

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Kirkwood Meadows Association  
P.O. Box 101  
Kirkwood, CA 95646  
Attn: Judith Flinn

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**KIRKWOOD MEADOWS ASSOCIATION'S NOTICE OF AMENDMENT OF  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

I, Judith Flinn state:

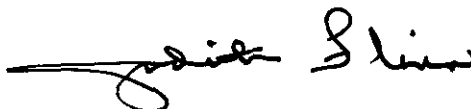
I am the President of Kirkwood Meadows Association, a California nonprofit mutual benefit corporation. I am informed, believe, and allege that the matters stated below are true.

1. Pursuant to Civil Code section 1355, Kirkwood Meadows Association obtained the approval of 75 percent of votes cast necessary to amend the Declaration of Covenants, Conditions and Restrictions for Kirkwood Meadows Association on December 29, 2009.
2. The approved and amended Declaration of Covenants, Conditions and Restrictions for Kirkwood Meadows are attached hereto.

DATED: Jan 12, 2010.

Kirkwood Meadows Association,  
A California nonprofit mutual benefit corporation

By:



Judith Flinn  
President, Kirkwood Meadows Association

**SECOND RESTATED  
DECLARATION  
OF  
COVENANTS,  
CONDITIONS AND  
RESTRICTIONS**

Kirkwood Meadows Association

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**SECOND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
KIRKWOOD MEADOWS**

On July 7, 1970, Kirkwood Meadows, Inc., a California corporation ("Declarant"), executed a Declaration of Covenants, Conditions and Restrictions for Kirkwood Meadows, which was Recorded on July 9, 1970, in Book 196, page 593-649, in the Official Records of Amador County, California ("Official Records"). On October 18, 1972, Declarant executed a Declaration of Annexation to Kirkwood Meadows, which was Recorded on October 18, 1972, as Instrument No. 6361, in Book 233, page 447, in the Official Records. On February 17, 1989, the Declaration of Covenants, Conditions and, Restrictions was amended by an instrument which was Recorded as Instrument No. \_\_\_\_\_, in Book \_\_\_\_\_, page \_\_\_\_\_ in the Official Records,

On July 3, 1993, a First Restated Declaration of Covenants, Conditions and Restrictions for Kirkwood Meadows was duly adopted and recorded on September 7, 1994 as Instrument No. 1994008721, in the Official Records of Amador County, California.

The Declaration of Covenants, Conditions, and Restrictions (as amended), the Declaration of Annexation, and the First Restated Declaration of Covenants, Conditions and Restrictions for Kirkwood Meadows (collectively, the "Original Declaration") affect and are binding on all that certain real property situated in the County of Amador, State of California, (hereafter referred to collectively as "Properties"), and more particularly described as follows:

Kirkwood Meadows Unit No. 1, all as shown on that certain subdivision map entitled, "Kirkwood Meadows Unit No. 1," filed in the Office of the Amador County Recorder, on July 1, 1970, in Book 3 of Maps at page 30; and

Kirkwood Meadows Unit No. 2, all as shown on that certain subdivision map entitled, "Kirkwood Meadows Unit No. 2," filed in the Office of the Amador County Recorder, on October 13, 1972, in Book 3 of Subdivision Maps at page 92.

The Original Declaration is hereby superseded, amended and restated in its entirety to read as follows:

## RECITALS

A. Declarant was the original owner of the Properties. 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.

B. 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(k) of the California Civil Code. Finally, it was the intention of Declarant that the "Common Areas" and "Common Facilities" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees and, with respect to certain portions of the Properties, the general public, all subject to the terms and conditions of the Governing Documents.

C. On December 29, 2009, the Owners of Lots within the Properties voted by written ballot to amend, consolidate, and restate the Current Declaration, all in accordance with the procedures for amendment set forth in the relevant provisions of law. It was the intention of the Owners to replace the Original Declaration, in its entirety, with the Recordation of this Declaration. The Owners' action to amend and restate the Original Declaration as set forth herein and the fact that the requisite percentage of affirmative votes required in the Original Declaration was achieved, is attested by the execution of this Second Restated Declaration by duly authorized officers of the Association, as required by California Civil Code section 1355(a). As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### Definitions

Section 1. "Articles" means the Articles of Incorporation of Kirkwood Meadows 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 Kirkwood Meadows Association, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an "association" as defined in section 1351(a) of the California Civil Code.

Section 4. "Association Rules" means the rules, regulations and policies adopted by the Board of Directors 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.

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

Section 7. "Common Area" means all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area owned by the Association at the time of the Recordation of this Declaration is described in Exhibit "A", attached hereto. Unless the context clearly indicates a contrary intent, any reference herein to the "Common Area" shall also include any Common Facilities located thereon.

Section 8. "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 or Common Facilities; (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors; (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Area and Common Facilities, and for nonpayment of any Assessments; and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

Section 9. "Common Facilities" means, the roads, parking areas, landscaping and other facilities, including any trees, hedges, plantings, lawns, shrubs, fences, utilities, berms, pipes, lines, lighting fixtures, buildings, structures facilities constructed or installed, or to be constructed or installed, or currently located within any portion of the Common Area and owned by the Association.

Section 10. "County" means the County of Amador, State of California, and its various departments, divisions, employees, and representatives. If any portion of the Properties becomes a portion of an incorporated city, then the term "County" shall be deemed to include the city in which that portion of the Properties is located.

Section 11. "Declarant" means the original, developer of the Properties, namely Kirkwood Meadows, Inc., a California corporation.

Section 12. "Declaration" means this instrument, as it may be amended from time to time. The "Original Declaration" means and refers to the documents referenced in the Preamble to this Declaration, together with all amendments and annexations thereto, adopted prior to adoption of this Declaration.

Section 13. "Duplex" means a structure on a Lot which contains two residences.

Section 14. "Excavation" means any disturbance of the surface of the land (except to the extent reasonably necessary for planting) which destroys any vegetation or results in the removal of earth, rock, sand or other natural substance.

Section 15. "Fill" means any addition of rock or earth materials to the surface of the land which increases the natural elevation of such surfaces by more than 24 inches.

Section 16. "Governing Documents" is a collective term that means and refers to this Declaration and to the Articles, the Bylaws and the Association Rules.

Section 17. "Improvement" includes, without limitation, any exterior construction, installation, alteration or remodeling of any buildings, walls, retaining walls, stairs, decks, fences, swimming pools, roads, driveways, parking areas, landscape structures, skylights, solar heating equipment, spas, antennas, poles, signs, utility lines or any structures of any kind.

Section 18. "Lot" means any parcel of real property designated by a number on the Subdivision Map, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence(s) and other Improvements constructed or to be constructed on a Lot.

Section 19. "Majority of a Quorum" means the vote of a majority of the votes cast at a meeting or by written ballot when the number of Members attending the meeting in person or by proxy or casting written ballots equals or exceeds the minimum quorum requirement for Member action, as specified in the Bylaws or statute.

Section 20. "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended.

Section 21. "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 22. "Owner" means any person, firm, corporation or other entity which owns a fee simple interest in any Lot. Where the provisions or context requires, the term "Owner" shall include family, guests, tenants, and invitees of Owner.

Section 23. "Owner of Record" includes an Owner and means any person, firm, corporation, or other entity in which title to a Lot is vested as shown by the Official Records of the County.

Section 24. "Planning Committee" or "Committee" means the committee created in accordance with article V of this Declaration.

Section 25. "Properties" means all parcels of real property (Common Area and Lots) described in the Preamble to this Declaration, together with all buildings, structures, utilities, Common Facilities, and other Improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto. The term "Properties" shall also include any additional real property that is hereafter annexed to the Properties and made subject to this Declaration pursuant to article XV, section 2 hereof.

Section 26. "Record" or "File" means, with respect to any document, the recordation or filing of such document in the Office of the County Recorder.

Section 27. "Regular Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with article IV, section 2, hereof.

Section 28. "Residence" means a private, single-family dwelling constructed or to be constructed on a Lot. As indicated in Section 13 above, a Duplex consists of two such Residences in a single structure as provided for in Article VIII, Section 1 hereof.

Section 29. "Road" means any vehicular way designated on a Subdivision Map as a road, court or street.

Section 30. "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 31. "Special Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with article IV, section 3 hereof.

Section 32. "Special Individual Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with article IV, section 4 hereof.

Section 33. "Subdivision Maps" means the Recorded maps for all phases and parcels comprising the common interest development within the Properties.

## **ARTICLE II**

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

Section 1. Owners' Non-exclusive Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to all Common Area within the Properties, 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 assign, rent, license, lease, charge reasonable admission and other fees for, and to otherwise designate and control the use of any unassigned parking and storage spaces and to charge reasonable admission and other fees or to limit the number of guests of Members who may use any recreational Common Facilities.

(b) The right of the Association to adopt Association Rules as provided below 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 initiate disciplinary action against the violating Owner or tenant. Such action may include the levying of fines and/or the temporary suspension of the voting rights and/or right to use the Common Facilities, other than roads, by any Owner and/or the Owner's tenants and guests.

(c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and Common Facilities and in aid thereof to Mortgage the Common Area; provided, however, that the rights of any such Mortgagee in the Common Area 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 Section 4.03, below.

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by a majority of the voting power of the Members. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Lot. The instrument approving the dedication may be executed in counterparts so long as each counterpart is in recordable form.



- (e) All easements affecting the Common Area.

Section 2. Persons Subject to Governing Documents. All present and future Owners, tenants and occupants of any Lot 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. The acceptance of a deed to any Lot, the entering into a lease, sublease or contract of sale with respect to any Lot or the occupancy of any Lot shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon 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 Lots, Generally. Any Owner may delegate, in accordance with and subject to the Governing Documents, the Owner's rights in and to the use and enjoyment of the Common Area and Common Facilities to the members of the Owner's family, guests, tenants, lessees or contract purchasers who reside in the Owner's Residence. In the event that any Owner conveys his or her interest in a Lot pursuant to a contract of sale, the Owner must delegate, in accordance with the Governing Documents, the Owner's membership rights and rights of enjoyment to the Common Area and Common Facilities to the Owner's contract purchaser/vendee.

With the exception of vacation and seasonal rentals, any rental or lease of a Residence may only be to a single family for Single Family Residential Use. The restrictions on multiple family occupancy imposed by this paragraph are intended to protect, enhance and maintain the single family residential atmosphere which exists within the Properties and to avoid an overburdening of Common Area and Common Facilities. In no event shall any Residence be owned or used on a time-share basis as defined in California Business and Professions Code section 11003.5 or comparable successor statute.

During any period when a Residence has been rented or leased, the Owner-lessor, his or her family, guests and invitees shall not be entitled to use and enjoy the Common Areas or Common Facilities of the Properties (other than roads), except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Residence; provided, however, that this restriction shall not apply to any Owner-lessor who is contemporaneously residing in another Residence within the Properties.

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

Every Owner-lessor shall be obligated to provide each tenant or lessee of the Owner's Residence with a copy of this Declaration or the Association Rules. This obligation may be satisfied by tender to the tenant or lessee of a summary of rules and regulations most pertinent to rentals as may be prepared, from time to time, by the Association's management. The Owner-lessor shall at all times be responsible for compliance by the Owner's tenant or lessee with all applicable Governing Document provisions during the tenant's/lessee's occupancy and use of the Residence, the Association shall be entitled to adopt rules of uniform and nondiscriminatory application interpreting the requirements of this section or regulating specific matters of collective concern arising out of or pertaining to the rental or lease of Residences. Such rules may make reasonable distinctions between the rights and privileges accorded to Owners, tenants and lessees with respect to Common Facilities and other Common Area amenities.

Whether or not such right is stated in any lease or rental agreement, every Owner who rents his or her Residence automatically grants to the Association the right to determine a tenant's default under the Governing Documents and of terminating the tenancy and evicting the tenant for such default in accordance with the procedures specified in this subparagraph (b). If the Board takes such eviction action, either in its own name or in the Owner's name, the Owner shall be responsible for all costs thereof, including reasonable attorneys' fees, and shall reimburse the Association upon demand for the entire amount of such costs. If the Owner refuses to make such reimbursement, the sums shall constitute a Special Individual Assessment for which a lien may be imposed against the Owner's Lot. The Association's right to maintain an eviction action hereunder is derived from California Code of Civil Procedure sections 1165 and 374 and shall only arise if the tenant's or lessee's conduct involves damage to or destruction of Common Areas or Common Facilities, or constitutes a nuisance or unreasonable interference with the quiet enjoyment of other residents.

(b) Discipline of 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 initiation of an eviction proceeding in accordance with the following paragraph, suspension of the tenant's privileges to use any recreational Common Facilities or the imposition of fines and penalties against the Owner or tenant.

(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 or the Association's General Manager 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 if 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.

Section 4. Obligations of Owners. By virtue of the ownership of a Lot within the Properties, each Owner shall be subject to the following:

(a) Owner's Duty to Notify Association of Tenants and Contract Purchasers. Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant residing on the Owner's Lot. Each Owner, contract purchaser or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights to use and enjoy the 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 right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(c) Notification Regarding Governing Documents.

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

(A) A copy of the Governing Documents;

(B) The Association's most recent financial documents as described in Civil Code section 1365;

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

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

(ii) Within 10 days of the mailing or delivery of a request for the information described in subparagraph (c)(i), above, the Association shall provide the Owner with copies of the requested items. The Association shall be entitled to impose a fee for providing the

requested items equal to (but not more than) the reasonable cost of preparing and reproducing the requested items.

(iii) 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. The Association may also institute a fee in connection with the transfer of title to a Lot so long as the fee does not exceed the actual costs incurred by the Association to change its records.

(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 pursuant to article IV, hereof, 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.

(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 obligation to pay 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 an Owner's 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 Recordation of the deed evidencing said transfer and, upon such Recordation, all Association membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

### **ARTICLE III**

#### **Kirkwood Meadows 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. Sole or joint ownership of a Lot shall be the sole qualification for membership in the Association. Each Owner shall remain a Member until his or her ownership in all Lots in the Properties ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed in lieu thereof.

Where Lots are owned by more than one person, the Board shall have the right, specified below, to adopt a rule designating the minimum percentage ownership of a Lot to qualify the Owner as a Member for purposes of using any Common Facility or for determining eligibility to serve as a director. Spouses shall be permitted to aggregate their ownership interests to determine either spouse's percentage ownership of a Lot.

**Section 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 / One Vote Per Lot.** Owners shall be entitled to vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, but in no event shall more than one vote be cast with respect to any Lot.

**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. Any Assessments levied by the Association against 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 of the Lot to which it is appurtenant and then, only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Lot shall pass automatically to the purchaser upon Recording of a deed evidencing the transfer of title. In the case of an encumbrance of such Lot, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights, do not thereby become Members, although the tenant and his or her family and guests shall, at all times, be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer of membership rights is void. If any Owner fails or refuses to transfer the membership registered in his or her name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 6. Powers and Authority of the Association.

(a) Powers and Authority, 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 the Bylaws.

(b) Association's Limited Right of Entry. Without limiting the foregoing description of powers, the Association and its agents shall have the specific right to enter on any Lot, when necessary, to perform the Association's obligations under this Declaration. The Association's rights hereunder shall not include the right to enter any private Residence and, with the exception of actions taken in response to emergency situations, the Association shall have no right to initiate any corrective action or alter any Improvement on the Owner's Lot without complying with the notice and due process requirements of article XIII.

The Association's right of entry pursuant to this subparagraph (b) shall be exercisable as follows:

(i) The Association shall have an immediate right of entry in the 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.

(ii) On a regular basis it is necessary for the Planning Committee and other Association or fire personnel to access Lots within the Properties to inspect ongoing construction projects or to inspect conditions and/or Improvements which are or may become a fire hazard. Notice of such inspections may be given in the Association newsletter (in the case of regular, periodic inspections) or as part of the Planning Committee construction approval process (in the case of Planning Committee inspections of ongoing construction projects); and

(iii) In all other non-emergency situations the Association, or its agents, shall furnish the Owner or his or her lessee with at least 10 days' written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry. In the case of all entries other

than entries required to respond to emergency situations, the Association 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 Rules.

(a) Adoption and Amendment of Rules. Subject to the limitations in subdivision (b) below, Association Rules may be adopted or amended from time to time by majority vote of the Board, provided, however, that no Association Rule or amendment thereto shall be adopted by the Board until at least 30 days after the proposed rule or rule amendment has been: (i) communicated to the Owners in writing by a mailing or other electronic means; and (ii) posted on the Association's official membership website. 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.

(b) Rule Making Power. 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 there under. In the event of any material conflict between any Association Rule and any provision of the Declaration, the Articles or the Bylaws, the conflicting provisions contained in the Declaration, the Articles or the Bylaws shall prevail.

(c) Requirement of Prior Notice to the Members. California Civil Code section 1357.100 defines an "Operating Rule" as an Association Rule or regulation that applies generally to the management and operation of the Development or to the conduct of the business and affairs of the Association. That section further defines a "Rule Change" as any adoption, amendment, or repeal of an Operating Rule by the Board of Directors. Civil Code section 1357.120 identifies five types of Operating Rules (and Rule Changes involving such Operating Rules) that must first be provided to the members in writing at least thirty (30) days prior to the Board taking action to implement the Rule Change. The notice must include the text of the proposed Rule Change and a description of the purpose and effect of the proposed Rule Change. This requirement of prior notice to the Members applies only to Operating Rules that relate to one or more of the following subjects:

- (i) Use of the Common Areas or Exclusive Use Common Areas of the Project;
- (ii) Use of any Residential Unit in the Project (including the adoption of Design Guidelines);

- (iii) Member discipline, including adoption or modification of any schedule of monetary penalties for violation of the Governing Documents or any procedures for the imposition of penalties;
- (iv) Any standards for delinquent assessment payment plans;
- (v) Any procedures adopted by the Association for resolution of disputes;
- (vi) Any procedures for reviewing and approving or disapproving a proposed physical change to an Owner's Unit pursuant to Article V, below, and
- (vii) Any procedures for the conduct of elections.

(d) Notice Exclusions. Notwithstanding Section 7(a), the following actions of the Board are excluded from required notice pursuant to Civil Code § 1357.120, regardless of whether those actions may be construed as being Association Rules or "Operating Rules", as defined in the Civil Code:

- (i) any Rule Change that the Board adopts to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association (such "emergency rules" can be adopted and remain in effect for up to one hundred (120) days);
- (ii) decisions regarding maintenance of the Common Areas;
- (iii) a decision on a specific matter that is not intended to apply to all Members, generally;
- (iv) establishing the amount of an assessment;
- (v) adoption of a Rule Change that is required by law (if the Board of Directors has no discretion regarding the substantive effect of the Rule Change); and
- (vi) issuance of a document that merely repeats existing law or the Governing Documents.

(e) Reversal of Operating Rules. With respect solely to Operating Rules and/or Rule Changes listed in subparagraphs (c)(i) through (c)(vii), above, Civil Code section 1357.140 gives Members (i.e., Owners) owning five percent (5%) or more of the Residential Units in the Project the right to demand that a special meeting of the Members be called to reverse a proposed Rule



Change, so long as the request for the special meeting is delivered to the Association not more than thirty (30) days after the Members are given notice of the Rule Change. If a proper and timely demand for a special meeting to vote to rescind an Operating Rule or Rule Change is tendered to the Association, the Board shall establish the date, time and location of the meeting and provide notice thereof to the Members in accordance with Corporations Code Section 7511(c).

So long as a quorum of the Members is present at any such meeting, the Rule Change can be reversed on the affirmative vote of a Majority of a Quorum of the Members, with each Member having one vote on the matter for each Residential Unit owned. If the Members vote to reverse an Operating rule or a Rule Change, the Board may not take action to readopt the Operating Rule or Rule Change for a period of one year after the date of the special meeting where reversal of the Operating Rule or Rule Change was approved; provided, however, that this provision is not intended to preclude the Board from adopting a different Operating Rule or Rule Change on the same subject as the Rule Change that was successfully reversed. As soon as possible following the close of voting on any proposal to reverse an Operating Rule or Rule Change, but not more than fifteen (15) days after the close of voting, the Board shall provide notice to each Member of the results of the Member vote by personal delivery or first-class mail.

(f) Distribution of Rules. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. A copy of the Association Rules shall also be available from the Board upon request and posted at the Association's official membership website.

Section 8. Breach of Association Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall entitle the Association to exercise the enforcement and disciplinary rights and remedies set forth in article XIII hereof.

Section 9. Limitation on Liability of the Association's Directors and Officers; Indemnification.

(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 Association's 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's capital replacement and reserve, accounts, repair and

maintenance of Common Area and Common Facilities and enforcement of the Governing Documents.

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

(i) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;

(ii) The act or omission was performed in good faith;

(iii) The act or omission was not willful, wanton, or grossly negligent;

(iv) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made general liability insurance of at least One Million Dollars (\$1,000,000);

The payment of actual expenses incurred by a Board member or officer in the execution of such Person's Association duties shall not affect such Person's status as a volunteer Board member or officer for the purposes of this section. A Board member or officer who at the time of the act or omission received either direct or indirect compensation as an employee from Declarant or from a financial institution that purchased a Residence at a judicial or non-judicial foreclosure of a Mortgage is not a volunteer for purposes of this section 5(b). The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations, pursuant to California Civil Code section 1365.7. In the event said Civil Code section is amended or superseded by another, similar provision of the California statutes, this subparagraph (b) shall be deemed amended to correspond to the amended or successor code provision without necessity of further member approval.

(c) Indemnification. To the fullest extent permitted by law, the Association shall indemnify its directors, officers, and other "agents" as defined in Corporations Code section 7237, against all expenses, judgments, fines, settlements, and other amounts actually or reasonably incurred by them in connection with any "proceeding" as that term is used in Corporations Code section 7237, and including an action by or in the right of the Association, by reason of the fact that such person is or was a director or officer. The term "expenses" used in this section shall have the same meaning as in Corporations Code section 7237.

The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any Person entitled to such indemnification.

## **ARTICLE IV**

### **Assessments**

Section 1. Assessments Generally. The Association shall have the power to establish, fix and levy Assessments against the Owners and to enforce the payment of such Assessments.

(a) Covenant to Pay Assessments. Each Owner of a Lot, by acceptance of a deed or other conveyance therefore (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association: (i) Regular Assessments; (ii) Special Assessments; and (iii) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided.

(b) Extent of Owner's Personal Obligation for Assessments. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the person who is the Owner of the Lot at the time the Assessment is levied. Each Owner who acquires title to a Lot (whether by conventional conveyance, at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot which become due and payable after the date that the person acquires title. Accordingly, when a person acquires title to a Lot, he or she shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. However, if the acquired Lot is conveyed subject to a valid lien for delinquent Assessments (and related costs of collection), the Association may continue to exercise its foreclosure remedies against the Lot, regardless of the change of ownership, and/or the Association may pursue its collection remedies against the prior Owner, individually.

(c) No Avoidance of Assessment Obligations. No Owner may exempt himself or his Lot from liability or charge for his share of any Assessment levied against the Owner or his or her share of any Regular or Special Assessment levied 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.

(d) Creation of Assessment Lien. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this Article may be subject to foreclosure as provided below.

(e) No Avoidance of Assessment Obligations. No Owner may exempt himself/herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him/her from the liens and charges hereof, by waiver

of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his/her Lot or any other portion of the Properties.

Section 2. Regular Assessments.

(a) Preparation of Annual Budget; Establishment of Regular Assessments. Not less than 30 nor more than 90 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 the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of the requisite percentage of the Members as specified below.

(b) Establishment of Regular Assessment by Board/Membership Approval Requirements. Subject to the Member approval requirements described in this subparagraph (b), the total Common Expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year. With the exception of Assessments imposed to address emergency situations (see section 4, 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 Members' approval in accordance with section 8, below.

(c) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), shall be allocated among, assessed against, and charged to each Owner of Record 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 Assessment so that each Lot bears an equal share of the total Regular Assessment.

(d) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a property Owner or as a Member of the Association. The Assessment roll (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)(i) 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.

(e) Mailing Notice of Assessment. On an annual basis, the Board of Directors shall mail to each Owner of Record 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. The statement shall be sent to all Owners within the time specified in 2(a) above.

(f) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to section 3(a)(i) of this article for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year. If it is later determined that additional funds are required to meet the Common Expenses for the fiscal year, any adjustment in the Regular Assessment or any supplemental Special Assessment to fund the deficit must be approved by the Members in accordance with the procedures specified below.

(g) Payment of Regular Assessment. The Regular Assessment levied against each Owner and his or her Lot shall be due and payable to the Association in accordance with the Assessment collection policy. Payment is due and payable on September 1 and delinquent if not postmarked by October 1.

### Section 3. Special Assessments.

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

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses incurred with respect to specific budget line items which were not contemplated or anticipated when the budget was 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) Additional Capital Improvements or Other Extraordinary Non-recurring Expenditures. 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) or to defray the costs of any other extraordinary, non-recurring action or undertaking which the Board, in its discretion, determines to be to the advantage and in the best interests of the Members as a whole. The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, replacement and

repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable capital repair and replacement reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with article X hereof. In the Original Declaration, Special Assessments for capital Improvements were designated as "Development Fund Assessments." If the Board intends to impose Special Assessments to fund any project, action or undertaking pursuant to this subparagraph (a)(ii), the proposal shall be included as part of the Association's budget disclosures to the Members.

(b) Special Assessments Requiring Membership Approval. Except as provided in section 4, below, 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/are levied, shall be imposed without the Members' approval in accordance with Section 8, below.

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to subparagraph 2(c). 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 shall be due as a personal debt of the Owner and a lien against his or her Lot. Special Assessments shall be payable to the Association within 60 days after the mailing of notice of the Special Assessment or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

Section 4. Assessments to Address Emergency Situations. The requirement of a membership vote to approve certain Regular Assessment increases and Special Assessments (see sections 2(b) and 3(b), above) shall not apply to assessment increases which are necessary to address emergency situations. For purposes of this section, an emergency situation is any of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense which is necessary to repair or maintain the Common Area, Common Facilities or any portion of the Lots which the Association is obligated to maintain where a threat to personal safety is discovered; or
- (c) An extraordinary expense which is necessary to repair or maintain the Common Area or Common Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to article XII, section 5 of the Bylaws and section 1365 of the California Civil Code; provided, however, that prior to the imposition or collection of an assessment under this subparagraph (c), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the

expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

Section 5. 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 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to article XIII, section 6 hereof, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's 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 the Owner's tenants or guests, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses: (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. 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 vehicles or improper weed or vegetation control, the Association shall have the right to enter the Lot, correct the offensive or hazardous condition and recover the cost of such action through the 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, 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, and a lien against his or her Lot, payable in full to the Association within 30 days after the mailing of notice of the Assessment.

Section 6. Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration, is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety and welfare of the Owners and other residents within the Properties; (b) to promote the enjoyment and use of the Properties by the Owners and their families, tenants and guests; and (c) to provide for the repair, maintenance, replacement, protection and expansion of the Common Area and Common Facilities. Each and every Assessment levied hereunder is further declared and agreed 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 7. 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 which is not being rented or leased for residential purposes.

Section 8. Notice and Procedure for Member Approval Pursuant to Sections 2 and 3. When Member approval is required in connection with any increase or imposition of Assessments pursuant to sections 2 and 3 of this article, the requisite vote shall be the affirmative vote of a majority of Members voting.. The quorum required for such membership action shall be a majority of the Members.

Section 9. 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 late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors. In addition, the Board shall be entitled to make investments of reserve or development funds in insured certificates of deposit, money market funds or other prudent investments consistent with the investment standards normally observed by trustees. The Association Rules shall include an investment policy describing with specificity the types of investments authorized hereunder.



The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of Association 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 these Bylaws.

(b) Use of Assessment Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may, during the course of a fiscal year, make appropriate adjustments among the various line items in the Board's approved general operating budget (but not in any budgeted reserve allocations) 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 the Assessment is levied, such surplus may, in the Board's discretion, be: (i) returned proportionately to the contributors thereof; (ii) reallocated among the Association's reserve accounts, if any such account is, in the Board's opinion, underfunded; or (iii) credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate account of all funds received by it in payment of each category of 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 for the year in which the Special Assessment is levied. Furthermore, 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 accounts 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.

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

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

(d) Reserve Funds. The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components of the Properties which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses.

The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Properties, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this subparagraph (d). This Special Assessment is subject to the Member approval requirements of California Civil Code section 1366 and relevant provisions of this Declaration if the aggregate amount of the Special Assessment exceeds five percent (5%) of the budgeted gross expenses of the Association for the year in which the Special Assessment is imposed. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

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

#### Section 10. Collection of Assessments; Enforcement of Liens.

(a) Delinquent Assessments. Assessments are delinquent if the payment is not postmarked within 30 days of the due date as established by the Board. In addition to the accrual of interest, the Board of Directors is authorized and empowered to promulgate a schedule of reasonable late charges or penalties for any delinquent Assessments, subject to the limitations imposed by California Civil Code sections 1366, subdivision (c) and 1366.1 or comparable successor 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 Records a Notice of Delinquent Assessment. The Notice shall be executed by an authorized representative of the Association and shall set forth: (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this article 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; (D) the name and address of the Association; and (E) in order for the lien to be enforced by non-judicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall Record a further notice stating the satisfaction and release of the lien thereof.

(ii) 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 initiated 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 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. The Association shall commence non-judicial foreclosure by Recording a Notice of Default with respect to the Lot giving rise to the delinquent Assessment. The Notice of Default 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 advise the Owner of Record and other interested parties of the Association's election 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 successor 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 against the Owner(s) who are personally liable for the delinquent Assessment, 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 the unpaid Assessments.

Section 11. Transfer of Lot by Sale or Foreclosure. The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Lot:

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

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

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

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

Section 12. Priorities. When a Notice of Delinquent Assessment has been Recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to

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

Section 13. Unallocated Taxes. The current policy of the County Assessor is to place no value on Common Area property for purposes of real property tax assessment purposes. However, in the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being reflected in the assessed value of the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to section 2 of this article. 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 14. 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 against the Owner's Lot.

## **ARTICLE V**

### **Environmental and Architectural Regulation**

#### Section 1. Planning Committee Approval of Improvements.

(a) 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 Planning Committee a written request for approval. The Owner's request shall include structural plans, specifications, plot plans and materials samples where appropriate, satisfying the requirements of the Planning Committee Rules (see section 5 below). Although the initial application for approval must be signed by the Owner, the application can designate an individual as the Owner's representative and agent for subsequent processing and review of the proposed project by the Committee. 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.

(b) 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 therefore and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If the proposed modification will have, or is likely to have, a material effect on other aspects or components of the Improvement project, 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 7 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.

(c) Maintenance of Existing Improvements and Lots. The Committee's jurisdiction and responsibilities hereunder shall also extend to and include the monitoring and regulation of existing Improvements and Lots for the common benefit of the Kirkwood Meadows community to ensure that the Improvements and Lots are being maintained and used in accordance with articles VI, VII and VIII of this Declaration.

Section 2. Committee Membership. The Planning Committee shall be composed of five (5) Members of the Association appointed by the Board.

Committee members shall serve for terms of three (3) years. The rules pertaining to removal of Committee members and the filling of vacancies shall be the same as the rules for directors. Neither the members of the Committee nor its designated representatives shall be entitled to any monetary compensation for services performed pursuant hereto. 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 Chairman of the Committee and the Treasurer of the Association. The Chairman of the Committee shall be elected by the Committee members.

Section 3. Duties of the Planning 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 Planning Committee Rules pursuant to section 5 hereof, to undertake periodic inspections of Lots and Common Area within the Properties to assure compliance with the Governing Document's land use, and environmental control regulations, and to perform other duties delegated to it by the Board of Directors or imposed by this Declaration. Plans and specifications shall be submitted to the Planning Committee Office or the Chairman of the Committee at the Association's principal office.

Section 4. Meetings. The Planning Committee shall meet on at least a quarterly basis and more frequently if 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 or his designated agent 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 or designated agent shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer and/or contractor. 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. Planning Committee Rules. The Planning 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 "Planning Committee Rules." Since Planning Committee Rules are part of the Association Rules, the procedures for adopting Association Rules generally (see article III, section 3(b)) shall be applicable to the adoption of Planning Committee Rules.

The Planning Committee Rules shall interpret and implement the provisions of this article by setting forth:

(a) The standards, procedures and time limitations for Planning Committee review and approval of Owner submittals of proposed Improvement projects (including, without limitation, minimum requirements for submitting a complete application for project approval);

(b) Guidelines for the construction of Improvements, including, without limitation, architectural design, placement on Lots, color schemes, exterior finishes and materials and similar features which are recommended or required for use on any Improvements or categories of Improvements within the Properties;

(c) 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 8 below);

(d) Minimum requirements for the maintenance, supervision and restoration of construction sites by Owners and their contractors. Without limiting the foregoing, the Planning Committee Rules may specifically regulate the activities of contractors and subcontractors, who shall be deemed to be the Owner's agents for purposes of rules enforcement and compliance matters;

(e) Any requirements for the payment of inspection/plan processing fees and deposits to assure the Owner's proper and timely performance in accordance with the approved plans and specifications and the application, use and/or refund of such fees and deposits;

(f) Uniform and reasonable time limitations for completion of approved Improvement projects or other duly noted compliance matters;

(g) The consequences of failing to complete approved Improvement projects, in a timely manner including, without limitation, the imposition of fines and penalties;

(h) Inspection of Improvement projects by the Planning Committee and the procedures available to the Planning Committee to assure compliance with Planning Committee Rules or any conditions imposed on the Improvement project during the course of construction

(including, without limitation, the issuance of stop work orders or "red tags" to cause an immediate cessation of construction activity); and

(i) The procedures available to the Planning Committee to correct non-conforming uses of Lots.

Notwithstanding the foregoing, the Planning Committee Rules shall implement the provisions of this Declaration in a reasonable, uniform and nondiscriminatory manner and no Planning Committee Rule shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Planning Committee Rules and this Declaration, the provisions of the Declaration shall prevail.

Section 6. Basis for Approval of Improvements. When a proposed work of Improvement is submitted to the Planning 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 conform to this Declaration and to the Planning Committee Rules in effect at the time such plans are submitted to the committee; 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.

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. Factors commonly considered by the Committee in reviewing proposed Improvements include 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 existing topography, finished grade elevations, roads, Common Area and other structures.

The Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable in the context of a particular Lot, even if the same or a similar Improvement/component has previously been approved for use at another location or locations within the Properties. Factors which may cause the Committee to reject a proposal which was previously approved at another site include: poor drainage, unique topography, visibility from roads, Common Area or other Lots or prior adverse experience with the product or design of the proposed Improvement or any component thereof.

The Committee shall have no jurisdiction with respect to the interior portions of any Improvement unless some portion of the proposed interior will have a direct and material adverse



impact on the exterior components of the Improvement (such as the design of the superstructure for roofs or load-bearing walls).

Section 7. Enforcement of Planning Committee Matters.

(a) In addition to other enforcement remedies set forth in this Declaration, the Planning Committee shall have enforcement authority with respect to any matters within the Committee's jurisdiction, as defined in section 1, above, including the authority to order an abatement of any construction, alteration or other matter for which approval is required, the imposition of reasonable fines (as approved by the Board), to the extent that an Improvement project 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) Legal proceedings to compel compliance with the Planning Committee Rules, eliminate architectural or environmental violations or other violations of the Governing Documents that are under jurisdiction of the Planning Committee must be approved by the Board and legal actions shall be 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.

(c) If an Owner or his designated agent(s) is/are found to be in noncompliance with this Declaration or any Planning Committee Rule, the Planning Committee shall so notify the Owner or agent and provide a reasonable time to take corrective action, giving due consideration to the nature of the problem or infraction. Planning Committee hearings shall be conducted in accordance with the minimum procedures set forth in article XIII, below.

Section 8. Variances. The Planning Committee shall be entitled to allow reasonable variances in any procedures specified in this article, the Planning Committee Rules, the minimum construction standards specified in article VI or in any land use restrictions specified in article VIII in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardship to Owner-applicants. Before a variance can be granted, however, all of the following conditions must be 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 hearing on the proposed variance after giving prior written notice to the Committee and to any Owner of a Lot which is located within 500 feet of the Lot affected by the variance.

(b) The Committee must make a good faith written determination that issuance of the variance will be consistent with either 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 or land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances. No variance will be granted if the Committee concludes that the request, if granted, will result in a material detriment, or create an unreasonable nuisance with respect, to any portion of the Properties.

Section 9. Estoppel Certificate. Within 30 days after written demand is delivered to the Planning 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, to recover the Association's actual costs of providing the service), 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 non-complying 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's 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 10. Limitation on Liability. Neither the Association, the Planning Committee nor any member thereof (collectively "released party") 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 on an approved Improvement, whether or not the work is performed pursuant to approved plans, drawings or specifications; (c) the development of any Lot within the Properties; or (d) the issuance of an estoppel certificate pursuant to section 9, above, whether or not the facts therein are correct; provided, however, that the released party has acted in good faith on the basis of such information as he or she possessed.

Section 11. Compliance with Governmental Regulations. Review and approval by the Planning 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 desires to construct, install, or modify the Improvement.

Section 12. Appeals. Appeals from decisions of the Planning 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 Planning Committee. The Association Rules shall contain procedures to process appeals pursuant to this section.

## ARTICLE VI

### Minimum Construction Standards

Unless a variance is requested from and granted by, the Planning Committee in accordance with article V, section 8, hereof, Improvements constructed, on any Lot shall conform to the following minimum construction standards:

(a) Setback Lines. All Improvements shall be constructed in accordance with applicable building line and setback provisions of applicable zoning ordinances, in compliance with all laws, and in compliance with all setback requirements prescribed herein.

(b) Waste Disposal. No outside toilet shall be constructed on any Lot, other than temporary facilities used in connection with construction on the Lot. All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to a sewage system.

(c) Model Homes. No Owner of any Lot shall build or permit the building thereon of any structure that is to be used as a model or exhibit.

(d) New Materials. All structures constructed on any Lot shall be constructed with a substantial quantity of new materials or comparable recycled materials and no used structure shall be relocated or placed on any Lot.

(e) Approval by Planning Committee. No building, fence, wall or other permanent structure or Improvement shall be erected, altered, or placed on any Lot until building plans, specifications and a plot plan showing the location of structures on the Lots have been submitted to the Planning Committee for review and approval as described in article V hereof.

(f) Exterior Surfaces. No reflective finishes (other than glass) shall be used on exterior surfaces (other than surfaces of hardware fixtures) of any building structure erected on a Lot. The Committee shall be authorized, as part of the Planning Committee Rules, to adopt a chart of approved colors and stains for exterior finishes.

(g) No Temporary Structures. No recreational vehicle, trailer, mobile home, camper, tent, shack, used structures, structures of a temporary character or other outbuildings (including garages, whether attached or detached) shall be used on any Lot at any time as a Residence. Notwithstanding the foregoing, an Owner may apply to the Planning Committee for approval of the use of a trailer or mobile home as a temporary residence during a period of construction so long as the temporary residence is serviced by a waste disposal system and approved by the Committee.

(h) Solar Heating Systems. Subject to limitations imposed by California law, the Planning Committee shall be entitled to adopt, as part of the Planning Committee Rules, reasonable regulations regarding the installation of exterior solar heating systems. These rules

may include limitations on placement and design of such systems to the extent necessary to avoid: an unsightly appearance from neighboring Lots or Common Area.

(i) Drainage. No Owner shall do any work, construct any Improvement, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Owner's or any adjacent Lots, or parcels or Common Area as established in connection with the approval of the final subdivision and parcel maps applicable to the Properties by the County in which the Properties are located, except to the extent such alteration in drainage pattern is approved in writing by the Planning Committee, the County, and all other public authorities having jurisdiction. Plans and specifications submitted by an Owner to the Planning Committee in connection with the construction of a Residence or other major structural Improvement shall include a drainage plan in sufficient detail to permit the Committee to assess the impacts, if any, of the Improvement on natural drainage courses. See also article VII, section 5.

(j) Modular and Prefabricated Housing; Mobile Homes. The use of Modular housing units or prefabricated housing units assembled off the building site shall be subject to regulation by the Planning Committee to the full extent permitted by Civil Code section 714.5 or standards, or other external fixtures except those approved by the Planning Committee, shall be construed, erected or maintained on any Lot. No wiring, insulation, air-conditioning, or other machinery or equipment other than those approved by the Planning Committee, and their duplicate replacements shall be constructed, erected or maintained on or within the exterior of any structure within the Properties.

## **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 expressed approval of the Association.

Without limiting the foregoing, the Association shall be responsible for:

(a) The reconstruction, replacement or refinishing of any Common Facility or other Improvements upon any portion of the Common Area as needed from time to time.

(b) The construction, reconstruction, replacement or refinishing of any road, or common parking area, and all snow removal for these portions of the Common Area.

(c) The replacement of trees or other vegetation and the planting of trees, shrubs and ground cover upon any portion of Common Area.

(d) The placement and maintenance of such signs as the Association may deem necessary for the identification of the development and of roads, the regulation of traffic, including parking, the regulation and use of Common Area and Common Facilities and for the health, welfare and safety of Owners, tenants and guests.

Section 2. Owner Maintenance Responsibility. Each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot.

Section 3. 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 and 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 5 hereof.

(b) The Planning Committee 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 a reasonable period of time, as specified in the Planning Committee's notice. If the Owner refuses or fails to perform such 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 XIII, section 5, hereof. The costs incurred by the Association in any such action shall be recoverable from the non-complying Owner as a Special Individual Assessment.

Section 4. 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 conduct of its work.

Section 5. Drainage Structures, Ditches and Swales.

(a) All drainage structures, culverts and canals improved by the Association for the major collection of storm runoff and any natural drainage courses within Common Area shall be maintained regularly by the Association or by an appropriate public agency.

(b) Except as provided in subparagraph (a), above, each Owner shall keep drainage courses, ditches and swales 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.

(c) No Owner or 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 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 Planning Committee.

## **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, Common Area and other parcels within the Properties.

#### Section 1. Use of Lots.

(a) All Lots within the Properties shall be used solely for the construction of Residences whose occupancy and use shall be restricted to Single Family Residential or Duplex use as defined in article I, sections 13 and 30 hereof. Duplexes may be constructed only on Lots zoned as shown on the subdivision map. In no event shall a Residence be occupied by more individuals than permitted by applicable law, zoning or other local governmental regulation.

(b) All Residence and related structures erected on any Lot shall conform to the minimum construction standards set forth in article VI hereof, unless a variance has been granted by the Planning Committee in accordance with article V, section 8 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 located thereon 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 and as not to create a fire hazard.

Section 2. Vegetation and Landscaping. 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 cause the proper diversion of water into streets and natural drainage channels. No existing trees shall be destroyed, uprooted, cut down or removed from any Lot unless and until the Planning Committee has been notified of the intended action and has issued its approval, and the lot Owner has complied with applicable county or state laws.

Section 3. Temporary Structures. No camping, whether temporary or permanent, and no temporary structures of any kind shall be permitted on any Lot, except as provided in article VI, section 1(g).

Section 4. Mining Operations. No drilling, refining, quarrying or mining operations of any kind shall be permitted on any Lot.

Section 5. Vehicular Access. Other than to those Lots owned by the Association, there shall be no vehicular access to any Lot on the perimeter of the Properties except from designated streets or roads within the Properties.

Section 6. Common Area. The Common Area shall be preserved as open space, except where improved for recreational purposes or other purposes incidental and ancillary to the use of Lots or administration of the Association. No improvement, excavation or work which in any way alters any Common Area or Common Facility from its natural or existing state shall be made or done except by the Association and then only in strict compliance with the provisions of this Declaration. Without limiting the foregoing, it is anticipated that the existing Common Facilities will require future expansion in order to accommodate increased Member usage as Residences are constructed on Lots within the Properties. The construction of new recreational Common Facilities and the cessation of operations of any existing recreational Common Facility shall be subject to the Member approval, requirements of article IX, section 2 of the Bylaws.

Section 7. Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or Common Area nor shall anything be done within the Properties which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Lot or the Common Area.

Section 8. Household Pets. The following restrictions regarding the care and maintenance of pets within the Properties shall be observed by each Owner and resident:

(a) 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, including horses, livestock or poultry of any kind shall be kept, bred or raised on any Lot.

(b) Dogs shall only be allowed within any portion of the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners or other person accompanying the dog.

(c) No household pet shall be left chained or otherwise tethered within any portion of the Common Area.

(d) Each person bringing or keeping a pet on the Properties shall be solely responsible for the conduct of the 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.

Section 9. 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 an Owner may post on his or her Lot: (a) any signs required by legal proceedings; (b) a single "For Rent," "For Lease" or "For Sale" sign of reasonable dimensions and appearance, in accordance with any applicable Association Rules; and (c) residential identification signs of a combined total face area of 1/2 square foot or less for each Residence. Furthermore, during periods of construction on any Lot the general contractor shall, with the Owner's permission, be entitled to maintain a sign of reasonable dimensions indicating that the contractor's company is performing work on the subject lot. A frame or other directional signs of real estate brokers advertising Lots for sale or lease shall only be allowed along roadways within the Properties or on any portion of the Common Area in strict compliance with applicable Planning Committee sign regulations.

Section 10. Business Activities. No business or commercial activities that generate excessive traffic or noise shall be conducted in any Lot.

Section 11. Garbage. No rubbish, trash or garbage shall be allowed to accumulate on any Lot. 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 Common Area. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating a Residence or during the construction or modification of 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.

Section 12. Storage. Storage of personal property (including, without limitation, trailers and construction materials) on any Lot shall be entirely within enclosed storage areas. There shall be no storage piles accumulated on top or outside of any enclosed storage area, with the exception of neatly stacked woodpiles with wood cut to fireplace length. The foregoing limitation shall not apply to construction materials placed on a Lot during periods of approved construction.

Section 13. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence or appurtenant structures within a rural common interest development such as Kirkwood Meadows.

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)    All driveways and garages, if any, on Lots shall be maintained in a neat and orderly condition.

(b)    No inoperable motor vehicle shall be stored on the Properties; after 72 hours, such vehicles shall be considered to be abandoned.

Section 16.    Activities Affecting Insurance. Nothing shall be done or kept on any Lot or within the Common Area which will increase the rate of any Association insurance policy without the prior written consent of the Association. 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 17.    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. No Owner of a Lot within the Properties shall be entitled to sever that Lot from the Common Area portion of the Properties.

Section 18.    Condominium - Splits of Duplexes. Owners of Duplexes may reach mutual agreement to own each Residence separately. Such "condominiumizing" of duplexes must be duly recorded with the Surveying and Engineering Department of Amador County and the Owners must notify the Association of their separate status. Thereafter each Residence will be treated as a separate "Lot" for purposes of assessment and each Owner will be a member of the Association, however the restrictions of Section 18 shall still apply.

**ARTICLE IX**  
**Easements**

Section 1.    Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are shown on the Subdivision Maps. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may change or interfere with the installation and maintenance of utilities, or which may damage, interfere or change the direction of flow of drainage facilities in the easements. The easement area of each Lot and all Improvements in it shall be maintained continuously by the Owner of the Lot, or, if in a Common Area by the Association, except for those Improvements for which a public authority or utility company is responsible.

Section 2.    Maintenance of Easement Areas. No dwelling unit and/or other structure of any kind shall be built, erected or maintained upon any such easement, reservation or right of way and said easements, reservations and rights of way shall, at all times, be open and accessible to public and quasi-public utility corporations, and other persons erecting, constructing, or

servicing such utilities and quasi-utilities, all of whom shall have the right of ingress and egress thereto and therefrom, and the right and privilege of doing whatever may be necessary in, under and upon said locations for the carrying out of any of the purposes for which said easements, reservations and rights of way are hereby reserved and may hereafter be reserved. The KMA Planning Committee shall determine what structures and improvements can be made to the Utility Easement area. Any improvements or structures added to the easement area would have to be removed and paid for by the owner in the event that a public or quasi-public utility corporations required access to the Utility Easement area.

Section 3. Slope Control Areas. Slope control areas are reserved as shown on the Subdivision Maps. Within these slope control areas no structure, planting or other materials shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of the flow of drainage channels. The slope control areas of each Lot and all Improvements in them shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible.

Section 4. Other Easements. Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Properties and each Lot and Common Area as shown on the Subdivision Map.

Section 5. Priority of Easements. Wherever easements granted to any County are, in whole or in part, coterminous with any other easements, the County easements shall have and are hereby granted priority over said other easements in all respects.

## **ARTICLE X**

### **Insurance**

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

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

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

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

(iii) Such other risks, perils, or coverage as the Board of Directors may determine.

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

(b) Public Liability and Property Damage Insurance. To the extent such insurance is reasonably obtainable, a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Board of Directors, any manager, the Owners and occupants of any 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 non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(c) 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 herein above 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 X, 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 the 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 X. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

Section 6. Insurance of Lots. An Owner may carry whatever personal liability, property, damage liability, fire and casualty insurance with respect to his or her Lot that he or she desires. The Association shall have no responsibility for the adequacy or extent of such coverages maintained by Owners.

## **ARTICLE XI**

### **Damage or Destruction**

Section 1. Damage or Destruction of Residences. In the event of damage to, or destruction of, a Residence by fire or other casualty, the Owner or Owners thereof shall, within six months thereafter, either:

(a) Diligently commence to rebuild the structure in accordance with this Declaration and the Planning Committee Rules; or

(b) Clear and level the Lot, removing all wreckage, debris and other evidence of damage to the property,

The time limitations for action hereunder can be modified, at the discretion of the Planning Committee, if necessary to accommodate delays due to weather or other factors. Any request for additional time shall be submitted to the Committee in accordance with article V hereof.

Section 2. Planning Committee Approval. Any Owner whose Residence has suffered damage shall apply to the Planning Committee for approval of plans for the reconstruction, rebuilding or repair of the 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. The Planning Committee shall grant,

such approval only if the design proposed by the Owner would result in a finished Residence in harmony with the exterior design of other Residences within the Properties.

Section 3. Time Limitation for Reconstruction or Removal. The Owner of any damaged Residence shall be obligated to proceed with all due diligence hereunder, and the Owner shall commence reconstruction within six months after the damage occurs and complete reconstruction or removal of damaged structures within the time requirements established by the Planning Committee for similar construction in the Planning Committee Rules.

Section 4. Common Facilities; Bids and Determination of Available Insurance Proceeds. In the event any Common Facilities are ever damaged or destroyed, then, and in such event, as soon as practicable thereafter the Board of Directors shall: (a) obtain bids from at least two reputable, licensed contractors, which bids shall set forth in detail the work required to repair, reconstruct and restore the damaged or destroyed portions of the Common Facilities to substantially the same condition as they existed prior to the damage and the itemized price asked for such work; and (b) determine that amount of all insurance proceeds available to the Association for the purpose of effecting such repair, reconstruction and restoration.

Section 5. Common Facilities; Sufficient Insurance Proceeds. Subject to the provisions of Section 1, above, if, in the event of damage to or destruction of any portion of any Common Facility, the insurance proceeds available to the Association are sufficient to cover the costs of repair, reconstruction and restoration, then the Association may cause such facilities to be repaired, reconstruction and restored; provided, however, that in the event of destruction of all or substantially all of a Common Facility, the Association shall not be obligated to restore the damaged Common Facility to its prior appearance and condition if the Board's opinion, architectural or design modifications to the Facilities will result in providing the Members with an improved facility which is suitable for substantially the same use and enjoyment as the destroyed facility.

Section 6. Common Facilities; Insurance Proceeds Insufficient in an Amount Exceeding \$5,000. In the event that any Common Facility is totally or substantially damaged or destroyed or, if, in the event of damage to or destruction of only a portion of the Common Facilities, the insurance proceeds available to the Association are insufficient in an amount exceeding \$5,000 to cover the estimated cost of repair, reconstruction and restoration, then the Owners shall determine, by majority vote, whether: (a) to repair, reconstruct and restore the damaged or destroyed Common Facilities and specially assess all Owners for such additional funds as may be needed for such purpose; or (b) not to repair, reconstruct or restore the damaged or destroyed Common Facilities but rather to utilize the insurance proceeds available for such reconstruction, together with any other sums otherwise available to the Association for such purpose, to demolish and remove the damaged or destroyed Improvements from the Common Area and to level and landscape the sites thereof and apply any balance of such proceeds and/or funds as the Members may determine.

## **ARTICLE XII**

### **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 the Association as his or her attorney-in-fact for such purposes.

## **ARTICLE XIII**

### **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 attorney's 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 the Association Rules and/or the covenants and restrictions contained herein 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: (i) the hiring of legal counsel; (ii) the imposition of fines and monetary penalties; (iii) the pursuit of legal action; (iv) the suspension of the Owner's right to use recreational Common Facilities; or (v) suspension of the Owner's voting rights as a Member of the Association; provided, however, the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this section.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance, and the nature and extent of the action taken, shall be matters which are 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 Planning Committee shall implement a schedule of reasonable fines and penalties for offenses related to matters within the jurisdiction of the Planning Committee. This schedule will be approved by the Board as part of the Planning Committee Rules. The Board shall implement a schedule of other fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as penalties for late payment of Assessments). Once imposed, all fines and penalties 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. So long as the Association's actions satisfy the due process requirements of subparagraph (ii) below, the Association shall have the power to discipline an Owner or cause a forfeiture or abridgment of the Owner's right to the full use and enjoyment of his or her privileges as a Member 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 under the following circumstances:

(A) where the loss, or forfeiture is the result of the judgment of a court of competent jurisdiction;

(B) where the action results from 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

(C) where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents.

(ii) Hearings. No penalty or temporary suspension of rights shall be imposed pursuant to this article unless the Owner alleged to be in violation is given at least 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, the Common Area or Common Facilities; or

(D) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors, or Its duly authorized agents, may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing,



within ten 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 under circumstances described in the immediately preceding paragraph where the Association is authorized to initiate summary action, a written request therefore shall be delivered to the Association no later than five days following the date when the fine is levied or other enforcement action is initiated.

The hearing shall be held as soon as reasonably practical, but in no event later than 45 days following the date of the disciplinary action or 45 days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

At the hearing the accused shall be given the opportunity to be heard, including the right to present evidence and to present or question witnesses. The Board shall notify the accused Owner, in writing, of the Board's decision within three business days following conclusion of the hearing. In no event shall the effective date of any disciplinary action commence sooner than five days following conclusion of the hearing unless (i) the hearing merely affirms summary disciplinary action initiated pursuant to the immediately preceding paragraph or (ii) earlier commencement is necessary to preserve the quiet enjoyment of other residents or to prevent further damage to, or destruction of, the Properties or any portion thereof.

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

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

## **ARTICLE XIV**

### **Amendment of Declaration**

Section 1. Amendment of the Declaration. This Declaration, or any part thereof, may be amended or repealed only upon (1) prior notification of all Owners, to include the written text of any proposed change and also such written arguments for or against as interested Owners may wish to make, and (2) approval by greater than 50% the Members, and (3) the recordation of a certificate by the Secretary of the Association with the Department of State of the State of California setting forth in full the change to these documents so approved, including any portion or portions thereof amended or repealed, and certifying that said change has been so approved.

## **ARTICLE XV**

### **General Provisions**

Section 1. Term. The covenants, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden, the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of 60 years from the date of the Recordation 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 Recorded.

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 of a majority of Members present or voting by proxy at the annual meeting of the Association. Upon obtaining the requisite approval pursuant to this section, 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 Record 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 affected by Recording 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.

The filing of a Declaration of Annexation shall constitute and effectuate the annexation of the additional real property described therein, and thereupon that 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.

### 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 and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

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

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

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

(f) Effective Date. This Declaration shall become effective upon its approval by the Members as attested by the signature of the president and secretary set forth below and its Recordation (the "Effective Date").

(g) Nonconforming Improvements. Any completed Improvement may be maintained or repaired without the necessity of complying with the Governing Documents, provided that such nonconforming Improvement may only be repaired or maintained so long as during any period of 12 consecutive months such repair and maintenance shall not exceed 50 percent of the current replacement cost of the nonconforming Improvement. Any repair or maintenance of the Improvement the cost of which exceeds 25 percent of the current replacement cost thereof shall require conformance to the governing documents as then in effect.

(h) Enlargement of Existing Nonconforming Improvements. An Improvement that is nonconforming with the governing documents as to use may not be added to or enlarged unless such nonconforming Improvement, and the additions and enlargements thereto and the use thereof, are brought into compliance with the governing documents as then in effect.

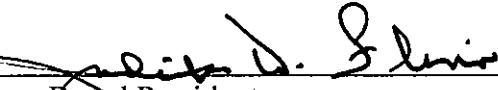
(i) Restoration. A nonconforming Improvement that is damaged or partially destroyed by any cause or reason to the extent of not more than 50 percent of its value at that time, may be restored. The occupancy or use of that structure or part thereof, which existed at before its partial destruction, may be continued or resumed, provided the total cost of such restoration does not exceed 50 percent of the value of the Improvement at the time of such destruction, and that restoration of the structure is started within 12 months and is diligently prosecuted to completion. If the damage or destruction exceeds 50 percent of the structure's value, no repair or reconstruction shall be made unless every portion of such improvement is made to conform to the governing documents. The value of the nonconforming Improvement shall be determined by the Planning Committee. If an Owner disputes this value determination, the matter may be appealed to the Board for final decision.


Section 4. 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.

DATED: Dec 12, 2009

KIRKWOOD MEADOWS ASSOCIATION, a  
California nonprofit mutual benefit corporation

By:   
Board President

By:   
Board Secretary