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Nevada, County Recorder  
Jewett-Burdick

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Friday, NOV 08, 2002 11:49:00

REC \$119.00 SBS \$109.00 MIC \$2.00

AUT \$111.00

Ttl Pd \$341.00

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ENM/EM/2-110

RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

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A Law Corporation  
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APNs. 19-400-08 & 19-400-09  
Final Map No. 01-061 , Town of Truckee

(Space Above For Recorder's Use Only)

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PINE FOREST AT TRUCKEE

THIS DECLARATION IS BEING RE-RECORDED TO CORRECT SEVERAL  
CROSS-REFERENCE ERRORS TO SECTIONS OF THE DECLARATION AND  
REFERENCES TO THE "COUNTY OF PLACER" THAT SHOULD BE THE  
"TOWN OF TRUCKEE"

045810

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RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

Nevada, County Recorder  
Jewett-Burdick

DOC- 2002-0033092-00

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Acct 3-Placer Title Company

Thursday, AUG 22, 2002 09:00:00

REC \$116.00 ECF \$2.00 SBS \$106.00

NIC \$2.00 AUT \$108.00

Ttl Pd \$334.00

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APNs. 19-400-08 & 19-400-09  
Final Map No. 01-061 , Town of Truckee

(Space Above For Recorder's Use Only)

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PINE FOREST AT TRUCKEE

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PINE FOREST AT TRUCKEE**

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PINE FOREST AT TRUCKEE**

This Declaration is made by Pine Forest Truckee, LLC, a California Limited Liability Company, ("Declarant").

**RECITALS**

A. Declarant is the owner of that certain real property located in the Town of Truckee, County of Nevada, State of California, commonly known as Pine Forest at Truckee and more particularly described in Exhibit "A" (the "Overall Development").

B. This Declaration shall initially apply only to that portion of the Overall Development described in attached Exhibit "B". The property that is initially subjected to this Declaration and any additional real property that is later annexed to the initial property and thereby subjected to this Declaration shall be referred to as "Pine Forest". It is the present intention of the Declarant that the initial Phase of the Pine Forest development shall include sixty-three (63) single family Lots and that the second Phase of development include 55 single family Lots, for a total of 118 single-family Lots. Other portions or Phases of the Overall Development may be made subject to this Declaration by the process of annexation set forth in Article xv below. Article xv also includes provisions which authorize the deannexation of property from this Declaration under certain terms and conditions.

C. Declarant hereby declares that all of the real property and improvements comprising Pine Forest shall be held, sold and conveyed subject to the following easements, restrictions, associations, reservations, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Pine Forest. These covenants, easements, restrictions, conditions, associations and reservations: (i) create a general plan and scheme for the subdivision development, sale and use of Pine Forest as a "planned development" as that term is defined in California Civil Code section 1351(k); (ii) are for the benefit and protection of Pine Forest and for the protection and enhancement of the desirability, value and attractiveness of all Lots, Common Areas and other parcels of property located therein; (iii) run with real property comprising Pine Forest and are binding on all parties having

or acquiring any right, title or interest in Pine Forest or any part thereof; and (iv) shall inure to the benefit of the successors and assigns of each Owner of any Lot within Pine Forest.

D. It is the further intention of the Declarant to sell and convey residential Lots to Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, liens, grants of easements, rights, rights of way, charges and equitable servitudes between Declarant and such Owners as set forth in this Declaration and any duly adopted amendments thereto.

E. Finally, it is the intention of Declarant to convey to the Association the "Common Areas" and "Common Facilities" located within Pine Forest to be owned and maintained by the Association and reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, subject to the terms and conditions of this Declaration and the other Governing Documents.

F. Notwithstanding the anticipated development of the Overall Development in accordance with the plan of phased development contemplated by this Declaration, nothing in this Declaration shall be construed or interpreted to commit Declarant to the development of any portion of the Overall Development in accordance with any present planning, or to the annexation of all or any part of the Overall Development to this Declaration, whether or not it is so developed. Accordingly, nothing contained herein shall obligate Declarant to refrain from the further subdivision or resubdivision of the lands comprising the Overall Development, and Declarant shall be free to so further subdivide or resubdivide. Nothing contained herein shall obligate Declarant to refrain from the further subdivision, resubdivision or reversion to acreage of portions of the Overall Development not theretofore annexed, and Declarant shall be free to so further subdivide or resubdivide, or revert those portions of the Overall Development.

## ARTICLE I Definitions

Section 1.01. "Articles" means the Articles of Incorporation of the Association, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 1.02. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV, below.

Section 1.03. "Association" means the Pine Forest Owners' Association, a California nonprofit mutual benefit corporation, its successors and assigns. The Association is an "association" as defined in California Civil Code section 1351(a).

Section 1.04. "Association Rules" means the rules, regulations and policies adopted by the Board of Directors, pursuant to Section 3.08, below, as the same may be in effect from time to time. Once the Pine Forest Design Review Committee has become a committee that is under the sole direction and control of the Association's Board of Directors (see Section 5.02, below) the Association Rules shall also include the Design Guidelines.

Section 1.05. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 1.06. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.07. "Common Area" means all real property owned and maintained by the Association for the common use and enjoyment of the Owners and residents of Pine Forest. The Common Areas to be owned by the Association at the time of the conveyance of the first Lot is described in Exhibit "C", attached hereto.

Unless the context clearly indicates a contrary intent, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon. At the inception of the Pine Forest development, the Common Areas will include all dedicated streets within the development. Although the streets within the development have been improved by the Declarant to the Town of Truckee road improvement standards and are therefore eligible for acceptance by the Town of Truckee into the Town's road system for ongoing public maintenance and snow removal in accordance with the Town's Private Road Acceptance Standards and Policies (August 17, 1995 policy; revised November 7, 1996), the Town has not yet accepted the offer of dedication for those streets. At such time as the offer of dedication is accepted by the Town and the streets are thereby accepted by the Town of Truckee for maintenance and snow removal, the roads shall no longer be Common Area or Common Facilities, as defined herein, and shall no longer be a maintenance or repair responsibility of the Association.

Section 1.08. "Common Expense" means any use of Common Funds authorized by Article IV, below, and Article IX of the Bylaws and includes, without limitation: (a) all expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions,

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

Section 1.09. "Common Facilities" means: (i) at the inception of the Pine Forest development, the streets within the subdivision until such time as the Town of Truckee, or a district or other political subdivision thereof, may accept those streets for maintenance; (ii) any retention ponds for water coming from paved road run-off, as shown on the Subdivision Map; (iii) the bicycle/pedestrian path located adjacent to Comstock Drive, as such bicycle/pedestrian easement is shown on the Subdivision Map; and (iii) the entrance monumentation to the development.

Section 1.10. "County" means the County of Nevada, State of California, and its various departments, divisions, employees and representatives.

Section 1.11. "Declarant" means Pine Forest Truckee, LLC, a California Limited Liability Company. The term "Declarant" shall also mean any successor or assign of Declarant, if (i) a certificate, signed by Declarant and Declarant's successor or assign, has been recorded in the County in which the successor or assign assumes the rights and duties of Declarant to some portion of the Pine Forest common interest development or (ii) such successor or assign acquires all of Pine Forest and the remainder of the Overall Development then owned by a Declarant which must be more than one Lot.

Section 1.12. "Declaration" means this instrument, as it may be amended from time to time.

Section 1.13. "Design Guidelines" means the Design Guidelines and procedural rules of the Design Review Committee, adopted pursuant to Section 5.05, below.

Section 1.14. "Design Review Committee" means the committee created in accordance with Article V, below.

Section 1.15. "Governing Documents" is a collective term that means and refers to this Declaration and to the Articles, the Bylaws and the Association Rules.

Section 1.16. "Improvement" as used herein includes, without limitation any improvement or project undertaken or contemplated by an Owner (other than the Declarant) within any portion of Pine Forest 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 V, below. In no event shall the term "Improvement" include any improvement, alteration or construction project located entirely within an existing Residence structure, unless such a project violates specific minimum construction standards imposed by Article VI, below.

Section 1.17. "Lot" means any parcel of real property designated by a number on the Subdivision Map for any portion of Pine Forest, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other Improvements constructed or to be constructed on a Lot.

Section 1.18. "Majority of a Quorum" means the vote of a majority of the votes cast at a meeting or by written ballot when the number of Members attending the meeting in person or by proxy or the number of members casting written ballots equals or exceeds the quorum requirement for Member action, as specified by the Bylaws or otherwise by statute.

Section 1.19. "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Section 13.06, below.

Section 1.20. "Mortgage" means any security device encumbering all or any portion of Pine Forest, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

Section 1.21. "Overall Development" means the property described in attached Exhibit "A".

Section 1.22. "Owner" means any person, firm, corporation or other entity which owns a fee simple interest in any Lot. The term "Owner" shall include the Declarant for so long as the Declarant possesses any Lot in Pine Forest, and, except where the

context otherwise requires, the family, guests, tenants and invitees of an Owner. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust.

Section 1.23. "Owner of Record" means any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

Section 1.24. "Phase" means one or more Lots annexed to Pine Forest that are collectively included within a single Public Report issued by the California Department of Real Estate.

Section 1.25. "Pine Forest", "the Pine Forest development" and "Pine Forest at Truckee" mean and refer to all parcels of real property (Common Area and Lots) described in Exhibit "B", together with all buildings, structures, utilities, Common Facilities, and other Improvements now located or hereafter constructed or installed thereon, all appurtenances thereto. The terms "Pine Forest", "the Pine Forest development" and "Pine Forest at Truckee" shall also include any additional real property that is hereafter annexed to the real property described in Exhibit "B" and made subject to this Declaration pursuant to Article XV, below.

Section 1.26. "Public Report" means a final subdivision public report issued by the Department of Real Estate in compliance with California Business and Professions Code section 11000 et seq., or any similar California statute hereafter enacted.

Section 1.27. "Record" means, with respect to any document, the recordation or filing of such document in the Office of the County Recorder.

Section 1.28. "Regular Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.02, below.

Section 1.29. "Reserves" means those Common Expenses for which Association funds are set aside pursuant to Article IV of this Master Declaration and California Civil Code section 1365.5 for funding the periodic painting, maintenance, repair and replacement of the major components of the Common Areas which would not reasonably be expected to recur on an annual or less frequent basis. The amounts required to properly fund Reserves shall be determined annually by the Board in accordance with the standards prescribed by maintenance cost guidelines prepared in accordance with California Civil Code sections 1365(a) and 1365.5(e) and prudent property management practices generally applied in "common interest developments"

(as that term is defined in California Civil Code section 1351(c)) in the geographic region in which the Pine Forest development is located.

Section 1.30. "Residence" means a private, single-family dwelling constructed or to be constructed on any Lot.

Section 1.31. "Single Family Residential Use" means occupation and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

Section 1.32. "Special Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.03, below.

Section 1.33. "Special Individual Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.04, below.

Section 1.34. "Subdivision Map" means the map for any portion of the Pine Forest development.

Section 1.35. "Subsequent Phase Property" this Declaration contemplates that those portions of the Overall Development which are not initially subject to this Declaration may, from time to time, be made subject to this Declaration by annexation. Any portion of the Overall Development not at a particular time subject to this Declaration is referred to as "Subsequent Phase Property."

Section 1.36. "Subsidy Agreement" means a contract between the Declarant and the Association, in a form and content acceptable to the Department of Real Estate, documenting the terms of any program in which the Declarant undertakes to subsidize the cost of operating and maintaining Common Areas or Common Facilities and/or the cost of providing services to the Owners and residents of Lots within Pine Forest, all as more particularly specified in Department of Real Estate Regulation section 2792.10.

Section 1.37. "Supplemental Declaration" means any declaration (as defined in California Civil Code section 1351(h)), Recorded pursuant to Section 14.06, below, which supplements this Declaration and which may affect solely a Phase of the Overall Development.



Section 1.38. "Town" means the Town of Truckee, Nevada County, California, and its various departments, divisions, employees and representatives.

Section 1.39. "Voting Power" means those Members who are eligible to vote for the election of directors or with respect to any other matter, issue or proposal properly presented to the Members for approval at any time a determination of voting rights is made. To be part of the Voting Power, a Member must be in good standing, as defined in the Bylaws and/or the Association Rules.

## ARTICLE II

### Property Rights and Obligations of Owners

#### Section 2.01. Declaration Regarding the Pine Forest Development.

(a) Properties Subject to Declaration. The real property and improvements comprising the Pine Forest development shall be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied and improved only upon compliance with and subject to the provisions of this Declaration, which is hereby declared to: (i) be in furtherance of a plan for the subdivision of Pine Forest and the sale of residential Lots within the Pine Forest development; (ii) be for the benefit and protection of the Pine Forest development and to enhance the desirability, value and attractiveness of Pine Forest; (iii) be for the benefit of the Owners; (iv) run with the land and be binding upon all parties having or acquiring any right, title or interest in Pine Forest or any portion thereof; (v) inure to the benefit of every portion of Pine Forest and any interest therein; and (vi) inure to the benefit of and be binding upon each Owner, the Declarant and each successor in interest of the Declarant as long as the Declarant or any successor shall hold an interest in any portion of the Pine Forest development.

(b) Binding Effect on Successors In Interest. Each conveyance, transfer, sale, assignment, lease or sublease made by Declarant of the Common Area and of any Lot shall be deemed to incorporate by reference all of the provisions of this Declaration. All present and future Owners, tenants and occupants Pine Forest shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same shall be amended from time to time unless a particular provision of the Governing Documents is specifically restricted to one or more classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the execution of a lease, sublease or contract of sale with respect to any Lot or the entering into occupancy of any Residence shall make the provisions of this Declaration binding upon said persons and they shall thereafter be obligated to observe and comply with all Governing Documents.

Section 2.02. Property Rights in Common Area.

(a) Fee Title in Association. Declarant shall convey fee simple title to the Common Area located in each phase of the Pine Forest development to the Association, free of all encumbrances and liens, with the exception of current real property taxes (which shall be prorated as of the date of such conveyance) and any easements, conditions and reservations then of record, including those set forth in this Declaration. Such conveyance shall be made prior to, or concurrently with, the first transfer or conveyance by Declarant of a Lot in such phase to a purchaser.

(b) Rights of Owners in Common Areas. The interest of each Lot Owner in and to the use and benefit of the Common Area and the Common Facilities shall be appurtenant to the Lot owned by the Owner and shall not be sold, conveyed or otherwise transferred by the Owner separately from the ownership interest in the Lot. Any sale, transfer or conveyance of such Lot shall transfer the appurtenant right to use and enjoy the Common Area and Common Facilities. There shall be no judicial partition of the Common Area or any part thereof, and each Owner, whether by deed, gift, devise, or operation of law for his or her own benefit and for the benefit of all other Owners specifically waives and abandons all rights, interest and causes of action for a judicial partition of any ownership interest in the Common Area and does further covenant that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The rights of all Owners in the Common Area shall be further subject to the requirements and restrictions set forth in Section 2.03, below.

Section 2.03. Owners' Nonexclusive Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area, including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) Right of Association to Regulate Common Area Uses. The right of the Association to control the use of any parking located within the Common Area and to charge reasonable admission and other fees or to limit the number of guests of Members who may use any recreational Common Facilities within the development.

(b) Right of Association to Adopt Rules. The right of the Association to adopt Association Rules as provided in Section 3.08, below, regulating the use and enjoyment of the land and improvements comprising Pine Forest for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or tenant, to initiate

disciplinary action against the violating Owner or tenant in accordance with Section 13.06, below. Such action may include the levying of fines and/or the temporary suspension of the voting rights and/or the right to use the Common Facilities, other than roads, by any Owner and the Owner's tenants and guests.

(c) Right to Incur Indebtedness. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and Common Facilities; provided, however, that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Section 4.03, below.

(d) Rights of Dedication. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds of the voting power of each class of Members and their first Mortgagees consenting to such dedication or transfer has been Recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Lot. The instrument effecting the dedication may be executed in counterparts so long as each counterpart is in recordable form.

(e) Rights of Easement Holders. All easements affecting the Common Area which are described in Article IX, below.

(f) Rights of Use by Declarant. The right of Declarant and its employees, sales agents, prospective purchasers, customers and representatives, to enter upon and to use the Common Areas for development and sales activities in accordance with Section 15.03, below. Such use shall not unreasonably interfere with the rights of use and enjoyment of the other Owners as provided herein.

#### Section 2.04. Delegation of Use.

(a) Delegation of Use and Leasing of Residences. Any Owner may delegate his or her rights to use and enjoy the Common Area and Common Facilities to his or her family members or tenants, lessees or contract purchasers who reside in the Residence; provided, however, that any rental or lease may only be to a single family for Single Family Residential Use and for a term not less than ninety (90) days.

(b) Requirements That Must Be Observed In All Residential Leases. The following specific limitations shall apply to all leases or tenancies of a Residence Pine

Forest: (i) no Residence may be leased or rented for a period of less than thirty (30) days; (ii) the rental shall apply to not less than an entire Residence including its appurtenant rights (except voting rights in the Association which may not be transferred to a tenant or lessee); and (iii) any rental shall be evidenced by a written lease or rental agreement which shall provide that the tenancy is subject to the terms of the Governing Documents and that any failure of the tenant to comply with the terms of any Governing Document relating to residential leases, property use restrictions or the use and enjoyment of any portion of the Common Areas and Common Facilities shall constitute a default under the lease or rental agreement and shall entitle the Owner to terminate the tenancy upon thirty (30) days' written notice. The Owner-lessor's right to terminate a lease or rental agreement on account of the tenant's violation of the Governing Documents shall in no way restrict the right of the Association, the Declarant, or any Owner to enforce the Governing Documents in accordance with Article XII, below, when the Owner's tenant is violating the Governing Documents.

(c) Discipline of Lessees. Subject to subparagraph (d), below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances in order to preserve the quiet enjoyment of other Owners and residents Pine Forest. Without limiting, the foregoing, the Association's actions in response to a tenant's violation of the Governing Documents may include: (i) suspension of the tenant's privileges to use the Common Area and/or Common Facilities, or (ii) the imposition of fines and penalties against the Owner-lessor of the Residence.

(d) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to any portion of the Pine Forest development or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) the Owner has received written notice from the Board, the Association's property manager or an authorized committee of the Board detailing the nature of the lessee's/tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner, and (iii) the Owner

has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with Section 13.06, below.

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

(a) Owner's Duty to Notify Association of Tenants and Contract Purchasers. Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant residing in the Owner's Lot. Each Owner, contract purchaser or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights to use and enjoy the streets and Common Areas of the Pine Forest development and the relationship that each such person bears to the Owner, contract purchaser or tenant.

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

(c) Notification Regarding Governing Documents.

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

(A) a copy of the Governing Documents;

(B) a copy of the most recent documents distributed by the Association pursuant to California Civil Code section 1365 (see Article XII of the Bylaws);

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

sold ("delinquency statement"); and (2) the amount of the Association's current Regular and Special Assessments and fees; (3) any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement;

(D) a copy or summary of any notice previously sent to the Owner pursuant to Civil Code section 1363(h), that sets forth any alleged violations of the governing documents that remain unresolved at the time of the request; and

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

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

(iii) The provisions of this section, except for those provisions relating to the furnishing of a delinquency statement, shall not apply to any Owner who is subject to the requirements of California Business and Professions Code section 11018.1 (i.e., the obligation to provide prospective purchasers with a Department of Real Estate Public Report).

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

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

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

**ARTICLE III**  
**Pine Forest Owners' Association**

Section 3.01. Formation. The Pine Forest Owners' Association is a California nonprofit mutual benefit corporation. On or before the first close of escrow for the sale of a Lot in each Phase of Pine Forest to an Owner, the Declarant shall convey fee simple title to the Common Area located in that Phase to the Association as provided in Section 14.04, below, and thereupon the Association shall be charged with the duties and invested with the powers set forth in the Governing Documents, including, but not limited to, the ownership, control, maintenance and repair of the Common Area and Common Facilities.

Section 3.02. Association Action; Board of Directors and Officers. With the exception of those matters requiring approval of Members under the Governing Documents or California law, the affairs of the Association shall be conducted and all corporate powers shall be exercised by the Board of Directors and such officers as the Board may elect or appoint. Except as otherwise provided in the Governing Documents or California law, all matters requiring the approval of Members shall be deemed approved if approved by a Majority of a Quorum of the Members.

Section 3.03. Membership.

(a) Qualifications. Each Owner of a Lot, including the Declarant, shall be a Member of the Association. An Owner shall hold one membership in the Association for each Lot that the Member owns. Sole or joint ownership of a Lot shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership of, or ownership interest in, all Lots in the Pine Forest development ceases, at which time the Owner's membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members.

(b) Members' Rights and Duties. Membership in the Association shall give rise to the rights, duties, and obligations set forth in the Governing Documents and any amendments thereto.

Section 3.04. Membership Voting.

(a) Commencement of Voting Rights. Voting rights attributable to the ownership of

Lots shall not vest until Assessments against those Lots have been levied by the Association.

(b) Classes of Membership. The Association shall have two (2) classes of voting membership, namely a Class A Members which shall initially consist of all Owners of Lots except the Declarant and a Class B Membership which shall be held by the Declarant. The voting rights and other privileges of the two (2) classes of membership and the conversion of the Declarant's Class B membership into Class A membership shall be as set forth in Article IV of the Bylaws.

(c) Suspension of Voting Rights. Voting rights may be temporarily suspended under those circumstances described in Section 13.06, below.

(d) Intent of Provisions Imposing Limitations on Declarant Voting Rights. With the exception of any membership vote pursuant to Section 3.11, below (relating to the enforcement of bonded obligations), no provision of any Governing Document requiring approval of a prescribed majority of the voting power of the Association other than the Declarant is intended to preclude the Declarant from casting votes attributable to any Lots owned by the Declarant. Instead, what is required is the matter receive the approval of a bare majority of the Class B voting power as well as the approval of the prescribed majority of the Class A voting power. Once the Class B membership has been converted to Class A membership, the intent is to require the approval of a bare majority of the total voting power of the Association as well as the approval of the prescribed majority of the total voting power of the Association other than the Declarant.

Section 3.05. Assessments. The Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within Pine Forest and to enforce payment of such Assessments, as more particularly provided in Article IV, below. Any Assessments levied by the Association against its Members shall be levied in accordance with, and pursuant to, the provisions of this Declaration.

Section 3.06. Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant, and then, only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Lot shall pass automatically to the purchaser upon the Recordation of a deed evidencing the transfer of title. In the case of an encumbrance recorded with respect to any Lot, the Mortgagee shall not possess any membership rights until the Mortgagee becomes an Owner by foreclosure or acceptance of a deed in lieu thereof. Tenants who are delegated rights of use pursuant to the rental



or lease of a Residence (see Section 2.05, above) do not thereby become Members, although the tenant and his or her family and guests shall at all times be subject to the property use restrictions and enforcement/disciplinary provisions of the Governing Documents. If any Owner fails or refuses to transfer the membership registered in his or her name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 3.07. Powers and Authority of the Association.

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

(b) Association's Limited Right of Entry.

(i) Right of Entry, Generally. Without limiting the foregoing description of powers, but in addition thereto, the Association and its agents shall have the right and power to enter any Lot to perform the Association's obligations under this Declaration, including: (A) obligations to enforce the architectural review and approval requirements, or land use restrictions of Articles V and VII, below; (B) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or (C) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, any portion of the Pine Forest development or the Owners in common.

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

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

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

(C) In all non-emergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner in default, the Association's entry shall be subject to observance of the notice and hearing requirements imposed by Section 13.06, below.

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

### Section 3.08. Association Rules.

(a) Rule Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners ("Association Rules"). The Association Rules may concern, but need not be limited to: (i) matters pertaining to use of the Common Area and Common Facilities; (ii) architectural control and the rules of the Architectural Committee under Article V, below (iii) regulation of pet ownership, parking, signs, collection and disposal of refuse and other matters subject to regulation and restriction under Article XII, below; (iv) collection of delinquent Assessments; (v) minimum standards of maintenance of landscaping or other Improvements on any Lot; (vi) the conduct of disciplinary proceedings in accordance with Section 13.06, below, (vii) and any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the Governing Documents or the rights, preferences and privileges of the Owners thereunder. In the event of any

material conflict between any Association Rule and the provisions of any other Governing Document, the conflicting provisions contained in the other Governing Document shall prevail.

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

(c) Adoption and Amendment of Rules. Association Rules may be adopted or amended from time to time by majority vote of the Board, provided, however, that no Association Rule or amendment thereto shall be adopted by the Board until at least thirty (30) days after the proposed rule or rule amendment has been: (i) published in the Association newsletter, if any, or otherwise communicated to the Owners in writing; and (ii) posted in the Association's principal office. The notice describing the proposed rule or amendment shall also set forth the date, time and location of the Board meeting at which action on the proposal is scheduled to be taken.

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

Section 3.09. Breach of Rules or Restrictions. Any breach of the Design Guidelines or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XII, below.

Section 3.10. Limitation on Liability of the Association's Directors and Officers.

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

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

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

- (i) The Board member or officer owns no more than two (2) Lots;
- (ii) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;
- (iii) The act or omission was performed in good faith;
- (iv) The act or omission was not willful, wanton, or grossly negligent;
- (v) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made general liability insurance with coverage of at least One Million Dollars (\$1,000,000).

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

Section 3.11. Enforcement of Bonded Obligations. If any of the Common Area improvements Pine Forest have not been completed when the California Real Estate Commissioner issues a final subdivision public report for any phase of the Pine Forest development, and if the Association is the obligee under a bond or other arrangement ("bond") to secure performance of a commitment of the Declarant to complete such

Common Area improvements, then the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvements for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that improvement in the "planned construction statement" appended to the bond. However, if the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the action to enforce the obligations under the bond only if a notice of completion has not been filed within thirty (30) days after the expiration of the extension.

If the Board fails to consider and vote on the action to enforce the obligations under the bond or decides not to initiate action to enforce the obligations under the bond, then on the petition in writing to the Board signed by Members representing not less than five percent (5%) of the total voting power of the Association other than the Declarant, the Board shall call a special membership meeting for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the bond.

The meeting shall be called by the Board by fixing a date not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of said petition. Notice of the meeting shall be given to all Owners entitled to vote in the manner provided in Section 5.04 of the Bylaws for notices of special membership meetings. At the meeting, the vote in person or by proxy of a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board shall then implement the Owners' decision by initiating and pursuing appropriate action in the name of the Association.

#### **ARTICLE IV**

##### **Assessments**

##### **Section 4.01. Assessments Generally.**

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

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

(c) Creation of Assessment Lien. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this Article may be subject to foreclosure as provided in Section 4.10(b), below.

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

(e) Improper Assessment. The Association shall not impose or collect an Assessment, penalty or fee which exceeds the amount necessary for the purpose or purposes for which it is levied.

#### Section 4.02. Regular Assessments.

(a) Preparation of Annual Budget: Establishment of Regular Assessments. Not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal

year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Members a budget satisfying the requirements of Section 12.05 of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period specified in the first sentence of this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of the requisite percentage of the Members in accordance with Section 4.08, below.

(b) Member Approval Requirements for Certain Assessment Increases. The total Common Expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year; provided, however, that, except as provided in Section 4.05, below ("Emergency Assessments") the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the Members' prior approval in accordance with Section 4.08, below.

(c) Commencement Date for Regular Assessments. Regular Assessments shall commence as to each Lot within a Phase upon the earlier to occur of (i) the date specified in a Notice of Commencement of Regular Assessments, Recorded by Declarant with respect to the Phase (which date shall be after to the date of Recordation of this Declaration); or (ii) to the first day of the first month following the month in which the first Close of Escrow occurs for the sale of a Lot in the Phase to a person other than the Declarant. Each Lot in the subject Phase shall thereafter be subject to its share of the then established annual Regular Assessment. The first annual Regular Assessment shall be pro rated, if necessary, according to the number of months remaining in the fiscal year established in the Association's Bylaws.

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

(e) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or

his or her authorized representative for any purpose reasonably related to the Owner's interest as a property Owner or as a Member of the Association. The Assessment roll shall show, for each Lot, the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by Section 2.06(c), above, shall be conclusive upon the Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(f) Mailing Notice of Assessment. No less than forty-five (45) days prior to the beginning of the next fiscal year, the Board of Directors shall mail to each Owner (including Declarant with respect to any unsold or retained Lots), at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year.

(g) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.03(a)(i), below, for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Board.

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

#### Section 4.03. Special Assessments.

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



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

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

(b) Special Assessments Requiring Membership Approval. The following Special Assessments require prior membership approval in accordance with Section 4.08, below: (i) any Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied; and (ii) any Special Assessments imposed pursuant to subparagraph (a)(i) of this section when the Board has failed to distribute a budget to the Members within the time specified in Section 4.02(a), above. The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any "emergency situation" as defined in Section 4.05, below.

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot (including the Declarant as to any unsold or retained Lots) in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4.02(d), above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in subparagraph (a)(i) of this Section 4.03, above, shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable to the Association in equal monthly installments during

the remainder of the then current fiscal year. Special Assessments for purposes described in subparagraph (a)(ii) of this Section 4.03 shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable in full to the Association within thirty (30) days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

Section 4.04. Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4.03, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below; provided, however, that no Special Individual Assessments may be imposed against an Owner pursuant to this Section 4.04 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 13.06, below, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

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

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

(iii) Required Maintenance on Lots. If any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, the Association shall have the right to enter said Lot, correct the condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry on the property of any Owner by the Association shall be effected in accordance with Section 3.07(b), above.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in subparagraph (a) of this section, such Special Individual Assessment shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to the affected Owner. The Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment. As more particularly provided in Section 4.10(b)(ii), below, only certain Special Individual Assessments may be collected through the use of lien and foreclosure remedies.

(c) Limitation on Right to Lien Lots For Special Individual Assessments. With the exception of Special Individual Assessments imposed by the Board of Directors to recover reasonable late payment penalties for delinquent Assessments and/or charges to reimburse the Association for its reasonable costs (including attorneys' fees) of collecting delinquent Assessments, Special Individual Assessments shall not be recoverable through the imposition of a lien against the Owner's Lot enforceable through foreclosure, but the same may be recovered by the Association through other legal processes. Special Individual Assessments relating to delinquent Assessments shall be subject to imposition of a lien and enforceable through foreclosure or sale under a power of sale for failure of an Owner to pay such Assessment, all as more particularly provided in Section 4.10, below.

Section 4.05. Assessments to Address Emergency Situations. The requirement of a membership vote to approve: (a) Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment; or (b) Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, shall not apply to Assessments necessary to address emergency situations. For purposes of this Section, an emergency situation is any of the following:

- (a) An extraordinary expense required by an order of a court.

(b) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities where a threat to personal safety is discovered.

(c) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 4.02(a), above; provided, however, that prior to the imposition or collection of an assessment under this subparagraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

Section 4.06. Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively: (a) to promote the recreation, health, safety and welfare of individuals residing Pine Forest; (b) to promote the enjoyment and use of the Pine Forest development by the Owners of Lots and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities.

Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns; provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them. Subject to the limitations imposed by Section 4.04(c), above, limiting the right of the Association to impose a lien as a remedy for collecting most Special Individual Assessments, the Association shall also be entitled to collect delinquent Assessments through lien and foreclosure, as more particularly provided in Section 4.10, below.

Section 4.07. Exemption of Certain Portions of Pine Forest From Assessments. The following real property subject to this Declaration shall, unless devoted to the use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

(a) Any portion of the Pine Forest development dedicated and accepted by a local public authority;

- (b) The Common Area and Common Facilities; and
- (c) Any Lot owned by the Association.

Section 4.08. Notice and Procedure for Member Approval Pursuant to Sections 4.02 and 4.03. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 4.02 and 4.03, above, the affirmative vote required to approve the increase shall be a Majority of a Quorum of the Members. The quorum required for such membership action shall be a majority of the Members.

Section 4.09. Maintenance of Assessment Funds.

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

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

(iii) credited proportionately on account of the Owners' future Regular Assessment obligations.

(c) Separate Accounts; Commingling of Funds. To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom; provided, however, that receipts and disbursements of Special Assessments made pursuant to Section 4.03(a)(i), above, shall be accounted for together with the receipts and disbursements of Regular Assessments, and a separate accounting shall be maintained for each capital Improvement for which reserve funds for replacement are allocated.

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

(d) Reserve Funds. The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund.

The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Pine Forest development and the Owners of Lots, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time

limits required by this subparagraph (d). This Special Assessment is subject to the Member approval requirements of California Civil Code section 1366 and Section 4.03(b), above, if the aggregate amount of the Special Assessment exceeds five percent (5%) of the budgeted gross expenses of the Association for the year in which the Special Assessment is imposed. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

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

**Section 4.10. Collection of Assessments; Enforcement of Liens.**

(a) **Delinquent Assessments.** If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within fifteen (15) days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law commencing thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by California Civil Code sections 1366(c) and 1366.1 or comparable successor statutes.

(b) **Effect of Nonpayment of Assessments.**

(i) **Creation and Imposition of a Lien for Delinquent Assessments.** As more particularly provided in California Civil Code section 1367 or comparable successor statute, the amount of any delinquent Regular or Special, or Special Individual Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed only when the Association Records a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth: (A) the amount of the delinquent Assessment(s) and

other sums duly imposed pursuant to this Article and California Civil Code section 1366; (B) the legal description of the Owner's Lot against which the Assessments and other sums are levied; (C) the name of the Owner of Record of such Lot; (D) the name and address of the Association; and (E) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof and a reasonable charge can be imposed for the preparation and recordation of that release. As more particularly provided in Civil Code sections 1367 (b) and (c) and subparagraph (ii), below, lien and foreclosure remedies may only be utilized to collect delinquent Special Individual Assessments in limited circumstances.

(ii) Remedies Available to the Association to Collect Assessments. The Association may bring legal action against the Owner personally obligated to pay the delinquent Assessment or (subject to the limitations expressed in the next two succeeding paragraphs) foreclose its lien against the Owner's Lot or accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure by the trustee designated in the Notice of Delinquent Assessment or by a trustee substituted pursuant to California Civil Code section 2934a. Any sale of a Lot by a trustee acting pursuant to this section shall be conducted in accordance with California Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages or deeds of trust.

For so long as the Declaration is subject to a Final Outstanding Public Report of the Department of Real Estate a Special Individual Assessment or other monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents or as a means of reimbursing the Association for costs incurred to repair damage to the Common Areas or Common Facilities or to bring a Member into compliance with the Governing Documents may not be collected through the imposition of a lien that can be collected through the use of foreclosure remedies, although other collection remedies permitted by law may be utilized by the Association.

Once the Association is no longer subject to the regulatory jurisdiction of the Department of Real Estate, Special Individual Assessments may only be collected through the use of lien and foreclosure remedies if the Assessment is imposed to reimburse the Association for costs incurred by the Association in the repair of damage to Common Areas and Common Facilities, to recover actual expenses incurred by the Association to gain the Member's compliance with the governing documents, or to



recover delinquent assessments and other costs and charges for which a lien may be recorded pursuant to Civil Code section 1367. Special Individual Assessments imposed as a monetary penalty and as a disciplinary measure for failure of a Member to comply with the Governing Documents may not be recovered through the use of lien and foreclosure remedies, but may be pursued by other legal process.

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

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

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

Section 4.11. Transfer of Lot by Sale or Foreclosure. The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Lot:

(a) Except as provided in subparagraph (b), below, the sale or transfer of any Lot shall not affect any Assessment lien which has been duly Recorded against the Lot

prior to the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

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

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

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

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

Section 4.12. Priorities. When a Notice of Delinquent Assessment has been Recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any first Mortgage of record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

**Section 4.13. Unallocated Taxes.** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to Section 4.02, above, and, if necessary, a Special Assessment may be levied against the Lots pursuant to Section 4.03, above, in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

## ARTICLE V

### Design Review and Approval of Improvement Projects

#### Section 5.01. Design Review Committee Approval of Improvements.

(a) **Approval Generally.** Prior to commencement of construction or installation of any Improvement (as defined in Section 1.16, above), on any Lot in Pine Forest, the Owner planning such Improvement must submit to the Design Review Committee a written request for approval. The Owner's request shall include structural plans, specifications and plot plans satisfying the minimum requirements set forth in the Design Guidelines adopted pursuant to Section 5.05, below and the minimum construction standards imposed by Article VI, below. Unless the Committee's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Committee shall base its decision on the criteria described in Section 5.06, below. The requirement of prior approval of the Design Review Committee shall not apply to any work of Improvement undertaken by the Declarant.

(b) **Modifications to Approved Plans Must Also Be Approved.** Once a proposed work of Improvement has been duly approved by the Design Review Committee, no material modifications shall be made in the approved plans and specifications therefore and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If the proposed modification will have, or is likely to have, a material affect on other aspects or components of the work, the Committee, in its discretion, may order the Owner and his or her contractors and agents to cease working not only on the modified component of the Improvement, but also on any other affected component.

In the event that it comes to the knowledge and attention of the Association, its Design Review Committee, or the agents or employees of either that a work of Improvement, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified in Section 5.15, below, including, without limitation, ordering an immediate cessation and

abatement of all aspects of the work of Improvement by "red tagging" the project until such time as proper Design Review Committee review and approval is obtained.

Section 5.02. Establishment of Design Review Committee. The Design Review Committee shall consist of three (3) members appointed as follows: the Declarant reserves to itself the power to appoint all of the original members to the Design Review Committee and all replacements until the first anniversary of the issuance of the original Public Report of the California Real Estate Commissioner for the first Phase of the Pine Forest development. During the period commencing on said first anniversary date and continuing until ninety percent (90%) of all Lots within the Overall Development have been sold or until the fifth (5th) anniversary date of the original issuance of the final public report for the first Phase of Pine Forest, whichever first occurs, the Declarant shall be empowered to appoint a majority (two members) of the Design Review Committee and the Board of Directors shall have the power to appoint one member of the Design Review Committee. Thereafter, the Board shall have the power to appoint all of the members of the Design Review Committee.

With the exception of individuals appointed to the Design Review Committee by Declarant (who need not be Members of the Association), all members of the Committee shall be Members of the Association in good standing. With the exception of those individuals appointed by the Declarant, all members of the Design Review Committee shall serve for terms of office coextensive with the terms of office of the Board of Directors who are responsible for their appointment.

In the event of the death or resignation of any member of the Committee, the successor shall be appointed by the person, entity or group that appointed such member to the Committee, and thereafter the Board shall have full authority to designate such a successor. Neither the members of the Design Review Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto.

Section 5.03. Duties. It shall be the duty of the Design Review Committee to consider and act upon the proposals and plans for Improvements submitted to it pursuant to this Declaration, to adopt Design Guidelines pursuant to Section 5.05, below, to perform other duties delegated to it by the Board of Directors and to carry out all other duties imposed upon it by this Declaration.

Section 5.04. Meetings. The Design Review Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Committee members shall constitute an act by the Committee and the Committee shall keep and maintain a written record of all actions taken.

The Owner-Applicant shall be entitled to appear at any meeting of the Design Review Committee at which the Owner's proposal is scheduled for review and consideration. The Owner shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer and/or contractor. Reasonable notice of the time, place and proposed agenda for Design Review Committee meetings shall be communicated before the date of the meeting to any Owner-Applicant whose application is scheduled to be heard.

Section 5.05. Design Guidelines. The Design Review Committee may, from time to time, adopt, amend and repeal rules and regulations to be known as "Design Guidelines". Once adopted, the Design Guidelines shall constitute a portion of the Association Rules. The Design Guidelines shall interpret and implement the provisions of this Article by setting forth:

(a) Procedures for Submittal of Projects. The procedures for Design Review Committee review and approval of Owner submittals of proposed Improvement projects (including, without limitation, minimum requirements for submitting a complete application for project approval);

(b) Guidelines for Approved Colors or Commonly Recurring Projects. Guidelines for the construction of Improvements, including, without limitation, charts of approved colors, typical plans and specifications for commonly recurring projects, such as fencing;

(c) Identification of Projects Subject To Summary Review. The Guidelines can identify categories of Improvement projects or components of the plan review and approval process which can be administered by the Association staff or other designee of the Committee without the need for direct involvement by the Committee in order to expedite the processing of applications for approval. In the event that the Committee determines that certain project approvals or plan processing requirements can appropriately be administered by the Association staff or other Committee designee, such delegation and the scope thereof shall be specified in the Rules.

(d) Variance Procedures. The criteria and procedures for requesting variances from any property use restrictions or minimum construction standards that

would otherwise apply to the proposed Improvement under the Governing Documents (see Section 5.15, below);

(e) Regulation of Construction Hours and Activities. The Guidelines may specifically regulate the activities of contractors and subcontractors (including, without limitation, hours of permitted construction activity, noise and contractor pet restrictions and noise and contractor pet), who shall be deemed to be the Owner's agents for purposes of rules enforcement and compliance matters;

(f) Landscaping Criteria. Minimum requirements for the landscaping of areas of the Lot that are disturbed by construction activity, which require particular landscape Improvements or which encourage minimal use of landscape irrigation in order to control drainage;

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

(h) Rules for Project Completion. Uniform and reasonable time limitations for completion of approved Improvement projects or other duly noted compliance matters. Said rules may also include procedures to request an extension of the usual completion time in order to avoid hardship or to accommodate other factors beyond the Owner's reasonable control which have interrupted the progress of the Improvement project;

Design Guidelines shall be effective when they are adopted by the Committee and the Guidelines shall also be approved by the Declarant for so long as the Declarant owns any Lots within Pine Forest. Notwithstanding the foregoing, the Design Guidelines shall implement the provisions of this Declaration in a reasonable, uniform and nondiscriminatory manner and no Design Guideline shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Design Guidelines and this Declaration, the provisions of the Declaration shall prevail.

Section 5.06. Basis for Approval of Improvements. When a proposed Improvement is submitted to the Design Review Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion, makes the following findings regarding the proposed project:

- (a) The Owner's plans and specifications conform to this Declaration and to the Design Guidelines in effect at the time such plans are submitted to the Committee;
- (b) The Improvement will be in harmony with the external design of other structures and/or landscaping Pine Forest;
- (c) The Improvement, as a result of its appearance, location or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her property; and
- (d) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing Pine Forest and with the overall plan and scheme of development Pine Forest.

While it is recognized that the Design Review Committee's determination will, of necessity, be subjective to some degree, the members of the Committee shall act reasonably and in good faith and shall consider such factors as the quality of workmanship and materials proposed for the Improvement project, the harmony of its exterior design, finished materials and color with that of other existing structures, and the proposed location of the Improvement in relation to the existing topography, finished grade elevations, roads, Common Areas and other existing structures.

The approval by the Design Review Committee of any plans, drawings or specifications for any work of Improvement done or proposed, or for any other matter requiring the approval of the Design Review Committee under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different locations for Improvements, the size of the structure, proximity to other Residences or Common Facilities and other factors may be taken into consideration by the Committee in reviewing a particular submittal. Accordingly, the Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar Improvement/component has previously been approved for use at another location if factors such as drainage, topography, noise or visibility from roads, Common Areas or other Lots or prior adverse experience with the product, the design or with similar Improvements mitigate against erection of the Improvement or use of a particular component thereof on the Lot involved in the Owner's submittal.

In approving a request for construction of an Improvement, the Design Review Committee may condition approval upon the adoption of modifications in the plans and

specifications or observance of restrictions as to location, noise abatement or similar mitigating conditions.

**Section 5.07. Inspection Fee and Deposits.** Once the Design Review Committee is under the control of the Association, the Design Guidelines may require that the submission of plans and specifications be accompanied by a reasonable fee. The Design Guidelines may also provide for a cash deposit procedure to help ensure proper and timely completion of works of Improvement in accordance with approved plans and specifications and to reimburse the Association for damage to roadways and other Common Facilities resulting from the Owner's construction project.

**Section 5.08. Delivery of Plans and Specifications.** Plans and specifications shall be submitted in duplicate to the Design Review Committee by personal delivery or first-class mail addressed to the Secretary of the Association or the Chairman of the Design Review Committee at the Association's principal office. Plans shall be prepared by a licensed architect.

**Section 5.09. Time Limits for Approval or Rejection.** Within thirty (30) days after submission of plans and specifications satisfying the requirements of the Design Guidelines the Design Review Committee shall return one set of such plans to the applicant, with either written notice of approval or disapproval or with written suggestions of changes required for approval. If written suggestions of changes required for approval accompany the returned set of plans, the applicant may implement such changes to the plans and within thirty (30) days resubmit plans incorporating such changes for approval to the Committee, which shall not unreasonably withhold its approval so long as the Owner has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the applicant within thirty (30) days after the Owner's plans and specifications (or revisions thereto) are submitted to the Committee, the plans shall be deemed to have been approved as submitted.

**Section 5.10. Employment of Architect or Engineer.** If at any time the Design Review Committee determines that it would be in the best interests of the Association and its Members for an applicant to employ an architect, licensed building designer or engineer to design or review any proposed Improvements or component thereof, the Committee shall advise the applicant in writing of its determination whereupon all plans and specifications so designated by the Design Review Committee must thereafter bear appropriate evidence of such preparation or review.



**Section 5.11. Proceeding With Work.** Upon receipt of approval from the Design Review Committee, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement of construction and erection of the Improvement pursuant to said approval, said commencement to be, in all cases, within six (6) months from the date of such approval, and the project shall be diligently pursued to completion. If the Owner shall fail to comply with this section, any approval given pursuant to this Article, shall be deemed revoked unless the Design Review Committee, upon written request of the Owner made prior to the expiration of the initial six (6) month period, extends the time for commencement or completion. No such extension shall be granted except upon a finding by the Design Review Committee that there has been no change in the circumstances upon which the original approval was granted and that the Owner has a bona fide intention and ability to complete the project within the time specified in the extension request.

**Section 5.12. Failure to Complete Work.** Unless the Owner has been granted an extension of time to complete the project by the Design Review Committee, construction, reconstruction, refinishing or alteration of any such Improvement must be complete within twenty four (24) months after approval of the construction project has been received, except for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents. In the case of building Improvements, the requirements of this section shall be deemed to have been met if, within the twenty four (24) month construction period, the Owner has completed construction of the building's foundation and all exterior surfaces (including the roof, exterior walls, windows and doors).

If the Owner fails to comply with this section, the Design Review Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Sections 5.13(c) and (d), below, as though the failure to complete the Improvement was a noncompliance with approved plans.

**Section 5.13. Inspection of Work by Design Review Committee.** Inspection of the work relating to any approved Improvement and correction of defects therein shall proceed as follows:

(a) During the course of construction, representatives of the Design Review Committee shall have the right to inspect the job site to confirm that the work of Improvement is proceeding in accordance with the approved plans and specifications.

(b) Upon the completion of any work of Improvement for which Design Review Committee approval is required under this Article, the Owner shall give the Design Review Committee a written notice of completion.

(c) Within thirty (30) days thereafter, the Design Review Committee, or its duly authorized representative, may inspect the Improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approval plans. If the Design Review Committee finds that the Improvement was not erected, constructed or installed in substantial compliance with the Owner's approved plans, then within the thirty (30) day inspection period the Committee shall give the Owner a written notice of noncompliance detailing those aspects of the project that must be modified, completed or corrected. If the violation or nonconforming work is not corrected, the Association and the Design Review Committee shall have the rights and remedies set forth in Section 5.14 (enforcement), below.

(d) If for any reason the Design Review Committee fails to notify the Owner of any noncompliance within thirty (30) days after receipt of the Owner's notice of completion, the Improvement shall be deemed to have been constructed in accordance with the approved plans for the project, unless the Owner knows of the noncompliance and intentionally misleads the Committee with respect thereto.

#### Section 5.14. Enforcement.

(a) In addition to other enforcement remedies set forth in this Declaration, the Design Review Committee shall have the authority to order an abatement ("red tag") of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Committee or if it does not conform to the plans and specifications submitted to and approved by the Committee. If an Improvement project is red tagged, the Owner and his or her contractor shall cease all construction activity until such time as the issue giving rise to the red tag order is resolved. The red tag notice shall clearly state the reasons why the abatement has been ordered.

(b) No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

(c) If the Owner fails to remedy any noticed noncompliance within thirty (30) days from the date of such notification, or if the Owner feels that the project has

been red tagged without justification, the 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 conducted in accordance with Section 13.06, below.

Section 5.15. Variances. The Design Review Committee, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article, or in any land use restrictions specified in Article VII, below, to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided all of the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise be applicable under this Declaration, the Design Review Committee must conduct a hearing on the proposed variance after giving prior written notice to the Committee and to all Owners residing within sixty (60) feet of the subject Lot. Said notice shall also be posted in the Association's principal office Pine Forest. The notice shall be posted and mailed to the interested Owners at least fifteen (15) days prior to the date when the Design Review Committee is scheduled to act on the requested variance. No decision shall be made with respect to the proposed variance until the fifteen (15) day comment period has elapsed.

(b) The Design Review Committee must make a good faith written determination that the variance is consistent with one or more of the following criteria: (i) the requested variance will not constitute a material deviation from any restriction contained herein or that the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) that the variance relates to a requirement land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect, to any other Lot or Common Area Pine Forest.

Section 5.16. Compliance Certificate. Within thirty (30) days after written demand is delivered to the Design Review Committee by any Owner, the Design Review Committee shall provide the requesting Owner with a certificate, executed by any two of its members, certifying (with respect to any Lot owned by the applicant Owner) that as of the date thereof, either: (a) all Improvements made and other work completed by said Owner comply with this Declaration; or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the basis of such

noncompliance. Any purchaser from the Owner, or from anyone deriving any interest in said Lot through the Owner, shall be entitled to rely on the Committee's compliance certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, the Committee, the Declarant, all Owners and any persons deriving any interest through them.

Section 5.17. Limitation on Liability. Neither the Declarant, the Association, the Design Review Committee nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any Improvement project, whether or not pursuant to approved plans, drawings specifications; (c) the development of any Lot Pine Forest; or (d) the execution and delivery to an Owner of a compliance certificate pursuant to Section 5.16, above, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as he or she possessed at the time the act or omission occurred.

Section 5.18. Compliance With Governmental Regulations. Review and approval by the Design Review Committee of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Lot Owner who desires to construct, install, or modify the Improvement.

Section 5.19. Appeals. Once the Design Review Committee is a committee appointed solely by the Board of Directors, appeals from decisions of the Design Review Committee may be made to the Board of Directors, which may elect, in its discretion, to hear the appeal or, in the alternative, to affirm the decision of the Design Review Committee. The Association Rules or the Design Guidelines shall contain procedures to hear, process and decide appeals pursuant to this section.

During the period when the Declarant has the right to appoint a majority of the Members of the Design Review Committee decisions of the Committee shall be final.

Section 5.20. Association Funding for Design Review Costs. It is anticipated that the Committee will require secretarial and administrative assistance, and that the Committee will incur out-of-pocket expenses in the performance of its responsibilities. The initial budget of the Association, submitted to and reviewed by the Department of Real Estate, contains projections of such costs. The Association shall provide the

Committee with reasonably required secretarial and administrative assistance, or, at the option of the Board, shall reimburse the Committee therefor, and shall reimburse the Committee for out-of-pocket expenses incurred by the Committee in the performance of its responsibilities. The Committee shall remit to the Association all review fees, if any, collected by the Committee which are in excess of the expenses incurred by the Committee.

**ARTICLE VI**  
**Minimum Construction Standards**  
**For Improvement Projects in Pine Forest**

Unless a variance is requested from, and granted by, the Design Review Committee in accordance with Section 5.15, above, Improvements constructed on any Lot shall conform to the following minimum construction standards:

**Section 6.01. Building Plans.** All building and Improvement plans must be submitted to, and approved by, the Pine Forest Design Review Committee prior to being submitted such plans to the Town of Truckee Community Development Department in order to obtain a building permit.

**Section 6.02. Compliance With Approved Plans and Applicable Improvement Requirements.** Once approved by the Committee, the Improvement project must be constructed and completed in accordance with the approved plans and specifications and any applicable minimum construction standards imposed by this Article VI or the Design Guidelines (unless a specific variance from those standards has been approved by the Committee).

**Section 6.03. Licensed Contractor.** Residential structures shall be constructed by a contractor licensed under the laws of the State of California and shall be designed by a licensed architect.

**Section 6.04. Maximum Height Requirements.** No Residence constructed on a Residential Lot shall have a ridge height (exclusive of chimneys) more than thirty-five (35) feet or three and a half stories, as measured by the Town of Truckee standards. No single retaining wall may be higher than four (4) feet of visible structure, measured vertically.

Section 6.05. Minimum Square Footage and Lot Coverage Requirements.

(a) Lot Coverage Restriction. The maximum total impervious coverage for any Lot is forty percent (40%) of the gross Lot area. "Impervious coverage" means any improvements that prohibit the infiltration of rain water.

(b) Residences within Pine Forest must have a minimum of one thousand six hundred (1,600) square feet of enclosed space, exclusive of garages, workshops, or covered porches. A minimum of sixty percent (60%) of the floor area of Residences (including covered porches and attached garages) must be located on the first floor.

(c) The maximum size of Residences varies, depending on the size of the Lot on which the Residences is located:

(i) If the Lot is less than two-thirds (2/3) of an acre in size, (29,040 square feet), the total maximum enclosed, heated square footage allowed is five thousand (5,000) square feet, with no more than four thousand five hundred (4,500) square feet of such space being located in the principal Residence.

(ii) If the Lot is two-thirds (2/3) of an acre in size or greater the total maximum enclosed, heated square footage allowed is six thousand (6,000) square feet, with no more than five thousand (5,000) square feet of such space being located in the principal Residence.

(iii) If two Lots are combined into a single Lot with the approval of the Design Review Committee and the Town of Truckee, the total maximum enclosed, heated square footage allowed is seven thousand (7,000) square feet, with no more than five thousand five hundred (5,500) square feet of such space being located in the principal Residence.

(iv) Enclosed, heated square footage is considered the gross area of the structure, measured from outside of wall to outside of wall.

Section 6.06. Building Location Setbacks. All Residences must be located within the setbacks imposed by this section. Setback distances are measured from the property line and for single parcels are as follows:

FRONT: Minimum thirty (30) feet. Some homesites may have a greater front setback. Front yard setbacks will be given to all portions of a lot that face a street.

**SIDES:** Minimum of ten (10) feet each side so long as a total of twenty five percent (25%) of the Lot width measured at any line is maintained (i.e., a 100 foot wide rectangular homesite would have a minimum total side yard setback of 25 feet with a minimum of 10 feet on one side). Some homesites may have a greater side yard setback.

**REAR:** Minimum twenty-five percent (25%) of the Lot area. Some homesites may have a greater rear yard setback.

The requirement for setbacks are inclusive of all grading with the exception of that required for the driveway, roof overhangs and other built structures, not the footprint of the residence. Porches, decks, detached garages, accessory buildings and other items with a structural component must be contained within the building envelope.

**Section 6.07. Site and Drainage Review.** General site considerations including site layout, open space and topography, orientation and locations of buildings, vehicular access, circulation and parking, setbacks, height, walls, fences, and similar elements shall be designed to provide a desirable environment. Either by amendments to the Subdivision Map or in the Design Guidelines or accompanying design notebooks that are specific to particular Lots, building envelopes and site envelopes may be established. A "building envelope" is the area on a Lot in which the Residence and all ancillary structures must be located. If a building envelope is established, it must be within the Lot's site envelope. "Site envelopes" for particular Lots, if established, shall be determined based on minimum setbacks, protected slope areas, drainage areas, and any other site conditions existing and known at the time the site envelope is defined.

**Section 6.08. Grading Restrictions.** The following grading restrictions shall apply to Lot Improvement projects:

(a) During construction the Owner and contractor shall use their best efforts to minimize the area of disturbance to soil and vegetation to the minimum required for construction activities. As noted above, site access shall be limited to one location.

(b) Grading, including trenching for underground utilities, shall also be designed and performed to minimize the disturbance of rock outcroppings, natural drainage courses, trees indicated to be saved as well as all other distinctive or unique site features.

(c) Grading of Lots shall not increase or divert surface drainage in a way that will be detrimental to any adjacent or down-gradient Lot, rights-of-way or Common Areas. Grading around structures shall provide positive drainage away from the foundation walls at the perimeter of the structure.

(d) Grading on Lots shall not leave slopes in excess of 2:1 [horizontal to vertical]. Where steeper slopes are required, a retaining wall shall be installed. If a slope steeper than 2:1 cannot be avoided, a Civil Engineer will be required to design and stamp the plans for such a project. In areas on a Lot where the existing gradient is greater than 20%, extra diligence must be exercised in the design and construction of Residences in order to minimize the negative visual and environmental impacts of the grading activity.

(e) Fill areas and excavation that exceeds ten (10) feet in depth from the original grade must be engineered by a Civil Engineer and must be specifically approved by the Design Review Committee prior to beginning construction.

(f) No grading shall encroach into side or rear setbacks more than one-half (½) the distance of the setback. Grading in the front setback of Lots shall be restricted to the minimum area required for driveway access.

Section 6.09. Restrictions on Tree Removal. With the exception of diseased or dead trees, No trees larger than 5" dbh may be removed from any Lot without prior specific approval from the Design Review Committee. Approval will be granted by Design Review to remove specific trees and other vegetation that is located in the area where an approved structure is to be erected. If an Owner believes that a tree larger than 5" dbh is diseased or dead, the Owner must nevertheless receive approval from the Design Review Committee prior to removing the tree.

Section 6.10. Automobile Access, Parking and Storage Areas. Each Residence must have a minimum of two (2) enclosed parking spaces and Lots shall be improved in a manner which provides off-street parking for three (3) additional vehicles. When garages are designed for the storage of three (3) cars, one of the garage doors must be separated from the other by at least 12' to the nearest dimension.

Driveways shall be subject to the following improvement requirements:

□ At the street, a near-level [maximum 2% slope] area is required in the first 8' from the edge of the paved right-of-way.



□ At the garage, a near level [maximum 4% slope] area is required in the first 12' from the edge of the garage.

□ For the area between the street and the garage, the overall slope should not exceed 8%. Where required, slopes of up to 12% may be approved by the Design Review Committee in limited areas where the Committee believes the additional slope is necessary and does not result in a dangerous condition.

□ Driveways may be no more than twelve (12) feet wide where they cross the front property line. The radius of the flair at the connection of the driveway to the adjacent street shall be limited to ten (10) feet.

□ There shall be no more than one driveway servicing any Lot. If two or more adjacent lots are purchased and combined, a single driveway may loop and have two connections to the street. Single homesites may not loop their driveways.

□ Driveways shall be designed and constructed so as to minimize the discharge of surface water onto the adjacent streets.

**Section 6.11. Garage Design and Location Requirements.** In order to minimize garages as a visual element of the front facade of Residences, front-facing garage doors will only be allowed if located substantially behind the main body of the Residence, and with the rear of the garage roof overhang being on the rear setback. The Design Review Committee may grant a waiver from this requirement if the garage doors do not, in the sole opinion of the Committee, create a negative visual impact on the remainder of the neighborhood. When two parking spaces are located adjacent to each other, those spaces shall not be accessed by a single garage door. Instead there shall be one garage door for each vehicle and if there is a third garage door, that door shall be located at least twelve (12) feet from the other garage doors. Garage doors be designed so as to be complementary with the architecture, color and materials used on the exterior of the Residence serviced by the garage. In no event will aluminum or glass fiber doors be permitted or approved.

**Section 6.12. Exterior Storage Areas and Structures.** Exterior storage areas must be constructed in a manner and location that mitigate the visual impact of the area. The area must be designed and use exterior materials that are architecturally compatible with the remainder of the structures on the Lot and shall fully enclose the materials being stored. These limitations are not intended to prohibit the storage of fire wood, neatly stacked and not to exceed five cords at any time. Buildings designed as storage areas or shops may not exceed ten percent (10%) of the area of the main Residence.

Storage buildings that are finished or heated shall be included when calculating the total allowable square footage of building improvements on the Lot (see Section 6.05, above). An enclosed storage area must be provided for every Residence for the purpose of storing two 30-gallon trash containers in a secure and out-of-site location. The trash enclosure must either be attached to the Residence or located in such a way that it does not stand alone. Access to trash storage areas must be provided from the driveway and the area shall be secured by a bear-resistant door.

**Section 6.13. Underground Utilities.** All utilities serving individual homes shall be routed below grade in accordance with Town of Truckee and the serving utility company's requirements.

**Section 6.14. Limitations Relating to Construction Activity Areas.** During the course of construction, there shall be no more than one area of access to the Lot. That access shall be designated on the site plan and shall be the same area where the driveway servicing the Lot is to be constructed. Other portions of the front setback will be designated as a no-access zone and must be kept in a natural state except for utility connection purposes. The area of any Lot that is to be disturbed from its natural state by construction activity (the "Construction Zone") shall not extend more than fifteen (15) beyond the footprint of the Improvement project. The construction zone of the Lot shall be fenced with a minimum 4-foot high fence that shall remain in place for the duration of the project. Storage of materials or equipment or use by construction crews will not be allowed outside of this designated construction zone. All trees within the construction zone that are indicated to be saved must have protective fencing installed in accordance with the Design Guidelines.

**Section 6.15. Fencing and Dog Runs.** Perimeter fencing along Lot lines is not permitted and in no event shall more than twenty-five percent (25%) of a Lot be fenced. In accordance with the Town of Truckee design standards, permitted fencing materials are limited to wood or wrought iron and cannot exceed three (3) feet in height. Fencing must be designed to be substantially open so as not to obstruct scenic views or the movement of non-domestic animals. Enclosures for dogs are discouraged. The Design Review Committee will approve dog runs only when the applicant has demonstrated that the visual impacts of the enclosure are fully mitigated, and the run is located at the rear of the Residence and constructed of a material with low visual impact. Free-standing dog runs are prohibited.

**Section 6.16. Signs and Entry Markers.** During periods of active initial construction, identification signs may be placed identifying the Owner, the project address, the design professional and the builder only. Signs shall not exceed five (5)

square feet per face with not more than ten (10) square feet (all permitted signs) per Lot. Real estate "for sale" signs shall not exceed three (3) square feet per face with not more than six (6) square feet per site. These signs may be in addition to the identification signs noted above. For sale signs shall not be allowed within any set back area, or along streets or in any portion of the Common Areas of Pine Forest. The Design Guidelines can restrict the colors that can be used on permitted signs. With the exception of house numbers, signs shall not be affixed to the exterior of any structure on a Lot or to any tree on the Lot. Entry markers for identification shall be no higher than 30 inches and, if illuminated, shall have deflected light.

Any proposal for a Lot entry marker for address identification shall be restricted to no more than 30 inches high as measured from the lowest part of the surrounding existing grade. Markers may display the street number only. No other identification will be approved. Numerals and text may be no more than 6" tall and the color of the sign must be compatible with the existing landscape.

Section 6.17. Landscape Review. The location, type, size, color, texture and coverage of plant materials and similar elements shall provide visual relief, complement buildings and structures, and provide an attractive environment for the enjoyment of the Owners in general and the enhancement of property values in Pine Forest generally. Landscaping standards for Pine Forest shall include the following:

- (a) The use of drought-tolerant and native plant species is preferred;
- (b) Landscaping shall be compatible with the overall Pine Forest's mountain setting;
- (c) For maximum mitigating effect, landscaping for screening purposes shall be clustered in natural appearing groups in the immediate vicinity (within 10 to 30) feet of the buildings to be screened (to the extent that fuel management provisions allow). Screening vegetation shall not be placed in unnatural appearing linear rows;
- (d) Landscaping shall emphasize use of the same planting "palette" throughout Pine Forest in order to unify Pine Forest and minimize its impact on offsite viewpoints;
- (e) Native, drought-tolerant, wind-resistant species which are compatible with existing site vegetation, including ponderosa pine, sugar pine, incense cedar, and native oaks are preferred;

(g) The use of artificial materials such as plastic plants, or flowers, artificial turf, or gravel gardens will be disapproved by the Committee; and

(h) The tendency to use larger size tree containers in the planting program in order to provide better visual screening in the initial years is discouraged.

(i) The Design Guidelines may contain a list of approved or recommended landscape plant materials.

Section 6.18. Exterior Building Materials.

(a) Materials used on the exterior of any structural Improvement shall be limited to traditional materials such as wood, stone, and composition shingle roofing materials. Building materials that attempt to appear as something they are not will not be allowed in Pine Forest. For example, vinyl siding that imitates wood boards, composite roof shingles that attempt to mimic wood shake or slate roofing, plywood siding that imitates vertical board siding, and synthetic stone products will not be permitted or approved. The use of solid body stains and paints on the exterior of building structures for anything other than trim will only be permitted in the sole discretion of the Committee. Reflective finishes shall not be used on exterior surfaces, including, without limitation, window frames, doors, roofs, fences, retaining devices, trim, pipes, and equipment.

(b) Weathering steel [Corten] and copper, although initially reflective, are allowed in Pine Forest as exterior building elements, however clear anodized and galvanized metals will not be permitted.

(c) Roof coverings are required to utilize Class A-rated materials. When composition shingle roofing materials are proposed, products that attempt to mimic other materials, such as slate and wood shakes by the use of artificial shadow lines, will not be approved. If painted metal roofing is proposed, the roofing material must be a product that utilizes low gloss paints with minimum 20-year warranty applicable to the painted surface.

(d) The Design Guidelines can include a list of approved exterior colors.

(e) All concrete foundations exposed to view must be stained to complement the remainder of the architecture.

**Section 6.19. Requirement of Front Porches.** All Residences in Pine Forest shall include a covered front porch with minimum dimensions of six (6) by twelve (12) feet.

**Section 6.20. Decks.** The use of decks as an expression of contemporary design is discouraged unless the deck is, in the opinion of the Committee, integrated into the design of the Residence so as not to appear as an appendage. If a deck is proposed that is to be raised above grade, the plans should include a design for the deck that minimizes the visual impact of below-deck supporting members.

**Section 6.21. Windows.** In keeping with the rural mountain character of the Pine Forest development, as envisioned by these restrictions and the Design Guidelines, plans for residences which include large windows comprised of expanses of glass that are unbroken by mullions are discouraged, especially on the street side of Residences. Windows with false divisions of glazing where the exterior pane of glass is unbroken are also prohibited. Window shapes that are inconsistent with the architectural style of the house, such as trapezoidal, octagonal and palladian-style windows, or windows with exaggerated aspect ratios will generally not be approved by the Committee.

**Section 6.22. Restrictions On Exterior Lighting.**

(a) All exterior light fixtures shall direct their light downward in such a way so as not to create light pollution (i.e., lighting the sky) or light trespass (i.e., light which crosses a property line--front, side or rear) onto neighboring properties, Common Areas or rights-of-way.

(b) Vapor lights (mercury or sodium), metal halide, halogen (except low-voltage landscape lighting) or other high-intensity lighting will not be approved for Residences in Pine Forest.

(c) Security lighting will only be approved by the Committee if the lighting is screened and is triggered by movement, sound or heat and stays on for a time limited to no more than 5 minutes. Activators must be positioned so they are not triggered by passing automobile traffic.

(d) Exterior holiday lighting shall only be permitted when the lighting is limited to a single color and does not blink or flash. The Association may impose restrictions on the time periods when holiday lighting may be displayed.

**Section 6.23. Fire Regulations and Restrictions on Fireplaces.**

(a) **Very High Fire Severity Zone.** The Town of Truckee requires that all Owners be advised that Pine Forest is included within a "Very High Fire Severity Zone" and is therefore subject to fire protection regulations and maintenance obligations established pursuant to Section 51182 of the Government Code. These regulations include provisions applicable to the construction of Residences. Any provision in this Declaration or in a program measure related to fire safety shall be subject to the approval of the Truckee Fire Protection District. Such provisions must be either expressly or deemed approved both prior to filing any map for Pine Forest or before the issuance of a building permit on Pine Forest.

(b) **Fireplaces.** Residences within Pine Forest cannot have more than one wood-burning appliance and that appliance (i.e., stove or fireplace) must have an EPA emissions rating acceptable with the Town of Truckee. Currently the limit on EPA emissions is a total of 7.5 grams per hour of emissions from an individual Residence. Additional gas-fired fireplaces may be used without limitation. All fireplaces shall be plumbed with natural gas. Outdoor fireplaces and fire pits are prohibited unless they utilize natural gas as their fuel source.

**Section 6.24. In-Law Units and Free-Standing Home Office Structures.** In-law or "granny" units and free-standing office structures are permitted within Pine Forest, consistent with the regulations imposed on such uses and structures by the Town of Truckee. Office activities on Lots shall also be subject to the limitations imposed by Section 8.07, below.

**Section 6.25. Antennas.** No outside television antenna, aerial, or other such device or satellite data reception equipment with a diameter or diagonal measurement greater than thirty-six inches (36") shall be erected, constructed to placed in any Common Area or any Lot. Such antennas and devices with a diameter or diagonal measurement of thirty-six inches (36") or less may be installed only if approved by the Design Review Committee in accordance with the provisions of Article V, above. Reasonable restrictions which do not significantly increase the cost of a the device or significantly decrease its efficiency or performance, including, without limitation, a requirement that antennas or reception dishes be screened from view from streets or neighboring Lots or Common Areas may be imposed as part of the Design Guidelines.

**Section 6.26. Basketball Standards and Other Outdoor Sports Apparatus.** Basketball hoops and standards will be allowed on a case-by-case basis by the Design Review Committee where the hoop, backboard and all related hardware are either

portable or, if attached to a Residence, the backboard is made of clear plexi-glass or fiberglass. When possible, Owners should locate basketball hoops at a point on a Lot where they will not be seen from any street, Common Area, or any neighboring Lot. Portable basketball standards shall be retracted and stored out of view when not in active use. The Association Rules may further define what constitutes "active use" so as to permit portable standards to remain standing during reasonable breaks in play.

Section 6.27. No Temporary Structures. No recreational vehicle, trailer, mobile home, camper, tent, shack, used structures, structures of a temporary character, or other outbuildings shall be used on any Lot at any time as a Residence.

## ARTICLE VII

### Association and Owner Maintenance Responsibilities

#### Section 7.01. Association Maintenance Responsibility.

(a) Association Common Area Maintenance Obligations, Generally. The Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association. If and when the dedicated roads of the Pine Forest development are accepted by the Town of Truckee for ongoing public maintenance and snow removal in accordance with the Town's Policy dated August 17, 1995 and revised November 7, 1996, the roads shall no longer be included as a "Common Facility" (as defined in Section 1.07, above) and shall now longer be included as a maintenance and repair responsibility of the Association. However, prior to any such action on the part of the Town, the dedicated roads shall be deemed to be part of the Common Facilities of the Association that are to be maintained and repaired by the Association. The bicycle/pedestrian path easement adjacent to Comstock Drive, as shown on the Subdivision Map, shall be and shall remain the Association's obligation hereunder to repair, maintain and to eventually replace or resurface, unless, and until such time as, such maintenance and repair obligations are assumed by a local public district or agency.

(b) Additional Maintenance/Repair Responsibilities Imposed by Supplemental Declarations or Declarations of Annexation. Supplemental Declarations and/or Declarations of Annexation may provide for additional Common Areas to be owned and

maintained or simply maintained by the Association. In such cases, the Association shall accept and/or maintain the areas described and provided for therein. The Association shall maintain front yards of Residential Lots if so provided by any Supplemental Declaration or by any maintenance agreement between the Association and a Sub-Association.

(c) Commencement of Maintenance of Common Areas. Notwithstanding any conveyance of Common Areas to the Association, the Association's responsibility to maintain the Common Areas located in any Phase shall not begin until the later of the following events: (i) inspection and approval of such Common Areas by the Association, not to be unreasonably withheld or delayed, or (ii) commencement of Regular Assessments in such Phase. Prior to the commencement of the Association's maintenance responsibility, such maintenance shall be the responsibility of Declarant.

Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain the landscaping or other Improvements within the Common Areas, the Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. The maintenance performed by the contractors or subcontractors of Declarant shall not postpone the commencement of Regular Assessments pursuant to this Declaration nor entitle either Declarant to claim any offset or reduction in the amount of such Assessments.

(d) Maintenance of Bicycle and Pedestrian Path Along Comstock Drive. In addition to maintaining the Common Areas and Common Facilities, the conditions of approval for the Pine Forest development require the Association to maintain, repair and replace the bicycle/pedestrian path easement, as shown on the Subdivision Map, and located adjacent to Comstock Drive.

Section 7.02. Owner Maintenance Responsibility. Each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot. Such obligations shall be performed to a standard that keeps the Lot and any Residence or other permitted structures located thereon in a neat and attractive appearance.

Section 7.03. Association Recovery of Costs of Certain Repairs and Maintenance.

(a) Association Maintenance Caused by Owner Negligence. If the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her



family, guests, tenants,<sup>1</sup> or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 4.04, above.

(b) Owner Defaults in Maintenance Responsibilities. If an Owner fails to perform maintenance or repair functions on the Owner's Lot for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3.07(b), above, to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with 13.06, below.

Section 7.04. Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and the agents and maintenance personnel of the Association in the prosecution of its maintenance activities.

Section 7.05. Drainage Structures, Ditches and Swales.

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

(b) Except as provided in subparagraph (a), above, each Owner shall keep drainage courses, ditches and swales on his or her Lot free and clear of all obstructions, and shall, in cooperation with contiguous property Owners (including the Association and the Declarant as to any contiguous parcels owned by them), maintain all such drainage ditches, swales and culverts common to their Lots in good order.

(c) No Owner or resident shall alter or obstruct a natural drainage course, or materially add to the natural water volume of said drainage course without making adequate provisions with respect to neighboring Lots and Common 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 Design Review Committee.

**ARTICLE VIII**  
**Use of Properties and Restrictions**

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

**Section 8.01. Use of Lots.**

(a) All Residences within Pine Forest shall be occupied solely for Single Family Residential Use. In no event shall a Residence be occupied by more individuals than permitted by applicable law, zoning or other local governmental regulation.

(b) Lots shall be used solely for the construction of Single Family Residences (and related ancillary structures and improvements approved by the Design Review Committee), except that the Declarant and its successors or assigns shall be entitled to use Lots owned by Declarant, and the Residences located thereon, as models, sales offices or construction headquarters for the purpose of constructing Residences and marketing Lots within Pine Forest until all Lots owned by Declarant are sold. (See also Section 6.24, above).

(c) Each Lot shall be conveyed as a separately designated and legally described fee simple estate, subject to this Declaration. All Lots and the Residences and other Improvements erected or placed thereon (including, without limitation, landscaping) shall at all times be maintained in such a manner as to prevent their becoming unsightly.

(d) The vegetation and landscaping on any Lot shall be planted or maintained by the Owner or resident in such a manner as to reduce the risk of fire, prevent or retard shifting or erosion of soils, encourage the growth of indigenous ground cover and to cause the proper diversion of water into streets and natural drainage channels.

(e) No more than one kitchen facility shall be installed or maintained in any Residence.

**Section 8.02. Common Areas.** The Common Areas shall be preserved as open space and used for recreational and other purposes incidental and ancillary to the use of Lots. Such use shall be limited to the private use for aesthetic and recreational purposes by the Members and their tenants, families and guests, subject to the provisions of the

Governing Documents. No Improvement, excavation or work which in any way alters any Common Area or Common Facility from its natural or existing state on the date such Common Area or Common Facility shall be made or done except by the Association and then only in strict compliance with the provisions of this Declaration. (See, particularly, Section 7.01, above).

Section 8.03. Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or Common Area nor shall anything be done Pine Forest which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including, but not limited to barking dogs, stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from an Owner's Lot or from activities within the Common Area, which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Lot or the Common Area.

Section 8.04. Temporary Structures. No structure of a temporary character, trailer, mobile home, camper, tent, shack, garage or other outbuilding shall be used on any Lot at any time as a Residence, either temporarily or permanently.

Section 8.05. Household Pets. The following restrictions regarding the care and maintenance of pets Pine Forest shall be observed by each Owner and resident:

(a) A reasonable number of common household pets may be kept on each Lot so long as the same are not kept, bred or maintained for commercial purposes. No other animals, livestock, or poultry of any kind shall be kept, bred or raised on any Lot or in any Residence.

(b) Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners.

(c) No household pet shall be left chained or otherwise tethered in front of a Lot or in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets in Pine Forest.

(d) Each person bringing or keeping a pet on any Lot in Pine Forest shall be solely responsible for the conduct of the owner's pets. The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet.

(e) The Board of Directors shall have the right to establish and enforce additional rules and regulations defining in a uniform and nondiscriminatory manner, what constitutes a "reasonable number" of pets depending on their size, disposition and/or maintenance requirements and imposing standards for the reasonable control and keeping of household pets in, upon and around Pine Forest to ensure that the same do not interfere with the quiet and peaceful enjoyment of Pine Forest by the other Owners and residents.

**Section 8.06. Signs.** No advertising signs or billboards shall be displayed on any Lot or posted within or upon any portion of the Common Area except that Owners may post on their Lots any signs required by legal proceedings and a single "For Rent," "For Lease" or "For Sale" sign of reasonable dimensions. Signs permitted hereunder shall not be nailed to the exterior of any Residence or staked in any lawn or green area in front of any Residence. A-frame or other directional signs of real estate brokers advertising Lots for sale or lease shall only be allowed within the Common Area or roadways Pine Forest in strict compliance with applicable Association Rules.

**Section 8.07. Business Activities.** No business or commercial activities of any kind whatsoever shall be conducted in any Residence garage or out building or in any portion of any Lot without the prior written approval of the Board; provided, however, the foregoing restriction shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents or the Declarant's activities in connection with the development, sale and marketing of Pine Forest. Furthermore, no restrictions contained herein shall be construed in such a manner so as to prohibit any Owner from: (a) maintaining his or her personal library in his or her Residence; (b) keeping his or her personal business records or accounts therein; (c) handling his or her personal or professional telephone calls or correspondence therefrom; (d) engaging in other activities related to the resident's business profession that can be conducted from a Residence using computers and other technology so long as the home or business activities generate no traffic, noise, or involve other employees or contractors in the Residence; (e) leasing or renting his or her Residence in accordance with Section 2.05, above; or (f) conducting any other activities on the Owner's Lot otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization. The uses described in (a) through (f), above, are expressly declared to be customarily incidental to the principal residential use and not in violation of this Section 8.07.

**Section 8.08. Garbage.** No rubbish, trash, or garbage shall be allowed to accumulate on Lots. Any trash that is accumulated by an Owner outside the interior walls of a Residence shall be stored entirely within appropriate covered disposal containers and facilities which shall be located in the residence or garage or at some other location on the resident's Lot that is screened from view from any street, neighboring Lot or Common Area. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from Pine Forest to a public dump or trash collection area by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this section.

**Section 8.09. Storage.** Storage of personal property on any Lot shall be entirely within enclosed storage areas or areas that are screened from view from adjacent streets or Lots. There shall be no woodpiles nor storage piles accumulated on top, or outside, of any enclosed storage area. The Association shall have the right to establish and maintain on the premises appropriate storage yards and storage buildings for the maintenance of materials and equipment used by the Association in connection with its planting, building, repair, maintenance and preservation of the structures, gardens and other Improvements within the Common Areas.

**Section 8.10. Clotheslines.** No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes on any Lot in a manner which is visible from any neighboring Lot or the Common Area.

**Section 8.11. Antennas, Aerials and Satellite Dishes.** In order to ensure adequate aesthetic controls and to maintain the general attractive appearance of Pine Forest, no Owner, resident or lessee shall place or maintain any objects, such as masts, towers, poles, or radio or television antennas on the exterior of any building Pine Forest unless Architectural Committee approval is first obtained in accordance with Article VI, above; provided, however, that:

(a) the Association shall have the right, without obligation, to erect, place or install and maintain any such apparatus for the benefit of all or a portion of Pine Forest;

(b) in accordance with Federal law, antennas or satellite dishes with a diameter or diagonal measurement not greater than thirty-six inches (36") which are

designed to receive direct broadcast satellite services, video programming services via multi-point distribution services, or television broadcast signals (collectively "Permitted Devices"]) may be erected, placed or installed on a Lot, provided that:

(i) Any such Permitted Device is placed in the least conspicuous location on the Residence at which an acceptable quality signal can be received and is either not visible from neighboring property or is screened from the view from streets of any neighboring Lot or Common Area.

(ii) Reasonable restrictions which do not significantly increase the cost of installation of a Permitted Device or significantly decrease its efficiency or performance, including, without limitation, screening material, location or complimentary-color painting of the Permitted Device, may be imposed as part of the Architectural Rules.

Furthermore, no activity shall be conducted on any Lot which causes an unreasonable broadcast interference with television or radio reception on any neighboring Lot.

Section 8.12. Burning. There shall be no exterior fires whatsoever except barbecue fires located only upon Lots and contained within receptacles designed for such purpose. No Owner or resident shall permit any condition to exist on his or her Lot, including, without limitation, trash piles, or weeds, which create a fire hazard or is in violation of local fire regulations.

Section 8.13. Machinery and Equipment. No power tools, machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence or appurtenant structures Pine Forest.

Section 8.14. Diseases and Pests. No Owner shall permit any thing or condition to exist upon his or her Lot which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

Section 8.15. Parking and Vehicle Restrictions.

(a) All driveways and garages shall be maintained in a neat and orderly condition and garage doors shall be kept in a closed position except as necessary to permit ingress and egress of vehicles or to clean or work in the garage area. Garages

are to be used for the parking of standard passenger vehicles and trucks not to exceed three-quarter (3/4) tons in gross weight, boats or the storage of similar items of personal property so long as such storage of personal property will not necessitate or result in the parking of vehicles on streets or regularly on driveways Pine Forest. Furthermore, garages shall not be converted to living quarters or work shops which will preclude the parking of vehicles.

(b) No vehicle shall be parked or left on any street within the development, except for brief periods during loading and unloading of vehicles.

(c) No motor vehicle shall be constructed, reconstructed or repaired Pine Forest and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on any Lot in Pine Forest; provided, however, that the provisions of this subparagraph (c) shall not apply to emergency vehicle repairs.

(d) The Board shall have the authority to promulgate as part of the Association Rules such further rules and restrictions regarding parking and vehicles Pine Forest as may be deemed prudent and appropriate.

Section 8.16. Activities Affecting Insurance. Nothing shall be done or kept on any Lot or within the Common Area which will increase the rate of insurance relating thereto without the prior written consent of the Association and no Owner shall permit anything to be done or kept on his or her Lot or the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Residence or any part of the Common Area.

Section 8.17. Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof and no Owner of a Lot Pine Forest shall be entitled to sever that Lot from the Common Area portion of Pine Forest. No Lot as shown on a final Subdivision Map for any portion of the Pine Forest development shall be combined with any other Lot .

Section 8.18. Variances. Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article VIII, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Board shall follow the procedures set forth in Section 5.16 for the granting of variances from the Design Guidelines.

**Section 8.19. Enforcement of Property Use Restrictions.** The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of a Design Review or property use infraction that does not necessitate immediate corrective action under Section 13.06, below, the Owner or tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her right to be heard on the matter.

## **ARTICLE IX Easements**

**Section 9.01. Street Easements.** Each Owner and the Association shall have and is hereby granted a nonexclusive easement for street, roadway and vehicular traffic purposes over and along the streets and paved parking areas Pine Forest, subject to termination of such easement and the rights and restrictions set forth in this Declaration. The nonexclusive easement granted hereby to each Owner and to the Association is subject to the offer of dedication of such streets made upon the Subdivision Map and upon complete or partial acceptance of such offer by the Town of Truckee, said easement shall terminate and be of no further force or effect as to those streets or portions thereof accepted by the Town.

**Section 9.02. 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 Design Review Committee. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Properties except as initially designed and approved by the Declarant or thereafter approved by the Association's Design Review Committee. The easements provided for in this section shall in no way affect any other Recorded easement affecting any portion of the Pine Forest development.



Section 9.03. Maintenance Easements. An easement is hereby granted to the Declarant and the Association, their officers, agents, employees, and to any management company or contractor selected by the Declarant or the Association to enter in or to cross over the Common Area and any Lot to perform the Association's duties of maintenance and repair of the Lots, Common Areas, and Common Facilities as provided herein.

Section 9.04. Easements in Favor of Declarant in Common Area. For so long as Declarant is subject to a bond for uncompleted Common Facilities or has the right to annex additional properties to the Pine Forest development pursuant to Article XV, below, Declarant shall have an easement for ingress to an egress from the Common Areas for the purpose of completing Improvements thereon or for the performance of necessary repair work and for entry on any portion of the Subsequent Phase Property in connection with the development of additional phases of the Overall Development.

Section 9.05. 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 Pine Forest development and each Lot as shown on the Subdivision Map for any portion of the Pine Forest development.

Section 9.06. Priority of Easements. Wherever easements granted to the County are, in whole or in part, coterminous with any other easements, the easements of the County shall have and are hereby granted priority over said other easements in all respects.

## ARTICLE X Insurance

Section 10.01. Insurance on Common Property . The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost, and risk coverage provided by such insurance:

(a) Casualty Insurance. A policy of all risk property insurance covering all real property insurable improvements and personal property owned by the Association located on Common Area, with a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis without deduction for depreciation. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against such other risks as shall customarily be

covered with respect to projects similar in construction, location, and use including, but not limited to, earthquake coverage and flood coverage.

(b) General Liability Insurance. A policy of commercial general liability insurance insuring the Association in an amount not less than One Million Dollars (\$1,000,000) covering bodily injury, including death of persons, personal injury, and property damage liability arising out of a single occurrence, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.

Section 10.02. Other Insurance Maintained by the Association.

(a) Director's and Officer's Liability Insurance. To the extent such insurance is reasonably obtainable the Association shall maintain individual liability insurance for its directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least One Million Dollars (\$1,000,000).

(b) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase with common funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this Section, demolition insurance, flood insurance, and workers' compensation insurance. A policy or bond providing adequate fidelity coverage to protect against dishonest acts on the part of Officers, Directors, trustees, and employees and agents (including chartered club officers) of the Association and all others who handle or are responsible for handling funds of the Association. Such fidelity coverage or bonds shall name the Association as an additional insured or as an obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance that it deems necessary or desirable.

Section 10.03. Policy Terms. All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of the Declarant or a Member of the Association, shall provide that the policies may not be canceled or substantially diminished or reduced in coverage without at least thirty (30) days prior written notice to the insured, as well as to any first mortgagee having previously requested such information in writing. Duplicate originals of all policies and

renewals thereof, together with proof of payment of premiums, shall be delivered to any Eligible Holder upon written request.

**Section 10.04. Other Insurance to Be Maintained by Owners.** The Association shall have the right, but not the obligation, to make arrangements with the owners of Lots within any Cost Center to obtain a master policy of fire and casualty insurance for all Residences located in such Cost Center. In that event, the premiums for such master policy shall be assessed equally against Owners in such Cost Center as part of Regular Assessments.

Except to the extent that the Association elects to obtain such a master policy of fire and casualty insurance, each Owner of a Lot shall be responsible for obtaining his/her own policy of fire and casualty insurance with respect to such Lot. Further, in any event, each Owner shall be responsible for obtaining his/her own insurance to cover: (i) furnishings, fixtures and personal property within such Owner's Residence; and, (ii) such Owner's personal liability for committing negligent or tortious acts while within Pine Forest.

**Section 10.05. Annual Review of Association Insurance and Disclosure to Members.** The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners' associations operating in similar common interest developments in the greater Sacramento region. In accordance with California Civil Code section 1365(e), annually the Association shall distribute to its Members a summary of the Association's property, general liability, and flood insurance (if any), such distribution to be made within sixty (60) days prior to the beginning of the Association's fiscal year.

**Section 10.06. Board's Authority to Revise Insurance Coverage.** The Board shall have the power and right to deviate from the insurance requirements contained in this Article X in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article X, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance

required hereunder because the insurance is no longer available; or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or the Members fail to approve any assessment increase needed to fund the insurance premiums.

Section 10.07. Policies Obtained by Declarant. It is contemplated that Declarant may contract for the insurance coverage contemplated by this Article prior to or concurrently with obtaining financing for the development of Pine Forest, and any such obligations or commitments for the payment of premiums or expenses with respect thereto shall become an obligation of the Association, shall be treated as a Common Expense, and shall be paid out of the Common Funds as provided herein.

## ARTICLE XI Damage or Destruction

Section 11.01. Common Facilities; Bids and Determination of Available Insurance Proceeds. In the event any Common Facilities are ever damaged or destroyed, then, and in such event, as soon as practicable thereafter the Board of Directors shall: (a) obtain bids from at least two reputable, licensed contractors, which bids shall set forth in detail the work required to repair, reconstruct and restore the damaged or destroyed portions of the Common Facilities to substantially the same condition as they existed prior to the damage and the itemized price asked for such work; and (b) determine that amount of all insurance proceeds available to the Association for the purpose of effecting such repair, reconstruction and restoration.

Section 11.02. Common Facilities; Sufficient Insurance Proceeds. Subject to the provisions of Section 11.01, above, if, in the event of damage to or destruction of any portion of any Common Facility, the insurance proceeds available to the Association are sufficient to cover the costs of repair, reconstruction and restoration, then the Association may cause such facilities to be repaired, reconstruction and restored substantially the same condition in which they existed prior to the loss ; provided, however, that in the event of a total destruction of the Common Facility, the Association shall not be obligated to restore the facilitate to its prior appearance and condition if the Board's opinion, architectural or design modifications to the Facilities will result in providing the Members with an improved facility available for substantially the same use and enjoyment as the destroyed facility.

Section 11.03. 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, capital replacement reserves and funds, if any, offered or contributed to the Association from any other source for the repair, replacement or major reconstruction of the damaged or destroyed facility are insufficient in an amount exceeding the dollar amount that the Board can raise without prior Member approval (see Sections 4.02 and 4.03, above), then the issue of whether repair or replacement of the Common Facility should be funded by a Special Assessment shall be presented to the Members for approval in accordance with Section 4.08, above. If such Assessment is approved, the Association shall levy such Special Assessment and proceed to make such repairs or reconstruction. If the Special Assessment is not approved, the insurance proceeds may, after first being used to clear and landscape damaged areas, be applied in accordance with the wishes of the Membership upon the approval of Members and Eligible Holders as set forth in Article XV, below, except that the proceeds shall not be distributed to the Owners, unless made jointly payable to Owners and the first Mortgagees, if any, of their respective Lots.

The solicitation materials distributed to the Members in connection with any such vote shall include sufficient replacement cost and bid information to enable to the Members to make an informed decision and the issue shall be presented on the ballot with the following alternatives: (a) to repair, reconstruct and restore the damaged or destroyed Common Facilities and specially assess all Owners for such additional funds as may be needed for such purpose (with the amount of the Special Assessment stated); or (b), in the alternative, 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.

**Section 11.04. Damage or Destruction of Residences.**

(a) **Obligation to Rebuild.** If all or any portion of any Residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Residence to rebuild, repair or reconstruct said Residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

(b) **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 Section 5.06, above.

(c) 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 sixty (60) days following the event and reconstruction shall commence within forty-five (45) 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 subparagraph (c).

## ARTICLE XII Eminent Domain

Section 12.01. Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the Common Area.

Section 12.02. Representation by Association in Condemnation Proceeding. In the event of a taking, the Association shall represent all of the Members in an action to recover all awards, subject to the right of all Institutional Holders who have requested the right to join the Association in the proceedings. The Association is designated as the sole representative of the Members in all aspects of condemnation proceedings.

Section 12.03. Award for Common Area. In the event of a taking of all or any part of the Common Area, the Association shall distribute the award from the taking authority after deducting therefrom fees and expenses related to the condemnation proceeding including, without limitation, fees for attorneys and appraisers and court costs. In the event that the taking is by judgment of condemnation and said judgment apportions the award among the Owners and their respective

Institutional Holders, the Association shall distribute the amount remaining after such deductions on the allocation basis set forth in the judgment. In the event that the taking is by sale under threat of condemnation, or if the judgment of condemnation fails to apportion the award, the Association shall distribute the award among the Owners and Institutional Holders on a pro rata basis, with each Owner and Institutional Holder receiving an equal share of such award for each Lot owned by such Owner within the Pine Forest development. Unless otherwise agreed to by the Institutional Holders, all amounts payable to an Owner shall be paid to the Institutional Holder.

Section 12.04. Inverse Condemnation. The Association is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

Section 12.05. Notice to Members. The Association, immediately upon having knowledge of any taking or threat thereof, shall promptly notify all Members.

### ARTICLE XIII Breach and Default

Section 13.01. Remedy at Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by Declarant, any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

Section 13.02. Nuisance. Without limiting the generality of the foregoing Section 13.01, above, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

Section 13.03. Attorneys' Fees. Reasonable attorneys' fees and costs shall be awarded to the prevailing party in any procedure to enforce the Governing Documents or a party's rights arising under the Governing Documents. Such enforcement procedure includes an action brought in any court having jurisdiction over any

alternative dispute resolution procedure implemented pursuant to the Governing Documents or to California Civil Code section 1354, as it may be renumbered and revised from time to time. In any enforcement procedure, such as mediation, conducted pursuant to California Civil Code section 1354, in which there is not an agreement between all of the parties that attorneys will represent them, recoverable costs are limited to attorneys' fees and costs incurred in providing the notices required under such statute.

Section 13.04. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

Section 13.05. Failure Not a Waiver. The failure of Declarant, any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Declarant, the Association or the Board, or any of its officers or agents.

Section 13.06. Rights and Remedies of the Association.

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

The decision of whether it is appropriate or necessary for the Association to take enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized enforcement committee. If



the Association declines to take action in any instance, any Owner shall have such rights of enforcement pursuant to California Civil Code section 1354 or otherwise by law.

(b) Schedule of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment, subject to the limitation on the use of lien and foreclosure remedies stated in Section 4.10(b)(ii), above.

(c) Definition of "Violation". A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Limitations of Disciplinary Rights.

(i) The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph (iii), below.

(ii) Monetary penalties imposed by the Association: (A) for failure of a Member to comply with the Governing Documents; (B) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area or Common Facilities allegedly caused by a Member; or (C) in bringing

the Member and his or her Lot into compliance with the Governing Documents, may not be characterized nor treated as an Assessment which may become a lien against the Member's Lot enforceable by a sale of the Lot in nonjudicial foreclosure; provided, however, that this limitation on the Association's lien rights shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in the Association's efforts to collect delinquent Assessments.

(iii) No disciplinary action, penalty or temporary suspension of rights shall be imposed pursuant to this Article unless the Owner alleged to be in violation is given at least ten (10) days prior notices by personal delivery or first-class mail, that the Board of Directors will be meeting to consider imposing such discipline. The notice shall contain at a minimum, the date, time, and place of the meeting, the nature of the alleged violations for which the Owner may be disciplined, and a statement that the Owner has a right to attend and address the Board at the hearing. The Board shall meet in executive session if requested by the Owner.

If disciplinary action is taken, the Board shall notify the accused Owner, in writing, either by personal delivery or first-class mail, of the Board's decision within fifteen (15) days following conclusion of the hearing.

In accordance with Civil Code section 1363(h), disciplinary action shall not be effective against an Owner unless the Board fulfills the requirements of this section.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes: (A) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (B) a traffic or fire hazard; (C) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (D) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors, or its duly authorized agents, may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five (5) days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action.

If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five (5) days following the date when the fine is levied.

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

At the hearing, the accused shall be given the opportunity to be heard, including the right to present evidence and to present or question witnesses. The Board shall notify the accused Owner, in writing, of the Board's decision within five business days following conclusion of the hearing. In no event shall the effective date of any disciplinary action commence sooner than five (5) days following conclusion of the hearing unless: (i) the hearing merely affirms summary disciplinary action initiated pursuant to the immediately preceding paragraph; or (ii) earlier commencement is necessary to preserve the quiet enjoyment of other residents or to prevent further damage to, or destruction of, the Properties or any portion thereof.

(iv) The notice and hearing procedures set forth in this Section 13.06 shall not apply to any actions by the Association or its duly authorized agents to collect delinquent assessments. Assessment collections shall be subject to Section 4.10, above, and any other notice, hearing and/or dispute resolution requirements or procedures as may be specifically applicable by law to Association assessment collection.

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

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

Section 13.07. Court Actions. Court actions to enforce the Governing Documents may only be initiated on behalf of the Association by resolution of the Board. Prior to the filing of any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either such action coupled with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000)), the Association shall first comply with the provisions of California Civil Code section 1354 relating to alternative dispute resolution. The Association's own notice and hearing procedures may be drafted to satisfy these statutory requirements.

#### ARTICLE XIV Protection of Mortgagees

Section 14.01. Assessment Lien Subordinated. Any lien created or claimed under the provisions of Article IV, above, shall be subject and subordinate to the lien of any first Mortgage given in good faith and for value. No such Mortgagee who acquires title to any Lot by judicial foreclosure or by exercise of power of sale contained in the Mortgage shall be obligated to cure any breach of this Declaration by a former Owner of such Lot or shall be liable for any unpaid Assessments made against the Lot which accrued prior to the date the Mortgagee acquired such title. No lien created or claimed under the provisions of Article IV, above, shall in any way defeat, invalidate or impair the rights of any Mortgagee under any such recorded Mortgage.

Section 14.02. Amendment of This Declaration. Except where an amendment has been approved in accordance with Section 14.12, below, no amendment of this Declaration shall affect any of the rights of the holder of any Mortgage described in Section 14.01, above, which is made in good faith and for value, if such Mortgage is recorded and notice of the delivery and recording thereof is given to the Association prior to the recording of such amendment.

Section 14.03. Default by Owner; Mortgagee's Right to Vote. In the event of a default by any Owner under a Mortgage encumbering such Owner's Lot, the Mortgagee under such Mortgage shall, upon: (a) giving written notice to the defaulting Owner; (b) recording a Notice of Default in accordance with California Civil Code section 2924; and (c) delivering a copy of such recorded Notice of Default to the Association, have the right to exercise the vote of the Owner at any regular or special meeting of the Association held only during such period as such default continues.

Section 14.04. Breach; Obligation After Foreclosure. No breach of any provision of this Declaration by Declarant, the Association or any Owner shall impair or invalidate the lien of any recorded Mortgage made in good faith and for value and

encumbering any Lot. The Declarant, the Association or their successor and assigns shall be obligated to abide by all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes provided for in this Declaration as it may be amended from time to time with respect to any person who acquires title to or any beneficial interest in any Lot through foreclosure, trustee's sale or otherwise.

**Section 14.05. Exchange of Information.** The Association shall, at the written request of any Mortgagee, insurer or guarantor, notify such party of:

(a) Any condemnation or casualty loss that affects either a material portion of the Properties or the Lot(s) security the Mortgage;

(b) Any delinquency of sixty (60) days or more in the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage;

(c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action of the Association that requires the consent of a specified percentage of Eligible Mortgagees (see Section 14.12(a), below, for definition of "Eligible Mortgagee").

To be entitled to receive this information, the Mortgagee, insurer or guarantor must send a written request to the Association, stating both its name and address and the number or address of the Lot(s) securing the Mortgage. Any Mortgagee of any Lot is hereby authorized to furnish to the Board of Directors, upon written request by the Board therefor, the amount of any unpaid balance of any indebtedness secured by a lien of a Mortgage and the amount and due date of any delinquent payment or payments of such indebtedness.

**Section 14.06. Certain Restrictions Affecting the Association.** Notwithstanding any other provisions of this Declaration, without the prior written consent of at least sixty-seven percent (67%) of the Owners or sixty-seven percent (67%) of the first Mortgagees, such percentage to be based upon the total of number of Lots so mortgaged, with each such Mortgagee entitled to one vote for each Lot, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or any Improvements thereon (except that the granting of

any easement for public utilities, or for other public purposes consistent with the intended use of Pine Forest, shall not be deemed a "transfer" as that term is used in this subparagraph(a));

(b) Change the method provided for in this Declaration of determining the Assessments or other charges which may be assessed against an Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(c) By act or omission, change, waive or abandon the scheme of maintenance and repair of Pine Forest, or the enforcement thereof, as provided for in this Declaration;

(d) Fail to maintain fire and extended coverage insurance on the Common Facilities in the amount and against the risks provided for in Section 10.01; and

(e) Use any insurance proceeds received as a result of the loss or damage to the Common Facilities for any purpose other than the repair, replacement or reconstruction of such Common Facilities.

**Section 14.07. Right of First Mortgagees to Make Certain Payments and Right of Reimbursement Therefor.** The holders of first Mortgages on the Lots shall have the right (but not the obligation), jointly or singly: (a) to pay taxes or other Assessments or charges which are in default and which may or have become a lien or charge against the Common Facilities; (b) to pay overdue premiums on casualty insurance policies for the Common Facilities; and (c) to secure and pay for new casualty insurance coverage on the Common Facilities upon the lapse of any such policy, in the amount and against the risks provided for in Section 10.01, above. Any first Mortgagee making such payment shall be entitled to immediate reimbursement therefor from the Association. Upon the request of any first Mortgagee, the Association shall, by separate instrument, signed by the president or any vice president and the secretary, evidence its agreement to the provisions of this section as the same affects the Mortgage held by such Mortgagee.

**Section 14.08. Right to Examine Books and Records of the Association.** All Mortgagees, insurers and guarantors of any Mortgages on any Lot shall have the right, upon written request to the Association, to:

(a) Examine current copies of the Governing Documents and the Association's books, records and financial statements, during normal business hours;

(b) Require the 'Association to provide an audited statement' for the preceding fiscal year: (i) at no expense to the requesting entity when Pine Forest consist of fifty (50) or more Lots; and (ii) at the requesting entity's expense when Pine Forest consist of fewer than fifty (50) Lots and no audited statement is available; and

(c) Receive a written notice of all meetings of the Association and designate a representative to attend all such meetings.

Section 14.09. Notices to First Mortgagees. The Association shall furnish to the holder of any first Mortgage on any Lot or on the Common Area, upon written request by the first Mortgagee, thirty (30) days prior written notice of: (a) abandonment or termination of the Association; (b) the effective date of any proposed material amendment to the Declaration; (c) the effectuation of any decision by the Association to terminate professional management, if any, and assume self-management of Pine Forest; (d) any condemnation or eminent domain proceeding; and (e) any extensive damage to or destruction of any Improvements located in or on the Common Area.

Section 14.10. Superiority of Mortgage to Condemnation Proceeds. If any Lot, or portion thereof, or the Common Area, or any portion thereof, is made the subject of any condemnation or eminent domain proceeding, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of said Lots or Common Area with respect to any distribution of the proceeds of any condemnation award or settlement.

Section 14.11. Superiority of Mortgage to Insurance Proceeds. In the event of any substantial damage to or destruction of the Improvements on any Lot, or on any part of the Common Area, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of said Improvements with respect to any distribution of any insurance proceeds relating to such damage or destruction.

Section 14.12. Approval of Material Amendments or Termination.

(a) Material Amendments. In addition to the approvals required by Article XVIII, below (Amendments), Eligible Mortgagees who represent at least fifty-one percent (51%) of the votes of Lots that are subject to Mortgages held by Eligible Mortgagees must approve any amendment to this Declaration of a material nature. An Eligible Mortgagee is the beneficiary of a first Mortgage who has requested the

Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees. A change to any of the following would be considered as material:

- (i) voting rights;
- (ii) assessments, assessment liens or the priority of assessment liens;
- (iii) reserves and responsibility for maintenance, repair and replacement of the Common Area;
- (iv) convertibility of Lots into Common Area and vice versa;
- (v) annexation or deannexation of property to or from Pine Forest;
- (vi) insurance or fidelity bonds;
- (vii) leasing of Lots;
- (viii) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot;
- (ix) a decision by the Association to establish self-management when professional management had been required previously by the Governing Documents or by an Eligible Mortgagee;
- (x) restoration or repair of the Common Areas and Common Facilities of Pine Forest (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;
- (xi) any action to terminate the legal status of Pine Forest after substantial destruction or condemnation occurs; or
- (xii) any provisions that expressly benefit Mortgagees, insurers or guarantors.

(b) Termination. In addition to the approvals required by Article XX, below, Eligible Mortgagees who represent at least sixty-seven (67%) of the votes of Lots that



are subject to Mortgages held by Eligible Mortgagees must approve any proposed termination of the legal status of the project for reasons other than substantial destruction or condemnation of Pine Forest.

(c) Implied Approval. Each Eligible Mortgagee which receives notice of a proposed amendment or termination of this Declaration by certified or registered mail, with a "return receipt" requested, shall be deemed to have approved the amendment or termination if the Eligible Mortgagee fails to submit a response to the notice within thirty (30) days of receiving the notice.

Section 14.13. Quality of Future Improvements. All intended Improvements in any future phase of Pine Forest shall be consistent with the Improvements in the first phase in terms of quality of construction. The requirements of this section are solely for the benefit of and may be enforced only by the Federal National Mortgage Association.

Section 14.14. Declaration to Conform With Mortgagee Requirements. It is the intent of this Article that this Declaration, the Articles of Incorporation, the Bylaws and Pine Forest in general, shall now and in the future meet all requirements of any institutional Mortgagee intending to secure its Mortgage by a Lot or necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Veterans' Administration.

## ARTICLE XV Annexation, Supplemental Declarations

Section 15.01. Annexations, Generally. Any or all of the Overall Development may be annexed to and made subject to this Declaration by any of the methods hereinafter set forth. In this Article XV, any reference to the "annexed property" or to an "Annexed Phase" shall mean the property that is described in a duly Recorded Declaration of Annexation or Supplemental Declaration.

Section 15.02. Unilateral Annexations. Declarant shall have the right to annex from time to time all or any portions of the Subsequent Phase Property (i.e., the lands more particularly described in Exhibit "A"), so as to be subject to this Declaration and so that membership in the Association shall be appurtenant to ownership of Lots within the annexed Phase. Such annexation shall not require the approval of either the Association, its Board or Members so long as the annexation is in substantial conformance with a detailed plan of phased development submitted to the

Department of Real Estate with the Declarant's application for a Public Report for the first Phase of the Overall Development. In order to be annexable at the option of the Declarant, the plan for phased development must include at least the following:

(a) Proof satisfactory to the Commissioner of the Department of Real Estate that no proposed annexation will result in an overburdening of Common Facilities;

(b) Proof satisfactory to the Commissioner that no proposed annexation will cause a substantial increase in Assessments against existing Owners of Lots within Pine Forest which was not disclosed in a Public Report under which such Owners purchased their interests in Pine Forest;

(c) Identification of the Phase proposed to be annexed and the total number of residential Lots then contemplated by the Declarant for the Overall Development; and

(d) A written commitment by the Declarant to pay to the Association, concurrently with the closing of the escrow for the first sale of a subdivision interest in the annexed Phase, an appropriate amount for reserves for replacement or deferred maintenance of Common Area improvements in the annexed Phase necessitated by or arising out of the use and occupancy of Residences under a rental program conducted by the Declarant which has been in effect for a period of at least one year as of the date of closing of the escrow for the first sale of a Residence in the annexed Phase.

Section 15.03. Other Annexations. In addition to annexations effected by the Declarant pursuant to Section 15.02, above, annexations of other real property may be made by Declarant with the approval by vote or written consent of Members entitled to exercise not less than two-thirds of the Voting Power of each class of membership of the Association. After the Class B membership has ceased, the affirmative vote of at least two-thirds of the voting power of Members other than Declarant shall be required to approve annexations pursuant to this Section 15.03. Upon obtaining the requisite approval of the Members pursuant to this Section, Declarant shall Record a Declaration of Annexation and, if appropriate, a Supplemental Declaration, as more particularly described in Sections 15.05 and 15.06, below.

Section 15.04. Conveyances of Common Area. Prior to the conveyance by Declarant of any Lot within a Phase annexed to this Declaration, fee simple title to any Common Area to be owned by the Association within such Phase shall be conveyed to

the Association free and clear of any and all encumbrances and liens, except current real property taxes, which taxes shall be prorated to the date of transfer, and reservations, easements, covenants, conditions and restrictions then of Record, including those set forth in this Declaration.

Section 15.05. Declaration of Annexation.

(a) Effect of Recordation of a Declaration of Annexation. Any annexation of portions of the Overall Development to the Pine Forest development authorized by this Declaration shall be made by Recording a Declaration of Annexation, or other similar instrument, with respect to the additional real property which shall be executed by Declarant or the Owner thereof and shall extend this Declaration to such real property. The Recordation of such a Declaration of Annexation shall constitute and effectuate the annexation of the additional real property described therein, and thereupon said real property shall become and constitute a part of Properties, become subject to this Declaration and encompassed within the general plan and scheme of the covenants conditions and restrictions contained herein, and become subject to Assessment by the Association and to the functions, powers and jurisdiction of the Association, and the Owners of Lots in said real property shall automatically become Members of the Association.

(b) Contents of Declaration of Annexation. The Declaration of Annexation shall include the following:

(i) Legal Description of the Annexed Property. A legal description of the property included in the annexed property, separately identifying Lots and any Common Areas;

(ii) Statement Regarding Commencement of Assessments. The Declaration of Annexation shall provide for a specified date on which Assessments shall commence for Lots in the annexed Phase, provided that the date specified may not be later than the first day of the first month following the month in which the first Lot in the annexed Phase is conveyed to an Owner;

(iii) Declarant's Commitment Concerning Reserve Contributions Relating to Rental Programs. A written commitment by Declarant to pay to the Association, concurrently with the close of escrow for the first sale of a Lot in an annexed Phase, appropriate amounts for reserves for replacement or deferred maintenance of Common Facilities in the annexed Phase necessitated by or arising out of the use and occupancy of Residences under a rental program conducted by Declarant

which has been in effect for a period of at least one year as of the date of closing of escrow for the first sale of a Residence in the annexed Phase;

(iv) Application of Equitable Servitudes. A statement that all of the covenants, conditions and restrictions of this Declaration shall apply to property within the Annexed Phase in the same manner as if the annexed property was originally covered by this Declaration; provided, however, that additional or revised covenants, conditions and restrictions applicable to the annexed property (collectively, "supplemental restrictions"), may be imposed when, in the sole discretion of the Declarant, it is deemed necessary or appropriate and to impose supplemental restrictions in order to reflect differences in the nature, Design or use of the Improvements to be constructed on Lots or Common Areas in the annexed Phase.

Supplemental restrictions may not alter the general common plan or scheme created by this Declaration, revise any restriction imposed by a governmental entity as a condition of Subdivision Map approval (without the consent of that entity) or revoke, modify or add to the covenants, conditions and restrictions imposed by this Declaration with respect to portions of the Pine Forest development initially subject to this Declaration or property that is annexed to the Pine Forest development prior to the annexed Phase. If supplemental restrictions are considered necessary or appropriate for a particular Phase, they shall be set forth in a Supplemental Declaration attached to, or incorporated in, the Declaration of Annexation (see Section 15.06, below).

Additional real property may be annexed to Pine Forest and become subject to this Declaration in accordance with this section. Although the present intention of the Declarant is to develop Pine Forest and the Subsequent Phase Property as residential subdivisions with Common Areas and Common Facilities in conformance with a plan of phased development, nothing in this Declaration shall be construed or interpreted to commit Declarant to the development or annexation of any portion of the Subsequent Phase Property in accordance with any present planning.

Section 15.06. Supplemental Declarations.

(a) Authority to Record Supplemental Declarations. During the course of developing the Property, it may become necessary or appropriate for Declarant to Record a Supplemental Declaration. Recordation of Supplemental Declarations by Declarant is hereby approved. In addition, if the Declarant conveys a Phase of the Overall Development to a builder of cluster or townhome residences, the Declarant can join with that purchaser in Recording a Supplemental Declaration applicable to that Phase.

(b) Content of Supplemental Declarations. Any Supplemental Declaration shall describe the portion of the Subsequent Phase Property to which it is to apply, recite that the Supplemental Declaration is being Recorded pursuant to the authority conferred by this Section and may include, without limitation:

(i) Description of Common Areas and Common Facilities. A description of any Common Areas (including all exclusive use common areas, as that term is defined in Section 1351(i) of the California Civil Code) and Common Facilities within the annexed Phase;

(ii) Specification of Property Use Restrictions Applicable to the Annexed Property. Property use restrictions and design and building standards which shall apply solely to the Lots (and any Improvements constructed thereon) within the annexed Phase;

(iii) Front Yard Maintenance. Provisions describing the nature and extent of the Association's duties and responsibilities if front yards or rear yards are to be maintained by the Association or a Sub-Association;

(iv) Designation of Cost Centers. A Supplemental Declaration may designate one or more Cost Centers within the annexed Phase by including the information described in Section 4.01(e), above.

Section 15.07. Reconciling Conflicts Among Documents. This Declaration shall control if there is any conflict between any Declaration of Annexation or Supplemental Declaration and the provisions of this Declaration; provided, however, that to the extent that any provision hereof is expressly modified by a Supplemental Declaration, no conflict shall be deemed to exist; and, provided further, that this Declaration and any Supplemental Declaration shall be construed so as to be consistent with one another to the extent that the reconciliation of provisions is reasonably possible. However, the inclusion in any Supplemental Declaration of covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, limitations, liens or charges which are more restrictive or more inclusive than in the Governing Documents shall not be deemed to constitute a conflict with the provisions of this Declaration.

Section 15.08. De-Annexation and Amendment. Declarant has the right, at its sole option, to (a) amend a Declaration of Annexation or a Supplemental Declaration, or (b) remove from Pine Forest any property described in a Recorded Declaration of Annexation or a Supplemental Declaration by executing and Recording a rescission of

such document, so long as all of the following conditions are satisfied at the time of the execution of the amendment or rescission: (i) no Lot in the annexed Phase encumbered by the Declaration of Annexation and/or Supplemental Declaration has been conveyed to an Owner; and (ii) Assessments have not commenced for any Lot in such annexed Phase. If Common Areas in the previously annexed Phase have been conveyed to the Association, then in the event of a rescission, such Common Area shall be conveyed back to Declarant promptly after the rescission. In the event of an amendment, if the amendment is such that some portion of that Common Area within the annexed Phase theretofore conveyed to the Association is excluded from the annexation, such portion shall be conveyed back to Declarant promptly after the amendment is adopted.

**Section 15.09. Taxes and Assessments.** All taxes and other Assessments relating to real property that is annexed to the Pine Forest development pursuant to Sections 15.02 and 15.03, above, covering any period prior to annexation of the Phase shall be paid or otherwise provided for by the Declarant.

**Section 15.10. Character of Common Area Improvements.** The nature, design, quantity, quality and all other attributes of the Common Area, and the Common Facilities constructed or to be constructed within any annexed Phase, shall be determined in Declarant's sole and absolute discretion. The Association shall be unconditionally obligated to accept title to and maintenance responsibility for the Common areas and Common Facilities, if any, when such title and maintenance responsibility are tendered by Declarant.

**Section 15.11. Infrastructure Improvements.** All intended infrastructure improvements in Phases that are annexed to Pine Forest pursuant to Sections 15.02 and 15.03 of this Article shall be substantially completed or bonded to the satisfaction of the local governmental agency with authority therefor and the Federal National Mortgage Association prior to annexation and shall be consistent with the initial improvements of the initial Phase of the Overall Development in terms of the quality of construction.

**Section 15.12. Effect of Annexation.**

(a) **Application of Declaration to Annexed Phase.** The Recordation of a Declaration of Annexation shall constitute and effectuate the annexation of the Subsequent Phase Property described therein, and thereupon the annexed Phase shall become and constitute a part of Pine Forest, and be subject to, and encompassed within, the general plan and scheme of this Declaration, subject only to such modification in said general plan as may be imposed by the Declaration of Annexation. Lots within the annexed Phase shall thereupon become subject to Assessment by the

Association and to the functions, powers and jurisdiction of the Association, and the Owners of Lots within the annexed Phase shall automatically become Members of the Association. Any Common Facilities which are included within the annexed Phase shall be conveyed to the Association, free of all liens and encumbrances, other than liens, rights-of-way or other encumbrances disclosed on the preliminary title report for the annexed Phase and approved by the Association. The conveyance of any Common Facilities in the annexed Phase to the Association shall occur immediately following Recordation of the Declaration of Annexation.

(b) Board's Obligation to Approve Budget Applicable to Phase. After a new Phase has been annexed, the Board shall approve a budget, which is substantially based upon the operating budget accepted by the California Department of Real Estate in connection with the Public Report for that Phase, for the remainder of the current fiscal year for use upon commencement of Regular Assessments against Lots within the annexed Phase.

Section 15.13. Amendment of Annexation Provisions. After the conversion of Class B membership to Class A membership and until such time as the Declarant no longer has any rights of unilateral annexation pursuant to Section 15.02, above, this Article may not be amended without the written consent of the Declarant, unless at the time of the amendment all property constituting Subsequent Phase Property has been annexed to Pine Forest.

## ARTICLE XVI Declarant Privileges and Exemptions

Section 16.01. Interest of the Declarant; Material Actions Requiring Declarant Approval. The real property comprising Pine Forest that is subject to this Declaration constitutes a portion of the Overall Development, which Declarant is causing to be developed. Each Owner of a Lot which is part of Pine Forest acknowledges by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other instrument, that Declarant has a substantial interest to be protected with regard to assuring compliance with and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration and any amendments thereto and any Supplemental Declarations recorded pursuant to this Declaration. Notwithstanding any other provisions of the Governing Documents, until such time as Declarant is no longer entitled to create Subsequent Phase Property by annexation without the vote of the Members, the following actions, before being undertaken by the Members or the Association, shall first be approved in writing by Declarant:

(a) Specified Approvals. Any amendment or action requiring the approval of Declarant pursuant to this Master Declaration, and any amendment or action requiring the approval of first Mortgagees pursuant to this Master Declaration (the Association shall provide Declarant with all notices and other documents to which a Mortgagee is entitled pursuant to this Master Declaration, provided that Declarant shall be furnished such notices and other documents without making written request);

(b) Annexation. The annexation to Pine Forest of any real property that is not included in the Overall Development by action of the Declarant;

(c) Special Assessments. The levy of a Special Assessment for the construction of new facilities by the Association not originally included in the Common Areas;

(d) Service/Maintenance Reductions. Subject to Section 4.02(b), above, regarding limitations on Regular Assessment increases without Member approval, any significant reduction of Common Area maintenance or other services or entering into contracts for maintenance or other goods and services benefiting the Association or the Common Area at contract rates which are fifteen percent (15%) or more below the reasonable cost for such maintenance, goods or services; or

(e) Design Guidelines. Any supplement or amendment to the Design Guidelines, including Design Guidelines applicable to a particular Phase of the Pine Forest development (see Section 5.05, above).

Section 16.02. Exemptions From Restrictions Otherwise Applicable. Nothing in the Governing Documents shall limit and no Owner, Sub-Association or the Association shall do anything to interfere with the right of Declarant, either directly or through their respective agents and representatives, to subdivide, re-subdivide, sell, resell, rent or re-rent any portion of the Pine Forest development, or the right of Declarant to complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Pine Forest development owned by Declarant or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of Pine Forest so long as any Lot or any portion of the Overall Development is owned by Declarant. Such right shall include, but shall not be limited to, carrying on by Declarant and their respective agents and representatives of such grading work as may be approved by the Town or other agency having jurisdiction, and erecting, constructing and maintaining on or within Pine Forest such structures, signs and displays as may be reasonably necessary for the conduct of its business of



completing the work and disposing of the same by sale, lease or otherwise. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or installation by Declarant may impair the view of such Owner, and hereby consents to such impairment.

**Section 16.03. Rights to Use Common Areas and Common Facilities in Connection With Development and Sales Activities.** Declarant may enter upon the Common Area, for the benefit of Declarant or for the benefit of portions of the Overall Development whether or not then annexed, or any combination of them, to complete the development, improvement and sale of Lots and the construction of any landscaping or other Improvement to be installed on the Common Area. Declarant shall also have the right of nonexclusive use of the Common Areas and the Common Facilities, without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right Declarant hereby reserves; provided, however, that such use rights shall terminate on the date on which Declarant no longer owns any Lots within Pine Forest and Declarant's unilateral right to annex portions of the Overall Development has expired. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein and all direct costs and expenses associated with Declarant sales and promotional activities (including, without limitation, any costs or expenses required to clean or repair any portion of the Common Area that are damaged or cluttered in connection with such activities) shall be borne solely by the Declarant and any other sponsor of the activity or event. The rights reserved to the Declarant by this section shall extend to any employee, sales agents, prospective purchasers, customers and/or representatives of the Declarant.

**Section 16.04. Amendment of Plans.** Subject to approval, as necessary, by the Town, Declarant may, from time to time as it deems fit, amend its plans for the Overall Development, combine or split Lots or Parcels, and apply for changes in the Development Agreement, changes in zoning, use and use permits, for any property within the Overall Development.

**Section 16.05. Right to Enforce Design Review and Approval Requirements.** For so long as the Declarant has the right to appoint any members of the Design Review Committee, the Declarant shall have the right to initiate action to correct or prevent any activity, condition or Improvement that is not in substantial compliance with approved plans and specifications to the same extent as the Association if: (a) the Committee has issued a Notice of Noncompliance; and (b) the Association, after having a reasonable opportunity to do so, is unable or unwilling to initiate enforcement action. In the event that such action is initiated by the Declarant and it is later determined by an arbitrator or a court of competent jurisdiction that the Owner of the subject Lot was, in

fact, proceeding in violation of the approved plans and specifications, any reasonable costs incurred by the Declarant in initiating enforcement action, including reasonable attorneys fees, which are not the subject of an award of fees and/or costs against the offending Owner may be charged to the Association pursuant to Section 5.12, above (relating to Association funding of Design Review costs).

**Section 16.06. Termination of Any Responsibility of Declarant.** In the event the Declarant conveys all of its rights, title and interest to any partnership, limited liability company, individual or individuals, corporation or corporations, in and to the Overall Development, and the acquiring person or entity is designated as a successor Declarant as to all the property conveyed, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of Declarant. This Article shall not terminate any responsibility of the Declarant for acts or omissions occurring prior to the conveyance to such partnership, individual or individuals, corporation or corporations. However, this shall not limit Declarant's right to enter into a contract or agreement dealing with such acts or omissions provided the contract or agreement is enforced by Declarant, if necessary.

**Section 16.07. No Amendment or Repeal.** So long as Declarant owns any Lots within Pine Forest, the provisions of this Article may not be amended or repealed without the consent of Declarant.

## ARTICLE XVII

### Notices

**Section 17.01. Mailing Addresses.** Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to Declarant: Pine Forest Truckee, LLC, 1380 Galaxy Way, Concord, California 94522 (or to such other address as Declarant may from time to time designate in writing to the Association)

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

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

Section 17.02. Personal Service Upon Co-Owners and Others. Personal service of a notice or demand to one of the co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, shall be deemed delivered to all such co-Owners, to such partnership, or to such corporation, as the case may be.

Section 17.03. Deposit in United States Mails. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered four (4) days after deposit in the United States mail in the County.

#### ARTICLE XVIII

##### No Public Rights in the Pine Forest Development

Nothing contained in this Declaration shall be deemed to be gift or dedication of all or any portion of the Pine Forest development to the general public or for any public use or purpose whatsoever. Notwithstanding the foregoing, the Pine Forest development shall be subject to such public dedications and/or easements and rights-of-way as appear on the Subdivision Maps.

#### ARTICLE XIX

##### Amendment of Declaration

Section 19.01. Amendment Before Close of First Sale. Before the close of escrow for the first sale of a Lot in Pine Forest to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect by the execution of an instrument amending or revoking the Declaration signed by Declarant and any Mortgagee of record, provided the consent or approval of the Commissioner of the California Department of Real Estate is first obtained to the extent required by California law. The amending or revoking instrument shall make appropriate reference to this Declaration and shall be Recorded.

Section 19.02. Restatements. This section describes the methods for restating the Declaration after an amendment.

(a) General. The Board has the right, by resolution without the necessity of consent by the Owners, to restate this Declaration when it has been properly amended pursuant to its requirements for amendment. Such restatement shall be effective upon execution of the restatement by any two (2) officers of the Association and its Recordation. Upon Recordation of the restatement, the restatement shall supersede the prior declaration and its amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all properties that are subject to the Declaration as established by the Declaration initial date of Recordation.

(b) Form of Restatement. The restatement shall restate the entire text of the original document, with these exceptions: (i) changes incorporating all amendments approved the Owners; (ii) changes made to rearrange or delete the text for consistency with the approved amendments; (iii) changes made to delete material no longer legally effective or legally required, such as the provisions described in the section entitled "Amendment of Declarant Benefit Provisions"; (iv) the addition of a statement that the Board has authorized the restatement pursuant to this section; (v) changes made to delete any provision declared illegal by constitutional or statutory enactment, by regulation, or by controlling judicial opinion; and (vi) changes needed to distinguish the restatement from the original document, such as title, section, or subsection numbering changes.

Section 19.03. Amendment After Close of First Sale. After the close of escrow for the first sale of a Lot in Pine Forest to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect upon compliance with the following provisions:

(a) Member Approval Requirements. Any amendment shall be approved by the vote or assent by written ballot of the holders of not less than fifty-one percent (51%) of the Voting Power of each class of Members. If a two-class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership, as provided in the Association's Bylaws, any amendment thereof will require the vote or assent by written ballot of both: (i) fifty-one percent (51%) of the total voting power of the Association; and (ii) the vote of fifty-one percent (51%) of the total Voting Power held by Members other than the Declarant. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

(b) Additional Approvals For Amendments to Particular Provisions:

(i) Mortgagee Approvals. Mortgagee approvals shall be required to amend any of the provisions described in Section 14.12, above.

(ii) Declarant Approvals. The following provisions may only be amended with the prior written consent of the Declarant for so long as the Declarant possesses rights of unilateral annexation of Subsequent Phase Property pursuant to Section 14.02, above: Article VI (Minimum Construction Standards), Article XV (Annexation), Article XVI (Declarant Privileges and Exemptions), and this subparagraph (b)(ii).

(iii) Approval by the Town. The following provisions of this Declaration reflect conditions of approval for the Overall Development imposed by the Town of Truckee and may only be amended with the prior consent of the Town: Sections 6.01, 6.06, 6.07, 6.08, 6.10, 6.14, 6.23, 7.1(d) and this subparagraph (b)(iii).

Section 19.04. Department of Real Estate. An amendment to this Declaration, Bylaws, or other governing instruments of the Association shall require immediate notification of the California Department of Real Estate in accordance with section 2800 of the Commissioner's Regulations so long as the Pine Forest development, or any portion thereof, is subject to an outstanding Final Subdivision Public Report.

Section 19.05. Mortgagee Approval. Mortgagee approval of any proposed material amendment shall be required in accordance with Section 14.12, above.

Section 19.06. Effective Date of Amendment. The amendment will be effective upon the Recording of a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of subsection (a) or (b), above, have been duly met. If the consent or approval of any governmental authority, Mortgagee, or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

Section 19.07. Business and Professions Code Section 11018.7. All amendments or revocations of this Declaration shall comply with the provision of California Business and Professions Code section 11018.7 to the extent said section is applicable.

Section 19.08. Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## ARTICLE XX General Provisions

Section 20.01. Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, Declarant, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of sixty (60) years from the date of the recording of this Declaration. After the expiration of the initial term, the same shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial sixty (60) year term or any such ten (10) year extension period, a written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association terminating the effectiveness of this Declaration, is Recorded.

Section 20.02. Termination of Any Responsibility of Declarant. In the event Declarant shall convey all of its rights, title and interest in and to Pine Forest to any partnership, individual or individuals, corporation or corporations, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations shall be obligated to perform all such duties and obligations of the Declarant.

Section 20.03. Statutory References. In the event that any statute in this Declaration, whether stated by code and number, or named by body of law, is amended, repealed, renumbered, or renamed, all references to such statute or body of law shall refer to the amended, repealed, renumbered, or renamed statutory provisions.

### Section 20.04. Construction.

(a) Restrictions Construed Together. All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of Pine Forest as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

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

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

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

(f) References to State Statutes. Any references in this Declaration to State Statutes shall be to the referenced statute as in effect on the date that this Declaration is Recorded in the Official Records of the County. In the event that any referenced statute is subsequently amended or superseded, all such references shall thereupon mean and refer to the referenced statute as so amended, modified or superseded, so long as the amended statute continues to regulate or pertain to the same subject matter.

Dated: 8/15, 2002.

DECLARANT:

PINE FOREST TRUCKEE, LLC,  
a California Limited Liability Company

By: Robert Schwartz Robert Schwartz  
Its: CO Managing Member

State of California )  
County of Nevada ) ss.

On August 15, 2002, before me, Lori Fallow, the undersigned  
Notary Public, personally appeared Robert Schwartz

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESSED my hand and official seal.

Lori Fallow  
Notary Signature



----- OPTIONAL -----

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signers(s) Other Than Named Above: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



(b) Restrictions Severable. Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

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

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

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

(f) References to State Statutes. Any references in this Declaration to State Statutes shall be to the referenced statute as in effect on the date that this Declaration is Recorded in the Official Records of the County. In the event that any referenced statute is subsequently amended or superseded, all such references shall thereupon mean and refer to the referenced statute as so amended, modified or superseded, so long as the amended statute continues to regulate or pertain to the same subject matter.

Dated: 9/20, 2002.

DECLARANT:

PINE FOREST TRUCKEE, LLC.  
a California Limited Liability Company

By: [Signature]  
Its: Co Managing Member

ALL-PURPOSE ACKNOWLEDGEMENT

045810

State of California

County of Contra Costa } ss.

On 9-20-02 before me, E. Stagner  
(DATE) (NOTARY)

personally appeared Robert K. Schwartz  
SIGNER(S)

personally known to me - OR -

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

E. Stagner  
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgement to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

INDIVIDUAL  
 CORPORATE OFFICER  
President  
TITLE(S)

PARTNER(S)  
 ATTORNEY-IN-FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER: \_\_\_\_\_

DESCRIPTION OF ATTACHED DOCUMENT

Pine Forest Dec of CC & R's  
TITLE OR TYPE OF DOCUMENT

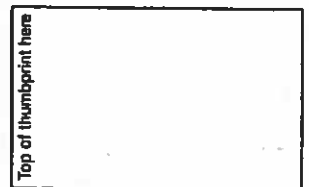
NUMBER OF PAGES

9-20-02  
DATE OF DOCUMENT

OTHER

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(IES)  
\_\_\_\_\_  
\_\_\_\_\_

RIGHT THUMBPRINT  
OF  
SIGNER



**EXHIBIT "A"**  
**Overall Development Including Annexable Property**

Lots 1 through 21, inclusive, 58 through 92, inclusive, 94 through 100, inclusive, Lots "A", "B", "D" and "E" and the "Remainder Parcel" as shown on the "Final Map No. 01-061, Pine Forest At Truckee Phase 1" recorded August 22, 2002, in Book 8 of Subdivisions, at Page 98, Nevada County Records.

**EXHIBIT "B"**  
**Phase 1 Property**

Lots 1 through 21, inclusive, 58 through 92, inclusive, 94 through 100, inclusive, and Lots "B", "D" and "E" as shown on the "Final Map No. 01-061, Pine Forest At Truckee Phase 1" recorded August 22, 2002 in Book 8 of Subdivisions, at Page 98, Nevada County Records.

**EXHIBIT "C"**  
**Phase 1 Common Area**

Lots "B", "D" and "E" as shown on the "Final Map No. 01-061, Pine Forest At Truckee Phase 1" recorded August 22, 2002 in Book 8 of Subdivisions, at Page 98, Nevada County Records.

Recording requested by:  
Placer Title Company

045810

~~033092~~

When recorded mail to:  
Plumas Bank  
c/o Placer Title Company  
11429 Donner Pass Road  
Truckee, CA 96161

Escrow #: 1502-5511lf  
Order #: 1502-5511

Space Above for Recorder's Use Only

**CONSENT OF LIENHOLDERS AND SUBORDINATION OF LIEN**

The undersigned Beneficiary under that certain Deed of Trust recorded July 16, 2002, as instrument No. 2002-0027634, of the Official Records of Nevada County, California, consents to all of the provisions contained in the Declaration of Covenants, Conditions and Restrictions for Pine Forest at Truckee executed by Pine Forest Truckee, LLC, A California Limited Liability Company, as Declarant, hereinafter referred to as the "Declaration", and agrees that the lien of the above referenced Deed of Trust shall be junior, subordinate and subject to the Declaration.

Dated: August 9, 2002

Plumas Bank

BY: Robert T. Herr  
Robert T. Herr, Executive Vice President

State of California            }  
County of Nevada            }ss.

On August 15, 2002, before me, Lori Fallow, the undersigned Notary Public, personally appeared Robert T. Herr personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESSED my hand and official seal.

Lori Fallow  
Notary Signature



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Handwritten text at the top right of the page, including a small sketch of a house or structure.



Main body of handwritten text, appearing to be a list or series of notes, spanning the middle of the page.



Lower section of handwritten text, continuing the list or notes from the middle section, extending towards the bottom of the page.

