

June 2, 2022

File No.: fai112818.001

**VIA GENERAL DELIVERY**

**To: Members of The Fairway Village Community Association**

**Re: Notice of Adopted Rule Change – Slope Damage Policy**

Dear Homeowner:

This office represents The Fairway Village Community Association (“Association”). This notice of adopted rule change (“Notice”) is provided on behalf of the Association’s Board of Directors, as required by *Civil Code* §4360.

Please be advised that at its general session meeting on June 1, 2022, the Board of Directors voted to adopt the *Slope Damage Policy* (“Policy”), a copy of which is enclosed with this Notice. The Policy is effective immediately upon adoption by the Board and is binding upon all owners.

Thank you for taking the time to review the adopted Policy. If you have any questions, please direct them to the Board of Directors care of your community manager, Carmen Portela, at [cportela@actionlife.com](mailto:cportela@actionlife.com) or 2603 Main Street, Suite 500, Irvine, California 92614.

Sincerely,

ROSEMAN LAW, APC



JACQUELINE PAGANO, ESQ.

Enclosure  
JP/jh  
cc: Client

# SLOPE DAMAGE POLICY

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## THE FAIRWAY VILLAGE COMMUNITY ASSOCIATION

### I. INTRODUCTION

The Fairway Village Community Association (“**Association**”) has implemented this Slope Damage Policy (“**Policy**”) to govern and regulate matters involving potential damage to homeowner lots (“**Lot**”) caused by the erosion and subsidence of the common area slopes surrounding the Lots. This includes, but is not limited to, “slope damage” to Lot patios as well as interior, structural damage to the residence.

This Policy is promulgated and adopted by the Association’s Board of Directors (“**Board**”) pursuant to the authority granted to the same under the Association’s governing documents (“**Governing Documents**”), including but not limited to, the Association’s *Declaration of Covenants, Conditions and Restrictions* (“**CC&Rs**”). (*CC&Rs*, Article IX, Section 4.) Accordingly, all owners, tenants, guests, and invitees are subject to this Policy and must abide by the same.

### II. SUBMISSION PROCEDURES

Owners who suspect damage to their Lot and/or residence due to slope erosion/subsidence must follow the following steps:

1. Provide written notice (“**Notice**”) to the Association’s managing agent (“**Management**” or “**Manager**”) of the suspected slope damage to the Lot, with the following information:
  - a. Date at which the owner noticed the damage;
  - b. Description of why the owner suspects this damage is caused by eroding slope; and
  - c. Photos of the damage.
2. Review, execute, and submit the “Manometer Study Agreement” (“**Agreement**”) attached hereto as **Exhibit “A”**, to Management.

Upon receipt of both the Notice and executed Agreement, the Association shall, within fourteen (14) days of receipt, coordinate with the owner and its authorized geotechnical engineering contractor a date to perform a manometer study (“**Study**”) at the residence to inspect the Lot, reported damage, and the surrounding slope, to determine if, in fact, the reported damage is caused by slope erosion.

The cost of the Study shall be paid up front by the Association. However, should it be determined by the contractor that the reported damage is not caused by slope erosion, the requesting owner shall reimburse the Association for the full cost of the Study per this Policy and Agreement.

**EXHIBIT “A”**  
**(Manometer Study Agreement)**

**MANOMETER STUDY AGREEMENT**

This Manometer Study Agreement (“**Agreement**”) is being entered into by and between:

[Print Applicant’s Name] \_\_\_\_\_  
 (“**Owner**” or “**Applicant**”), and The Fairway Village Community Association, a California nonprofit mutual benefit corporation (“**Association**”). Owner and Association are referred to herein individually as a “**Party**” and collectively as the “**Parties.**” The Parties enter into this Agreement with reference to the following:

**RECITALS**

**A.** The Owner is the record owner of a lot within the Association, commonly known as and described as follows (the “**Lot**”):

[Print Address of Applicant’s Lot] \_\_\_\_\_,  
 Fullerton, CA 92835.

**B.** The Owner is required to comply with the provisions contained within the Association’s Governing Documents which include, among others, the Association’s recorded *Declaration of Covenants, Conditions and Restrictions*, and any amendments thereto (collectively, “**CC&Rs**”), and its Slope Damage Policy (“**Policy**”).

**C.** The Association is responsible to maintain the common area, natural slopes within the Association’s development.

**D.** Owner has reported damage to the Association regarding his/her Lot and suspects that said damage is caused by eroding/subsiding common area slope surrounding the Lot.

**E.** In order to determine if, in fact, the suspected damage to the Lot is caused by eroding slope, the Parties desire to utilize the services of the Association’s geotechnical engineering contractor (“**Contractor**”) to perform a manometer study (“**Study**”), the cost of which (“**Study Fee**”) shall be paid pursuant to this Agreement.

**NOW THEREFORE**, in consideration of the terms and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**TERMS AND CONDITIONS**

**1. Adoption of Recitals.** The Parties acknowledge the accuracy of the Recitals above and hereby adopt and incorporate each as the basis for this Agreement.

2. **Adoption of Policy Obligations.** Owner hereby acknowledges and accepts any obligations of Owner as may be contained in the Policy; such obligations are hereby incorporated into this Agreement by reference.
3. **The Study.** The Study will be performed by the Association's Contractor at the Owner's Lot on a day and time all parties are available. Owner shall provide access to the Association and Contractor to perform the Study.
  - a. **Study Fee.** The Study Fee will be paid initially up front by the Association to the Contractor. Should it be determined by the Contractor that the Lot damage is due to eroding/subsiding slope, the Owner shall have no obligation to reimburse the Association for the Study Fee.

On the other hand, should it be determined by the Contractor that the Lot damage is not caused by eroding/subsiding slope, the Owner shall reimburse the Association for the entirety of the Study Fee within two (2) business days.

- b. **Special Assessment.** In the event Owner fails to and/or refuses to reimburse the Association for the Study Fee within the prescribed timeframe, the Association shall specially assess the Owner's account for the Study Fee, which shall be collectible and enforceable pursuant to the CC&Rs and applicable California law. (CC&Rs, Article I, Section 2(d).)
4. **Attorney's Fees.** In any action or proceeding pertaining to or arising out of the terms of this Agreement, or the breach thereof, the prevailing party shall be entitled to recover reasonable attorney's fees and costs along with any other relief granted.
5. **Independent Counsel.** Each party to this Agreement has been advised to seek legal counsel and, in entering this Agreement, has had the opportunity to rely upon the advice, evaluation and recommendation of its own counsel and not opposing counsel. This Agreement shall be construed without reference to the identity of the party or parties preparing the same. It is understood and agreed that the Parties hereto participated equally in the drafting of this Agreement.
6. **Integration Clause.** This Agreement supersedes all prior representations, undertakings or agreements of the parties and the parties rely solely upon the contents of this Agreement. This Agreement may be modified only by a writing signed by the parties or their parties.
7. **Severability.** If any of the terms or provisions of this Agreement shall be declared by a court of competent jurisdiction to be invalid or inoperative, all of the remaining terms and provisions shall remain in full force and effect.
8. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest and assigns.
9. **Counterparts.** This Agreement may be executed in counterparts, each of which may be transmitted by facsimile or other electronic means, and each counterpart may individually be considered an original signature effective to bind the party to this Agreement.

**10. Authorization to Execute.** Each party warrants and represents that the person signing this Agreement on its behalf has authority to bind that party and that the party's execution of this Agreement is not in violation of any by-law, covenants and/or other restrictions placed upon them.

**IN WITNESS WHEREOF,** the Parties to this Agreement have signed and acknowledged it below:

**THE FAIRWAY VILLAGE COMMUNITY ASSOCIATION**

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

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Its: \_\_\_\_\_

**OWNER(S)**

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

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Name: \_\_\_\_\_

Signature: \_\_\_\_\_