month in which the Assessment is due.

### ***Section 3. Special Assessments.***

- (a) *Purpose for Which Special Assessments May Be Levied.* Subject to the membership approval requirements set forth in subparagraph (b), below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:
  - (i) *Regular Assessment Insufficient in Amount.* If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.
  - (ii) *Capital Improvements.* The Board may also levy Special Assessments for additional capital improvements within the Common Area (i.e., improvements not in existence on the date of this Declaration that are unrelated to repairs for damage

to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with article XI hereof.

Where the Cost of a Capital Improvement requires the accumulation of funds for a period in excess of one fiscal year, the funds may nevertheless be collected by means of a Special Assessment (subject to the limitations contained herein) and accumulated; provided, however, that any funds collected by Special Assessment to fund an undertaking in a subsequent fiscal year shall be separately identified in the financial records of the Association. In the event the Board of Directors determines, in any subsequent fiscal year, that Special Assessment funds accumulated for a specific future undertaking are not to be applied to such undertaking, or if the accumulated funds exceed the cost of the undertaking, the fund balance shall be transferred to the Association's general fund in order to serve as a credit against the Owners' Regular Assessment obligations.

- (b) *Special Assessments Requiring Membership Approval.* No Special Assessments described in subparagraph (a), hereof, which in the aggregate exceed 5 percent of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied, shall be made without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association; provided, however, that this membership approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in section 2(c) of this article IV. All Special Assessments imposed in the same fiscal year shall be aggregated for purposes of computing the 5 percent limitations on the Board's Special Assessment authority.
- (c) *Allocation and Payment of Special Assessments.* When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to subparagraph 2(d) above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in subparagraph (a)(i) of this section 3 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. 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 3, 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 4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to article XIV, section 6 hereof, 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) *Expense Incurred in Gaining Member Compliance.* In the event that the Association incurs any costs or expenses: (A) to accomplish the payment of delinquent Assessments, (B) to repair, maintain or replace 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) to 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.* As more particularly provided in article III, section 6(b) and article VIII, section 4 (and without limiting the generality of those sections), if any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk automobiles or improper weed or vegetation abatement or control, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

(b) *Levy of Special Individual Assessment and Payment.* Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in subparagraph (a) of this section 4, such Special Individual Assessment shall be recorded on the Association's Assessment roll, notice thereof shall be

mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable as follows: Special Individual Assessments shall be payable in full to the Association within 30 days after the mailing of notice of the Assessment.

**Section 5. Purpose and Reasonableness of Assessments.** Each Assessment, whether Regular or Special, made in accordance with the provisions of this Declaration, is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety and welfare of individuals residing within the Properties; (b) to promote the enjoyment and use of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby), of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns; provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**Section 6. Exemption of Certain of the Properties From Assessments.** The following real property subject to this Declaration shall, unless devoted to the use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

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

**Section 7. Notice and Procedure for Member Approval Pursuant to Sections 2 and 3.** In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 2 and 3 of this article IV, approval of the requisite percentage of the Members shall be solicited either by written ballot conducted in accordance with section 7513 of the Corporations Code and article IV, section 6 of the Association's Bylaws or at a meeting of the Members called for that purpose, duly noticed in accordance with article V, section 4 of the Bylaws. The quorum required for such membership action shall be a majority of the voting power of the Members.

**Section 8. Maintenance of Assessment Funds.**

- (a) **Bank Accounts.** All sums received or collected by the Association from Regular, Special or Special Individual Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market account in a bank or savings and loan association selected by the Board of Directors; provided, however, that the amounts deposited in any particular financial institution shall not exceed the maximum amount

covered by FDIC or FSLIC insurance limitations. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code section 1365.5 and article XII, section 2 of the Bylaws.

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. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

- (b) *Separate Accounts: Commingling of 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 returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such, account is, in the Board's opinion, underfunded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate account 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 article IV, section 3(a)(i), hereof shall be accounted for together with the receipts and disbursements of Regular Assessments; and separate liability accounts shall be maintained for each capital improvement for which reserve funds for replacement are allocated.

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

## ***Section 9. 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 from and 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, subdivision (c) and 1366.1 or comparable superseding statutes.

(b) *Effect of Nonpayment of Assessments.*

(i) *Creation and Imposition of a Lien for Delinquent Assessments.* As more particularly provided in section 1367 of the California Civil Code or comparable superseding statute, the amount of any delinquent Regular, 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 causes to be recorded in the Office of the County Recorder of Tuolumne County, State of California, 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 IV and section 1366 of the California Civil Code; (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; and (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 cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

(ii) *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. Foreclosure by the Association of its lien may be by judicial foreclosure or by non-judicial 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 9 shall be conducted in accordance with sections 2924, 2924b and 2924c of the California Civil Code applicable to the exercise of powers of sale in mortgages or deeds of trust.

- (iii) *Non-judicial Foreclosure.* Non-judicial foreclosure shall be commenced by the Association by recording in the Office of the County Recorder a Notice of Default, which notice shall state 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, the amount of any Assessment which is due and payable although not delinquent, a legal description of the property with respect to which the delinquent Assessment is owed, and the name of the Owner of Record or reputed Owner thereof. The Notice of Default shall 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 section 2924c of the California Civil Code, or comparable superseding statute.

The Association shall have the rights conferred by section 2934a of the Civil Code to assign its rights and obligations as trustee in any non-judicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of said 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 company authorized to serve as a trustee in non-judicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any non-judicial foreclosure hereunder.

- (iv) *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.

***Section 10. Transfer of Lot by Sale or Foreclosure.*** Except as otherwise provided herein, the sale or transfer of any Lot shall not affect any Assessment lien duly recorded with respect to such Lot prior to the sale or transfer. However, the sale or transfer of any Lot pursuant to the foreclosure of any first Mortgage or other encumbrance which, by law, has priority over the Association's Assessment lien (collectively "Superior Lien") shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. 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 some other person, from liability for any Assessments thereafter becoming due or from the lien thereof.

Where the first Mortgagee or other purchaser of a Lot obtains title to the same as a result of foreclosure of any Superior Lien or exercise of a power of sale contained in any Superior Lien, the person acquiring title, his or her successors and assigns shall not be solely liable for the Assessments chargeable to such Lot which became due prior to the acquisition of title. Instead, such unpaid Assessments shall be deemed to be Common Expenses collectible from the Owners of all of the Lots, including such acquirer, his or her successors and assigns. Furthermore, foreclosure of any Superior

Lien shall not affect the Association's right to maintain an action for the collection of delinquent Assessments against the foreclosed party personally.

Section 11. **Priorities.** When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens except, (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgages or deeds of trust) 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 deed of trust.

Section 12. **Unallocated Taxes.** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to Section 2 of this article IV and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two installments, thirty days prior to the due date of each tax installment.

Section 13. **Waiver of Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article IV, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed.

## **ARTICLE V Environmental Management**

### ***Section 1. Environmental Control Committee Approval of Improvements.***

- (a) *Basic Objectives of Environmental Management.* The objectives of the Association's environmental management authority and the policies and regulations promulgated pursuant to that authority are to insure that Improvements (as defined below) and individual and collective membership activities shall be directed and pursued with a view toward enhancement of the natural beauty and character of the Properties and the quiet enjoyment thereof by all Owners, residents and guests. Although the principal responsibility for administration and implementation of environmental management policies rests with the Board of Directors, management and the Environmental Control Committee, membership support of these objectives is basic to their successful implementation. The Association's environmental management policies are primarily concerned with effective enforcement, administration and implementation of Articles V and VIII of this Declaration, the ECC Rules and other Association Rules pertaining to such articles.
- (b) *Definition of Improvement.* The term "Improvement," as used herein, shall include, but shall not be limited to, the construction, installation, alteration, remodeling, and exterior color selection of buildings, walls, fences, landscaping structures, landscaping, retaining walls, piers, boat shelters, floats, privacy structures, outdoor spas, antennas, television

satellite reception dishes, heating or air conditioning equipment or swimming pools, including above ground pools and wells.

- (c) *Approval Generally.* Before commencing construction or installation of any Improvement on any Lot within the Properties, the Owner planning such Improvement must submit to the Association's Environmental Control Committee (the "Committee") a written request for approval. The Owner's request shall include plans and specifications satisfying the requirements of the ECC Rules (see Section 5, below). Unless the Committee's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Committee shall base its decision to approve, disapprove or conditionally approve any proposed Improvement on the criteria described in Section 6, of this article V.
- (d) *Modifications to Approved Plans Must Also Be Approved.* Once a work of Improvement has been duly approved by the Committee, no material modifications shall be made in the approved plans and specifications therefor and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If the proposed modification will have, or is likely to have, a material affect on other aspects or components of the work, the Committee, in its discretion, may order the Owner, his or her contractors and agents to cease working not only on the modified component of the Improvement, but also on any other affected component.

In the event that it comes to the knowledge and attention of the Association, the Committee, or the agents or employees of either that a work of Improvement, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified in Section 12 of this article V, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Committee review and approval is obtained.

***Section 2. Committee Membership.*** The Environmental Control Committee shall be composed of three Members of the Association appointed by the Board. In selecting the Committee, the Board of Directors shall endeavor to appoint individuals whose occupations or education will provide technical knowledge and expertise relevant to matters within the Committee's jurisdiction. The Committee shall also be assisted by a compliance officer who shall be a staff employee and have such duties and responsibilities as specified in the ECC Rules.

Committee members shall serve for one-year terms subject to the Board's power to remove any Committee member and to appoint a successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto, unless otherwise approved by the Board of Directors. The Committee members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Committee functions. Requests for reimbursement shall be supported by adequate documentation and shall be submitted to, and approved by, the Board of Directors.

**Section 3. Duties of the Environmental Control Committee.** It shall be the duty of the Committee to consider and act upon the proposals and plans submitted to it pursuant to this Declaration, to adopt Environmental Control Committee Rules pursuant to Section 5 hereof, to undertake periodic inspections of Lots and the Common Area within the Properties to assure compliance with the Governing Document's land use and environmental control regulations, to perform other duties delegated to it by the Board of Directors and to carry out all other duties imposed upon it by this Declaration.

**Section 4. Meetings.** The Environmental Control Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Committee members shall constitute an act by the Committee and the Committee shall keep and maintain a written record of all actions taken.

The Owner-applicant shall be entitled to appear at any meeting of the Committee at which the Owner's proposal has been scheduled for review and consideration. The Owner shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer and/or contractor. Other Owners whose properties may be affected by the proposed Improvement (in terms of the view or solar access of their Lot, noise or other considerations) shall also be entitled to attend the meeting.

Reasonable notice of the time, place and proposed agenda for Committee meetings shall be communicated before the date of the meeting to any Owner-Applicant whose application is scheduled to be heard.

**Section 5. ECC Rules.** The Environmental Control Committee may, from time to time and with approval of the Board of Directors, adopt, amend and repeal rules and regulations to be known as "ECC Rules." The ECC Rules shall interpret and implement the provisions hereof by setting forth: (a) the standards and procedures for Environmental Control Committee review (including, without limitation, minimum requirements for submitting a complete application for project approval); (b) guidelines for the design features, and placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use within the Properties; (c) minimum content of plans and specifications for any improvement; (d) the criteria and procedures for requesting variances from any property use restrictions; or minimum construction standards that would otherwise apply to the proposed Improvement under the Governing Documents (see Section 13, below); and (e) minimum requirements for the maintenance, supervision and restoration of construction sites by Owners and their contractors. Notwithstanding the foregoing, no ECC Rule shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the ECC Rules and this Declaration, the provisions of the Declaration shall prevail. The ECC Rules are currently set forth in a booklet entitled "Environmental Control Committee Guidelines".

**Section 6. Basis for Approval of Improvements.** When a proposed work of Improvement is submitted to the Environmental Control Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion, finds that all of the following provisions have been satisfied.

- (a) The Owner's plans and specifications: (i) conform to this Declaration and to the ECC Rules in effect at the time such plans are submitted to the Committee; (ii) will result in the construction of an Improvement that is the harmony with the external design of other structures and/or landscaping within the Properties; and (iii) will not interfere with the reasonable enjoyment of any other Lot Owner of his or her property, including, without limitation, the other Owner's rights to scenic and solar access free of unreasonable obstructions; and
- (b) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Properties and with the overall plan and scheme of development of the Properties and the purposes of this Declaration.
- (c) *Delivery of Plans and Specifications.* Plans and specifications shall be submitted to the Committee by personal delivery or first-class mail addressed to the Secretary of the Association or the Chairman of the Committee at the Association's principal office.

While it is recognized that the Committee's determination to approve or disapprove an Improvement will, of necessity, be subjective to some degree, the members of the Committee shall act reasonably and in good faith and shall consider such factors as the quality of workmanship and materials proposed for the Improvement project, the harmony of the proposed Improvement's exterior design, finish materials and color with that of other existing structures, and the proposed location of the Improvement in relation to the existing topography, finished grade elevations, roads, the Common Area and other existing structures. The Committee shall also be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar Improvement /component has previously been approved for use at another location if factors such as drainage, topography or visibility from roads, the Common Area or other Lots or prior adverse experience with the product or design of the Improvement mitigate against erection of the Improvement or use of a particular component within the Improvement on the Lot involved in the Owner's submittal.

***Section 7. Inspection Fee and Deposits.*** The Association shall be entitled to charge a reasonable fee in order to defray the time, cost and expense involved in reviewing and processing the materials submitted to the Committee. Should it be determined that all or a portion of the materials submitted require resubmittal, an additional fee may be imposed to defray the time, costs and expense involved in re-reviewing such materials, provided that the applicant is notified of the estimated fee to be charged along with notification that such matters must be resubmitted.

As part of its submittal to the Committee, each Owner shall be obligated to make or deposit in an amount established by the Board from time to time. This sum is in addition to the initial plan submittal fee and shall be used: to pay for any clean-up on Lots or streets and repairs of any streets within the Properties made necessary by the Owner's construction. Because such cleanup and repair will need to be done right away, no notice shall be required. These funds shall be available so that the provisions of section 1 may be strictly enforced. The Association shall place deposit funds in an account with a financial institution selected by the Board, and more construction and all clean up are complete, shall refund the unused portion of the deposit, without interest, to the Owner.

**Section 8. Time limits for Approval or Rejection.** Within 30 days after submission of plans and specifications satisfying the requirements of the ECC Rules, the Committee shall return one set of such plans to the applicant, with either written notice of approval or disapproval or with written suggestions of changes required for approval accompanying the returned set of plans. The applicant may implement such changes to the plans and within 30 days resubmit plans incorporating such changes for approval to the Committee, which approval it shall not unreasonably withhold so long as the Owner has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the Owner-applicant within 30 days after the Owner's plans and specifications (or revisions thereto) are submitted to the Committee, the plans shall be deemed to have been approved as submitted.

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

**Section 9. Proceeding With Work.** Upon receipt of approval from the Environmental Control Committee, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement of construction and excavation pursuant to said approval. In all cases, work on an Improvement project shall commence within one year from the date of such approval and shall be completed within one construction season. If the Owner fails to comply with this paragraph, any approval given pursuant to this article V, shall be deemed revoked unless the Committee, upon written request of the Owner prior to the expiration of the initial one year period, extends the time for commencement or completion. No such extension shall be granted except upon a finding by the Committee that there has been no change in the circumstances upon which the original approval was granted and that the Owner has a bona fide intention and ability to complete the Improvement project within the time specified in the extension request.

**Section 10. Failure to Complete Work.** Unless the Owner has been granted an extension of time to complete the Improvement project by the Environmental Control Committee, construction, reconstruction, refinishing or alteration of any such Improvement must be complete within one construction season after construction has commenced, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents. In the case of building Improvements, the requirements of this Section 10 shall be deemed to have been met if, within the permissible construction period, the Owner has completed construction of the building's foundation and all exterior surfaces (including the roof, exterior walls, windows and doors).

If the Owner fails to comply with this Section 10, the Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 11(c) and (d), below, as though the failure to complete the Improvement was a noncompliance with approved plans.

**Section 11. Inspection of Work by Environmental Control Committee.** Inspection of the work relating to any approved Improvement and correction of defects therein shall proceed as follows:

- (a) During the course of construction, the ECC compliance officer or other representatives of the Environmental Control Committee shall have the right to inspect the job site to confirm that the work of Improvement is proceeding in accordance with the approved plans and specifications.
- (b) Upon the completion of any work of Improvement for which Committee approval is required under this Article V, the Owner or his or her contractor shall give the Committee a written notice of completion.
- (c) Within 30 days thereafter, the Committee, or its duly authorized representative, may inspect the Improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans. If the Committee finds that the Improvement was not erected, constructed or installed in substantial compliance with the Owner's approved plans, then within the 30 day inspection period the Committee shall give the Owner a written notice of noncompliance detailing those aspects of the project that must be modified, completed or corrected. If the violation or nonconforming work is not corrected within a reasonable time (to be determined by the Committee), the Association and the Committee shall have the enforcement rights and remedies set forth in Section 14, below.
- (d) If for any reason the Committee fails to notify the Owner of any noncompliance within 30 days after receipt of the Owner's notice of completion, the Improvement shall be deemed to have been constructed in accordance with the approved plans for the project, unless it can be demonstrated that the Owner knew of the noncompliance and intentionally misled the Committee with respect thereto.

***Section 12. Enforcement of Environmental Control Matters.***

- (a) In addition to other enforcement remedies set forth in this Declaration, the Environmental Control Committee shall have enforcement authority with respect to any matters required to be submitted to and approved by it, and, subject to prior approval by the Board, may enforce such architectural control by any proceeding at law or in equity. In addition, the Committee shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Committee or if it does not conform to the plans and specifications submitted to and approved by the Committee. No work of Improvement for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work.
- (b) If the Owner fails to remedy any noncompliance with respect to which notice has been given within 30 days from the date of such notification, the Committee shall notify the Board in writing of such failure. The Committee shall then set a date on which a hearing regarding the alleged noncompliance not be more than 30 days nor less than 15 days after the notice of the noncompliance is issued by the Committee to the Owner and, in the discretion of the Committee, to any other interested party.

- (c) At the hearing, the Owner, one or more representatives of the Committee and any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Committee shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance is determined to exist, the Committee shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Committee, in its discretion, may grant. If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board, at its option, may either remove the noncomplying Improvement or remedy the noncompliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the Association, the Board shall recover such expenses through the levy of a Special Individual Assessment against such Owner.
- (d) Legal proceedings to compel compliance with the ECC Rules, eliminate architectural or environmental violations or other violations of the Governing Documents that are under jurisdiction of the Environmental Control Committee must be approved by the Board and maintained in the name of the Association. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.
- (e) The approval by the Environmental Control Committee of any plans, drawings or specifications for any work of Improvement done or proposed, or for any other matter requiring the approval of the Committee under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different locations for Improvements, the size of the Improvement structure, proximity to other Residences or Common Facilities and other factors may be taken into consideration by the Committee in reviewing a particular submittal.

**Section 13. Variances.** The Environmental Control Committee shall be entitled to allow reasonable variances in any procedures specified in this Article V, the minimum construction standards specified in Article VI or in any land use restrictions specified in Article VIII to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardship to Owner-applicants, provided all of the following conditions are met:

- (a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise be applicable under this Declaration, the Committee must conduct a public hearing on the proposed variance after giving prior written notice to the Board and to any Owner of a Separate Interest located within 300 feet of the Separate Interest affected by the variance.
- (b) The Committee must make a good faith written determination that the variance is consistent with one or more of the following criteria: (i) the requested variance will not constitute a material deviation from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite

noncompliance; or (ii) the variance relates to a requirement land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect, to any other portion of the Properties.

***Section 14. Nonconforming Use of Properties.***

- (a) *Establishment of Nonconforming Use; Notice Requirements.* In addition to its jurisdiction over the review and approval of new improvements and regulation of the timely and proper completion of such improvements, the Environmental Control Committee shall also be vested with authority and responsibility to regulate continued compliance by Lots with the provisions of this Article V and Articles VI and VIII of this Declaration. To this end, the Committee may appoint a compliance officer who shall periodically tour the Properties from time to time and report to the Committee any apparent violations of said articles ("architectural/land use violations"). If the Committee agrees that the compliance officer has identified an architectural/land use violation on any Lot, the Committee shall so notify the Owner, in writing. The notice shall detail the nature of the alleged violation and advise the Owner of his or her right to be heard on the matter in accordance with Article XIV hereof. If the Owner fails to make a timely request for a hearing the Committee shall be entitled to make its own determination of whether a violation exists at the next regularly scheduled Committee meeting following expiration of the notice period.

If a violation is determined to exist which the Owner is unable or unwilling to correct or eliminate within a reasonable period of time, the Association shall be entitled to execute and record against the subject Lot a Notice of Noncompliance With Recorded Use Restrictions which shall identify the subject Lot, describe the nonconforming use and specify the Article and Section number of the Governing Document which is being violated. The ECC Rules shall include other reasonable rules, policies and procedures concerning the correction and/or elimination of existing land use violations including, without limitation, rules which prohibit any expansion of the nonconforming use of which require compliance with the Governing Documents when the nonconforming improvement is in need of substantial repair or replacement.

- (b) *Certificate of Compliance.* Upon the elimination of any nonconforming use, the Association shall execute and record an estoppel certificate, as described in Section 15 of this article V, which shall reference any previously recorded Notice of Noncompliance With Recorded Use Restrictions, rescind said notice and confirm that the Lot is in compliance with all applicable Governing Document provisions referenced in the Notice of Noncompliance.

***Section 15. Estoppel Certificate.*** Within 30 days after written demand is delivered to the Environmental Control Committee by any Owner, and upon payment to the Association of a reasonable fee (as established from time to time by the Board, in its sole discretion), the Committee shall record an estoppel certificate, executed by any two of its members, certifying (with respect to any Lot owned by the applicant Owner) that as of the date thereof, either: (a) all improvements made and other work completed by said Owner comply with this Declaration, or (b) such improvements or work do not so

comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser of the subject Lot from the Owner, or from anyone deriving any interest in said Lot through the Owner, shall be entitled to rely on the Association estoppel certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

**Section 16. Limitation on Liability.** Neither the Association, the Environmental Control Committee nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications; (c) the development of any Lot within the Properties; or (d) the execution and filing of a Notice of Noncompliance pursuant to Section 14, above, or an estoppel certificate pursuant to Section 15, above, whether or not the facts therein are correct; provided; however, that such member has acted in good faith on the basis of such information as he may possess. Accordingly, by acceptance of title to any Lot, the grantee hereby releases the Association, the members of the ECC, and the Association's agents, employees and independent contractors from all loss or damage or claim thereof arising from any defect or alleged defect in such plans and specifications; and the grantee further waives the benefit of section 1542 of the California Civil Code which pertains to the release of unknown claims. Also, the grantee agrees to indemnify and hold harmless the Association, the ECC and any agents, employees and independent contractors of the Association from any claim asserted by third parties arising out of any such defects.

**Section 17. Effect of Approval of Lake Improvements.** Whenever the Association shall approve plans and specifications for a pier, boat shelter, float or similar Improvement on or extending into any lake within the Properties, such approval shall constitute a mere revocable license from the Association for the construction, placement, and maintenance of the proposed structure.

**Section 18. Compliance With Governmental Regulations.** Review and approval by the Environmental Control Committee of any proposals, plans or other submittals pertaining to improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Lot Owner who desired to construct, install, or modify the improvement.

**Section 19. Appeals.** Appeals from decisions of the Environmental Control Committee may be made to the Board of Directors, which may elect, in its discretion, to hear the appeal or, in the alternative, to affirm the decision of the Committee. The Association Rules shall contain procedures to process appeals pursuant to this Section 19.

## **ARTICLE VI Minimum Construction Standards**

Unless a variance is requested from, and granted by the Environmental Control Committee in accordance with article V, section 13, hereof, improvements constructed on any Lot shall conform to the following minimum construction standards:

**Section 1. Minimum Square Footage/Single Family Residence.** Each Single Family Residence constructed shall have a fully enclosed floor area (exclusive of roofed or unroofed porches, decks, terraces, garages, carports or other outbuildings) not less than: (i) one thousand six hundred (1,600) square feet on lakefront Lots; and (ii) one thousand two hundred fifty (1,250) square feet on all other Lots.

**Section 2. Minimum Square Footage/Multi-Family Residence Units and Condominiums.** There shall be at least two (2) Residence units in each multi-family building. Each Residence unit shall contain a minimum of the following fully enclosed floor areas devoted to living purposes, exclusive of roofed or unroofed porches, decks, terraces, garages or carports: one bedroom, one units - 550 square feet; one bedroom, one bath, convertible den units - 675 square feet; and two bedroom, two bath units - 775 feet.

**Section 3. Roof Eaves.** Roof eaves or overhang on all Residences is to be no less than 24” horizontally from the wall.

**Section 4. Roof Pitch.** The roof pitch of all Residences must be minimum of 4 in 12. All dimensions on overhangs and pitch must be denoted on the plans.

**Section 5. Setback Requirements.** Setbacks for any Residence or other permanent structure (whether or not attached to the Residence) shall be at least:

- (a) Twenty feet from the front Lot line or according to current standards determined by the County of Tuolumne, whichever is stricter;
- (b) Fifteen feet from the rear Lot line, or according to current standards determined by the County of Tuolumne, whichever is stricter;
- (c) Six feet from the side Lot lines or according to current standards determined by the County of Tuolumne, whichever is stricter;
- (d) Fifty feet from the shoreline of any lakefront Lot using as such line the normal lake elevation of 2,550 feet mean sea level, provided that on any lakefront Lot there may be constructed and maintained, at or adjacent to such shoreline, a pier or a dock in respect to the size, design, construction or replacement for which the Association has issued a permit or license.

**Section 6. Elevation of Lakefront Residences.** First floor elevations of all Residences constructed on lakefront Lots shall not be lower than 2,559 mean sea level.

**Section 7. No Used Structures.** No used buildings or structures, intended for use as a Dwelling Unit, shall be placed on any Lot.

**Section 8. Board's Authority to Regulate Other Structures and Improvements.** The Board shall have the authority to set up regulations as to the height and size requirements for all other types of buildings and structures, including fences, walls, chimneys, copings, flagpoles, etc.

**Section 9. Fences, Retaining Walls, Landscape and Privacy Structures.** No fences, retaining walls, landscape or privacy structure shall be constructed or erected on any Lot without the prior written approval of the Association.

**Section 10. Colors and Exterior Finishes.** All exterior colors, textures and materials, including roof materials, must be adequately described in the plans and specifications (with an indication where the colors will be used upon the finish dwelling) and approved in writing by the Environmental Committee prior to initiation of construction. Color samples shall be submitted to the Committee along with the plans and specifications. The Committee is authorized to maintain a chart of approved colors.

**Section 11. Roofing Materials.** Natural wood or shingle roofing materials or composition roofing materials shall not be permitted on any Residence within the Properties unless they are treated with fire retardant materials. The use of other roofing materials, such as tile, gravel or artificial shingles or shakes that have the appearance of natural wood shingles shall be permitted subject to prior Environmental Control Committee approval of the appearance and quality of the material.

## **ARTICLE VII Association and Owner Maintenance Responsibilities**

**Section 1. Common Area.** The Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association.

**Section 2. Owner Maintenance Responsibility.** Each Owner shall be responsible for maintaining and keeping his Residence and Lot in good repair, including landscaping. In the event that an Owner fails to perform maintenance and repair for which he is responsible, the Association may exercise its right under article II, section 1(d) hereof to enter the Owner's Lot and perform the maintenance or repair providing that the Association has afforded the Owner his notice and hearing rights as specified in article XIV, section 6, hereof.

### **Section 3. Drainage Structures, Ditches and Swales.**

- (a) All drainage structures, culverts and canals within the Common Area which are or were improved by the Declarant or the Association for the major collection of storm runoff and any natural drainage courses shall be maintained regularly by the Association.
- (b) Except as provided in subparagraph (a), above, each Owner shall keep drainage courses, ditches and swales, both improved and unimproved, on his or her Lot free and clear of all obstructions, and shall, in cooperation with contiguous property Owners (including the

Association as to any contiguous parcels it owns), maintain all such drainage ditches, swales and culverts common to their Lots in good order. No structures, plantings, or other materials shall be placed or permitted to remain and no other activities shall be undertaken which will damage or interfere with the installation or maintenance of utilities or which may obstruct, retard or change the direction of any established drainage course.

- (c) No Owner resident shall alter or obstruct a natural drainage course, or materially add to the natural water volume of said drainage course without making adequate provisions with respect to neighboring Lots and the Common Area. Any such alterations, obstructions, or additions to water volume shall be considered a work of improvement that is subject to prior review and approval by the Environmental Control Committee.

***Section 4. Association Recovery of Costs of Certain Repairs and Maintenance.***

- (a) In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with article IV, section 4 hereof.
- (b) The Association may give written notice to an Owner who fails to perform maintenance functions for which he or she is responsible, with a request to correct the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under article III, section 6(b) to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with article XIV, section 6, hereof.

***Section 5. Cooperative Maintenance Obligations.*** To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

**ARTICLE VIII Use of Properties and Restrictions**

In addition to the restrictions established by law or the Association Rules promulgated by the Board of Directors (consistent with this Declaration), the following restrictions are hereby imposed upon the use of Lots, the Common Area and other parcels within the Properties.

***Section 1. Use of Lots.***

- (a) All Lots within the Properties, other than C-1 (Light Commercial) Lots, shall be used solely for the construction of Residences whose occupancy and use shall be restricted to Single Family Residential Use as defined in article I, section 27 hereof and as permitted by applicable zoning (i.e., single family [R-1], multi-family [R-3], etc.). In no event shall a Residence be occupied by more individuals than permitted by applicable law, zoning or other local governmental regulation. The restriction is not intended to preclude

construction of & "guest house" for the housing of occasional social guests or servants' quarters for the housing of servants or the domestic employees on the premises.

- (b) All Residence and related structures erected in any Lot shall conform to the minimum construction standards set forth in Article VI hereof, unless a variance has been granted by the Environmental Control Committee in accordance with article V, section 13 hereof.
- (c) Each Lot shall be conveyed as a separately designated and legally described fee simple estate, subject to this Declaration. All Lots and the Residences and other improvements erected or placed thereon (including, without limitation, landscaping) shall at all times be maintained in such a manner as to prevent their becoming unsightly.
- (d) The vegetation and landscaping on any Lot shall be planted or maintained by the Owner or resident in such a manner as to reduce the risk of fire, prevent or retard shifting or erosion of soils, encourage the growth of indigenous ground cover and to cause the proper diversion of water into streets and natural drainage channels.
- (e) No camping, whether temporary or permanent, and no temporary structures of any kind shall be permitted on any Lot.
- (f) No more than one kitchen facility shall be installed or maintained in any Residence.
- (g) No fences, hedges, retaining walls, landscape or privacy structures shall be constructed, erected, or placed on any Lot without the prior approval of the Environmental Control Committee. In no event shall any fence exceed six (6) feet in height and fences constructed of metal, chain link (or similar fabric or plastic appearances) shall not be permitted; provided, however, that wrought iron fences may be erected with Environmental Control Committee approval.
- (h) No drilling, refining, quarrying or mining operations of any kind shall be permitted on any Lot, except that agricultural water wells may be authorized by the Environmental Control Committee in accordance with Article V, hereof.
- (i) Other than to those Lots owned by the Association, there shall be no access to any Lot on the perimeter of the Properties except from designated streets or roads within the Properties.
- (j) Owners of Lots adjacent to the golf course shall permit entrance upon their Lots in order to permit retrieval of a player's golf ball.
- (k) No existing trees with a diameter greater than five inches shall be destroyed, uprooted, cut down or removed from any Lot without first obtaining a tree-cutting permit from the Association.

- (l) Any Lot which is zoned "light commercial" (C-1) shall only be utilized for purposes and uses permitted within such zoning and shall be subject to regulation by the ECC to the same extent as other Lots within the Properties.

**Section 2. Common Area.** The Common Area shall be preserved as open space and used for recreational purposes and other purposes incidental and ancillary to the use of Lots. Such use shall be limited to the private use for aesthetic and recreational purposes by the Members, their tenants, families and guests, subject to the provisions of the Governing Documents, including section 3, below. No improvement, excavation or work which in any way alters any Common Area or Common Facility from its natural or existing state on the date such Common Area or Common Facility shall be made or done except by the Association and then only in strict compliance with the provisions of this Declaration.

**Section 3. Restrictions on Recreation Privileges.** In order to avoid an overburdening of the Common Area and Common Facilities, the Membership that is appurtenant to any Lot shall entitle the Lot Owner(s) to only the following user privileges with respect to recreational Common Facilities:

- (a) *Vacant and Improved Lots* The Membership appurtenant to joint ownership of a Lot shall confer user privileges as defined in article II to no more than one Family at any one time subject to subparagraph (b), below. All other joint Owners of a Lot shall only have those rights and privileges accorded to Guests pursuant to the Governing Documents.
- (b) *Rental Properties.* The Membership appurtenant to any improved Lot that is rented or leased by the Owner(s) shall confer user privileges as defined in article II hereinabove on the Tenants; provided, however, that use of recreational Common Facilities shall be subject to such further rules, regulations and limitations as may be adopted by the Board from time to time. The Owner of any rented or leased Lot shall only have those rights and privileges accorded to Guests pursuant to the Governing Documents.
- (c) *Guests and Invitees.* Use of recreational the Common Area and Common Facilities by the Guests or Invitees of any Owner shall be subject to such rules, regulations and limitations as maybe adopted by the Board from time to time.

**Section 4. Prohibition of Noxious Activities.** No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or the Common Area nor shall anything be done within the Properties which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including, but not limited to barking dogs, the operation of excessively noisy stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from an Owner's Lot or from activities within the Common Area, which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Lot or the Common Area.

**Section 5. Temporary Structures.** No structure of a temporary character, trailer, mobile home, camper, tent, shack, garage or other outbuilding shall be used on any Lot at any time as a Residence, either temporarily or permanently.

**Section 6. Household Pets.** The following restrictions regarding the care and maintenance of pets within the Properties shall be observed by each Owner and resident:

- (a) A reasonable number of common household pets may be kept on each Lot so long as the same are not kept, bred or maintained for commercial purposes. No other animals, livestock, or poultry of any kind shall be kept, bred or raised on any Lot or in any Residence, except that in Unit 12 of the Properties, the Board, by the Association Rules, may limit the number of pets.
- (b) Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners.
- (c) Each person bringing or keeping a pet on the Properties shall be solely responsible for the conduct of the Owner's pets. The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet.
- (d) The Board of Directors shall have the right to establish and enforce additional rules and regulations defining, in a uniform and nondiscriminatory manner, what constitutes a "reasonable number" of pets depending on their size, disposition and/or maintenance requirements and imposing standards for the reasonable control and keeping of household pets in, upon and around the Properties to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Properties by the other Owners and residents.

**Section 7. Signs.** No advertising signs or billboards shall be displayed on any Lot or posted within or upon any portion of the Common Area except that Owners may post on their Lots (i) any signs required by legal proceedings and (ii) a single "For Rent," "For Lease" or "For Sale" sign of reasonable dimensions and appearance, in accordance with any applicable Association Rules. A-frame or other directional signs of real estate brokers advertising Lots for sale or lease shall only be allowed within the Common Area or roadways within the Properties in strict compliance with applicable Association Rules.

**Section 8. Business Activities.** No business or commercial activities of any kind whatsoever shall be conducted in any Residence garage or out building or in any portion of any Lot without the prior written approval of the Board; provided, however, the foregoing restriction shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this section 8 shall be construed in such a manner so as to prohibit any Owner from: (a) maintaining his or her personal library in his or her Residence; (b) keeping his or her personal business records or accounts therein; (c) handling his or her personal or professional telephone calls or correspondence therefrom; (d) leasing or renting his or her Residence in accordance with article II, section 3, hereof; or (e) conducting any other activities on the Owner's Lot otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization. The uses described in (a) through (e), above, are

expressly declared to be customarily incidental to the principal residential use and not in violation of this section 8.

**Section 9. Garbage.** No rubbish, trash, or garbage shall be allowed to accumulate on Lots. Any trash that is accumulated by an Owner outside the interior walls of a Residence shall be stored entirely within appropriate covered disposal containers and facilities which shall be screened from view from any street, neighboring Lot or the Common Area. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and improvements) shall be removed from the Properties to a public dump or trash collection area by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this section.

**Section 10. Storage.** Storage of personal property on any Lot shall be entirely within enclosed storage areas. The Association shall have the right to establish and maintain on the premises appropriate storage yards and storage buildings for the maintenance of materials and equipment used by the Association in connection with its planting, building, repair, maintenance and preservation of the structures, gardens and other improvements within the Common Area.

**Section 11. Antennas and Similar Devices.** Owners may maintain antennas on their Residences which are designed for customary television and radio broadcast reception, subject: to compliance with the ECC Rules. Furthermore, no activity shall be conducted on any Lot which causes an unreasonable broadcast interference with television or radio reception on any neighboring Lot.

**Section 12. Burning.** Burning is permitted on Lots subject to prior notification to the Association and compliance with all local governmental fire safety and permit regulations. No Owner or resident shall permit any condition to exist on his or her Lot, including, without limitation, trash piles, or weeds, which create a fire hazard or is in violation of local fire regulations.

**Section 13. Machinery and Equipment.** Except during periods of approved construction, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence or appurtenant structures within the Properties.

**Section 14. Diseases and Pests.** No Owner shall permit any thing or condition to exist upon his or her Lot which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

**Section 15. Parking and Vehicle Restrictions.**

- (a) Vehicle use within the Properties is restricted to streets and parking areas by street-licensed vehicles only, as the same may be defined by Association Rules and Regulations. In the interests of safety, use by nonmotor-driven recreational vehicles, with the exception of bicycles, is prohibited on streets and parking areas within the Properties.
- (b) The storage of motor homes, recreational vehicles, trailers, camper shells, boats or other similar vehicles and equipment on an Owner's Lot may be permitted; provided, however,

that such storage shall be subject to the Association Rules regarding such matters that may be adopted from time to time.

- (c) No dilapidated or inoperable vehicle or parts thereof, including vehicles without wheel(s) or an engine, shall be stored or repaired in the open within the Properties except for emergency repairs. The Association shall remove, at the Owner's expense, any vehicle parked or stored in violation of this restriction.
- (d) The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding parking and vehicles within the Properties as may, be deemed prudent and appropriate.

**Section 16. Children.** Each Owner and resident shall be accountable to the remaining Owners and residents, their families, visitors, guests and invitees, for the conduct and behavior of their children and any children temporarily residing in or visiting the Owner's/resident and for any property damage caused by such children.

**Section 17. Activities Affecting Insurance.** Nothing shall be done or kept on any Lot or within the Common Area which will increase the rate of insurance relating thereto on any policy maintained by the Association (see Article XI, below) without the prior written consent of the Association and no Owner shall permit anything to be done or kept on his or her Lot or the Common Area which would cause any improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Residence or any part of the Common Area.

**Section 18. Restriction on Further Subdivision and Severability.** No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof and no Owner of a Lot within the Properties shall be entitled to sever that Lot from the Common Area portion of the Properties.

**Section 19. Use of Private Streets Within the Common Area.**

- (a) Private streets within the Properties shall not be used for recreational purposes, including "joy riding" or racing. Motorcycles, mopeds, and cars shall be allowed on such private streets only for ingress and egress.
- (b) In order to prevent accelerated deterioration of private roadways, the Association Board shall be entitled to collect deposits from Owners and/or contractors in connection with construction projects within the Properties. Such deposits can be designated as nonrefundable or they can, in the Board's discretion, be applied to correct or repair specific damage caused by the construction in accordance with article V, section 7, above.
- (c) All operators of motor vehicles, including motorcycles, within the Properties subdivision must possess a valid California driver's license.
- (d) All provisions of the California Vehicle Code must be honored at all times when operating any motor vehicle within the Properties.

- (e) Although all roads within the Properties are subject to the California Vehicle Code, the Association shall have the right to adopt reasonable rules regarding the control and use of roads within the subdivision, vehicles operated thereon and the speed of such vehicles. The Association is further authorized to delegate the discharge of its rights hereunder to a municipality or other governmental entity or to contract with a private security patrol company for such purposes so long as the private character of the subdivisions roads is not jeopardized by such action. No motorized vehicles of any sort shall be operated or allowed on the equestrian trails within the Properties.

**Section 20. Variances.** Upon application by any Owner, the Environmental Control Committee shall be authorized and empowered to grant reasonable variances from the property use restrictions of this Article VIII in accordance with the procedures set forth in article V, section 13.

**Section 21. Enforcement of Property Use Restrictions.** The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural, environmental, or property use infraction that does not necessitate immediate corrective action under article XIV, section 6 hereof, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her appeal rights.

## **ARTICLE IX Lake and Lakefront Lots**

**Section 1. Ownership of Lake.** Subject to the limitations contained in section 5, below, the water in and the land under any lake located within the boundaries of the Properties, whether now in existence or to be constructed within any portion of the Common Area, are or shall be owned by the Association. The location of such lake, as well as its normal maximum water elevation, is or will be shown on the recorded map of each unit of the Subdivision to the extent applicable. The title that will be acquired by Owner and to any successors or assigns of such Owner to any Lot contiguous to any such lake shall extend only to the shoreline of the lake to which such Lot is contiguous as said shoreline would be established on the date hereof if the water elevation in such lake were one vertical foot above the normal maximum water level indicated on the recorded map of the unit in the Subdivision in which it is located and as the shoreline may hereafter be established by the water at an elevation one vertical foot above the normal maximum water level by erosion from said shoreline.

**Section 2. Limitations on Water Rights.** No Owner of a Lot contiguous to a lake or stream shall have any rights with respect to such lake or stream, the land thereunder, the water therein, or its or their elevation, use or condition. Nor shall any Owner have any riparian rights incidental or appurtenant to any lake or stream. No person shall acquire or be divested of title to any land in the Properties by accretion, reliction, submergence or changing water levels.

**Section 3. Right to Remove Accretions.** The Association shall have the right at any time to dredge the lake or otherwise remove any accretion or deposit from any lakefront Lot in order that the shoreline of the lake to which such Lot is contiguous may be moved toward or to, but not inland beyond, the location of said shoreline as it would be established on the date hereof if the water elevation in such lake were one vertical foot above the normal water level indicated on the recorded map of the unit in the Subdivision in which it is located, and title shall pass with such dredging or other removal as by erosion.

**Section 4. Non-responsibility for Damages.** The Association shall not be liable for damages caused naturally by erosion, washing, or other action of the water of any lake or stream.

**Section 5. Right to Change Level of Lake.** The Association shall have the right to raise and lower the water level of any lake within the Properties; provided, however, that such right shall not permit raising the water level in excess of one vertical foot above the normal lake elevation of 2,559 feet mean sea level.

**Section 6. Floating Dock Approvals.** Whenever the Association shall approve plans and specifications for a floating dock or similar structure on or extending into any lake, such approval shall constitute a mere revocable license for the construction, placement and maintenance of the proposed structure. Due to the variations of the lake level, all structures extending into the lake shall be of the floating type. No structure extending into the lake shall be permanently fixed on piles, posts, or any kind of foundation.

## **ARTICLE X Easements**

The following easements are reserved within the Properties for the benefit of the Association, the Owners and the providers of utility services for purpose incidental to the use and maintenance of the real property subject to this Declaration. Said easements shall include rights of ingress and egress to the extent reasonably necessary to exercise such easements.

**Section 1. Utilities.** A five-foot wide strip running along the inside of all Lot lines, except those Lot lines coincident with street right-of-way lines in which case such strip shall be 10 feet wide, for the installation, maintenance and operation of all utilities such as water, sewer, telephone and electrical facilities, including radio and TV transmission cables, and the right to locate guy wires, braces or anchors or to cut, trim, or remove trees and plantings thereon whenever necessary in connection with such installation, maintenance and operations.

**Section 2. Streets.** A nonexclusive right to each Owner and the Association on, over and under all streets within the Properties for street roadway and vehicular traffic purposes in order to install, maintain and operate all utilities; for access to any Lot or parcel; and for drainage and maintenance of all said streets.

**Section 3. Shoreline Maintenance.** A 15-foot wide strip running along the lakefront portion of each Lot contiguous to a lake shoreline for the purpose of lake and shoreline maintenance and control.

**Section 4. Equestrian.** Those strips of land designated on the Subdivision Map as "Equestrian Easements" for the use and maintenance of riding trails. Without limiting the foregoing, the Subdivision Map for Pine Mountain Lake, Unit No. 12, recorded in the Office of the Tuolumne County Recorder on June 26, 1970 in Volume 6 of Subdivisions at Page 27, subjects the following Lots to an equestrian easement:

Lots 90 through 98, inclusive;  
134 through 144, inclusive;  
and 269.

**Section 5. Flight Strip Taxiway Easement.** The following Lots will be subject to a taxiway easement as shown on the Unit No. 12 Subdivision Map which will be fifty feet (50') in width and will be or the exclusive use and enjoyment of the Owners of such Lots to wit:

Lots 5 and 6  
21 through 46, inclusive;  
20 and 47  
49 through 55, inclusive;  
114, 115 and 116  
112 and 113;  
62 and 63.

The Environmental Control Committee shall have the right to limit the use of this taxiway easement to planes of Class 1, i.e., planes up to and including any general executive twin-engine aircraft.

**Section 6. Priority.** Wherever easements granted to governmental agencies are, in whole or in part, coterminous with any other easements, such governmental easements shall have priority over other easements in all respects.

**Section 7. Owner Responsibility.** On each Lot, the right-of-way and easement areas reserved by the Association or dedicated to public utilities purposes shall be maintained continuously by the Lot Owner, but no structures, planting, or other material shall be placed or permitted to remain or other activities undertaken that may damage or interfere with the installation or maintenance of utilities; which may change the direction of flow of drainage channels in the easements; which may obstruct or retard the flow of water through drainage channels in the easements; or which damage or interfere with established slope ratios or create erosion or sliding problems. Improvements within such areas shall be maintained by the respective Lot Owner, except those for which a public authority or utility company is responsible.

## **ARTICLE XI Insurance**

**Section 1. Types of Insurance Coverage.** The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost:

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

- (i) Loss or damage by fire or other risks covered by the standard extended coverage endorsement.
- (ii) Loss or damage from theft, vandalism or malicious mischief.
- (iii) Such other risks, perils or coverage as the Board of Directors may determine.

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

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

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

**Section 2. Coverage Not Available.** In the event any insurance policy, or any endorsement thereof, required by section 1 is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage hereinabove described. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

**Section 3. Copies of Policies.** Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

**Section 4. Trustee.** All insurance proceeds payable under section 1 of this article XI may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank in Tuolumne County that agrees in writing to accept such trust.

**Section 5. Adjustment of Losses.** The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to section 1 of this article XI. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

## **ARTICLE XII Damage or Destruction**

### **Section 1. Damage or Destruction to the Common Area or Facilities.**

- (a) As soon as practicable after damage to or destruction of any portion of the Common Area or Common Facilities, other than that which can, and by preference should be, repaired or replaced by Association personnel and equipment, the Board of Directors shall obtain competitive bids from licensed contractors, which bids shall set forth in detail the work required to restore the damaged property or facility and the itemized price therefor. The ultimate determination of whether a destroyed Common Area or Common Facility is to be rebuilt and, if so, the plans and specifications for the project, shall be matters within the discretion of the Board, provided, however, that in the event that the insurance proceeds payable with respect to the loss are insufficient to cover the cost of the repair or reconstruction project, and no reserve funds have been accumulated for the major repair or reconstruction of the damaged or destroyed facility, the cost of the project shall be defrayed by a Special Assessment levied in accordance with article IV, section 4 hereof.
- (b) The Board shall also cause inquiry to be made as to responsibility for such damage or destruction and where indicated take such action, on advice of legal counsel, as may be necessary or appropriate to assess appropriate penalties and collect damages therefor.

### **Section 2. Damage or Destruction of Residences.**

- (a) **Obligation to Rebuild.** If all or any portion of any Residence is damaged or destroyed by fire or other casualty it shall be the duty of the Owner of said Residence to rebuild, repair

or reconstruct said Residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

- (b) *Committee Approval.* Any Owner who has suffered damage shall apply to the Committee for approval of plans for the reconstruction, rebuilding, or repair of his or her Residence. Application for such approval shall be made in writing together with full and complete plans, specifications, working drawing and elevations showing the proposed reconstruction and the end result thereof.
- (c) *Time Limitation For Reconstruction.* The Owner or Owners of any damaged Residence(s), the Environmental Control Committee shall be obligated to proceed with all due diligence hereunder, and the Owner(s) shall commence reconstruction or to clear the Lot of all damaged or destroyed structures within three (3) months after the damage occurs and complete reconstruction within six (6) months after the damage occurs, unless an extension of these time limitations is obtained from the Committee in accordance with article V, section 9 hereof.

### **ARTICLE XIII Condemnation**

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

### **ARTICLE XIV Breach and Default**

**Section 1. Remedy at Law Inadequate.** Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

**Section 2. Nuisance.** Without limiting the generality of the foregoing section 1, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

**Section 3. Costs and Attorneys' Fees.** In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the court may award to any party to such action such attorneys' fees and other costs as it may deem just and reasonable.

**Section 4. Cumulative Remedies.** The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

**Section 5. Failure Not a Waiver.** The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

**Section 6. Rights and Remedies of the Association.**

- (a) *Rights Generally.* In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Facilities or suspension of the Owner's voting rights as a Member of the Association; provided, however, the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this section 6.

The decision of whether it is appropriate or necessary for the Association to take enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as exist by virtue of section 1354 of the California Civil Code or otherwise by law.

- (b) *Schedule of Fines.* The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment.
- (c) *Definition of "Violation".* A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation

continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) *Limitations of Disciplinary Rights.*

- (i) *Loss of Rights: Forfeitures.* The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph (iii) below.
- (ii) *Hearings.* No penalty or temporary suspension of rights shall be imposed pursuant to this Article XIV unless the Owner alleged to be in violation is given at least 15 days' prior notice of the proposed penalty or temporary suspension and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) at a hearing conducted at least 5 days before the effective date of the proposed disciplinary action.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes (A) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (B) a traffic or fire hazard; (C) a threat of material damage to, or destruction of, tire Common Area or Common Facilities; or (D) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors, or its duly authorized agents, may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the

Association no later than five days following the date when the fine is levied. The hearing shall be held no more than 15 days following the date of the disciplinary action or 15 days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

- (e) *Notices.* Any notice required by this article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice; provided, however, that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.
- (f) *Rules Regarding Disciplinary Proceedings.* The Board, or a Covenants Committee appointed by the Board to conduct and administer disciplinary hearings and related proceedings pursuant to section 7, below, shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

### ***Section 7. Covenants Committee.***

- (a) *Appointment of Committee.* Acting pursuant to article X, section 1, of the Bylaws, the Board of Directors may establish a Covenants Committee to hear and decide cases involving alleged violations of the Governing Documents. If no committee is established, the Board shall perform this function.
- (b) *Jurisdiction and Hearing Procedures of the Committee.* The Covenants Committee shall review written complaints from Lot Owners, the General Manager, or the Environmental Control Committee (for violations other than those relating to specific improvement projects within the jurisdiction of the Environmental Control Committee) regarding alleged violations of the Governing Documents or Association Rules, and, when determined appropriate, conduct hearings and make findings regarding the alleged violation(s). The Covenants Committee may levy penalties and/or fines (pursuant to a Board-approved fine schedule) in the event the allegations regarding such violations are found to be true. To perform the foregoing, the Covenants Committee shall adopt rules of procedure for enforcement hearings and shall conduct its hearings in accordance with such rules after they have been approved by the Board. Notwithstanding the foregoing, enforcement of specific violations of architectural requirements relating to improvement projects submitted, to, and reviewed by, the Environmental Control Committee shall remain the jurisdiction of the Committee pursuant to article V, section 12.
- (c) *Appeals.* The decisions of the Covenants Committee, if established, shall be appealable to the Board of Directors within 10 calendar days following receipt of the committee's decision. The Board shall have the discretion to hear any appealed matter or decline to take the appeal and thus affirm the decision of the Covenants Committee. Any decision to decline an appeal shall be based on a reasonable determination from the record that the

appeal lacks merit. Decisions of the Board shall be final. Procedures for appeal and the hearing of appeals shall be set forth in the Association Rules.

- (d) *Court Actions.* Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the Board.

## **ARTICLE XV Notices**

**Section 1. Mailing Addresses.** Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to any Owner: To the street address of his or her Lot or to such other address as he or she may from time to time designate in writing to the Association.

If to the Association: Pine Mountain Lake Association at the principal office of the Association (or to such other address as the Association may from time to time designate in writing to the Owners).

**Section 2. Personal Service Upon Co-Owners and Others.** Personal, service of a notice or demand to one of the co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, shall be deemed delivered to all such co-Owners, to such partnership, or to such corporation, as the case may be.

**Section 3. Deposit in United States Mails.** All notices and demands served by mail shall be sent by first class or certified mail, with postage prepaid, and shall be deemed delivered four days after deposit in the United States mail in Tuolumne County, California.

## **ARTICLE XVI No Public Rights in the Properties**

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

## **ARTICLE XVII Amendment of Declaration**

**Section 1. Amendment in General.** This Declaration may be amended or revoked in any respect by the vote or assent by written ballot of the holders of not less than 51 percent of the voting power of the Members. Notwithstanding the foregoing, the percentage of Member votes necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

**Section 2. Effective Date of Amendment.** The amendment will be effective upon the recording in the Office of the Recorder of Tuolumne County, a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of section 1 above have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of

the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment. If the consent or approval of any governmental authority, Mortgagee, or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

**Section 3. Reliance on Amendments.** Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## **ARTICLE XVIII General Provisions**

**Section 1. Term.** The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration (as the same may be amended from time to time in accordance with article XVII, above) shall run with, and shall benefit and burden the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of 60 years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of 10 years each unless, within 6 months prior to the expiration of the initial 60-year term or any such 10-year extension period, a recordable written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association terminating the effectiveness of this Declaration shall be filed for recording in the Office of the County Recorder of Tuolumne County, California.

### **Section 2. Annexation of Additional Property.**

- (a) *Membership Approval Required.* Additional real property may be annexed to the Properties and brought within the general plan and scheme of this Declaration upon the approval by vote or written consent of Members entitled to exercise not less than 66-2/3 percent of the voting power of the Association. Upon obtaining the requisite approval pursuant to this section 2, the owner of any real property who desires to annex such property to the Properties and add it to the general plan and scheme of this Declaration and subject the property to the jurisdiction of the Association, shall file with the Office of the County Recorder a Declaration of Annexation as more particularly described in subsection (b), below.
  
- (b) *Declaration of Annexation.* Any annexations of real property to the Properties authorized under subparagraph (a), above, shall be effected by the filing with the Office of the County Recorder a Declaration of Annexation, or other similar instrument, with respect to the additional real property. The Declaration of Annexation: (i) shall be executed by the owner of the subject property; (ii) shall extend the general plan and scheme of this Declaration to such real property; and (iii) may contain such additions to, and modifications of, the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added real property, so long as the supplemental restrictions are consistent with the general plan and scheme of this Declaration and all applicable laws and governmental regulations. Any such supplemental declaration may set forth use restrictions and the design and building standards which shall apply to the annexed parcel in question or may give blanket

approval for development of that parcel in accordance with specific architectural plans and drawings which are signed, dated and incorporated by reference in the supplemental declaration.

- (c) The filing of a Declaration of Annexation shall constitute and effectuate the annexation of the additional real property, described therein, and thereupon said real property shall become and constitute a part of the Properties, and be subject to, and encompassed within, the general plan and scheme of this Declaration. Lots within the annexed property shall thereupon become subject to Assessment by the Association and to the functions, powers and jurisdiction of the Association, and the Owners of Lots within the annexed real property shall automatically become Members of the Association.

***Section 3. Construction.***

- (a) *Restrictions Construed Together.* All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.
- (b) *Restrictions Severable.* Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.
- (c) *Singular Includes Plural.* The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.
- (d) *Captions.* All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.
- (e) *Exhibits.* All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

DATED: \_\_\_\_\_, 1990.