

RECORDING REQUESTED BY, AND  
WHEN RECORDED, RETURN TO:

**AUBURN VALLEY PROPERTY  
OWNERS' ASSOCIATION, INC.**  
P.O. Box 7993  
Auburn, CA 95604

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(Space Above For Recorder's Use)

**EIGHTH RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
AUBURN VALLEY PROPERTY OWNERS' ASSOCIATION, INC.**

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**EIGHTH RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
AUBURN VALLEY PROPERTY OWNERS' ASSOCIATION, INC.**

This Eighth Restated Declaration of Covenants, Conditions, and Restrictions for Auburn Valley Property Owners' Association, Inc. is made by the Auburn Valley Property Owners' Association, Inc., a California nonprofit mutual benefit corporation (the "Association").

**RECITALS**

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A. The Association is an "association", as that term is defined in California Civil Code Section 4080, which has been created to manage the common interest development located in Placer County, State of California, commonly known as Auburn Valley (the "Development") and more particularly described in Exhibit "A".

B. The original developers of the Development, Leonard P. and Gail S. Odenthal (referred to collectively herein as the "Declarant") executed a document entitled "Declaration of Covenants, Conditions and Restrictions," recorded on August 8, 1976, as Instrument No. 26502, Book 1755, Page 549, in the Official Records of Placer County (the "Original Declaration").

C. The Original Declaration was subsequently amended and restated in the entirety by a document entitled "Declaration of Covenants, Conditions and Restrictions of The Auburn Valley Property Owners' Association," recorded on July 31, 1989, as Instrument No. 40773, Book 3678, Page 554 in the Official Records of Placer County (the "First Restated Declaration").

D. The First Restated Declaration was subsequently amended and restated in the entirety by a document entitled "Declaration of Covenants, Conditions and Restrictions of The Auburn Valley Property Owners' Association," recorded on June 22, 1993, as Instrument No 93-044446, in the Official Records of Placer County, California (the "Second Restated Declaration").

E. The Second Restated Declaration was subsequently amended and restated in the entirety by a document entitled "Amended and Restated CC&Rs of Covenants, Conditions and Restrictions of The Auburn Valley Property Owners' Association," recorded on May 27, 1994, as Instrument No. 94-040681, in the Official Records of Placer County (the "Third Restated Declaration").

F. The Third Restated Declaration was subsequently amended and restated in the entirety by a document entitled "Amended and Restated CC&Rs of Covenants, Conditions and Restrictions of The Auburn Valley Property Owners Association," recorded on August 27, 1996, as Instrument No. 96-0049399, in the Official Records of Placer County (the "Fourth Restated Declaration").

G. The Fourth Restated Declaration was subsequently amended and restated in the entirety by a document entitled "Amended and Restated CC&Rs of Covenants, Conditions and Restrictions of The Auburn Valley Property Owners Association," recorded on May 31, 2001 as Instrument No. 2001-0053424, in the Official Records of Placer County (the "Fifth Restated Declaration").

H. Due to a scrivener's error, the Fourth Restated Declaration and Fifth Restated Declaration failed to include a legal description of all the real property comprising the Development that was encumbered by the Original Declaration and the earlier amendments or Restated Declarations listed in Exhibit "A," below. Accordingly, a document entitled "Fourth Declaration of Covenants, Conditions and Restrictions for Auburn Valley Country Club," was recorded on October 22, 2002, as Document No. 2002-0128337, in the Official Records of Placer County (the "Sixth Restated Declaration"). The Sixth Restated Declaration presented a correct legal description of the real property that is subject to the Declaration.

I. The Sixth Restated Declaration was subsequently amended and restated in the entirety a document entitled "Fifth Amended and Restated Declaration of Covenants, Conditions and Restrictions for Auburn Valley," recorded on February 14, 2011, as Document No. 2011-0012482-00, in the Official Records of Placer County (the Seventh Restated Declaration").

J. The Original Declaration established certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in the real property comprising the Development.

K. The "Declarant", as that term is defined in the Original Declaration, no longer owns any property within the Development.

L. This Declaration will be effective when at least fifty-one percent (51%) of the Total Voting Power of the Members have voted to amend, restate, and supersede the 2011 Restated Declaration pursuant to Section 17.01(a) of the 2011 Restated Declaration. The 2011 Restated Declaration was incorrectly titled as the Fifth Restated Declaration. The correct title of the 2011 Restated Declaration is the Seventh Restated Declaration and this 2021 Declaration is intended to amend, restate and supersede the 2011 Restated Declaration and to be titled the Eighth Restated Declaration.

**NOW, THEREFORE,** it is hereby declared as follows:

1. The Seventh Restated Declaration is hereby amended, restated and superseded in its entirety to read as set forth in this Declaration.

2. All of the real property comprising the Development constitutes a "planned development", as that term is defined in California Civil Code Section 4175.

3. All of the real property comprising the Development is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the Development and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the real property comprising the Development and any part thereof.

4. All of the covenants, conditions, and restrictions set forth in this Declaration shall constitute enforceable equitable servitudes as provided in California Civil Code Section 5975, shall constitute covenants that shall run with the real property comprising the Development, and shall be binding upon and inure to the benefit of each Owner of any portion of such real property or of any interest therein and their heirs, successors, and assigns.

## **ARTICLE 1 DEFINITIONS**

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### 1.1 Absolute Majority.

"Absolute Majority" shall mean a majority of the Total Voting Power of the Association.

### 1.2 Additional Charges.

"Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.

### 1.3 Architectural Review Committee.

"Architectural Review Committee" shall mean the committee created pursuant to Article 9 of this Declaration.

### 1.4 Architectural Rules.

"Architectural Rules" shall mean the rules and regulations adopted by the Board pursuant to Section 9.5 of this Declaration.

### 1.5 Articles.

"Articles" shall mean the Articles of Incorporation of the Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.

### 1.6 Assessment.

"Assessment" shall mean a charge levied by the Association against an Owner and his or her Lot as provided in Article 6 of this Declaration. "Assessment" shall include any or all of the following:

1.6.1 Annual Assessments, which shall have the meaning set forth in Section 6.5 of this Declaration.

1.6.2 Enforcement Assessments, which shall have the meaning set forth in Section 6.8 of this Declaration.

1.6.3 Reimbursement Assessments, which shall have the meaning set forth in Section 6.7 of this Declaration.

1.6.4 Special Assessments, which shall have the meaning set forth in Section 6.6 of this Declaration.

### 1.7 Association.

"Association" shall mean the Auburn Valley Property Owners' Association, Inc., a California non-profit mutual benefit corporation, its successors and assigns.



1.8 Association Rules.

"Association Rules" shall mean rules and regulations regulating the use and enjoyment of the Common Area which may be adopted by the Board from time to time.

1.9 Board of Directors or Board.

"Board of Directors" or "Board" shall mean the governing body of the Association.

1.10 Bylaws.

"Bylaws" shall mean the Bylaws of the Association as they shall be adopted by the Board of Directors and Members and any duly-adopted amendments thereof.

1.11 Common Area.

"Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners in the Development excluding the Lots.

1.12 Common Facilities.

"Common Facilities" shall mean all facilities constructed or installed, if any, or to be constructed or installed, or currently located on the Common Area and owned by the Association. There are limited Common Facilities located within the Development, other than the private roads, a pond, a gazebo, and an entrance sign.

1.13 Contract Purchaser/Contract Seller.

"Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.

1.14 County.

"County" shall mean the County of Placer.

1.15 Declaration.

"Declaration" shall mean this instrument, as it may be amended from time to time.

1.16 Development.

"Development" shall mean all the real property described in Exhibit "A" of this Declaration as well as such other real property as may hereafter be brought within the jurisdiction of the Association.

1.17 Director.

"Director" shall mean a member of the Board of Directors.

1.18 Governing Documents

"Governing Documents" shall mean the Articles, Bylaws, Declaration, Association Rules (including the Architectural Rules), Election Rules and the policies and resolutions duly adopted by the Board and distributed to the Members.

1.19 Improvement(s).

"Improvement(s)" shall mean, without limitation, any improvement or project undertaken or contemplated by an Owner on any Lot in the Development involving the construction, installation, alteration or remodeling of any Residence, garages, out buildings, walls, fences, swimming pools, landscaping, landscape structures, patio awnings, solar heating equipment, spas, antennas, television satellite reception equipment, utility lines or any other structure of any kind. Improvement projects are subject to design review and approval pursuant to Article 9, of this Declaration. The term "Improvement" does not include any construction project, remodeling, or other improvement that is confined totally within a completed Residence. The fact that a particular Owner construction or home improvement project may not be an "Improvement" that is subject to prior review and approval pursuant to Article 9 of this Declaration does not, however, exempt the Owner from the necessity to comply with other minimum improvement standards and property use restrictions set forth in this Declaration. Improvement projects requiring a Placer County building permit must be approved by the Architectural Review Committee prior to submission to the County.

1.20 Lot/Residence.

"Lot" shall mean any plot of land shown upon any Subdivision Map, with the exception of the Common Area. Residence shall mean a residential structure located upon a Lot which is designed for human residential use and occupancy.

1.21 Map or Subdivision Map.

"Map" or "Subdivision Map" shall mean the map for any portion of the Development.

1.22 Member.

"Member" shall mean an Owner.

1.23 Owner.

"Owner" shall mean any person, firm, corporation or other entity in which fee title to a Lot is vested as shown by the official records of the office of the Placer County recorder, including Contract Sellers, but excluding Contract Purchasers and excluding those having such interest merely as security for the performance of an obligation. Where the context requires, the term "Owner" shall include the members of the Owner's household and the Owner's guests, tenants/lessees and invitees; provided, however, that such persons are not "Owners" for purposes of exercising voting rights in the Association.

1.24 Record.

"Record" shall mean, with respect to any document, the recordation or filing of such document in the office of the Placer County Recorder.

1.25 Resident.

"Resident" shall mean any person who resides in a Residence within the Development whether or not such person is an Owner as defined in Section 1.24 of this Declaration.

1.26 Simple Majority.

"Simple Majority" shall mean a majority of the votes of the Members: (a) represented and voting at a meeting at which a quorum is present, or (b) cast by written or secret ballot (in conformity with California Corporations Code Section 7513 or Civil Code Sections 5100 through 5125, respectively) in which the number of ballots received equals or exceeds the number required to establish a quorum.

1.27 Total Voting Power.

"Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one (1) vote for each Lot/Residence.

**ARTICLE 2 COMMON AREA**

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2.1 Purpose of Common Area.

Subject to the provisions of the Declaration, the Common Area is held and maintained by the Association, and is used to meet the common interests of the Owners..

2.2 Owners Non-Exclusive Easements of Enjoyment.

Every Owner shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area, including ingress and egress to and from his or her Lot. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

2.2.1 The right of the Board to establish and enforce reasonable Rules governing use of the Common Area.

2.2.2 The right of the Board, as more particularly addressed in the Bylaws, to suspend an Owner's right to use Common Facilities located on the Common Area for: (a) any period during which any Assessment against such Owner's Lot remains unpaid; and/or (b) for violations of the Governing Documents by an Owner or any person for whom an Owner is responsible.

2.2.3 The right of the Board, as set forth in Section 3.2 of this Declaration, to grant easements and rights of way in, on, over, or under the Common Area.

2.2.4 The right of the Board to sell, dedicate, or transfer all or any part of the Common Area, subject to the requirements of Section 5.8 and Section 5.9 of this Declaration.

2.2.5 The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association.

2.2.6 The right of the Association, through its authorized agents, to enter any Lot to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair or replacement or to make necessary repairs that the Lot Owner has failed to perform. The right shall be immediate in case of an emergency originating in or threatening such Lot and the obligation can be performed whether or not the Owner is present.

2.2.7 The right of the Association to establish, construct, maintain, repair and replace facilities upon the Common Area including without limitation recreation facilities, storage facilities and workshops, which may be necessary or convenient in the discharge of the Association's duties and the exercise of its rights under the Governing Documents.

2.2.8 The right of the Association to grant exclusive use of a portion of the Common Area to an Owner, if approved by an Absolute Majority of the Members, except as provided by law.

### 2.3 Assignment of Rights of Use.

Any Owner may assign his or her rights of use and enjoyment, including easements, in the Development to the members of his household, tenants, Contract Purchasers, guests and invitees, subject to the terms of the Governing Documents. Upon the leasing of a Lot, or upon occupancy of a Lot by a Contract Purchaser, the Owner shall be deemed to have assigned all such rights exclusively to the tenants or Contract Purchasers of such Lot except that such Owner shall continue to have an easement for ingress and egress to such Owner's Lot to the extent necessary to discharge of the Owner's obligations and rights as a landlord. Each Owner shall notify the Secretary of the Association of the names of any tenants or any such Contract Purchasers of such Owner's Lot. Any rights of enjoyment assigned pursuant to this section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. It is the express purpose and intent of the provisions of this section to limit the right of use and enjoyment of the Common Area to Residents and their guests.

### 2.4 Damage to Common Area or Association Property.

An Owner is responsible for the actual cost to repair any damage caused to any Common Area, which is caused by the negligence, gross negligence, or willful misconduct by the Owner or the Owner's tenants, residents, or invitees. In the event that the Association elects to submit a claim to its insurance provider for the cost to repair said damage, the Association will charge all sums not covered by insurance including, but not limited to, the deductible and any increased premiums, to the Owner as a Reimbursement Assessment.

### 2.5 Common Area Construction.

Notwithstanding Section 3.4 of this Declaration and except as may be authorized by the Board, no person or entity other than the Association or its duly-authorized agents: (a) shall construct, reconstruct, refinish, alter, or maintain any Improvement upon the Common Area; (b) shall make or create any

excavation or fill upon the Common Area; (c) shall change the natural or existing drainage of the Common Area; or (d) shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

## 2.6 Mechanic's Liens.

In the event there shall be filed against the Common Area a Notice of Mechanic's Lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner or his or her Lot, such Owner shall immediately cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be granted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

## **ARTICLE 3 EASEMENTS**

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### 3.1 Easements in General.

In addition to all easements reserved and granted on a Subdivision Map and the easements specified in Article 2 of this Declaration there are hereby specifically acknowledged, reserved and granted for the benefit of the Lots and the Owners in common and for each Lot and Owner severally, and for the Association, as their respective interests shall exist, the easements and rights of way as particularly identified in this article.

### 3.2 Easements Granted by Board.

The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of: (a) constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and (b) for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association. Each purchaser, in accepting a deed to a Lot, expressly consents to such easements and rights of way. No such easements may be granted if they would materially interfere with the use, occupancy, or enjoyment by an Owner or Resident of his or her Lot without the consent of the affected Owner of the Lot.

3.3 Road Easements.

Each Owner and the Association shall have and is hereby granted a nonexclusive easement for Road, roadway and vehicular traffic purposes over and along the private Roads of the Development, subject to termination of such easement and the rights and restrictions set forth in this Declaration.

3.4 Blanket Utility Easement.

There is hereby created a blanket easement upon, across, over and under the Common Areas for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage and electricity and the master television antenna or cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area at locations approved by the Architectural Review Committee. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated within the Development except as initially designed and approved by the Declarant or thereafter approved by the Association's Architectural Review Committee. The easements provided for in this Section shall in no way affect any other Recorded easement on property within the Development.

3.5 Entry for Repairs.

The Board may authorize its agents and employees to enter upon any Lot when necessary in connection with any maintenance, landscaping or construction for which the Association is responsible, to effect emergency repairs or to effect necessary repairs which the Lot Owner has failed to perform as required by this Declaration. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association. Except in case of an emergency, twenty-four (24) hour advance notice shall be given to the Owner or occupant.

3.6 Other Easements.

Each Lot and its Owner, the Association and Declarant, as the case may be, is hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Development and each Lot as shown on the Development Map.

**ARTICLE 4 USE RESTRICTIONS**

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4.1 Single Family Residential Use.

Except as specifically provided in Section 4.4 of this Declaration no Residence, or any portion thereof, shall be occupied or used for other than single-family residential purposes by the Owners, their Contract Purchasers, lessees, tenants, or guests.

4.2 No Partition.

There shall be no judicial partition of the Development or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof; provided, however, that if any Lot shall be owned by two (2) or more co-tenants as tenants in

common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition by sale as between such co-tenants.

4.3 Prohibition on Further Lot Division.

No Lot may be further subdivided for purposes of sale, lease or financing.

4.4 Restriction on Businesses.

No trade, business or commercial activity of any kind shall be established, maintained, operated, permitted, or conducted within the Development except:

4.4.1 Those professional and administrative occupations as may be permitted by, and which are conducted in conformance with, all applicable governmental ordinances provided that there is no external evidence thereof, and further provided that the Board may, in its complete discretion, prohibit the conduct of any such activities which the Board determines to be incompatible with the nature and character of the Development or which, in the Board's opinion, may or does otherwise negatively impact the quality of life and property values within the Development. The Board may also adopt Rules regulating the conduct of such occupations.

4.4.2 Advertising placed on or affixed to vehicles shall not be readily visible from the road.

4.5 Offensive Conduct, Nuisances, Noise.

No noxious, harmful, or unlawful activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their reasonable use of the Common Area and facilities thereon or the reasonable use and enjoyment of their Lots or Residences. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to dog barking, excessively loud music, or unmuffled or excessive engine noise from a motor vehicle, including a motorcycle, to emanate from the Resident's Lot, which would unreasonably disturb another Resident's reasonable enjoyment of his or her Lot or of the Common Area. Excessive noise levels shall be determined by Placer County noise regulations. Nothing in this section shall be construed to limit the Association's ability to discharge its duties in accordance with the Governing Documents or otherwise manage the Development.

4.5.1 Generators --Whole House Generators - No owner or resident shall install a whole house generator without the approval of the Architectural Review Committee (ARC). Requirements for approval include a: (a) permit issued by the County of Placer; (b) completed form titled "Architectural Review and Approval Form" (the form can be found on the Auburn Valley website: [myauburnvalley.com](http://myauburnvalley.com)); and (c) drawing showing placement of the unit. To the extent possible, the unit shall not be visible from the Road or placed in a location where the noise level might unreasonably impact a neighbor, especially if in close proximity to sleeping quarters.

#### 4.6 Drainage.

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 Areas. 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 Architectural Review Committee.

#### 4.7 Use of the Common Area.

Nothing shall be placed, kept, stored, or parked on the Common Area without the prior written consent of the Association, except by the Association. Without limiting the foregoing, no Owner shall place rubbish, debris, or other unsightly or unsanitary materials in the Common Area. Each Owner shall avoid causing damage to the Common Area.

#### 4.8 Requirement of Architectural Approval.

As addressed in greater detail in Article 9 of this Declaration construction, installation, modification, or alteration of buildings, outdoor structures, fences, awnings, outdoor lighting, front yard landscaping and all other exterior Improvements are subject to approval of the Architectural Review Committee.

#### 4.9 Temporary Structures.

No structures of a temporary character, shack, tent, mobile home, garage or other out building shall be used for residential purposes, either temporarily or permanently.

#### 4.10 Signs.

No sign of any kind shall be displayed to the public view from any portion of the Development except that this restriction shall not apply to: (a) signs required by legal proceedings; (b) signs which by law cannot be prohibited; (c) a single sign of customary and reasonable dimension and design, complying with the Rules and reasonably located on a Lot advertising the Residence for sale or rent; (d) a single identification sign which has been approved by the Board located on a Lot identifying the number or address of the Lot; (e) signs required for traffic control and regulation of Roads or open areas within the Development; (f) signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association; and (g) such other signs as the Board, in its discretion, may approve provided that the Board may adopt limitations on such other signs including, without limitation, restrictions on the size of the signs, the duration of their posting, and their location. All permissible signs must be in good condition. Signs shall not be faded or cracked. The Board may adopt, amend and repeal Rules for the implementation of this section which Rules may include, without limitation, automatic approval of signs meeting specified requirements. It is the express purpose and intent of this section to permit the Association's regulation of signs within the Development to the greatest extent permitted by law.



#### 4.11 Pet Restrictions.

4.11.1 No animals, reptiles, rodents, livestock, poultry, or bee hives shall be kept within a Lot or elsewhere within the Development. Not more than two (2) cats and two (2) dogs may be kept, provided that: (a) they are not kept, bred or maintained for any commercial purposes; (b) they are maintained under reasonable control at all times; and (c) they are kept in conformance with any City or County ordinances. All venomous snakes and other venomous reptiles are prohibited. The restrictions of this section do not apply to fish, domesticated birds and/or domesticated animals such as hamsters or guinea pigs.

4.11.2 Placer County ordinances pertaining to animal control apply. If there are violations, Residents are encouraged to contact animal control directly.

4.11.3 Leashing. While outside the Owner's property dogs must be restrained on a leash held by a responsible person capable of controlling it. Dogs may not be tethered anywhere under any circumstance.

4.11.4 No Dangerous or Vicious Animals. The Association shall have the right to prohibit the keeping of any animal, or to require the removal of any animal determined by the Board to be vicious or dangerous, which constitutes, in the sole and exclusive opinion of the Board, a nuisance to any other person.

4.11.5 Pet Waste. Each Owner and Resident shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by their pets or the pets of their guests and invitees.

4.11.6 Liability. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Development by such person or by members of his or her household, tenants, guests, or invitees. Each Owner and Resident shall indemnify the Association and its officers, directors, and agents against any and all claims, damages, losses, demands, liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner or Resident, members of his or her household, guests, tenants, or invitees.

4.11.7 Pet Rules. The Board may adopt and enforce pet rules, which shall be Rules, in addition to the provisions of this section. Such Rules may include, without limitation, regulations regarding the presence of pets on the Common Area, limitations on the number of pets Owners may have, and restrictions on breed and size.

4.11.8 Animal Runs. Must be approved by the Architectural Review Committee and may not be erected on any Lot where it is readily visible from the Road or any neighboring properties.

4.11.9 Barking Dogs. Dog owners are responsible for ensuring that their dog does not engage in excessive barking so as to disturb neighboring Residents. Section 4.5 above applies.

4.11.10 Wildlife. No Resident shall feed or leave water and/or food outside for feral cats or wildlife (except for birds) as such activities encourage the presence of raccoons, rats and other unwanted vermin in the community.

4.12 Clotheslines.

Exterior clotheslines or other outside clothes drying or airing facility shall not be erected or maintained on the Common Area or on a Lot such that it is visible from any other Lot or the Common Area unless it receives approval from the Architectural Review Committee.

4.13 Holiday Lighting.

Winter holiday lights and decorations should be removed within a reasonable time following the holidays, but no later than January 15<sup>th</sup> of each year. Other annual holiday lights and decorations should be removed no later than one (1) week following the celebrated holiday.

4.14 Exploration and Excavation.

No gas or oil drilling, refining or development operations, and no quarrying or mining operations of any kind, shall be permitted on any Lot, nor shall any wells, tanks, tunnels or mineral excavations or shafts be permitted. No derrick or other structure designated for use in boring for water, oil or natural gas shall be erected, maintained or permitted, except that water wells may be drilled in accordance with conditions imposed by the Architectural Review Committee, local and State statutes and regulations.

4.15 Refuse.

Except during the construction period, no trash, ashes, garbage or other refuse shall be dumped or stored on any Lot in the Development nor be thrown into or left on any property within the Development.

4.15.1 Outside Burning Prohibited.

No outside burning of yard waste, tree trimmings, tree limbs, tree branches, leaves, lawn refuse, trash or garbage shall be permitted, regardless of any County or other municipal rules which allow for such burning.

4.16 Sports Apparatus.

No permanent sports apparatus, including without limitation basketball standards, which is visible from any other Lot or the Common area is permitted within the Development unless it is approved by the Architectural Review Committee. Notwithstanding the foregoing, portable standards on a Lot may be visible from any other Lot or the Common Area, so long as it is stored out of sight from other Lots or the Common Area when not in use. As used in this section, the term "sports apparatus" does not include bicycles, skateboards, roller skates, roller blades or any other similar wheeled equipment.

4.17 Light Standards; Security Cameras; Security Apparatus.

Other fixtures or apparatus such as light standards, security cameras or visible security apparatus may not be erected or installed on any Lot if directed toward any neighboring properties where a reasonable expectation of privacy exists.

The Board may evaluate unduly bright exterior lighting that creates a nuisance to adjacent Owners or if lighting complaints are received. Safety considerations will be balanced against aesthetic/nuisance considerations in applying these restrictions.

4.18 Antennas; Satellite Dishes; Solar Panels.

No outside mast, tower, pole, antenna or satellite dish shall be erected, constructed or maintained within the Development or on any Common Area except: (a) those erected, constructed or maintained by the Association; or (b) those specifically permitted by law. The Owner of each Lot shall be responsible for the repair and maintenance of any mast, tower, pole, antenna, dish or satellite installed by him or her within the Development and shall indemnify and reimburse the Association for all costs and expenses associated therewith, including without limitation any increased costs incurred by the Association in the performance of its maintenance obligations as specified in Article 9 of this Declaration. The installation of satellite dishes and solar panels does not require review or approval by the Architectural Review Committee as these activities are regulated by State Law.

4.19 Yard Art.

No yard art (such as wooden, ceramic, resin, plastic or metal animals, gnomes, or sculptures) may be erected or installed without the prior approval of the Architectural Review Committee. The approval process for proposed yard art may include a requirement of "neighbor notification". On a case-by-case basis, proposed yard art projects may be approved with conditions, such as a requirement that the Improvement be screened from Road or neighbor view.

4.20 Parking and Vehicles.

The following restrictions shall apply to parking within the Development:

4.20.1 Parking. Each Lot shall maintain at all times two (2) fully enclosed parking spaces to the extent possible. Those Lots with existing enclosures that will only accommodate one car are not required to comply with this provision.

4.20.2 Restriction on Size and Type of Vehicles That May Be Regularly Parked Within the Development. Subject only to the exceptions set forth below, the only vehicles that may be parked within the Development are passenger vehicles (including sport utility vehicles and motorcycles) and pickup trucks with a gross carrying capacity of one (1) ton or less. In this Section 4.20 of this Declaration these categories of vehicles are referred to as "Authorized Vehicles."

4.20.3 Prohibited or Restricted Vehicles, Trailers, and Equipment. The following categories of vehicles and trailers may only be parked within the Development in accordance with this Section of this Declaration.

4.20.3.1 Trailers. No trailer of any kind except those listed in 4.20.3.2 shall be parked or kept within the Development except: (a) trailers and boats on trailers that are stored in a garage with the garage door entirely closed; (b) the short-term parking of trailers in the driveway of a Lot for purposes of loading and unloading, not to exceed three (3) days.

4.20.3.2 Campers, Camping Trailers and Recreation Vehicles. No campers, camping trailers, motor homes, 5<sup>th</sup> Wheelers, trailers, house trailers, and recreational vehicles may be kept upon any Lot or parked along any Road within the Development except for brief periods for purposes of loading or unloading and not to exceed three (3) consecutive days as described herein. Regarding campers, camping trailers, motor homes, 5<sup>th</sup> Wheelers, trailers, house trailers, and recreational vehicles, an Owner may park such vehicle: (a) in his or her driveway for brief periods of loading and unloading, not to exceed three (3) consecutive days; and (b) on the Road in front of the Owner's Lot for brief periods of loading and unloading, not to exceed forty-eight (48) consecutive hours providing all parts of the vehicle, to the extent possible, are fully off the Road pavement so that the Road is completely clear for passage of other vehicles, especially, but not limited to, emergency vehicles. Parking on the Road for a maximum of forty-eight (48) hours is permitted only if the vehicle cannot be safely placed in the Owner's driveway.

4.20.3.3 Exception for Power Outages. In the event of a community power outage, the three (3) day limit for parking referred to in this section will not be enforced.

4.20.3.4 Non-operable/Inoperable Vehicles. No non-operable or inoperable vehicle (including, without limitation, vehicles without current registration, vehicles without operable engines or tires) shall be parked at any time within the Development except for parking within an enclosed garage. Overnight parking in an Owner's driveway is restricted to Authorized Vehicles that are regularly driven and do not remain parked and unmoved in the driveway for more than five (5) consecutive days.

4.20.3.5 Commercial Vehicles. No commercial vehicles shall be parked within the Development with these exceptions: (a) commercial vehicles of an Owner so long as the vehicle is stored in the garage of the Owner's Residence at all times when not in use; (b) commercial vehicles of construction personnel and service providers who are actively engaged in work at a Lot construction site or making deliveries to the construction site; and (c) short-term parking of other commercial vehicles of an Owner, Resident or guest for purposes of loading or unloading. In no event shall a commercial vehicle be parked outside of a garage overnight. For purposes of this restriction a "commercial vehicle" includes any vehicle that is visibly designed and constructed for commercial use, rather than customary passenger transportation, and trucks that are larger than one (1) ton in gross carrying capacity

4.20.4 Permitted Parking Areas Within the Development. Authorized Vehicles of Owners and Residents shall only be parked, stored, or maintained within driveways or enclosed garages on the Owner's Lot. Under no circumstances shall parking be permitted along Roads within the Development, with the exception of: (a) on-Road parking on a short-term basis as might occur while an Owner or Resident is entertaining; (b) the parking of commercial and construction vehicles in the ordinary course of business at times when the vehicle owner or operator is at the construction site; and (c) vehicles operated by persons who are making deliveries or otherwise providing service to a Lot or Residence. Any vehicle parked on the Road must be parked on the correct side of the Road. Vehicles may not be parked facing the wrong way (against traffic) as wrong way parking requires driving on the wrong side of the road and presents a safety issue. No more than two (2) Authorized Vehicles may be parked overnight in an Owner's or Resident's driveway, provided that both vehicles must be regularly driven and do not remain parked and unmoved in the driveway for more than five (5) consecutive days. In no event may an Authorized Vehicle be parked overnight on or along Roads within the Development. Vehicles parked overnight on the Road in violation of this Section may be towed at the owner's expense unless the Vehicle owner has been granted a variance by the Board and is parked in compliance with that variance. When parking vehicles temporarily along the Roads during the day, Owners and Residents are at all times responsible for ensuring that such parking allows for the passage of emergency vehicles.

4.20.5 Authority to Adopt Further Parking Regulations. The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding parking and vehicles within the Development as may be deemed prudent and appropriate. For the safety of Residents, the Board shall have the authority to authorize enforcement of the California Vehicle Code on all roadways in the Development and shall allow, among other things, law enforcement authorities to enforce speeding and stop sign violations as well as parking violations. Parking violations which may impede emergency vehicle access may result in towing the violating vehicle at the Owner's expense.

#### 4.21 Water Softeners.

The use of water softeners is governed by State Law and the Auburn Valley Community Service District (AVCSD). The California Regional Water Quality Control Board has placed requirements on the Association to reduce sodium and chloride salt concentrations in order to bring the Association into compliance with State Waste Discharge Requirements of the Wastewater Treatment Permit. Therefore, the use of salt or potassium water softeners is prohibited.

#### 4.22 Fuel Storage and Outdoor Receptacles.

4.22.1 Every tank for the storage of fuel installed outside any building in the Development shall comply with the requirements set forth in Section 8.2.5.3.5.

4.22.2 Every outdoor receptacle for ashes, trash, rubbish or garbage shall be screened or so placed and kept so as not to be visible from any Road or park within the Development at any time except during refuse collections. Garbage cans placed on the Road for refuse collection and removed from the Road following refuse collection should be done within a 24 hour period prior to and after refuse collection to the extent possible in order to keep the community Roads as clear and passable as possible.

#### 4.23 Road Use.

Use of Roads within the Development shall be limited to affording vehicles ingress, egress and access to individual Lots, the golf course and other areas within or adjacent to the Development. Roads shall not be used for recreational purposes such as skateboarding, all-terrain vehicles, racing, etc. All vehicles shall be driven at reasonable posted speeds and otherwise in accordance with applicable laws. The California Vehicle Code shall apply to all roadways in the Development. No vehicle, including motorcycles, may generate excessive noise. Motor revving is not permitted. The use of golf carts on Roads in the Development shall be permitted.

#### 4.24 Improvement Destruction.

No Improvement which has been partly or totally destroyed by fire, earthquake or otherwise, shall be allowed to remain in such state for more than six (6) months from the time of the event causing the damage or destruction. During this time the lot must be cleared of all debris and rebuilding of the improvement must be commenced as soon as possible but not more than one year from the time of the event causing the damage or destruction.

#### 4.25 Rental of Lots.

The rental or lease of Lots shall be subject to the restrictions in accordance with the provisions of this section. No structures of a temporary character, basement, shack, tent, mobile home, garage or other out-building shall be used for residential rental purposes, either temporarily or permanently.

4.25.1 Term. All rental or lease of a Lot must be for a term of not less than six (6) months. Following the initial six (6) month term, a lease may continue on a month to month basis. All leases are expressly subject to the terms of this Declaration and any breach of a provision of this Declaration constitutes a breach of the lease. Owners may not lease any garage or, accessory building or other similar improvement separate from the Residence.

4.25.2 No Hotel-Like Services. No lease or rental of a Lot shall be permitted which contemplates or results in the provision of those services typically provided by a hotel or motel. Owners are prohibited from renting or leasing a Lot or any portion thereof through online community platforms, including but not limited to, Airbnb and Vacation Rental by Owner/VRBO.

4.25.3 Written Lease Agreement Required. Any rental or lease of a Lot within the Development shall be by written rental or lease agreement. Such written agreement shall expressly provide that its terms are subject to all of the provisions of the Governing Documents, that the tenants shall comply with all provisions of the Governing Documents and that any violation of any provisions of the Governing Documents will be a breach and default of the terms of such rental agreement. A copy of said rental or lease agreement evidencing the rental term must be made available to the Association upon request.

4.25.4 Owner Responsibility. Each Owner renting or leasing a Lot shall be strictly responsible and liable to the Association for the actions of such Owner's tenants within the Development and for each tenant's compliance with the provisions of all the governing documents, including the Bylaws, the Declaration and any amendment thereto, and Association Rules. An Owner leasing or renting a Lot shall provide the tenants with copies of the Governing Documents and all subsequent amendments, and other pertinent information of general application to the members.

4.25.5 Association's Enforcement Rights. In addition to all other remedies available, in the event a tenant's conduct involves damage or misuse of any Common Area or constitutes a nuisance to Owners or residents, the Association shall be entitled to maintain an eviction action against such tenant to the same extent as the Owner of the Lot with the Association being deemed a third-party beneficiary of any lease or rental agreement involving any Lot within the Development. The Association's right to maintain an eviction action shall arise only in the event that the Owner has not prevented and/or corrected the actions of the tenant giving rise to the damage or nuisance and (a) the Association has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action, or (b) the Owner has appeared before the Board, or a duly authorized committee thereof, to present arguments as to why eviction by the Association is not necessary. Any disciplinary action shall be prosecuted in strict compliance with the notice requirements and hearing procedures set forth in California Civil Code Section 4820, or comparable successor statute, and the Governing Documents.

4.25.6 Indemnification of Association. Every Owner of a Lot that is occupied by persons other than the Owner pursuant to a rental, lease or otherwise, agrees to and shall indemnify and defend the Association, its officers, Directors, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, including but not limited to attorneys' fees arising out of the conduct or presence of the occupants of the Lot upon the Development, including any such arising or alleged to have arisen out of the enforcement or nonenforcement by the Association of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys' fees incurred by the Association to enforce the Governing Documents against such occupants, including eviction as provided herein, shall be reimbursed to the Association by the Owner and may be assessed by the Association as a Reimbursement Assessment.

4.26 Permitted Hours of Construction and Commercial Gardener Activity.

Construction activities, commercial gardening or landscaping and equipment maintenance shall take place only between the hours of 7:00 A.M. and 6:00 P.M., Monday through Friday and 9:00 A.M. to 5:00 P.M. on Saturday. No construction or commercial gardening or landscaping activities or equipment maintenance shall be conducted on Sundays or Federal Holidays.

4.27 Permitted Hours of Garden Tools and Power Equipment – Residents Only.

A Resident's use of garden tools and power equipment shall take place only between the hours of 8:00 A.M. and 6:00 P.M., Monday through Friday and 9:00 A.M. to 5:00 P.M. on Saturdays, Sundays, and Federal Holidays. Residents are strongly encouraged to be considerate of their neighbors when using garden tools and power equipment which may cause disturbing noise.

#### 4.28 Improvements.

No improvements shall be erected, constructed, altered, placed or permitted to remain in violation of any ordinance of Placer County, California, as the same may, from time to time, provide. Any Improvement, including but not limited to out buildings, landscape structures, patio awnings or covers, spas, pools, tennis courts or any other structures of any kind must be contained in the backyard area of the Residence, and if viewable from an adjacent Residence must meet with the approval of the Architectural Review Committee with respect to design, theme and color. Variances may be granted on a case-by-case basis by the Architectural Review Committee but shall not set a precedent for future variances. The construction, alteration, or placement of any Improvement shall take place only between the hours of 8:00 A.M. and 6:00 P.M., Monday through Friday and 9:00 A.M. to 5:00 P.M. on Saturday.

#### 4.29 Sewage Systems.

With the exception of portable toilets used during construction, no outside toilet shall be constructed on any Lot. All plumbing fixtures, dishwashers, toilets or sewage disposal system shall be connected to the community sewage system.

#### 4.30 Construction Materials.

All structures constructed and placed on any Lots shall be constructed with a substantial quantity of new material and no used structures shall be relocated or placed on any such Lot. Roofing shall be metal, concrete or clay tile or a facsimile thereof. For replacement roofs for existing homes that do not meet structural requirements for tile or metal roofs, the Architectural Review Committee may review and allow an exception that composition asphalt shingles will be permitted if they are replacing composition asphalt shingles. All roofing materials and associated improvements (flashing, chimneys, etc.) shall be of like color. Low sloped roofs must be reviewed by the Architectural Review Committee to insure their appearance does not adversely affect neighboring properties.

#### 4.31 Tree Removal.

No trees whose main trunk exceeds six (6) inches in diameter at a point thirty-six (36) inches from the ground, shall be removed from any Lot without first obtaining the written consent of the Architectural Review Committee. Notwithstanding the foregoing, an Owner is authorized to remove any tree or vegetation without consent of the Architectural Review Committee if such removal is pursuant to current California fire guidelines or insurance company requirements.

#### 4.32 Garage and Estate Sales.

4.32.1 Estate Sales. The term "estate sale" shall mean a sale of items on a Lot as a result of when a Resident of the Development has passed away, and the heirs are charged with liquidating the estate.

4.32.2 Garage Sales. Individual "garage sales" shall mean a sale of items on a Lot as a result of an impending move occasioned by the listing and sale of a Residence.



#### 4.32.3 Conditions.

4.32.3.1 Each Resident (or, for the purpose of estate sales, the heirs of the Resident) must submit an application for and obtain approval from the Association's Board prior to hosting an estate or garage sale. Applications are required to be made at least twenty-one (21) days in advance of the event, and must specify: (a) the date(s) and times of the event; (b) the principals responsible for conducting the event; and (c) the principal's phone numbers that will be active and available during the event.

4.32.3.2 Estate and garage sales are limited to one (1) date-specific event, not to exceed two (2) contiguous days.

4.32.3.3 Third-party contractors are not allowable as designated responsible parties.

4.32.3.4 Principals shall notify the Residents on their Road of any approved estate or garage sale at least ten (10) days in advance of the event and are responsible for managing attendance to minimize any intrusion on any other Resident's Lot.

4.32.3.5 Only the contents of the Residence for which the event is being held shall be available for sale at the event. No other materials may be brought to the Lot from any other source. All items available for sale must be contained within the boundary of the Lot at all times, and materials for sale during a two (2) day event must be returned to within the Residence each night.

#### 4.33 Variances.

The Board shall be authorized to grant reasonable variances from the provisions of Article 4 of this Declaration upon written application from any Owner provided that the Board determines, in its sole discretion, that the specific application of the restriction to such Owner will: (a) cause substantial undue hardship to the Owner; or (b) fail to further or accomplish the common plan for the Development as contemplated by this Declaration. The Board shall have the power to limit any variance granted in scope or duration or otherwise impose such specific requirements as the Board may, in its complete discretion, see fit to require. The Board shall follow the following procedures in acting on any request for a variance:

4.33.1 The Board, in its sole discretion, shall make an initial determination of whether or not the variance request on its face meets the requirements set forth in this section. Where the Board deems it appropriate, the Board may, but shall not be required to, obtain the input of the Architectural Review Committee in considering the variance request. If the Board determines that the variance request does not meet the requirements set forth in this section, the variance request shall be denied and the Board shall so notify the applicant within thirty (30) days of the Board's decision. If the Board determines that the variance request does on its face meet the requirements set forth in this section, the procedures set forth in the remainder of this section shall be followed.

4.33.2 Provided the Board determines that the variance request does on its face meet the requirements set forth in this section, the variance shall be granted. In the event a variance

request is denied, and at the applicant's request, the Board shall conduct a hearing on the variance within sixty (60) days of the receipt of the written request for a hearing.

4.33.3 After the conclusion of the hearing, the Board shall, in its sole discretion, either grant or deny the request for variance in accordance with the standards set forth in this section. As more fully discussed above, if the Board grants the variance request, the Board may impose such conditions as the Board deems appropriate and shall so notify the applicant within thirty (30) days of the Board's decision. Further, the Board retains the right to revoke any variance that has been granted in the event the applicant does not comply with the specified conditions of the variance.

## **ARTICLE 5 HOMEOWNERS ASSOCIATION**

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### **5.1 Management and Operation.**

The Association, through the Board of Directors, shall manage and operate the Development in accordance with the applicable provisions of the Governing Documents and the applicable provisions of California law. The Association shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

### **5.2 Membership.**

Each Owner of a Lot shall be a Member of the Association and shall remain a Member thereof until such time as his or her Lot ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.

### **5.3 Voting.**

Only one (1) vote shall be cast for each Lot, as specified in the Bylaws.

### **5.4 Board of Directors.**

The affairs of the Association shall be managed by or under the direction of the Board. The number and qualifications of Directors shall be as established in the Bylaws, and the Directors shall be elected as provided in the Bylaws. The Board of Directors shall have all of the powers and duties set forth in any provision of the Governing Documents, including without limitation such powers and duties as may be expressly set forth in this Declaration.

### **5.5 Association Rules.**

The Board shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such rules and regulations, which shall be known as "Rules", as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association. The Rules may concern, but need not be limited to, matters pertaining to: (a) use of the Common Area;

(b) pets; (c) signs; (d) collection and disposal of refuse and recycling; (e) minimum standards for maintenance of property; (f) use of recreation facilities, if any; (g) parking and traffic regulations; (h) rental or leasing of Lots; and (i) any other subject matter within the jurisdiction of the Association as provided in the Governing Documents or by law.

#### 5.6 Manager and Other Personnel.

The Board shall have the power and authority to employ a manager and such other persons or entities as the Board shall deem appropriate to assist it in managing the Development and conducting the business and affairs of the Association, as more particularly set forth in the Bylaws.

#### 5.7 Insurance.

The Board shall procure and maintain liability insurance and property insurance as it shall deem proper and as more particularly set forth in the Bylaws.

#### 5.8 Association Property.

Upon approval of Members, the Board of Directors shall have the power to sell, transfer, lease or otherwise dispose of the Association's property, provided that the Board shall not, sell, transfer or otherwise dispose of real property owned by the Association having an aggregate value in excess of ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year without the approval of at least a Simple Majority of the Members

#### 5.9 Dedication or Transfer of Common Area to Public Agency or Utility.

The Board of Directors shall have the power to dedicate or transfer all or any part of the Common Area to a public agency, authority or utility. No such dedication or transfer shall be effective unless it has been previously approved by Members holding at least two-thirds (2/3) of the Total Voting Power.

#### 5.10 Borrow Money.

The Board of Directors shall have the power to borrow money in the name of the Association if such borrowing has been previously approved by Members holding at least two-thirds (2/3) of the Total Voting Power.

#### 5.11 Mortgage of Association Property.

The Board of Directors shall have the power and authority to mortgage, pledge, encumber, or otherwise hypothecate the real and personal property of the Association for money borrowed or debts incurred by the Association.

#### 5.12 Mergers and Consolidations.

The Association may: (a) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as the Association; or (b) annex additional property to the Development, provided that the approval of an Absolute Majority is obtained.

### 5.13 Dissolution.

So long as there is any Lot, parcel or area for which the Association is obligated to provide management, maintenance, preservation or control, the consent of all Members must be obtained for the Association to: (a) transfer all or substantially all of its assets; or (b) file a certificate of dissolution.

### 5.14 Limitation of Liability.

Neither the Association nor its Directors, officers, employees, agents or committee members (collectively and individually referred to as the "Released Party") shall be personally liable for damages or in equity to any of the Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or pursuant to the Bylaws, even if such Released Party is negligent, provided that such Released Party has not acted in bad faith. This standard of care and limitation of liability shall extend, without limitation, to matters such as: (a) the establishment of the Association's annual financial budget; (b) the funding of Association reserve accounts; (c) the discharge of the Association's maintenance, repair and replacement obligations; (d) the enforcement of the Governing Documents; and (e) to any other fiduciary duties or responsibilities imposed by law or the Governing Documents.

## **ARTICLE 6 ASSESSMENTS AND LIENS**

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### 6.1 Covenant of Owner.

Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (a) Annual Assessments; (b) Special Assessments; (c) Reimbursement Assessments; and (d) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.

Each Assessment levied by the Association under this Article, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of Record of any Lot shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is Record Owner of such Lot. After an Owner transfers of Record any Lot he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. A Contract Seller of any Lot shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is Recorded.

### 6.2 Creation of Lien.

Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot notwithstanding the transfer of Record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been Recorded as provided in this Declaration and by law. The priority of all such liens on each Lot shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Lot for succeeding months.

### 6.3 Purpose of Assessments.

The Assessments levied by the Board shall be used exclusively for: (a) managing and operating the Development; (b) conducting the business and affairs of the Association; (c) promoting the recreation, health, safety, welfare, benefit, and interests of the Owners in relationship to the Development; (d) improving and maintaining the Common Area and, to the extent provided for in the Governing Documents or by law, the Lots situated within the Development; (e) enforcing the Governing Documents; and/or (f) otherwise benefitting the Owners.

### 6.4 Authority of the Board.

The Board shall have the power and the duty to levy Annual and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.

### 6.5 Annual Assessment.

6.5.1 Calculation of Estimated Required Funds. Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the funds required by the Association for such fiscal year to: (a) manage, administer, operate, and maintain the Development; (b) to conduct the affairs of the Association; and (c) to perform all of the Association's duties in accordance with this Declaration. Such estimate shall include a reasonable amount allocated to contingencies and to a reserve fund for the restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis.

6.5.2 Allocation of Annual Assessment. The Board shall allocate and assess the amount of estimated required funds equally among the Lots by dividing the amount by the number of Lots.

6.5.3 Payment of Annual Assessments. Unless the Board shall designate otherwise, Annual Assessments shall be levied on an annual basis and shall be paid in two (2) equal semi-annual installments during the fiscal year, and each installment shall be due and payable on January 1 and July 1 of each year.

6.5.4 Increases in Annual Assessment. Pursuant to California Civil Code Sections 5605 and 5610, except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

## 6.6 Special Assessments.

6.6.1 Purpose of Special Assessments. If at any time during any fiscal year the Annual Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of Improvements located in the Development, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost. The Board may also levy a Special Assessment for capital improvements within the Common Area. The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for routine maintenance, repair and replacement of Common Facilities through Annual Assessments.

6.6.2 Allocation of Special Assessments. Special Assessments shall be allocated and assessed equally among all Lots in the Development, except any Assessment against an Owner as a result of a deficiency in insurance proceeds or condemnation awards as provided in Article 7 of this Declaration.

6.6.3 Approval of Special Assessments. Except in the case of an emergency situation as defined in California Civil Code Section 5605 and 5610, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

## 6.7 Reimbursement Assessments.

The Association shall levy a Reimbursement Assessment against any Owner and his or her Lot if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such Owner or his or her Lot into compliance, or to reimburse the Association for damage caused to the Common Area or Improvements thereon by any Owner or their family, guest, or tenant. The Association shall also levy a Reimbursement Assessment in the event that the Association has expended funds performing emergency repairs as authorized by this Declaration or for any other reasons specifically authorized by the provisions of this Declaration. A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Association,

including costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied.

#### 6.8 Enforcement Assessments.

The Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied. If an Owner fails to take action to correct the violation and/or fails to make timely payment of Enforcement Assessments, monetary funds may be assessed and the Owner is subject to subsequent legal action.

#### 6.9 Failure to Fix Assessments.

The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.

#### 6.10 Offsets.

All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

#### 6.11 Payment Under Protest.

If a dispute exists between the Owner of a Lot and the Association regarding any disputed charge or sum levied by the Association, including, but not limited to an Assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits set forth in the Code of Civil Procedure Sections 116.220 and 116.221, or comparable successor statute, the Owner may, in addition to pursuing dispute resolution, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any, pursuant to subdivision (b) of Section 5650, and commence an action in small claims court. Nothing in this section shall impair the Association's ability to collect delinquent assessments as provided by California law.

#### 6.12 Delinquent Assessments.

Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, except as prohibited by law. Except as prohibited by law, upon any delinquency in payment, the Association may, at its option, declare the entire balance of all sums then due

or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect such sums, including all Additional Charges. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive.

#### 6.13 Power of Sale.

Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, of the California Civil Code, and does further grant to the Board, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy such lien, except as prohibited by law. The Association or any Owner may purchase the Lot at the sale.

#### 6.14 Certificate of Satisfaction and Release of Lien.

Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall Record, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.

#### 6.15 Priority.

Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article shall have priority as of the date of Recording of the original declaration applicable to the Development over all other liens and encumbrances applicable to the Lots. Notwithstanding the preceding, a lien for Assessments which have become due and payable prior to the sale of a Lot pursuant to a decree of foreclosure of a First Mortgage, or pursuant to a power of sale contained in any such First Mortgage, shall be subordinate to the lien of any First Mortgage Recorded against the Lot. Such foreclosure sale shall not relieve the Lot from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

#### 6.16 Association Funds.

All Association accounts shall be maintained in one (1) or more banks or other depositories selected by the Board, which accounts shall be clearly designated as belonging to the Association. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be used for the purposes set forth in Section 6.3 of this Declaration.

#### 6.17 Waiver of Exemptions.

Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this article, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article.

#### 6.18 Property Exempt From Assessments.



The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:

6.18.1 All property dedicated to and accepted by the County or other local public authority and devoted to public use.

6.18.2 Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure. Such exemption shall be applicable only during the period in which the Association is Record Owner of such Lot.

6.18.3 All Common Areas and Community Roads.

6.19 Owner Assignment of Rents.

Each Owner hereby presently assigns to the Association, absolutely and regardless of possession of the Lot, all rents and other monies now due or which may hereafter become due under any lease, agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made, for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current.

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**ARTICLE 7 DAMAGE OR DESTRUCTION; CONDEMNATION**

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7.1 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 (2) 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.

7.2 Common Facilities; Insurance Proceeds Insufficient in an Amount Exceeding Association Special Assessment Authority.

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 five percent (5%) of the Association's budgeted gross expenses for the year in which the loss occurs, so as to require a Special Assessment to cover the estimated cost of repair, reconstruction and restoration, then the proposal for imposition of the Special Assessment shall be presented to the Owners for approval in accordance with Section 6.6 of this Declaration. The proposition shall be presented to the Owners in a form which permits them to choose

between: (a) funding the Special Assessment 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 holding such voting power and their first mortgagees may determine.

### 7.3 Damage or Destruction of Residences.

7.3.1 Obligation to Rebuild or Clear Damaged Structures. If all or any portion of any Residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Residence to rebuild, repair or reconstruct said Residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty. If structural improvements other than a Residence, garage or fence are damaged or destroyed and the Owner prefers not to rebuild the improvement, the Owner shall clear his or her Lot of all damaged or destroyed materials and return the affected area to blend in with the remaining landscaping on the Lot.

7.3.2 Architectural Review Committee Approval. Any Owner whose Residence or other structural improvements have been damaged or destroyed shall apply to the Architectural Review Committee for approval of plans for the reconstruction, rebuilding, or repair of the damaged or destroyed Residence or structure. 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 Architectural Review Committee shall grant such approval only if the design proposed by the Owner satisfies the requirements for approval set forth in Article 9 of this Declaration.

7.3.3 Time Limitation for Reconstruction or Removal. The Owner or Owners of any damaged Residence(s) and the Architectural Review Committee shall be obligated to proceed with all due diligence hereunder to remove damaged structures (or portions thereof), prepare and process reconstruction plans and specifications and complete the repair and restoration work. At a minimum, whenever Owners are required to prepare and submit repair or reconstruction plans to the Architectural Review Committee, said submittal shall be made within ninety (90) days following the event and reconstruction shall commence within thirty (30) days following receipt of approval from the Committee. Reconstruction shall be completed within six (6) months following receipt of Committee approval. For good cause (including, without limitation, delays caused by inclement weather or the processing of insurance claims) the Architectural Review Committee may waive or extend any of the deadlines imposed by this subsection 7.3.3 – such approval to waive or extend any of the deadlines set forth herein shall not be unreasonably withheld.

### 7.4 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, 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 8 MAINTENANCE OF PROPERTY**

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### **8.1 Association Responsibilities.**

The Association shall be solely responsible for all maintenance, repair, upkeep and replacement of all roads and other Common Areas of the Development. 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 or any structure of any nature from, or plant any tree, shrub, or other vegetation or place any structure of any nature upon the Common Area without express approval of the Association.

All drainage structures improved or installed by the Declarant or the Association for the major collection of storm runoff and any natural drainage courses within the Common Areas shall be maintained regularly by the Association.

### **8.2 Owner Responsibilities.**

Except as specifically provided in Section 8.1 of this Declaration each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot.

8.2.1 Without limiting the generality of the foregoing, each Owner's repair and maintenance obligations shall include the following:

8.2.1.1 Painting, repairing, replacing and caring for roofs, fences, exterior building surfaces, exterior glass surfaces, exterior doors.

8.2.1.2 Maintaining all Improvements and landscaping on the Owner's Lot.

8.2.1.3 Maintenance of drainage facilities on the Owner's Lot.

8.2.2 All Lots, whether improved or unimproved, and any Improvements placed thereon, shall at all times be maintained in such a manner as to prevent their becoming unsightly by reason of trash, debris, weeds, other unattractive growth, or the accumulation of rubbish, debris or recycling materials.

8.2.3 For appearance and fire prevention purposes, all dry grass must be removed in conformity with applicable County and State fire and other regulations. In the event any such Lot or Improvement thereon is not so maintained, the Association shall have the right enter the Lot and remove or remedy the offending condition pursuant to Section 8.3 of this Declaration and charge the actual costs thereof to the Owner as a Reimbursement

Assessment. Owners must perform annual weed abatement work on their Lots no later than June 1 of each calendar year.

8.2.4 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 with respect to adjacent Common Areas), maintain all such drainage ditches, swales and culverts common to their Lots in good order.

8.2.5 Removal of Trees and Other Landscaping.

8.2.5.1 All dead trees and bushes must be removed promptly. The Owner shall remove such dead trees or bushes within thirty (30) days of being notified by the Association. In the event the Owner fails to remove the tree or bush within the thirty (30) day period, the Association is authorized to remove the tree or bush and charge the cost thereof to the Owner as a Reimbursement Assessment.

8.2.5.2 Owners shall trim all tree limbs that overhang the Roads in the Development to allow for at least fifteen (15) feet of overhead clearance to ensure appropriate ingress and egress for fire and other emergency vehicles. The Owner shall trim their tree within thirty (30) days of being notified by the Association. In the event the Owner fails to trim the tree or bush within the thirty (30) day period, the Association is authorized to trim the tree or bush and charge the cost thereof to the Owner as a Reimbursement Assessment.

8.2.5.3 Owners are encouraged to maintain defensible space around their Residence in full compliance with the California Fire Defensible Space Guidelines, as may be amended from time to time. Specifically, Owners are encouraged to comply with the following actions:

8.2.5.3.1 Remove all branches within ten (10) feet of any chimney or stovepipe outlet.

8.2.5.3.2 Equip chimney or stovepipe openings with a metal screen having openings between three-eighths (3/8) inch and one half (1/2) inch

8.2.5.3.3 Remove all branches that overhang the house roof.

8.2.5.3.4 All exposed woodpiles should be stored at least 30 feet from the home structure and have a minimum of ten (10) feet clearance, down to bare mineral soil, in all directions.

8.2.5.3.5 Liquid Propane Gas (LPG) storage tanks shall have no flammable vegetation or wood screens for ten (10) feet around their exterior. Whenever it is possible, LPG storage tanks are to be placed underground. Wood screens or similar structures in place prior to the adoption of this Declaration are exempt. However, when the screens or

structures need to be replaced, it shall be done with non-combustible materials. Replacement screens or structures require Architectural Review Committee approval prior to being installed.

### 8.3 Owner Failure to Maintain.

The Board may determine if any maintenance, repair, or replacement which is the responsibility of an Owner, is necessary to preserve the appearance, safety, and value of the property comprising the Development, or any portion thereof, and may notify an Owner of the work the Board deems necessary. Subject to the authority of the Board to authorize immediate emergency repairs as specified in Section 8.7 of this Declaration, in the event an Owner fails to perform such work within thirty (30) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right to a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

### 8.4 Owner Liability.

In the event the need for any maintenance, repair, or replacement by the Association is necessitated by the willful or negligent act or omission of an Owner, members of any Owner's household, or an Owner's tenants, Contract Purchaser, guests, invitees, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment.

### 8.5 Authority for Entry of Lot.

The Association or its agents may enter any Lot, when such entry is necessary in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is authorized to perform, including without limitation the authorization provided in Section 8.3 of this Declaration. Although under no obligation to do so, the Board may enter or may authorize the Association's agents to enter any Lot to effect emergency repairs where such repairs are necessary for safety reasons or to prevent or discontinue damage to the entered Lot or any other Lot or the Common Area. The cost of performing any such emergency repairs shall be charged to the Owner as a Reimbursement Assessment. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations. Notice is to be given by posting same on the front door of the Residence and/or by giving notice to the Resident in accordance with the Resident's stated preferred method of receiving notice.

### 8.6 Association Liability.

Except as specifically provided in Section 8.1 of this Declaration the Association shall not be responsible or liable for any maintenance or repair of a Lot or maintenance, repair or replacement of any Improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the gross negligence of the Association, its employees, contractors, or agents.

### 8.7 Board Discretion.

The Board shall have the discretion to determine the manner, method, extent and timing of the performance of any and all maintenance, repair and replacement obligations imposed upon the Association by this Article.

8.8 Cooperative Maintenance Obligations.

To the extent necessary or desirable to accomplish the Association's maintenance, repair and replacement obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the performance of their work.

**ARTICLE 9 ARCHITECTURAL REVIEW**

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9.1 Submission of Plans and Specifications.

Except for Improvements made, or constructed by, or on behalf of, the Association, all Residential Improvements, which require a permit from the County of Placer in compliance with Placer County Building Codes or Health and Safety Codes must be made only after the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee as to: (a) quality of workmanship and design; (b) harmony of external design in relation to the nature and character of the Development and the Improvements thereon; (c) location in relation to surrounding structures, topography, finished grade elevation; and (d) compliance with the provisions of the Declaration.

Any Owner proposing to perform any work of any kind whatever, which requires prior approval pursuant to this Article, shall apply for approval by notifying the Association, in writing, of the nature of the proposed work and furnishing such information and documentation as the Architectural Review Committee or Board may require, including without limitation samples of proposed paints and other finish materials in such sizes and formats as the Committee or the Board may deem appropriate. In addition to any other remedies the Association may have, the Board may impose a fine against any Owner who fails to obtain the approval required by this Article prior to proceeding with any Improvement, or any alteration to an existing Improvement, for which approval is required pursuant to this Article.

9.2 Establishment of Architectural Review Committee.

9.2.1 Except as provided in Sections 9.2.2 and 9.2.3 of this Declaration the Board shall appoint an Architectural Review Committee to be selected by the Board, who serve at the pleasure of the Board. The Board shall have the power, in its complete discretion and either with or without cause, to remove any member of the Architectural Review Committee. In the event of death, resignation or removal of any member of the Architectural Review Committee, the Board shall have the full authority to designate a successor.

9.2.2 The Board may, in its discretion, elect to act as the Architectural Review Committee without appointing the separate committee provided for in Section 9.2.1 of this Declaration.

9.2.3 If a duly-constituted Architectural Review Committee is not in existence, or if the Board elects to act as the Architectural Review Committee, the Board shall act as the Architectural Review Committee in accordance with the terms of this article.

9.3 Duties.

It shall be the duty of the Architectural Review Committee to consider and act upon proposals or plans submitted to it, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

#### 9.4 Meetings.

The Architectural Review Committee may meet as necessary to properly perform its duties hereunder. Every act done or decision made by a majority of the members of the Architectural Review Committee shall be the act or decision of the Architectural Review Committee. The Architectural Review Committee shall keep and maintain a record of all actions taken by it at any meetings or otherwise. The Architectural Review Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Architectural Review Committee function.

#### 9.5 Architectural Rules.

The Architectural Review Committee may, from time to time, and subject to the Board's approval, adopt, amend, and repeal rules and regulations to be known as Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards and procedures for Architectural Review Committee review and guidelines for architectural design, placement of Residences and other structures, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Development; provided, however, that the Architectural Rules shall not be in derogation of the minimum standards required by this Declaration. The Architectural Rules may also impose limits on the days and hours of construction and impose any other restrictions and regulations which the Board deems appropriate to limit the impact of construction activities on the Residents. In its discretion, and subject to the Board review and Section 9.22 of this Declaration the Architectural Review Committee may grant variances from specific Architectural Rules subject to such terms and conditions as it deems appropriate.

#### 9.6 Expert Review.

If at any time the Architectural Review Committee determines that it would be in the best interest of the community for an Owner-applicant to employ an architect, licensed building designer, soils engineer or structural engineer to design or review the structural integrity of any proposed Improvement or component thereof, the Architectural Review Committee shall so advise the Owner in writing of its determination, whereupon all plans and specifications so designated by the Architectural Review Committee must thereafter bear appropriate evidence of such preparation or review.

#### 9.7 Fees, Deposits.

9.7.1 Compliance Fee. A deposit not to exceed Fifteen Thousand Dollars (\$15,000.00), which is referred to herein as a "compliance fee" will be required to ensure proper construction site cleanup as well as the repair of any private roads or other Common Areas resulting from new/major construction activities. Minor construction projects may result in a lower compliance fee, as reasonably determined by the Architectural Review Committee. The unexpended portion of the compliance fee shall be returned to the Owner upon the

Architectural Review Committee's determination that the Improvement project has been completed in accordance with approved plans and specifications and that any required cleanup or repairs have been completed. The compliance fee for new construction will be due and payable when the Will Serve Letter is issued by the Auburn Valley Community Services District. In no event shall construction commence prior to the Owner's payment of the compliance fee.

9.7.2 Liability. Owners conducting any construction shall be strictly liable to: (a) the Association for any resulting damage to the Common Area and roads in the community; and (b) any neighboring Owners for any resulting damage to their respective neighboring Lots. The offending Owner's obligation to reimburse the Association and/or neighboring Owners for any damage shall not be limited by the deposit amount required in Section 9.7.1, above.

9.7.3 Insurance. As applied to the construction of a building on a Lot, the Owner of such Lot shall ensure that their construction contract shall name the Association and all adjacent or contiguous land Owners as additional insureds.

9.7.4 Plan Review Fee. A Plan Review Fee, in an amount determined by the Architectural Review Committee, shall be charged to defray the cost of an engineer retained by the Committee to review an Owner's plans and specifications. Minor improvement projects may be exempted from this Plan Review Fee, in the discretion of the Committee. The Plan Review Fee is due and payable upon submission of the Owner's plans.

## 9.8 Grant of Approval.

The Architectural Review Committee shall grant the requested approval only if:

9.8.1 The Owner shall have complied with the provisions of Section 9.1, 9.5, 9.6, and 9.7 of this Declaration;

9.8.2 The Architectural Review Committee shall find that the plans and specifications conform to: (a) this Declaration and the Architectural Rules in effect at the time such plans were submitted to the Committee, unless a variance is granted from such Architectural Rules pursuant to this Article; (b) will be in harmony with the external design of other structures and/or landscaping within the Development; and (c) will not interfere with the reasonable use and/or enjoyment of any other Lot Owner of his or her property; and

9.8.3 The Architectural Review Committee shall determine that the proposed Improvements would be consistent with the standards of the Development and the purposes of this Declaration as to quality of workmanship, design and materials, as to harmony of exterior design with the existing structures, and as to location with respect to topography and finished grade elevations.

## 9.9 Form of Approval.

All approvals and denials of requests for approval shall be in writing except as provided in Section 9.12 of this Declaration. The Architectural Review Committee may approve a request for approval



subject to the Owner's consent to any modifications made by the Architectural Review Committee. If the Owner does not consent to the modifications, the request for approval shall be deemed denied in its entirety. Any denial of a request for approval shall include: (a) an explanation of why the request for approval was denied; and (b) a description of the procedure for Board review of the denial as set forth in this Article and any applicable Architectural Rules.

#### 9.10 Time for Architectural Review Committee Action.

The Architectural Review Committee shall act on a request for approval within thirty (30) days from the date of receipt. Any request for approval which has not been acted on by the Committee within the preceding time frame shall be deemed approved. The Owner requesting approval shall have the burden of establishing the date of receipt of the request for approval by the Architectural Review Committee in the form of a copy of such request for approval date-stamped by the Association or by certified mail provided by the U. S. Postal service acknowledging that such request for approval was delivered to the Association.

#### 9.11 Board Review.

This section shall only apply if there is a duly organized Architectural Review Committee and shall not apply if the Board is acting in the capacity of an Architectural Review Committee pursuant to this Article. An Owner shall have a right to appeal the decision of the Architectural Review Committee to the Board, provided that such request shall be presented to the Board within ten (10) days from the date of the Architectural Review Committee's decision. If a review is conducted: (a) it shall take place during an open meeting of the Board; (b) the Board may affirm, reverse or modify the decision in its discretion and in accordance with the provisions of the Governing Documents; and (c) the Board shall notify the applicant in writing of the Board's decision within fifteen (15) days following the review.

#### 9.12 Commencement.

Upon receipt of approval by the Architectural Review Committee, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all installation, construction, reconstruction, refinishing, alterations, and excavations pursuant to such approval, commencement to occur, in all cases, within ninety (90) days from the effective date of such approval or upon such later date as the Committee may in its discretion designate. If the Owner shall fail to comply with this paragraph, any approval previously given shall be deemed revoked unless the Committee, upon written request of the Owner made prior to the expiration of the time for commencement, extends the time for such commencement. No such extension shall be granted except upon a finding by the Committee that there has been no change in the circumstances upon which the original approval was granted.

#### 9.13 Completion.

The Owner shall, in any event, complete the installation, construction, reconstruction, refinishing, or alteration of any Improvement, within one (1) year after commencing construction thereof (or in the case of projects under construction when this Declaration is Recorded, within one (1) year after the date of Recordation), except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his/her agents. If an Owner fails to comply with this section, the

Board shall proceed in accordance with the provisions of Section 9.19 of this Declaration as though the failure to complete the Improvements was a noncompliance with approved plans.

9.14 Inspection.

Inspection of work and correction of defects therein shall proceed as follows:

9.14.1 Upon the completion of any installation, construction, reconstruction, alteration, or refinishing of the exterior of any Improvements, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Architectural Review Committee.

9.14.2 Within sixty (60) days after the receipt of such written notice, the Architectural Review Committee, or its duly authorized representative, may inspect such Improvement to determine whether it was installed, constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the Architectural Review Committee finds that such installation, construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such sixty (60) day period, specifying particulars of noncompliance and shall require the Owner to remedy such noncompliance.

9.14.3 If the Owner shall have failed to remedy such noncompliance upon the expiration of thirty (30) days from the date of such notification, the Architectural Review Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing shall be noticed and conducted in accordance with Section 8.1.4 of the Bylaws.

9.14.4 At the hearing the Owner, the Architectural Review Committee and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance, and, if so, the nature thereof. If a noncompliance exists, the Board shall require the Owner to remedy or remove the same within a period determined in the discretion of the Board. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may: (a) remove the noncomplying Improvement or remedy the noncompliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Reimbursement Assessment; and/or (b) exercise any of the enforcement rights specified in Section 10.5 of this Declaration.

9.14.5 If, for any reason, the Architectural Review Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt of a notice of completion from the Owner, the Improvement shall be deemed to be in accordance with the approved plans. The Owner shall have the burden of establishing the date of receipt of the notice of completion by the Architectural Review Committee by evidence in the form of either a copy of such notice date-stamped by the Association's office or by a certified mail provided by the U. S. Postal service acknowledging that such notice was delivered to the Association.

#### 9.15 Non-Waiver.

The approval by the Architectural Review Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Review Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

#### 9.16 Estoppel Certificate.

Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee, the Board shall Record an estoppel certificate, if permitted by the County of Placer, certifying (with respect to any Lot of such Owner) that as of the date thereof, either: (a) all Improvements made and other work completed by such Owner comply with this Declaration; or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the Owner, or from anyone deriving any interest in a Lot through him or her, shall be entitled to rely on such certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

#### 9.17 Notice of Noncompliance.

If any Improvements are installed within the Development that are not in conformance with this Declaration, the Association is authorized to Record a notice of noncompliance, if permitted by the County. The notice of noncompliance shall provide: (a) a legal description of the Lot affected; (b) the name of the record Owner as most recently reported to the Association; and (c) a description of the general nature of the noncompliance. If and when such Lot is brought into compliance with this Declaration, as determined by the Board, the Association shall issue and, if permitted by the County of Placer, Record an estoppel certificate in accordance with Section 9.18 of this Declaration. Each Owner of a Lot, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to the recordation of notices of noncompliance as set forth in this Section.

#### 9.18 Liability.

Neither the Board, the Architectural Review Committee nor any member or representative thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Development; (d) the execution and filing of an estoppel certificate pursuant to Section 9.18 of this Declaration, whether or not the facts therein are correct; provided, however, that the Architectural Review Committee, the Board or any member or representative thereof has acted in good faith on the basis of such information as may be possessed by it or him or her; or (e) the execution and filing of a notice of noncompliance pursuant to Section 9.19 of this Declaration whether or not the facts therein are correct; provided, however, that the Architectural Review Committee, the Board or any member or representative thereof has acted in good faith on the basis of such information as may be possessed by it or him or her. Without in any way limiting

the generality of the foregoing, the Architectural Review Committee, the Board or any member or representative thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Review Committee. Every purchaser, by acquiring title to a Lot or portion thereof agrees not to bring any action or suit against the Board, the Architectural Review Committee, or their members or representatives seeking to recover any such damages.

#### 9.19 Compliance with Governmental Requirements.

The application to the Association, and the review and approval of any proposals, plans, or other submittals, shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on the Board, the Architectural Review Committee, or their members as to the accuracy, efficacy, or sufficiency of such proposals, plans or other submittals.

#### 9.20 Architectural Standards.

##### 9.20.1 Minimum Improvement Standards Applicable to Improvement Projects In Auburn Valley Unit No. II.

9.20.1.1 The basic guidelines apply for Improvement projects within Unit No. II as they do for Improvement projects within Unit No. I except, because of contour and rock formation in the area, the following additional requirements apply to Improvement projects within Unit No. II, except Lots 1 and 6:

9.20.1.2 It is recognized that certain Lots in Unit No. II of the Development, because of prior planning and commitment, may have zero setbacks on side property lines, but this must be in conjunction with an adjoining Lot, also with a zero setback. On such Lots there must be two (2) dwelling units erected at the same time with duplicate architecture, color, and styling, rooflines, and building materials to give the appearance of a single Residence. Each building is to be within the confines of a designated Lot.

9.20.1.3 The Owner of each single-family Lot, except Lots 1 and 6, is granted an easement of four (4) feet along the zero-setback axial of the adjoining Lot for the design, construction and maintenance of an optional roof extension into the said adjoining Lot provided such roof line extension is approved by the Architectural Review Committee, and provided such approval precedes any construction of roofline extensions into adjoining Lots.

9.20.1.4 "Duet" type single-family Units may be permitted in Unit No. II provided that two (2) sets of plans and specifications for each Unit are submitted for approval to the Architectural Review Committee at the same time, and that constructions on both Residences will start and finish at the same time. The minimum living area for each single-family Residence shall be one thousand, six

hundred and fifty (1650) square feet and the combined minimum living area for the Duet shall be three thousand, three hundred (3,300) square feet.

9.20.1.5 Color schemes must be the same and all exterior elevations and rooflines must blend or "twin" with each other.

9.20.1.6 The initial painting must be the same and all future painting must be accomplished at the same time on both Units using the same paint scheme.

9.20.1.7 Because of contour and rock formations in Unit No. II, the Architectural Review Committee may waive the distance of front setback for the most aesthetic and utilitarian use.

9.20.2 Minimum Set-Back Requirements. For the purpose of computing front yard dimensions, the measurement shall be taken from the nearest point of the front wall of the building of the Lot line; provided, however, that if an Official Plan Line has been established for the Road, or if a future width line is established therefor by provisions of Placer County, then the measurement shall be taken from the nearest point of the front wall of the building to the Official Plan Line or such future width line. The set-back shall be no less than fifty (50) feet.

9.20.2.1 Each Residence shall have a rear yard, measurement of which shall be taken from the point of the rear wall to the rear property line, or in the event of an easement, to the line of easement nearest the Residence. Each rear yard shall have a depth of not less than twenty-five (25) feet.

9.20.2.2 Each Residence shall have a side yard, measurement of which shall be taken from the point of the side wall, nearest to the property line and for a distance of not less than ten (10) feet. In the event that a site borders upon more than one Road, the setback shall be not less than twenty-five (25) feet from each Road.

9.20.3 Grading. If an Improvement will result in fifty (50) or more cubic yards of soil being relocated, a Placer County grading permit is required prior to the commencement of such work, and must be provided to the Architectural Review Committee prior to the commencement of grading.

9.20.4 Location and Size of Residences. Each single-family Residence in the Development shall have a minimum of two thousand (2,000) square feet of living space. If the Residence has two (2) stories; the main floor shall not be less than sixty percent (60%) of the total living space. No more than one Residence shall be built upon any Lot.

9.20.5 Permitted Roofing Materials. Roofing shall be metal, concrete or clay tile or a facsimile thereof; as approved by the Architectural Review Committee. Exception can be made on a case-by-case basis by the Architectural Review Committee for replacement roofs for existing homes which do not meet structural requirements for tile or metal roofs that composition asphalt shingles are permitted if they are replacing composition asphalt shingles. All roofing materials and associated Improvements (flashing, chimneys, etc.)

shall be of a like color. Low-sloped roofs must be reviewed by the Architectural Review Committee to insure their appearance does not adversely affect neighboring properties.

9.20.6 Garages. For aesthetic, security, and utility reasons, a Residence erected upon a site within the Auburn Valley Subdivision shall have included an enclosed garage area with minimum dimensions of twenty-four (24) feet in length and twenty-four (24) feet in width. The garage may be attached or erected as a separate structure. A detached garage shall be reviewed and approved or disapproved by the Architectural Review Committee separately, upon its individual merits. Garage interiors must be sheeted and finished. Sectional doors must be used on all garages. Head height of garage doors is limited to ten (10) feet maximum.

9.20.7 Location and Size of Accessory Buildings.

9.20.7.1 A detached accessory building, except a garage, of not over one story and not exceeding twelve (12) feet in height may occupy not to exceed thirty percent (30%) of the area of any rear yard. Accessory buildings shall not exceed two hundred and fifty (250) square feet in size. If required by Placer County, a permit must be obtained.

9.20.7.2 In the case of an interior Lot abutting upon one Road, no detached accessory building shall be erected or altered so as to encroach upon the front half of the Lot.

9.20.7.3 In the case of an interior or corner lot abutting upon two (2) or more Roads no accessory building shall be erected or altered so as to encroach upon the one-quarter (1/4) of the Lot nearest either Road.

9.20.7.4 Any accessory building must be at least twenty-five (25) feet away from any property line.

9.20.7.5 No detached accessory building shall be within twenty-five (25) feet of the side line of the front half of any adjacent Lot, except as specifically permitted.

9.20.8 Fence Restrictions.

9.20.8.1 In order to preserve the aesthetic appearance of the existing geographic areas within the Development, all fences must have a uniform and consistent appearance subject to Architectural Review Committee approval requirements set forth in Article 9 of this Declaration. All fences shall be constructed to be set back from the Lot's property line sufficiently to provide a an area of the Lot that will allow wildlife to safely pass through on at least one side of the Lot.

9.20.8.2 No fence or boundary wall situated anywhere upon any Lot or building site shall have a height greater than six (6) feet above the finished graded surface of the ground upon which such wall or fence is to be situated. Nor shall any wall, fence or hedge situated within the front yard setback area of any dwelling-house have a height greater than four (4) feet above the finished graded surface of the ground upon which such fence or wall is to be situated.

#### 9.21 Variances.

The Architectural Review Committee may, with approval of the Board, grant reasonable variances in any procedures specified in this Article 9 in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardship, provided the following conditions are met:

9.21.1 The Architectural Review Committee must make a good faith written determination that: (a) the requested variance does not constitute a material deviation from the overall plan and scheme of the Development or from any restriction contained in the Declaration or that the proposal allows the objectives of the violated restriction(s) to be substantially achieved despite noncompliance; (b) that the variance relates to a restriction or requirement that is unnecessary or burdensome under the circumstances; or (c) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Lot, Common Area or Owner in the Development.

### **ARTICLE 10 ENFORCEMENT**

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#### 10.1 Violations as Nuisance.

Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance. In addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association, its officers, the Board or by any Owner. The Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.

#### 10.2 Violation of Law.

Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

#### 10.3 Owners' Responsibility for Conduct and Damages.

Each Owner shall be fully responsible for informing the members of his or her household and his or her tenants, Contract Purchasers, contractors and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Lot is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

#### 10.4 No Avoidance.

No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities, if any, or by abandonment of his or her Lot.

## 10.5 Rights and Remedies of the Association.

10.5.1 Enforcement Rights. The Association, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive. The Board shall not be obligated to take action to enforce a provision of the Governing Documents if, in the exercise of its discretion, the Board determines that acting to enforce the provision is not likely to foster or protect the interests of the Association and its Members as a whole.

10.5.2 Member Not In Good Standing. Upon a determination by the Board of Directors, after prior notice to the affected Member and an opportunity for a hearing, that such Member has violated any provision of the Governing Documents including a failure to pay any Assessment when due, the Board shall give notice in writing to such Member that he or she is deemed not to be a Member in Good Standing. Such Member shall be deemed to remain in that status until such time as the Board shall determine in writing that the violation which resulted in the Board's determination has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member shall again be deemed to be a Member in Good Standing of the Association. Such Member shall be so notified in writing with a copy given to the Secretary. Such action will not impede a Member's right to vote on any matters coming before the community for a vote.

10.5.3 Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or his or her tenants, Contract Purchasers, contractors, guests or invitees, the Board shall have the power to impose sanctions against the Owner. Such sanctions may include, without limitation, the imposition of fines and/or the suspension of an Owner's rights as a Member, including an Owner's right to use the recreational or community facilities, if any, or the Common Area. Such action will not impede a Member's right to vote on any matters coming before the community for a vote. Except as provided in Section 10.7 of this Declaration imposition of sanctions shall be effective only after notice and an opportunity for hearing as provided in Section 8.1.4 of the Bylaws. The payment of any such fine may be enforced as an Enforcement Assessment as provided in Section 6.8 of this Declaration as well as in any manner permitted by law. Further, each Owner shall be obligated to pay Reimbursement Assessments levied by the Board for reimbursement of any costs incurred by the Association relating to violation of any provisions of the Governing Documents by the members of such Owner's household and such Owner's tenants, Contract Purchasers, guests, pets, or other invitees.

10.5.4 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of Article 6 of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings



initiated by the Association, its Officers or Board of Directors, or by any Owner or by their respective successors in interest.

10.5.5 Limitation on Disciplinary Rights. The Association shall not have the power and authority to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to Article 6 of this Declaration. The provisions of this subsection shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

10.6 Disciplinary Rules.

The Board or Rules Committee (appointed by the Board for that purpose) may adopt rules and regulations that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such rules, when approved and adopted by the Board, shall be deemed to be a part of the Association Rules provided for in, and constituting a part of, the Governing Documents.

10.7 Emergency Situations.

The following shall constitute emergency situations: (a) an immediate and unreasonable threat to the safety of Residents of the Development; (b) a traffic or fire hazard; or (c) a threat of material damage to or destruction of the Development or any portion thereof. Notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that constitutes an emergency situation, the Association may undertake immediate corrective or disciplinary action. Hearings with respect to such corrective or disciplinary action shall be in accordance with Section 8.1.4 of the Bylaws.

10.8 Alternative Dispute Resolution.

Compliance with California Civil Code Sections 5925 through 5965 and Civil Code Sections 5900 through 5920 shall be required with respect to any dispute subject to such sections.

10.9 Non-Waiver.

Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.

10.10 Notices.

Any notices required or given under this Article shall conform to Section 8.1.4 of the Bylaws.

10.11 Costs and Attorneys' Fees.

In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Member or members of his or her household or his or her tenants, Contract Purchasers, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the prevailing party shall be entitled to recover the full amount of all costs incurred, including attorneys' fees, in responding to such a violation and/or in enforcing any Governing Document provision. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, without limitation, the imposition of a Reimbursement Assessment as provided in Section 6.7 of this Declaration.

#### 10.12 Indemnification.

Each Owner, by acceptance of his or her deed, agrees for himself or herself and for the members of his or her household, his or her Contract Purchasers, tenants, guests or invitees, to: (a) indemnify each and every other Owner for; (b) to hold each and every other Owner harmless from; and (c) to defend each and every other Owner against, any claim of any person for personal injury or property damage occurring within the Lot of such Owner, except that such Owner's liability may be diminished to the extent that the injury or damage occurred by reason of the negligence of any other Owner or person temporarily visiting in such Lot or is fully covered by insurance.

### **ARTICLE 11 AMENDMENT**

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#### 11.1 Amendments by Members.

This Declaration may be amended by the affirmative vote or written consent of fifty-one percent (51%) of all Members. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officers of the Association and shall be Recorded. The identity of Members eligible to vote is determined as of the date the ballots are issued.

#### 11.2 Amendments by Board.

The Board of Directors may, without the approval of the Members, amend any part of this Declaration to the limited extent necessary to comply with the lending requirements of any federally chartered lending institution or to comply with a mandatory change in applicable federal, state or local legislation.

Certain provisions of this Declaration reflect legal requirements prescribed by Federal law, California law, and other governmental statutes and regulations. In the event that any such laws, statutes or regulations are amended, revoked, or supplemented, the Board of Directors may, by the affirmative vote of a majority of the Directors present at a meeting at which a quorum has been established, amend the Declaration to reflect the underlying law, statute or regulation. The purpose of this provision is to provide the Members with notice of current legal requirements which affect their rights and obligations as they pertain to their Lot and membership within the Association.

#### 11.3 Restatement of the Declaration.

The Board of Directors may, by the affirmative vote of a quorum of the Directors, restate the Declaration when it has been properly amended pursuant to this Article. Any such restatement shall supersede any prior declarations and amendments in their entirety, but shall not affect the priority of any

previous declarations or amendments in the chain of title to all Lots within the Development as established by the initial date of recordation of the original declaration for the Development. Such restatement may also:

11.3.1 Add, delete, or rearrange the text of the Declaration to maintain consistency with any amendments including, but not limited to, altering the title and numbering of the restatement;

11.3.2 Delete material that is no longer legally effective;

11.3.3 Add text which indicates that the Board of Directors has authorized the restatement and otherwise describes the background of the Development and the restatement process; and

11.3.4 Correct any errors or inaccuracies in the Declaration, including but not limited to, the legal description of the properties in the Development.

## **ARTICLE 12 GENERAL PROVISIONS**

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### 12.1 Headings.

The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.

### 12.2 Severability.

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

### 12.3 Liberal Construction.

The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.

### 12.4 Number; Gender.

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

### 12.5 Easements Reserved and Granted.

Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.

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**IN WITNESS WHEREOF**, Members of the Auburn Valley Property Owners' Association, Inc., consisting at least a majority of the Total Voting Power of the Members, hereby affirm, approve, and adopt this Eighth Restated Declaration of Covenants, Conditions, and Restrictions for Auburn Valley Property Owners' Association, Inc. pursuant to the requirements of Section 17.01(a) of the Seventh Restated Declaration.

DATED: \_\_\_\_\_, 2021

**Auburn Valley Property Owners' Association, Inc.**, a  
California nonprofit mutual benefit corporation

\_\_\_\_\_  
Michael Krug, President

\_\_\_\_\_  
Carolyn Clair, Secretary

## **Exhibit "A"**

### **Legal Description of Development**

All that real property situate in the State of California, County of Placer, unincorporated area, described as follows:

**PARCEL 1:**

Lots 1 through 41, inclusive, as shown on that certain map entitled "Auburn Valley Subdivision Unit No. 1", filed in the office of the County Recorder of Placer County, California, in Book G of Maps, at page 21.

**PARCEL 2:**

Lots 1 through 22 inclusive, as shown on that certain map entitled "Tract No. 349 Auburn Valley Subdivision Unit No. 2", filed in the office of the County Recorder of Placer County, California, in Book M of Maps, at page 57.

**PARCEL 3:**

Lots 1 through 27 inclusive as shown on that certain map entitled "A Plat of Tract No. 571 Auburn Valley Unit No. 4-A", filed in the office of the County Recorder of Placer County, California, in Book N of Maps, at page 80.

**PARCEL 4:**

Lots 28 through 54, inclusive and Lot "A" as shown on the map entitled "A Plat of Tract No. 575 Auburn Valley Unit No. 4B" filed in the office of the County Recorder of Placer County, California, in Book O of Maps, at page 4.

**PARCEL 5:**

Lots 55 through 82 inclusive as shown on the map entitled "A Plat of Tract No. 576 Auburn Valley Unit No. 4C" filed in the office of the County Recorder of Placer County, California on July 17, 1984 in Book O of Maps, page 5.