



**Declaration of Covenants,  
Conditions and Restrictions of  
Walden Woods Homeowners  
Association, Inc.**

**Walden Woods Homeowners Association**  
P.O. Box 2746, Granite Bay, California, 95746-2746

**SECOND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
WALDEN WOODS HOMEOWNERS ASSOCIATION, INCORPORATED**

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**FIRST ~~SECOND~~ RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF WALDEN WOODS HOMEOWNERS ASSOCIATION, INCORPORATED**

Those certain declarations of protective restrictions listed in exhibit A (collectively, the "Original Declarations"), which were executed by the subdivision developer listed in article I, section 12, below (collectively, the 'Declarant') and recorded in the Official Records of Placer County, California, at the book and page numbers of said Official Records identified in items 3 through ~~12-13~~ of attached exhibit A, are hereby consolidated into this single Declaration covering all the Properties and are amended, consolidated and restated in their entirety to read as follows:

**RECITALS**

1. Declarant was the original owner of that certain real property ("Properties") located in the County of Placer, State of California, which is more particularly described in items 1 and 2 of attached exhibit A which is incorporated herein by reference.
2. Declarant conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declarations referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.
3. It was the further intention of the Declarant to sell and convey residential Lots improved by residences originally constructed by Declarant to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties as a "planned development" as that term is defined in section 1351 (k) of the California Civil Code. Finally, it was the intention of Declarant that the "Common Areas" and "Common Facilities" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.
4. On \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ percent of the Owners of Lots within the Properties voted by written ballot to consolidate and restate the Original Declarations, all in accordance with the procedures for amendment set forth in the Original Declarations. It was the intention of said Owners to replace the Original Declarations, in their entirety, with the recordation of this Declaration. The Owners' action to amend and restate the

Original Declarations as set forth herein and the fact that the requisite percentage of affirmative votes required in the Original Declarations was achieved, is attested by the execution of this First Restated Declaration by duly authorized officers of the Association, as required by California Civil Code section 1355(a). As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

## **ARTICLE I**

### **Definitions**

Section 1. "Architectural Committee" means the committee created in accordance with article V of this Declaration.

Section 2. "Articles" means the Articles of Incorporation of Walden Woods Homeowners Association, Incorporated, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 3. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of article IV of this Declaration.

Section 4. "Association" means Walden Woods Homeowners Association, Incorporated, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an "associations" as defined in California Civil Code section 1 351 (a),

Section 5. "Association Rules" means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to article III, section 7 of this Declaration, as the same may be in effect from time to time.

Section 6. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 7. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 8. "Common Area" means all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area owned by the Association at the time of the recordation of this Declaration is described in exhibit A, attached hereto. Unless the context clearly indicates a contrary intent, any reference herein to the "Common Area" shall also include any Common Facilities located thereon.

Section 9. "Common Expense" means any use of Common Funds authorized by article IV hereof and article IX of the Bylaws and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area or Common Facilities that the Association is obligated to maintain or replace, and for nonpayment of any Assessments, and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

Section 10. "Common Facilities" means the trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, buildings, structures

and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

Section 11. "County" means the County of Placer, State of California, and its various departments, divisions, employees and representatives. If any portion of the Properties becomes a portion of an incorporated city, then the term "County" shall be deemed to include the city in which that portion of the Properties is located.

Section 12. "Declarant" means the original developer of the Properties, namely Louie J. Costanzo.

Section 13. "Declaration" means this instrument, as it may be amended from time to time. The "Original Declarations" mean and refer to the documents referenced in exhibit A, together with all amendments and annexations thereto, adopted prior to the adoption of this Declaration.

Section 14. "Governing Documents" is a collective term that means and refers to this Declaration and to the Articles, the Bylaws, and the Association Rules.

Section 15. "Improvement" includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, decks, driveways, fences, gazebos, swimming pools, landscaping, landscape structures, retaining walls, skylights, solar heating equipment, spas, antennas, utility lines, utility storage sheds, or any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects, which are restricted to the interior of any Residence.

Section 16. "Lot" means any parcel of real property designated by a number on the Subdivision Map of the Properties, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other improvements constructed or to be constructed on a Lot.

Section 17. "Member" means every person or entity ~~who~~that holds a membership in the Association and whose rights as a Member are not suspended pursuant to article XII, section 6 hereof.

Section 18. "Mortgage" means any security device encumbering all or any portion of the Properties, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

Section 19. "Owner" means any person, firm, corporation or other entity ~~which~~that owns a fee simple interest in any Lot. The term "Owner" shall include, except where the context otherwise requires, the family, guests, tenants and invitees of an Owner.

Section 20. "Owner of Record" and "Member of the Association" include an Owner and mean any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

Section 21. "Properties" means all parcels of real property (Common Area and Lots) as described in exhibit "A," attached hereto, and in recital 1 hereof, together with all

buildings, structures, utilities, Common Facilities, and other improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

Section 22. "Regular Assessment" means an Assessment levied on an Owner and his or her Lot in accordance with article IV, section 2 hereof.

Section 23. "Residence" means a private, single family dwelling constructed or to be constructed on a Lot.

Section 24. "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 25. "Special Assessment" means an Assessment levied on an Owner and his or her Lot in accordance with article IV, section 3 hereof.

Section 26. "Special Individual Assessment" means an Assessment made against an Owner and his or her Lot in accordance with article IV, section 4 hereof.

Section 27. "Subdivision Map" means the map for the Properties described in exhibit A of this Declaration.

Section 28. "Coverage" means all land covered by primary/main buildings, garages and carports, accessory buildings, covered decks and other enclosed and covered areas, but not paved areas such as driveways, exterior covered walkways, uncovered patios, and uncovered parking areas or roads.

## ARTICLE II

### Property Rights and Obligations of Owners

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

(a) The right of the Association to adopt Association Rules as provided in article III, section 7 hereof, regulating the use and enjoyment of the Common Area for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or Tenant, to temporarily suspend the voting rights of the Owner in violation, subject to compliance with the due process requirements of article XII, section 6 hereof.

(b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and common facilities and in aid thereof to mortgage said property; provided, however, that the rights of any such Mortgagee in said properties shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of article IV, section 3 hereof.

(c) 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 the 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. Said instrument may be executed in counterparts so long as each counterpart is in recordable form.

(d) The right of the Association and Owners (or their representatives) of adjoining Lots of entry upon and access to slopes and drainage ways located upon a Lot, when such access is essential for the maintenance or stabilization of slopes or drainage, or both, on such adjoining Lots, provided requests for entry are made in advance and that entry is at a time convenient to the Owner whose Lot is being entered upon. In case of emergency the right of entry shall be immediate.

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

occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents.

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

(a) **Delegation of Use and Leasing of Residences.** Any Owner may delegate the Owner's rights to use and enjoy the Common Area and Common Facilities to members of the Owner's family or to the Owner's tenants, lessees or contract purchasers who reside in the Owner's Residence, provided that any rental or lease may only be to a single family for Single Family Residential Use.

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

Any fine or penalty levied pursuant to this section 3 shall be considered a Special Individual Assessment as defined in article IV, section 4, below. If a Special Individual Assessment is imposed as a result of the conduct of a renter or lessee, the renter or lessee agrees to be personally obligated for the payment of such assessments in the event the Owner-lessor fails to pay the assessments prior to the delinquency date. This provision, however, shall not be construed to release the Owner from any obligation, including the obligation to pay any duly imposed Special Individual Assessments, for which such Owner would otherwise be responsible. Any lessee charged with a violation of the Governing Documents is entitled to the same notice and hearing rights to which the Owner is entitled as provided in subparagraph (b) below. Any Owner who shall lease his or her Residence shall be responsible for assuring compliance by the lessee with the Governing Documents.

(b) **Due Process Requirements for Disciplinary Action.** Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Properties or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) The Owner has received written notice from the Board, the Association's authorized committee of the Board detailing the nature of the lessee's or tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner; and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with article XII, section 6 hereof.

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

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

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

(c) **Notification Regarding Governing Documents.**

(i) As more particularly provided in the 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 current copy of the Governing Documents; (B) the Association's most current financial statement; and (C) a true statement in writing from the Association ("delinquency statement") as to the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold.

(ii) The Association shall, within 10 days of the mailing or delivery of a request for the information described in subparagraph (c)(i), above, provide the Owner with a copy of the current Governing Documents, together with the delinquency statement referred to in the immediately preceding paragraph. The Association shall be entitled to impose a fee for providing the Governing Documents and delinquency statement equal to (but not more than) the reasonable cost of preparing and reproducing the requested materials.

(d) **Payment of Assessments and Compliance With Rules.** Each owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all rules and regulations set forth in any Governing Document.

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

(f) **Joint Ownership of Lots.** In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall

be joint and several. Without limiting the foregoing, this subparagraph (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

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

(h) **Termination of Obligations.** Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any Assessments levied with respect to such Lot which become due after the date of recording of the deed evidencing said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

## ARTICLE III

### Homeowners Association

Section 1. **Association Membership.** Every Owner of a Lot shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Lot owned and the membership shall be appurtenant to such Lot. Ownership of a Lot or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership in all Lots in the Properties ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed in lieu thereof.

Section 2. **One Class of Membership.** The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

Section 3. **Voting Rights of Members.** Each Member of the Association shall be entitled to one vote for each Lot owned by said Member. When more than one person holds an interest in any Lot, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Lot. Voting rights may be temporarily suspended under those circumstances described in article XII, section 6 hereof.

Section 4. **Assessments.** The Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within the Properties and to enforce payment of such Assessments in accordance with article IV of this Declaration. Any Assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

Section 5. **Transfer of Memberships.** Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Lot. In the case of an encumbrance of such Lot, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use pursuant to article II, section 3 hereof do not thereby become Members, although the tenant and Members of the tenant's family shall, at all times, be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 6. **Powers and Authority of the Association.**

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

#### Section 7. **Association Rules.**

(a) **Rule-Making Power.** The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners of Lots within the Properties. Such rules may concern (i) matters pertaining to the maintenance, repair, management and use of the Common Area and Common Facilities by Owners, their tenants, guests and invitees, or any other person(s) who have rights of use and enjoyment of such Common Area and Common Facilities; (ii) architectural control and the rules of the Architectural Committee under article V, section 5 hereof; (iii) the conduct of disciplinary proceedings in accordance with article XII, section 6 hereof; and (iv) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

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

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

(c) **Adoption and Amendment of Rules.** Association Rules may be adopted or amended from time to time by majority vote of the Board, provided, however, that no Association Rules or amendments thereto shall be adopted by the Board until at least 30 days after the proposed rule or rule amendment has been published in the Association newsletter, if any, or otherwise communicated to the Owners in writing. 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 Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail.

**Section 8. Breach of Rules or Restrictions.**

Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in article XII hereof.

**Section 9. Limitation on Liability of 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 Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

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

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

## ARTICLE IV

### Assessments

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

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

(b) **Extent of Owner's Personal Obligation for Assessments.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the Person who was the Owner of the Lot at the time the Assessment was levied. Each Owner who acquires title to a Lot (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

(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 article IV, section 9(b) hereof.

(d) **No Avoidance of Assessment Obligations.** No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Lot or any other portion of the Properties.

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

(a) **Preparation of Annual Budget: Establishment of Regular Assessments.** Not less than 45 nor more than 60 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Association Members a budget satisfying the requirements of article ~~XIX~~, section 5 of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase Regular Assessments for

that fiscal year unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with the Bylaws.

(b) **Establishment of Regular Assessment by Board or Membership Approval Requirements.** The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in subparagraph (a) above, and subparagraph (c) below, the Board of Directors may not impose a Regular Assessment that is more than 20 percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association (see article IV, section 7, below).

(c) **Assessments to Address Emergency Situations.** The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. For purposes of this subparagraph (c), an emergency situation is any of the following:

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

(ii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to subparagraph (a) above, provided that, prior to the imposition or collection of an assessment under this paragraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the L4embers together with the notice of assessment.

(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 the Properties owned by the assessed Owner to the total number of Lots subject to Assessments so that each Lot bears an equal share of the total Regular Assessment.

(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 (which may be maintained in the form of a computer printout) shall show for each Lot the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by article II, section 4(c) hereof shall be conclusive upon the Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(f) **Mailing Notice of Assessment.** The Board of Directors shall mail to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than 45 days prior to the beginning of the next fiscal year.

(g) **Failure to Make Estimate.** If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to article IV, section 3(a)(i) for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

(h) **Payment of Assessment.** The total Regular Assessment levied against each Owner and his or her Lot shall be all due and payable to the Association on or before January 1st of each year.

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

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

(i) **Regular Assessment Insufficient in Amount.** If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by article IV, section 2(a), 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. The Board's assessment authority pursuant to this section 3 subparagraph (a)(i) shall be subject to membership approval requirements under the circumstances described in article IV, section 2(a).

(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, replacement and 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 hereof.

(b) **Special Assessments Requiring Membership Approval.** No Special Assessments described in (i) section 3(a) hereof, which in the aggregate exceed 5 percent of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied; or (ii) in the last sentence of article IV, section 2(a), shall be made without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in this article IV, section 2(c).

(c) **Allocation and Payment of Special Assessments.** When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to article IV, section 2(d), above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in this section 3(a)(i) 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 this section 3(a)(ii) shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable in full to the Association within 30 days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

#### Section 4. **Special Individual Assessment.**

(a) **Circumstances Giving Rise to Special Individual Assessments.** In addition to the Special Assessments levied against all Owners in accordance with section 3, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) and (ii) below, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this section 4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to article XII, section 6 hereof, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) **Damage to Common Area or Common Facilities.** In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of 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 accomplish (A) the payment of delinquent Assessments, or (B) to otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(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 this section 4(a), such Special Individual Assessment shall be recorded on the Association's Assessment roll, notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment.

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

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

(a) Any portion of the Properties dedicated and accepted by a local public authority;

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

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

**Section 8. 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 which has offices located within the State of California. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board, and such officers or agents of the Association as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code section 1365.5 and article ~~XIX~~XI, section 2 of the Bylaws.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

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

funded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to this article IV, section 3(a)(i) shall be accounted for together with the receipts and disbursements of Regular Assessments; and separate liability accounts shall be maintained for each capital improvement for which reserve funds for replacement are allocated.

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

#### Section 9. **Collection of Assessments; Enforcement of Liens.**

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

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

(i) **Creation and Imposition of a Lien for Delinquent Assessments.** As more particularly provided in California Civil Code section 1367 or comparable superseding 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 causes to be recorded in the Office of the County Recorder of the County, a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this article IV and 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) the name and address of the trustee authorized by the Association to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

**(ii) Remedies Available to the Association to Collect Assessments.**

The Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Lot or accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by judicial foreclosure or by 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 9 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.

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

The Association or its assignee shall mail a copy of the Notice of Default to the Owner or reputed Owner of the subject Lot at the Owner's last address appearing on the books or records of the Association, and to any person to whom the giving of a notice of default is required by applicable provisions of California Civil Code section 2924b. Following receipt of the Association's notice, the Owner and junior encumbrances shall have reinstatement rights identical to those provided by law for trustors or mortgagors, which rights must be exercised during the period specified by law for reinstatement of obligations secured by deeds of trust.

After the lapse of such time as may then be required by law following the recording of a Notice of Default under a deed of trust, the Association or its assignee may give Notice of Sale in the manner and for the period required in the

case of deeds of trust. After the giving of the Notice of Sale, the Association, or its assignee, without demand on the Owner, may sell the Lot at the time and place fixed in the Notice of Sale, at public auction to the highest bidder. At the Trustee's sale, the Trustee shall have the right to require every bidder to show evidence of his or her ability to deposit with the Trustee the full amount of his or her final bid in cash or a bank or savings and loan certified check and to require the last and highest bidder to deposit the full amount of his or her final bid in cash or a bank or savings and loan association certified check. The Association or its assignee may postpone the noticed sale by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement.

The Association shall deliver to the purchaser at such foreclosure sale the Association's deed conveying the Lot so sold, but without covenant or warranty, express or implied. The recitals in such deeds shall be conclusive proof of the truthfulness thereof. Any person, including the Association, may bid on the subject property and purchase the same at such sale.

After deducting from the sale proceeds all costs, fees, and expenses incurred by the Association, the net proceeds shall be applied to the payment of all sums secured by the Association's lien at the time of sale, including interest, costs and attorneys' fees, and the remainder, if any, shall be disbursed to the person or persons legally entitled thereto.

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

**Section 10. Transfer of Lot by Sale or Foreclosure.** Except as otherwise provided herein, the sale or transfer of any Lot shall not affect any Assessment lien duly recorded with respect to such Lot prior to the sale or transfer. However, the sale or transfer of any Lot pursuant to the foreclosure of any first Mortgage or other mortgage or lien recorded prior to the Association's Assessment lien (collectively "prior encumbrance") shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale or otherwise shall relieve the new Owner of such Lot, whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party from liability for any Assessments thereafter becoming due or from the lien thereof.

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

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

Section 11. **Priorities.** When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens or encumbrances recorded subsequent thereto, except (a) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgages or deeds of trust) made in good faith and for value, provided that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or deed of trust, or other prior encumbrance.

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

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

## ARTICLE V

### Architectural Committee

Section 1. Responsibilities of the Architectural Committee. The Architectural Committee appointed by the Board of Directors assumes the responsibility for:

- (a) Review for compliance architectural improvements requested by Homeowners.
- (b) Protecting and maintaining the architectural harmony and integrity of Walden Woods.
- (c) Advising the Board of Directors on proposed policy revisions and upgrades when appropriate.
- (d) To implement policies and administrative processes, approved by the Board of Directors that facilitate Homeowners understanding and compliance with the above objectives.
- (e) Maintain a policy Manual that is available to all Homeowners.

**Section 42. Improvements in General; Establishment of Architectural Committee.**

No "improvement" (as defined in article I, section 15) of any kind shall be commenced, erected or maintained within the properties, nor shall any exterior addition to or change or alteration be made in or to any Residence until the plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials, and location of the same shall have been submitted to and approved in writing by the Association's Architectural Committee as to quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, setback lines, topography and finish grade elevation.

**Section 23. Appointment of Architectural Committee.** The Board of Directors may appoint an Architectural Committee composed of not less than three nor more than five members. Committee members appointed shall be from the membership of the Association. Members of the Committee shall serve for a term of one year. In the event of the death or resignation of any member of the Architectural Committee, a successor shall be appointed by the Board. Neither the members of the committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto.

**Section 34. Submission of Plans; Action by Board or Committee.** Plans and specifications for the proposed Improvement shall be submitted to the Architectural Committee by personal delivery or certified mail to the secretary of the Association or the chairman of the Architectural Committee. If within 30 days of written acknowledgement of receipt of said plans and specifications, the Committee fails to approve or disapprove such improvements, the request shall be deemed approved. In the event the Committee fails to approve or disapprove such design and location within 45 days after said plans and specifications have been submitted to it, the request shall be deemed denied. Under such circumstances, the written request may be resubmitted. Approval of the Committee can contain conditions or requests for modification of particular aspects of the Owner's plan and specifications.

Section **45. Variances.** The Architectural Committee shall be entitled to allow reasonable variances with respect to this article V or any restrictions specified in article VI in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided that the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Committee must conduct a hearing on the proposed variance after giving at least 10 days' prior written notice to the Board and to all Owners of Residences within 100 feet of the property for which the variance applies. The Owners receiving notice of the proposed variance shall have 30 days in which to submit to the Board or Committee written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the 30-day comment period has expired.

(b) The Committee must make a good faith determination that (i) the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Properties or from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement hereunder that it is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Residence, Common Area or Owner within the Properties.

Section **56. Estoppel Certificate.** Within 30 days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Committee shall execute an estoppel certificate, executed by any two of its members, certifying (with respect to any Residence owned by the applicant Owner) that as of the date thereof, either (i) all Improvements made and other work completed by said Owner with respect to the Residence comply with this Declaration; or (ii) that 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 bases of such noncompliance. Any purchaser from the Owner, or anyone deriving any interest in said Residence through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

## ARTICLE VI

### Use of Properties and Restrictions

In addition to the restrictions established by law, the following restrictions are hereby imposed upon the use of Lots, Common Areas and other parcels within the Properties. The provisions contained in section 2 of this article VI apply exclusively to Walden Woods Unit No. 5, as identified in Item 7 of exhibit A to this Declaration.

#### Section 1. Use Restrictions

(a) No work on any improvement identified in Article I, Section 15, shall be started upon any lot unless two copies of plans have been submitted to and approved in writing by the Board of Directors of the Association or by an architectural committee, appointed by the Board, which shall review said plans for compliance with external architectural design harmonious with the development.

(a)(b) No dwelling shall be constructed having less than 1,800 square feet of living area.

(b)(c) No dwelling structure shall be constructed with a corrugated or standing seam metal roof, except a utility shed up to 100 square feet. or a roof with reflective surface. Bare metal roofs are prohibited on any structure.

(c)(d) No removal of oak trees shall be permitted outside the perimeter of the lines of the proposed dwelling site except for installation of utilities, unless permission is granted in writing from the architectural committee or the Board of Directors of the Association. Either of these bodies must answer in writing within thirty days of the date of the request or it will automatically be assumed that permission has been granted. Furthermore, no land clearing other than weeds and debris will be allowed without prior written permission.

(d)(e) No structures shall be permitted in the Common Area without the prior written approval of the Board of Directors of the Association.

(e)(f) No Lots in this subdivision shall be sub-divided, nor shall there be a boundary line adjustment, modification or granting of easements for the purpose of sale, lease or financing except upon the prior written approval of the Board of Directors of the Association.

(f)(g) No form of commercial, manufacturing, or storage business enterprise or activity shall be conducted or maintained on any lot in this subdivision. No truck larger than one ton with commercial advertising shall be parked on a regular basis in the subdivision.

(g)(h) No Lots in this subdivision shall be used for the keeping or breeding of any animals of any kind for commercial purposes. No other animals shall be kept

in numbers or under conditions objectionable to other residents in the subdivision.

~~(h)~~(i) No noxious or offensive, hazardous or dangerous activity shall be conducted upon any Lot or the Common Area, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to the other owners in the enjoyment of their residence lots or the Common Area.

~~(h)~~(i) No building or portable type buildings or pools shall be erected upon any lot unless two copies of plans therefor have been submitted to and approved in writing by the Board of Directors of the Association or by an architectural committee, appointed by the Board, which shall review said plans for compliance with these restrictions for external architectural design harmonious with the development. Should the Board or architectural committee fail to approve or disapprove submitted plans within thirty days of the date of their submission, approval under this section shall not be required.

~~(h)~~(k) Each residence lot shall be used as a residence for a single family and for no other purpose.

~~(k)~~(l) Setbacks

Walden Woods Units 1,2 & 3 - Each building envelope shall be sited as shown on the site plan for this subdivision, which is on file at the Placer County Planning Department. Insofar as is practicable, all dwellings shall be at least fifty (50) feet apart with minimum setbacks of twenty (20) feet front and ten (10) feet sides and rear.

Walden Woods Unit 5 – Each building envelope shall be sited as shown on the site plan for this subdivision, which is on file at the Placer County Planning Department. The minimum setbacks are 20 feet in the front, 10 feet in the rear, 5 feet on one side with a minimum of 15 feet total for both sides. For corner lots, a 10 feet minimum on the street side. Garages or carports facing a side street require a minimum of 20 feet to the side street.

The Architectural Committee shall have discretion to grant variances from these setback requirements in individual cases, where strict compliance would result in excessive tree removal, excavation, or hardship to the lot owner.

~~(l)~~(m) Maximum building foundation (footprint) square footage of detached units to be 3,000 square feet as required by Placer County Planning Commission. Coverage as defined in Article I, Section 28 shall be as follows:

<u>Lot Size in Acres</u>	<u>Maximum Coverage in Square Feet</u>
<u>0.50 or less</u>	<u>3500</u>
<u>0.60</u>	<u>3600</u>
<u>0.70</u>	<u>3700</u>
<u>0.80</u>	<u>3800</u>
<u>0.90</u>	<u>3900</u>
<u>1.00 or larger</u>	<u>4000</u>

For lots between each size listed, add 10 square feet per one hundredth of an acre (i.e., a lots size of .55 acres can have a maximum coverage of 3550 square feet).

Any Lot containing Coverage which does not conform to the Maximum Coverage restrictions set forth herein shall be exempt from said restrictions only as to Coverage in existence as of the date of recordation of this Declaration. A variance from the Architectural Committee shall be required for any new construction on any Lot containing such nonconforming Coverage which in any way changes, alters or affects Coverage existing as of the date of recordation of this Declaration. The failure or refusal of any Owner of a Lot containing nonconforming Coverage to obtain such a variance shall constitute a violation of these CC&Rs.

(n) No home shall exceed 2 stories in height. No detached secondary structures shall exceed 1 story in height.

(o) One utility shed of 100 square feet maximum, located on the side or rear of lot, is exempt from the lot setback and coverage requirements subject to adjacent Owner and Architectural Committee approval.

~~(m)~~(p) Any maintenance of community landscaping, open space, private roads, parking areas, storm drainage, etc., shall be the responsibility of the Walden Woods Property Owners Association.

~~(n)~~(q) Horses shall not be maintained or boarded on individual lots, nor will they be maintained or boarded in the Common Area.

~~(o)~~(r) No fences shall be erected upon any Lot unless the plans therefor have been submitted to and approved in writing by the Board of Directors of the Association or by an Architectural Committee, appointed by the Board, which shall review said plans for compliance with external architectural design harmonious with the development.

~~(p)~~(s) Before any exterior paint can be applied to any structure the color must first be approved in writing by the Board of Directors of the Association or by an Architectural Committee appointed by the Board.

~~(q)~~No exterior antennas of any kind.

~~(r)~~(t) No fire arms, air rifles, slingshots, bows and arrows or other weapons shall be used within the Walden Woods Common Area for either hunting or practice purposes except as indicated below:

- (i) The Board of Directors may grant members permission to use weapons as indicated above for the purpose of controlling rodents or predatory animals or fowl. Such use shall be subject to the State of California and Placer County regulations.

~~(s)~~(u) No ~~motorized mechanized~~ vehicles or motorized equipment of any kind are to be allowed in the Common Area, except in performance of maintenance duties, at the direction of the Board of Directors.

~~(t)~~(v) Cars, motorbikes, scooters and like vehicles must be operated within the regulations of the county laws. No excessive noise will be tolerated.

Written permission must be obtained from the owner of the vacant lots before riding on said lots.

~~(u)~~(w) There shall be no rebuilding of automobiles, motorcycles, or other vehicles in the driveway or otherwise in view from the street or in the view of neighboring homes. No wrecked, inoperable, abandoned or dismantled vehicles shall be kept in view from the street or from neighboring homes.

~~(x)~~ No Owner shall store boats, trailers, recreational vehicles or campers/camper shells except on driveway or side/rear of house.

~~(y)~~ Each owner shall subscribe to weekly refuse collection with a refuse collector approved by Placer County.

Section 2. **Provisions Applicable Only To Walden Woods Unit No. 5.** The following provisions of this section shall apply only to Walden Woods Unit No. 5, as more particularly described at Item 7 of exhibit A to this Declaration. To the extent that the provisions contained herein conflict with the other sections of this Article VI, the provisions contained in this section ~~38~~ shall control:

~~(a)~~Each Owner shall subscribe to weekly refuse collection with a refuse collector approved by Placer County.

~~(b)~~(a) No Owner shall store boats, trailers, recreational vehicles, campers or inoperable vehicles within the Project except to the side or rear of a residence, and provided that the vehicle is screened from street view.

~~(e)~~(b) Pursuant to Conditions of Approval for the Project adopted by Placer County on April 9, 1987, Declarant has entered into an agreement with Placer County whereby a County Service Area (CSA) Zone of Benefit will be established to provide for road maintenance, storm drain maintenance, and street lighting within the Project.

~~(d)~~(c) The Owners of Lots 2, 3, 14 and 15 of Walden Woods Unit No. 5 shall maintain and keep clear the drainage channels which encumber their Lots in a manner which will reduce mosquito breeding. The CSA shall have the right to enter upon these Lots to perform clearing and maintenance functions should the Lot Owners fail to keep clear these channels.

Section 3. **VariANCES.** Upon application by any Owner, the Architectural Committee shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this article VI, 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 Committee shall follow the procedures set forth in article V, section 5 for the granting of architectural variances.

Section 4. **Enforcement of Property Use Restrictions.** The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under article III, section 6 hereof, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her appeal rights.

## ARTICLE VII

### Exterior Maintenance Responsibilities

Section 1. **Objective.** It is the objective of this article to require the proper and timely maintenance of all Lots and Common Areas. Exterior appearance should be reasonably maintained as to their design and intended use as well as to maintain or increase the overall property values in the development.

Section ~~4~~**2. Common Area.** The Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association.

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

- (a) The replacement of trees or other vegetation and the planting of trees, shrubs and ground cover upon any portion of Common Area.
- (b) The placement and maintenance of such signs as the Association may deem necessary for the identification of the development, the regulation and use of Common Area and Common Facilities and for the health, welfare and safety of Owners, tenants and guests. Any such signs to be placed within the street area shall be subject to county approval. The standards of landscaping, the selection and replacement of plant materials and the standards for exterior structural maintenance by the Association hereunder shall be determined by the Board of Directors.
- (c) **Common Area Committee.** The Board of Directors may authorize the creation of a Common Area Committee that will advise the Board on policy, maintenance and upgrade issues. The Chairperson of the Committee will report to the Board and have a one-year term that expires on the date of the Annual Homeowners Meeting.
- (d) **Common Area Maintenance Plan.** The Association will develop, implement and fund a yearly Common Area Maintenance Plan that will insure the Common Area is maintained for the use and safety of all Owners. The Plan will cover the following areas:

<u>Fire Roads</u>	<u>Signs</u>
<u>Entrances</u>	<u>Creeks</u>
<u>Trails</u>	<u>Fire Fuel Abatement</u>
<u>Posion Oak Abatement</u>	<u>Access Easements</u>
<u>Fences</u>	

Section **23. Owner Maintenance Responsibilities.** Each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot. The exterior of all residences and lots will not materially detract from the overall appearance of the development nor diminish the enjoyment, appearance or value of adjacent Owner's lots.

Section **34. Recovery of Costs of Certain Repairs and Maintenance.** In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with article IV, section 4 hereof.

## **ARTICLE VIII**

### **Easements**

Section 1. **Easements.** Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Properties and each Lot and Common Area as shown on the Subdivision Map.

Section 2. **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 IX

### Insurance

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

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

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

Such policy or the endorsement made a part thereof shall, to the extent available, provide that the insurer issuing the policy agrees to abide by the decision of the Association made in accordance with the provisions of article XI of this Declaration as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Facilities. The form, content and term of the policy and its endorsements shall be satisfactory to all institutional First Mortgagees. If more than one institutional first mortgagee has a loan of record against a Lot within the Properties, the policy and endorsements shall meet the maximum standards of said institutional First Mortgagees.

Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this section shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall provide amounts or coverage as shall be determined by the Board and shall name as insured the Association, all Owners and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in section 5 below.

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

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

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

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

## ARTICLE X

### Damage or Destruction

Section 1. **Common Facilities; Bids and Determination of Available Insurance Proceeds.** In the event any Common Facilities are ever damaged or destroyed, then, and in such event, as soon as practicable thereafter the Board of Directors shall (a) obtain bids from at least two 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 2. **Common Facilities; Sufficient Insurance Proceeds.** Subject to the provisions of this article XII, section 1 hereof, 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 to substantially the same condition in which they existed prior to the loss.

Section 3. **Common Facilities; Insurance Proceeds Insufficient in an Amount Exceeding \$5,000.** In the event that any Common Facility is totally or substantially damaged or destroyed or, if, in the event of damage to or destruction of only a portion of the Common Facilities, the insurance proceeds available to the Association are insufficient in an amount exceeding \$5,000 to cover the estimated cost of repair, reconstruction and restoration, then the Owners entitled to vote 75 percent of the voting power of the membership of the Association shall determine whether (a) to repair, reconstruct and restore the damaged or destroyed Common Facilities, and specially assess all Owners for such additional funds as may be needed for such purpose, or (b) not to repair, reconstruct or restore the damaged or destroyed Common Facilities but rather to utilize the insurance proceeds available for such reconstruction, together with any other sums otherwise available to the Association for such purpose, to demolish and remove the damaged or destroyed Improvements from the Common Area and to level and landscape the sites thereof and apply any balance of such proceeds and/or funds as the Members holding such voting power and their First Mortgagees may determine.

## ARTICLE XI

### Condemnation

Section 1. **Association as Trustee for Owner.** If all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected Lots or Parcels, shall be payable to the Association as trustee for all Owners and Mortgagees according to the loss or damages to their respective interest in the Common Area. The Association, acting through its Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation, settlement and litigation of the issues with respect to the taking and compensation affecting the Common Area. Each Owner hereby designates and appoints the Association as his or her attorney-in-fact for such purposes.

## ARTICLE XII

### Breach and Default

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

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

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

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

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

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

(a) **Rights Generally.** In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the

pursuit of legal action, or suspension of the Owner's voting rights as a Member of the Association; provided that the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this section 6. The initiation of legal action shall be subject to section 8, below.

The decision of whether it is appropriate or necessary for the Association to initiate 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 as may exist by virtue of the California Civil Code section 1354 or otherwise by law.

(b) **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 them 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.

(c) **Limitations of Disciplinary Rights.**

(i) **Loss of Rights: Forfeitures.** The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents 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 so long as the Association's actions satisfy the due process requirements of subparagraph (e) below.

(d) **Hearings.** No penalty or temporary suspension of rights shall be imposed pursuant to this article unless the Owner alleged to be in violation is given at least 15 days prior notice of the proposed penalty or temporary suspension and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violations at a hearing conducted at least 5 days before the effective date of the proposed disciplinary action.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes (i) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (ii) a traffic or fire hazard; (iii) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (iv) 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), the Board of Directors or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five days following the date when the fine is levied. The hearing shall be held no more than 15 days following the date of the disciplinary action or 15 days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

(e) **Notices.** Any notice required by this article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided 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 shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings.

#### Section 7. **Court Actions; Arbitration.**

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

(b) If the Association and an owner are unsuccessful at resolving any failure or alleged failure or by the owner's tenant to comply with any provision of Article II, section 3 ("Delegation of Use"), Article V ("Architectural Control"), or Article VII ("Use of Properties and Restrictions"), the dispute shall be submitted to, and conclusively determined by, binding arbitration in accordance with this subparagraph (c), provided, however, that the provisions of this subparagraph shall not preclude any party from seeking injunctive or other provisional or equitable relief in order to preserve the status quo of the parties pending resolution of the dispute, and the filing of an action seeking injunctive or other provisional relief shall not be construed as a waiver of that party's arbitration rights.

The arbitrators shall be selected and the arbitration conducted in accordance with the Commercial Arbitration rules of the American Arbitration Association.

The parties shall submit to arbitration all written, documentary, or other evidence and oral testimony as is reasonably necessary for a proper resolution of the dispute. Copies of all written submittals shall be provided to the arbitrators and both parties. The

arbitrators shall conduct such hearings as (s)he/they consider necessary, may require the submission of briefs or points and authorities and may submit written questions to the parties. The parties shall respond to such questions in writing. If a question is addressed to less than all of the parties, copies of the question and the answer thereto shall be served on the other parties.

At the hearing, any relevant evidence may be presented by any party and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence shall be admitted or excluded in the sole discretion of the arbitrator(s).

Except as provided above, the arbitration procedures set forth in the California arbitration act statutes (CCP § § 1 282-1 294.2) shall apply to the arbitration.

The arbitration shall proceed with due dispatch and a decision shall be rendered within 180 days after appointment of the arbitrator(s). The arbitrator(s)' decision shall be in writing and in a form sufficient for entry of a judgment in any court of competent jurisdiction and in a form sufficient for entry of a judgment in a court of competent jurisdiction in the state of California. Any decision of the arbitrators shall be subject to the limitations set forth in the immediately succeeding paragraph.

The arbitrator(s)' decision shall pertain, and shall be limited to, the granting of damages not to exceed any party's actual out-of-pocket expenses and the costs of undertaking any repairs, maintenance or reconstruction relating to the dispute and the award of any injunction or other equitable relief. In no event shall the arbitrator(s)' award include any component for punitive or exemplary damages. Costs of the arbitration proceeding shall be borne as determined by the arbitrator(s).

## ARTICLE XIII

### Notices

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

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

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

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

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

**ARTICLE XIV**

**No Public Rights in the Properties**

Section 1. Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Properties to the general public or for any public use or purpose whatsoever.

## ARTICLE XV

### Amendment of Declaration

Section 1. **Amendment in General.** This Declaration may be amended or revoked in any respect by the vote or assent by written ballot of the holders of not less than 51 percent of all Owners. Notwithstanding the foregoing, the percentage of the Owners 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.

With respect to any vote hereunder the Association shall be entitled to accept the vote of any Owner of Record of a Lot as the vote of all Owners of Record of such Lot unless the Association receives more than one vote from said co-Owners, in which case the vote of a majority of the co-owners shall bind all.

Section 2. **Effective Date of Amendment.** The amendment will be effective upon the recording in the Office of the Recorder of Placer County a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of section 1, above, have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment. If the consent or approval of any governmental authority, Mortgagee or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

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

## ARTICLE XVI

### General Provisions

Section 1. **Term.** The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of 60 years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of 10 years each unless, within 6 months prior to the expiration of the initial 60-year term or any such 10-year extension period, a recordable written instrument, approved by 51 percent of all Owners terminating the effectiveness of this Declaration shall be filed for recording in the Office of the County Recorder of Placer County, California.

Section 2. **Construction of Declaration.**

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

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

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

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

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Walden Woods Homeowners Assoc., Inc.

By \_\_\_\_\_  
(President)

By \_\_\_\_\_  
(Secretary)

**EXHIBIT A**

**~~FIRST~~ ~~SECOND~~ RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF WALDEN WOODS HOMEOWNERS ASSOCIATION**

1. That subdivision map entitled "Walden Woods Unit No. 1," recorded in the office of the Placer County Recorder on June 19, 1975 in book K of Maps at page 45, et seq.
2. That subdivision map entitled "Walden Woods Unit No. 2 & 3" recorded in the office of the Placer County Recorder on May 5, 1977 in book L of Maps at page 4, et seq.
3. The Declaration of Covenants, Conditions and Restrictions, Walden Woods Unit No. 1, recorded in the office of the Placer County Recorder on April 13, 1976 in volume 1717 at page 50, et seq.
4. The Amendment to the Declaration of Covenants, Conditions and Restrictions, recorded in the office of the Placer County Recorder an November 12, 1976 in volume 1780 at page 356, et seq.
5. The Declaration of Annexation of Unit Nos. 2 and 3, recorded in the office of the Placer County Recorder on April 4, 1977 in volume 1825 at page 154.
6. The Declaration of Amendment notarized on April 4, 1977, and recorded in the office of the Placer County Recorder in volume 1825 at page 189.
7. The Declaration of Amendment of Covenants, Conditions and Restrictions, recorded in the office of the Placer County Recorder on September 28, 1977 in volume 1890 at page 487, et seq.
8. The Amendments to the Declaration of Covenants, Conditions and Restrictions, Walden Woods Unit Nos. 1, 2 and 3, recorded in the office of the Placer County Recorder on June 10, 1980 in volume 2265 at page 52, et seq.
9. The Declaration of Amendment of Covenants, Conditions and Restrictions dated September 15, 1984, and recorded in the office of the Placer County Recorder in volume 2736 at page 37, et seq.
10. The Authorization and Ratification of Stipulation for Entry of Judgment and Declaration of Amendment of Covenants, Conditions and Restrictions, Walden Woods, recorded in the office of the Placer County Recorder on September 25, 1984 .in volume 2736 at page 44, et seq.
11. The Declaration of Amendment of Covenants, Conditions and Restrictions, and the Bylaws, Walden Woods, recorded in the office of the Placer County Recorder on March 20, 1985 in volume 2784 at page 262, et seq.

12. A Supplemental Declaration of Restrictions for Walden Woods Unit No. 5, recorded in the office of the Placer County Recorder on September 17, 1987 in book 3266 at page 337, et seq.

13. First Restated Declaration of Covenants, Conditions and Restrictions of Walden Woods Homeowners Association, Incorporated, recorded in the office of the Placer County Recorder on May 24, 1994 as 94 039 448.