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**Merry Mountain
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% Baydaline & Jacobsen LLP
895 University Avenue
Sacramento, CA 95825
Attn: Darren M. Bevan, Esq

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PROPOSED
2024

**SECOND AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS, & RESTRICTIONS
FOR
MERRY MOUNTAIN**

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**SECOND AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, & RESTRICTIONS FOR
MERRY MOUNTAIN**

This *Second Amended and Restated Declaration of Covenants, Conditions, & Restrictions for Merry Mountain* is made by the Merry Mountain Owners' Association, Inc., a California nonprofit mutual benefit corporation ("Association").

RECITALS

A. The Association is an "association," as defined in Civil Code section 4080, created to manage the common interest development located in unincorporated Clipper Mills, County of Butte, State of California commonly known as Merry Mountain ("Development"), as described in Exhibit "A".

B. The original developers of the Development, Rollen Waterson and Associates, Butte County, a co-partnership (collectively, "Declarant") executed the document entitled "Declaration of Covenants, Conditions and Restrictions of Merry Mountain" recorded on September 10, 1965, Book 1389, Page 594, of the Official Records of Butte County, California ("Original Declaration").

C. The Original Declaration was amended by two documents each entitled "Amended Declaration of Protective Restrictions, Covenants and Agreements Affecting That Real Property Known as Merry Mountain Village," the first recorded on December 28, 1965, Book 1406, page 276, and the second recorded on September 27, 1971, at Book 1703, Page 299, of the Official Records of Butte County, California.

D. The Original Declaration, as amended, was restated and amended, by a document entitled "First Restated Declaration of Covenants, Conditions and Restrictions for Merry Mountain Village," recorded on July 26, 1996, Instrument No. 1996-0028051, of the Official Records of Butte County, California ("First Restated Declaration").

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

F. "Declarant" as this term is defined in the Original Declaration, no longer owns any property within the Development.

G. At least fifty-one percent (51%) of the Owners voted to amend, restate, and supersede the First Restated Declaration pursuant to Article XVI, Section 1 of the First Restated Declaration.

NOW, THEREFORE, it is hereby declared as follows:

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

2. All the real property comprising the Development constitutes a "planned development," as defined in Civil Code section 4175.

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

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

ARTICLE 1 DEFINITIONS

1.1 Absolute Majority. "Absolute Majority" means a majority of the Total Voting Power of the Association.

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

1.3 Architectural Committee. "Architectural Committee" means the committee created pursuant to Article 9.

1.4 Architectural Rules. "Architectural Rules" means the rules and regulations adopted by the Board pursuant to Section 9.5.

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

1.6 Assessment. "Assessment" means a charge levied by the Association against an Owner and their Lot as provided in Article 6. "Assessment" includes any or all the following:

1.6.1 Annual Assessments, have the meaning set forth in Section 6.5.

1.6.2 Enforcement Assessments, have the meaning set forth in Section 6.8.

1.6.3 Reimbursement Assessments, have the meaning set forth in Section 6.7.

1.6.4 Special Assessments, have the meaning set forth in Section 6.6.

1.7 Association. "Association" means the Merry Mountain Owners' Association Inc., a California non-profit mutual benefit corporation, its successors, and assigns.

1.8 Association Rules. "Association Rules" means the rules and regulations governing the use, occupancy, management, administration, elections, and operation of the Development or any part thereof as adopted and published by the Board of Directors from time to time.

1.9 Board of Directors. "Board of Directors" or "Board" means the governing body of the Association.

1.10 Bylaws. "Bylaws" means the Bylaws of the Association as they shall be adopted by the Board and Members and any duly adopted amendments thereof.

1.11 Common Area. "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 "B", attached hereto. Unless the context clearly indicates a contrary intent, any reference herein to "Common Areas" shall also include any Common Facilities located thereon. Except for the private roads, swimming pool and picnic area, and the office building, most of the Common Area is comprised of several open space natural areas with trails.

1.12 Common Facilities. "Common Facilities" means the office building, swimming pool and apron area, pool storage and pump house, pool furniture, picnic area, private roads, open space natural areas, the water system, and its tanks, hiking trails, and other facilities constructed or installed, or to be constructed or installed within the Common Area.

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

1.14 County. "County" means the County of Butte.

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

1.16 Development. "Development" means all real property described in Recital "A" as well as such other real property as may hereafter be brought within the jurisdiction of the Association.

1.17 Director. "Director" means a member of the Board.

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

1.19 Improvement(s). "Improvement(s)" means all structures or other improvements in the Development including, but not limited to buildings, landscaping, trees, shrubs, bushes, paving, fences, walls, signs, or anything on a Lot, which is not naturally part of the Lot. The term Improvement also means an appurtenant or accessory Improvement including without limitation, any appurtenant structure, shelter,

shed, lean-to, covering, gazebo, pavilion, play structure, barn, storage container, outbuilding, green house, gutter, culvert, driveway, or roadway.

1.20 Lot. "Lot" means any plot of land shown upon any Subdivision Map, except for the Common Area.

1.21 Member. "Member" means an Owner.

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

1.23 Record. "Record" means, with respect to any document, the recordation or filing of such document in the office of the Butte County recorder.

1.24 Residence. "Residence" means a residential dwelling located upon a Lot which is designed for human residential use and occupancy.

1.25 Resident. "Resident" means any person who resides in a Residence within the Development whether such person is an Owner as defined in Section 1.23.

1.26 Simple Majority. "Simple Majority" means a majority of the votes of the Members: (a) represented and voting at a meeting at which a quorum is present or (b) cast by written or secret ballot (in conformity with Corporations Code section 7513 or Civil Code sections 5100–5125) in which the number of ballots received equals or exceeds the number required to establish a quorum.

1.27 Residential Use. "Residential Use" means occupancy and use of a Residence for residential purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting residential dwellings.

1.28 Subdivision Map. "Subdivision Map" means those subdivision maps recorded in the Office of the County Recorder of Butte County for any portion of the Development.

1.29 Total Voting Power. "Total Voting Power" means the total number of votes of all Members entitled to vote at a particular time, calculated based on one (1) vote for each Lot.

ARTICLE 2 COMMON AREA

2.1 Purpose of Common Area. Subject to the provisions of the Declaration, the Common Area is held and maintained by the Association and is used to meet the common interests of the Owners, the members of the Owners' households, and the Owners' tenants, resident Contract Purchasers, and guests as provided in the Governing Documents.

2.2 Owners Non-Exclusive Easements of Enjoyment. Every Owner shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area, including ingress and egress to and from their Lot. Each such non-exclusive easement must be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

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

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

2.2.3 The right of the Board, as set forth in Section 3.6, to grant easements and rights of way in, on, over, or under the Common Area.

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

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

2.2.6 The right of the Board to borrow money in accordance with the Governing Documents.

2.2.7 The right of the Association, through its authorized agents, to enter any Lot to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common, or to make necessary repairs the Lot Owner has failed to perform. The right shall be immediate in case of an emergency originating in or threatening such Residence or Lot and the obligation can be performed whether the Owner is present.

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

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

2.3 Assignment of Rights of Use. Any Owner may assign their rights of use and enjoyment, including easements, in the Development to members of their household, tenants, Contract Purchasers, guests and invitees, subject to the terms of the Governing Documents. Upon leasing of a Lot, or upon occupancy of a Lot by a Contract Purchaser, the Owner shall be deemed to have assigned all such rights exclusively to the tenants or Contract Purchasers of such Lot except such Owner shall continue to have an

easement for ingress and egress to such Owner's Lot to the extent necessary to discharge of the Owner's obligations and rights as a landlord. Each Owner shall notify the Association of the names of any tenants or any such Contract Purchasers of such Owner's Lot.

Each Owner shall notify the Association and provide the names of all members of their household, tenants, Contract Purchasers to whom such Owner has assigned any rights of enjoyment in the Development as provided herein and the relationship each person bears to such Owner. Any rights of enjoyment assigned pursuant to this Section are subject to suspension to the same extent the rights of Owners are subject to suspension as provided in Article 10. It is the express purpose and intent of the provisions of this Section to limit the right of use and enjoyment of the Common Area to Residents and their guests.

2.4 Damage to Common Area or Association Property. An Owner is responsible for the cost to repair any damage caused to any Common Area, which is caused by the negligence, gross negligence, or willful misconduct by the Owner or the Owner's tenants, residents, or invitees. If the Association elects to submit a claim to its insurance provider for the cost to repair said damage, the Association may charge the cost of the deductible and any increased premiums to the Owner as a Reimbursement Assessment.

2.5 Common Area Construction. Except as may be authorized by the Board, no person or entity other than the Association or its duly-authorized agents: (a) shall construct, reconstruct, refinish, alter, or maintain any Improvement upon the Common Area; (b) shall make or create any excavation or fill upon the Common Area; (c) shall change the natural or existing drainage of the Common Area; or (d) shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

2.6 Utilities Rights and Duties. Whenever sanitary sewer, water, electric, gas, television receiving, telephone lines or other utility connections or drainage systems are located or installed within the Development, the Owner of each Lot served by said connections shall be entitled to the use and enjoyment of such portions of said connections as served their Lot. Every Owner shall maintain all utility installations located in or upon their Lot except for those installations specifically arranged to be maintained by the Association, or utility companies, whether public, or private. Utility companies must have the right, at reasonable times after reasonable notice, to enter upon the Development to discharge any duty to maintain Development utilities.

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

ARTICLE 3 EASEMENTS

3.1 Street Easements. Each Owner and the Association shall have and are hereby granted a nonexclusive easement for street, roadway, and vehicular traffic purposes over and along the private streets within the Development.

3.2 Utility Easements. There is hereby created a blanket easement upon, across, over, and under all the Common Area and within the front and side set-back areas on each Lot for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage, electricity, and the master television antenna or cable television systems. By virtue of this easement, it is expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities in the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated in the Development, except as initially designed and approved by the Declarant or thereafter approved by the Board. The easements provided for in this Section shall in no way affect any other Recorded easement in the Development.

3.3 Maintenance Easement. An easement is hereby granted to the Association, its Officers, agents, and employees selected by the Association to enter in or to cross over the Common Area and any Lot to perform the Association's duties of maintenance of adjacent Common Area, provided any entry by the Association or its agents onto any Lot must only be undertaken in strict compliance with Section 8.5.

3.4 Easements in Favor of Lots 64 and 65. The Declarant reserved to the Owners of Lots 64 and 65 as the same are delineated on the above-mentioned map of Merry Mountain Village Subdivision No. 1, the right to use the Siesta Circle natural area and Access A as delineated in the Subdivision Map for access roads or driveways for the purpose of ingress and egress to their Lots.

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

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

ARTICLE 4 USE RESTRICTIONS

4.1 Residential Use. Except as specifically provided in Section 4.6, below, no Lot, or any portion thereof, shall be occupied or used for other than residential purposes by Owners, Contract Purchasers, lessees, tenants, or guests. In no event shall a Residence be occupied by more individuals than permitted by applicable law, zoning, or other local governmental regulation.

No building, other than one Residence, including an appurtenant structure, and garage, shall be constructed upon any Lots. Nor shall any Residence constructed on a Lot be used for any purpose other than a Residence. No appurtenant structure or garage shall be constructed on a Lot before the primary Residence is constructed on a Lot.

4.2 Minimum Construction Standards. Unless a variance is requested from, and granted by, the Architectural Committee in accordance with Section 9.18, hereof, Improvements constructed on any Lot must conform to the following minimum construction standards:

4.2.1 Minimum Square Footage Requirements. No Residence having a ground-floor area of less than eight hundred (800) square feet (exclusive of porches, terraces, stoops, or similar) shall be constructed or placed upon any Lot.

4.2.2 Minimum Set-Back Requirements. No building shall be erected on any Lot nearer than twenty (20) feet to the front street line, nor shall any building be erected on any Lot nearer than ten (10) feet to any side or rear Lot line.

4.2.3 Temporary Structures. No temporary structure, shed, garage, storage container, tent, or shelter, shall be erected on any Lot. No tent, shed, garage, or outbuilding, whether temporary or permanent, shall be used as a Residence, this prohibition also includes without limitation any trailer, recreational vehicle, truck, van, tent, or other type of temporary accommodation placed on a Lot and used for living quarters prior to, during, or after construction of a Residence. The Board may grant temporary exemptions to this section if requested by an Owner, provided a Residence is constructed on the Lot.

4.2.4 Fences, Walls, and Hedges. No fence, boundary, wall, or hedge, other than an open-wire fence surrounding a tennis court, badminton court, or similar improvement, shall have a greater height than six (6) feet. No such fence, wall, or hedge situated within twenty (20) feet of any front-street line must be at a greater height than three (3) feet, nor shall any tight-board fence be erected within twenty (20) feet of any front-street line.

4.2.5 Removal of Trees. Only such trees and limbs thereof may be removed as are necessary for the construction of a Residence, and appurtenant structures, for the installation of utilities and for the safety of any building located on a Lot; provided, prior to any such removal, notice shall be given to the Architectural Committee, and the written approval therefor of the Architectural Committee, shall be first obtained. Notwithstanding the foregoing, it is understood and agreed cutting and/or trimming of trees necessary for the public utility to properly maintain their lines shall be allowed for satisfactory service may be maintained in the areas. No existing trees with a diameter greater than six (6) inches

(measured at grade) must be destroyed, uprooted, cut down, or removed from any Lot unless and until such action has been approved by the Architectural Committee.

4.2.6 Restriction on Wells and Private Water Systems. No wells or private water systems, other than the system maintained and operated by the Association, are allowed.

4.2.7 Restriction on Occupancy of Residences During Construction. No Residence shall be occupied until it has a toilet and sewage disposal system in operation. There shall be at least one (1) toilet for every two (2) bedrooms or fraction thereof.

4.2.8 Driveway Improvements. Before any construction begins, the driveway for each Lot must be treated so dust created by the work shall not cause an inconvenience to other persons. Before any construction begins, driveway designs shall be approved by the Architectural Committee to ensure adequate and proper drainage, protection of culverts, and roads from erosion, and ensure driveways are located on a Lot with existing Residence.

4.2.9 Licensed Contractor. Where required by law, residential structures shall be constructed by a contractor licensed under the laws of the State of California.

4.2.10 Exterior Finishes. All exterior colors, textures, and materials, including roof materials, must be adequately described in the plans and specifications, with an indication where the colors shall be used upon the finished Residence, and approved in writing by the Architectural Committee prior to initiation of construction. Color samples must be submitted to the Architectural Committee along with the plans and specifications. The Architectural Committee is authorized to maintain a chart of approved colors.

4.2.11 Roofing Materials. All roofs must be constructed of class A roofing materials to reduce the risk of fire damage. The Association may adopt a schedule listing approved and prohibited roofing materials.

4.2.12 Siding Materials. The exterior walls of any Residence, garage, or other structure must be finished with wood, rock, or brick. Stucco, metal, or other siding materials are not permitted unless the Owner can demonstrate to the satisfaction of the Architectural Committee, the proposed siding material shall present a natural appearance. All siding materials shall be aesthetically consistent with the Development.

4.2.13 Drainage. No Owner shall do any work, construct any Improvement, place any landscaping, or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Owner's or any adjacent Lots, parcels, or Common Area Plans. Specifications submitted by an Owner to the Architectural Committee in connection with the construction of a Residence or other major structural Improvement shall include a drainage plan in sufficient detail to permit the Committee to assess the impacts, if any, of the Improvement on natural drainage courses.

4.2.14 Concrete Foundations. All Residences must be installed on and attached to a continuous concrete foundation. Residences constructed prior to the recording of this Declaration are not obligated to comply with this provision.

4.2.15 Exterior Lighting and Fixtures. Fluorescent, mercury-vapor, sodium, or amber-vapor lights, or standard outdoor lights of the type used for security must be enclosed in a manner, which directs the light in a specific area without causing a visual impairment to passing motorist or a nuisance to neighboring properties. The issue of whether a nuisance exists shall be determined by the Architectural Committee.

4.3 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof; provided, however, if any Lot shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing herein contained must be deemed to prevent a judicial partition by sale as between such co-tenants.

4.4 No Further Subdivision. No Lot in the Development shall be further altered, subdivided, or changed in such a way resulting in more or less than the existing 159 Lots. To protect the rural aesthetics of the Development, no Lot shall be further subdivided, or lot lines changed and in no event shall any Lot be altered, subdivided, or changed.

4.5 Tenants and Leases. Each Member shall have the right to assign their rights as a Member (other than voting rights) to a tenant residing within the Member's Residence. Such assignment shall only be effective so long as the tenant is residing in the Residence and remains in compliance with the Governing Documents as the same may exist from time to time. At all times the Owner must remain responsible for compliance with the provisions of the Governing Documents by the Owner's lessee or tenant.

4.6 Restriction on Business Activities. No business or commercial activities of any kind shall be conducted in any Residence, garage or outbuilding or in any portion of any Lot without the prior written approval of the Board; provided, however, the foregoing restriction shall not apply to the signs or activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this Section shall be construed in such a manner so as to prohibit any Owner from: (a) maintaining their personal library in their Residence; (b) keeping their personal business records or accounts therein; (c) handling their personal or professional telephone calls or correspondence therefrom; (d) leasing or renting their Residence in accordance with Section 4.12, hereof; (e) working at a home; or (f) conducting any other activities on the Owner's Lot otherwise compatible with residential use and the provisions of this Declaration, which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization so long as any such activity does not involve exterior signage or create customer traffic within the Development. The uses described in (a) through (e), above, are expressly declared to be customarily incidental to the principal residential use and not in violation of this Section.

4.7 Offensive Conduct, Nuisances, Noise. No noxious, harmful, unlawful, or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area and facilities thereon or the use and enjoyment of their Lots or Residences, or increase the cost of the Association's insurance. Without limiting any of the foregoing, no Resident shall permit noise to emanate from the Resident's Lot or from activities within the Common Area, which unreasonably disturbs any other Resident's enjoyment of their Lot or the Common Area. To protect the aesthetic beauty of the Development, Residents shall keep the exterior portions of their Lots in a clean and neat condition and shall keep their

Lots free and clear of trash, unused building materials, appliances, washing machines, stoves, automobiles in non-running condition, and such other items commonly referred to as "junk" or "debris." Excessive noise levels may be determined at the sole discretion of the Board, which may but shall not be obligated to rely on the standards established in applicable County codes regulating such matters. Nothing in this Section shall be construed to limit the Association's ability to discharge its duties in accordance with the Governing Documents or otherwise manage the Development.

4.8 Use of the Common Area. The Common Area shall be preserved as open space and used for recreational purposes and other purposes incidental and ancillary to the use of Lots. Such use shall be limited to private use for aesthetic and recreational purposes by Members, their tenants, household, and guests, subject to provisions of the Governing Documents. No Improvements, excavations, or work which in any way alters any Common Area or Common Facility from its natural or existing state on the date such Common Area or Common Facility is made or done, except by the Association and then only in strict compliance with the provisions of this Declaration.

4.9 Use of Private Streets.

4.9.1 Prohibitions. Private streets within the Development shall not be used in manner, which creates a nuisance. Excessive speed is prohibited. Vehicles are allowed on private streets and must be operated by licensed drivers.

4.9.2 Funding Street Repairs. To prevent accelerated deterioration of private roadways, the Board is entitled to collect deposits from Owners and/or contractors in connection with construction projects within the Development. Such deposits may be designated as nonrefundable by the Board or in its discretion, may be applied to correct or repair specific damage caused by the construction.

4.10 No Camping. No camping, whether temporary or permanent, shall be permitted on any Lot. No Lot shall be used regularly for overnight stays by large groups, such as social organizations, groups, or clubs, or other similar groups.

4.11 Requirement of Architectural Approval. As addressed in greater detail in Article 9, construction, installation, modification, or alteration of buildings, outdoor structures, fences, awnings, outdoor lighting, landscape, and all other exterior Improvements are subject to approval of the Architectural Committee.

4.12 Lease of Lots. All leases for a Lot or Residence within the Development must be in writing, for a term of not less than thirty (30) days, and a copy of said lease evidencing the lease term must be made available to the Association upon request. All leases are expressly subject to the terms of this Declaration and any breach of a provision of this Declaration constitutes a breach of the lease. Owners may not lease any garage, accessory building, or other similar improvement separate from the Residence. No Owner may lease or rent their Lot, Residence, or rooms within the Residence for transient or hotel-like services.

Without limiting the foregoing, no Lot, Residence, or any portion thereof in the Development shall be used for or in connection with any time-sharing or other short-term rental or lease agreement, plan, program, or other arrangement, including, without limitation a short-term rental through online platforms, including but not limited to, Airbnb and Vacation Rental by Owner/VRBO, or so-called vacation license,

travel club, extended vacation, or other membership, time interval occupancy, or other occupancy arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Lot or Lots or any portion thereof in the Development rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodic, recurring, or other basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or other period of time. Provided, this Section shall not be construed to limit the personal use of any Lot or any portion thereof in the project by any Owner or their guests. No rental shall be permitted which contemplates or results in the provision of those services typically provided by a hotel, motel, inn, or other similar form of lodging.

4.13 Association's Right to Evict. In the event a tenant's conduct involves damage or misuse of any Common Area or Common Facilities or constitutes an unreasonable nuisance to Residents, the Association shall be entitled to maintain an eviction action against such tenant to the same extent as the Owner of the Lot, the Association being deemed to be a third-party beneficiary of any lease or rental agreement involving any Lot within the Development. The Association's right to maintain an eviction action shall arise only in the event: (a) the Association has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments as to why eviction by the Association is not necessary, and (b) the Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.

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

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

4.15 Pets. The following restrictions regarding the care and maintenance of pets within the Development shall be observed by each Owner and Resident:

4.15.1 Reasonable Use. No more than a reasonable number of common household pets shall be allowed to reside on a Lot or within a Residence, so long as the same are not kept, bred, or maintained for commercial purposes. No other animals, livestock, or poultry of any kind shall be kept, bred, or raised on any Lot or in any Residence.

4.15.2 Common Area. Dogs shall only be allowed in the Common Area or other Owners' Lots when they are leashed and under the supervision and restraint of their Owners. No pet shall be left chained or otherwise tethered within the Common Area. Pet owners shall be responsible for the prompt removal and disposal of all pet waste deposited by their pets in the Common Area.

4.15.3 Owner Liability. Each person bringing or keeping a pet in the Development shall be solely responsible for the conduct of the owner's pets. The Association, its Board, Officers, employees, and agents shall have no liability, whether by virtue of this Declaration or otherwise, to any Owner, their household members, guests, invitees, tenants, and contract purchasers for any damage or injury to persons or property caused by any pet.

4.15.4 Pet Rulemaking Authority. The Board has the right to establish and enforce additional rules and regulations defining in a uniform and nondiscriminatory manner, what constitutes a "reasonable number" of pets depending upon their size, disposition, and/or maintenance requirements and imposing standards for the reasonable control and keeping of household pets in, upon, and around the Development to ensure the same do not interfere with the quiet and peaceful enjoyment of the Development by the other Owners and residents.

4.16 Trash; Trash Containers. All garbage and trash shall be regularly removed from the Development and shall not be allowed to accumulate thereon. Any extraordinary accumulation of rubbish, trash, garbage, or debris, such as debris generated upon vacating a Residence or Lot or during the construction of modifications of an Improvement, shall be removed from the Development to a proper trash disposal site or trash collection area by the Owner or tenant at their expense. The Association shall be entitled to impose Reimbursement Assessments and Enforcement Assessments associated with the collection of garbage and refuse disposed in a manner inconsistent with this section and to compel an Owner to comply with this Section. Trash may only be placed and kept in covered trash containers. Trash containers must be stored in a place where they are screened or concealed from view from the Common Area, the streets, or any other Lot in the Development except for a reasonable time, not to exceed twenty-four (24) hours prior to and after trash collection. All woodpiles or storage piles must be kept screened and concealed from view of other Lots, streets, and Common Areas.

4.17 Storage. Storage of personal property on any Lot shall be entirely within the Owner's Residence, appurtenant structure, garage, or other appropriate storage areas. The Association shall have the right to establish and maintain within the Common Area appropriate storage yards and storage buildings for the maintenance of materials and equipment used by the Association in connection with its planting, building, repair, maintenance and preservation of the structures, landscaping, and other Improvements within the Common Area, which the Association is obligated to repair and maintain. The Board shall consider protection of the rural aesthetics of the Development when constructing Improvements in the Common Area.

4.18 Access to Lot. Other than to those Lots owned by the Association, there shall be no access to any Lot on the perimeter of the Development, except when using the streets or roads within the Development.

4.19 Parking and Vehicles.

4.19.1 Driveways. All driveways and garages must be maintained in a neat and orderly condition.

4.19.2 Vehicles. No motor vehicle shall be constructed, reconstructed, or repaired within the Development and no dilapidated or inoperable vehicle, including vehicles without

wheel or an engine, shall be stored in the Development, provided the provisions of this Section shall not apply to emergency or occasional vehicle repairs.

4.19.3 Other. Boats, trailers, motorhomes, and motorcycles may be kept on Lots only when reasonably screened or located in a reasonably inconspicuous manner with respect to the Common Areas and other Lots.

4.19.4 Service Vehicles. The provisions of subsections 4.19.2 and 4.19.3 shall not apply to vehicles being used in connection with the construction or repair of any of the improvements in the Development.

4.19.5 No Parking. There shall be no parking of any vehicle along or on streets within the Development.

4.19.6 No Liability Snow Removal. The Association shall not be liable for any harm or damage caused to vehicles or other property during snow removal activities conducted by the Association.

4.20 Parking Rules and Enforcement. To prevent or eliminate any parking problems within the Development, or to further define and enforce the restrictions contained in this Section, the Board shall have the authority to adopt further reasonable rules and restrictions regarding vehicles and parking within the Development as the Board may deem prudent and appropriate. The Board shall also have the power to impose fines and other sanctions for violations of the provisions of the Governing Documents relating to vehicles and parking. Such authority and power shall include, without limitation, the power and authority:

4.20.1 Towing. To cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Development in violation of any of the provisions of the Governing Documents, provided towing of vehicles of guests and other non-Residents of the Development shall be subject to the provisions of applicable law. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Lot Owner responsible or whose household members, tenants, Contract Purchasers, or guests are responsible for the presence of such vehicle.

4.20.2 Fines. To fix and impose fines for violations of this Section in accordance with Section 10.5.2 and the Bylaws.

4.21 Antennas; Flag Poles. No outside mast, tower, pole, or antennae including satellite dishes larger than one (1) meter in diameter shall be erected, constructed, or maintained in the Development, including the outside of any building, except as expressly approved by the Board or the Architectural Committee or as was initially installed during the construction of the buildings with architectural approval, excluding those maintained, erected, or constructed by the Association. Furthermore, no activity shall be conducted on any Lot which causes an unreasonable broadcast interference with television or radio reception on any neighboring Lot.

4.22 Signs. No sign of any kind shall be displayed to the public view from any portion of the Development except this restriction shall not apply to: (a) signs required by legal proceedings; (b) signs

which by law cannot be prohibited; (c) one sign of customary and reasonable dimension and design, complying with the Rules and reasonably located on a Lot advertising the Lot for sale or rent; (d) signs required for traffic control and regulation of streets or open areas within the Development; (e) signs on the Common Area as approved by the Board for a purpose related to the affairs of the Association; and (f) such other signs as the Board, in its discretion, may approve provided the Board may adopt limitations on such other signs including, without limitation, restrictions on the size of the signs, the duration of their posting, and their location. All permissible signs must be in good condition. Signs shall not be faded, cracked, or damaged. The Board may adopt, amend, and repeal Rules for the implementation of this Section which Rules may include, without limitation, automatic approval of signs meeting specified requirements. It is the express purpose and intent of this Section to permit the Association's regulation of signs within the Development to the greatest extent permitted by law.

4.23 Garages. Owners are encouraged to keep garage doors closed when not in use.

4.24 Mineral Exploration. No property in the Development shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance, or other minerals of any kind.

4.25 Burning. Burning is permitted on Lots subject to prior notification to, and approval by, the Association and compliance with all local, state, and federal governmental fire safety requirements and permit regulations. No Owner or Resident shall permit any condition to exist on their Lot, including, without limitation, trash piles, or weeds, which create a fire hazard or is in violation of local fire regulations.

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

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

4.26.2 Hearing. Provided the Board determines the variance request does not meet the requirements set forth in this Section, the Board shall conduct a hearing on the variance within sixty (60) days of the receipt of the written request for a variance. No decision regarding the request for variance shall be made until the conclusion of the hearing.

4.26.3 Notice. After the conclusion of the hearing, the Board shall, in its sole discretion, either grant or deny the request for variance in accordance with the standards set forth in this Section. As more fully discussed above, if the Board grants the variance request, the Board may impose such conditions as the Board deems appropriate and shall so notify the applicant within thirty (30) days of the Board's decision.

ARTICLE 5 HOMEOWNERS ASSOCIATION

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

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

5.3 Voting. Only Members shall be entitled to vote, and only one (1) vote shall be cast for each Lot, all as more particularly specified in the Bylaws.

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

5.5 Association Rules. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact, and amend the rules and regulations of general application to the Owners ("Association Rules"). The Association Rules may concern, but need not be limited to: (a) 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 persons who have the right to use and enjoyment of such Common Area and Common Facilities; (b) architectural control and the rules of the Architectural Committee under Section 9.5, hereof; (c) the conduct of disciplinary proceedings in accordance with Bylaws; (d) regulation of parking, pet ownership and other matters subject to regulation and restriction under Article 4; (e) collection and disposal of refuse; (f) minimum standards for the maintenance of Improvements on any Lot; and (g) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Governing Documents.

5.6 Manager and Other Personnel. The Board shall have the power and authority to employ a manager and such other persons or entities as the Board shall deem appropriate to assist it in managing the

Development and conducting the business and affairs of the Association, as more particularly set forth in the Bylaws.

5.7 Insurance. The Board must procure and maintain liability insurance, property insurance, fidelity insurance, and workers compensation insurance as it deems proper and as more particularly set forth in the Bylaws.

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

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

5.10 Borrow Money. The Board shall have the power to borrow money in the name of the Association.

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

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

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

ARTICLE 6 ASSESSMENTS AND LIENS

6.1 Covenant of Owner. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (a) Annual Assessments, (b) Special

Assessments, (c) Reimbursement Assessments, and (d) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.

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

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

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

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

6.5 Annual Assessment.

6.5.1 Calculation of Estimated Required Funds. Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the funds required by the Association for such

fiscal year to: (a) manage, administer, operate, and maintain the Development; (b) to conduct the affairs of the Association; and (c) to perform all of the Association's duties in accordance with this Declaration. Such estimate shall include a reasonable amount allocated to contingencies and to a reserve fund for the restoration, repair, and/or replacement of those components for which the Association is responsible, and which must be repaired or replaced on a periodic basis.

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

6.5.3 Payment of Annual Assessments. Unless the Board shall designate otherwise, Annual Assessments shall be levied in advance: on an annual basis and shall be due and payable on an annual basis in advance: on the first day of the Association's fiscal year (August 1st), or four (4) quarterly installments, or twelve (12) monthly installments.

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

6.6 Special Assessments.

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

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

6.6.3 Approval of Special Assessments. Except in the case of an emergency as defined in Civil Code sections 5600–5650, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year, except upon the affirmative vote or written consent of a majority of the Members voting on any such Special Assessment, provided a

quorum is established. For the purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

6.7 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and their Lot if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such Owner or their Lot into compliance, or to reimburse the Association for damage caused to the Common Area or Improvements thereon by any Owner or their household members, guest, or tenant. The Association shall also levy a Reimbursement Assessment if the Association has expended funds performing emergency repairs as authorized by this Declaration or for any other reasons specifically authorized by the provisions of this Declaration. A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Association, including costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied.

6.8 Enforcement Assessments. The Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.

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

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

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

6.12 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges

not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment, plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, except as prohibited by law. Except as prohibited by law, upon any delinquency in payment, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect such sums, including all Additional Charges. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive.

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

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

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

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

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

6.18 Property Exempt from Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein: (a) all property dedicated to and accepted by the County or other local public authority and devoted to public use; (b) any Lot which is owned by the Association because of the Association having acquired such Lot through

foreclosure or otherwise, such an exemption shall be applicable only during the period in which the Association is Record Owner of such Lot; and (c) all Common Areas.

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

ARTICLE 7 DAMAGE OR DESTRUCTION; CONDEMNATION

7.1 Damage or Destruction.

7.1.1 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 practical thereafter, the Board must: (a) obtain bids from at least two (2) reputable, licensed contractors, which bids must 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 the amount of all insurance proceeds available to the Association for the purpose of effecting such repair, reconstruction, and restoration.

7.1.2 Common Facilities; Sufficient Insurance Proceeds. Subject to the provisions of Section 7.1.1 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, reconstructed, and restored; provided, in the event of destruction of all or substantially all of a Common Facility, the Association shall not be obligated to restore the damaged Common Facility to its prior appearance and condition if, in the Board's opinion, architectural or design modifications to the Facilities shall result in providing the Members with an improved facility which is suitable for substantially the same use and enjoyment as the destroyed facility.

7.1.3 Common Facilities; Insurance Proceeds Insufficient in an Amount Exceeding \$5,000. In the event any Common Facility is totally or substantially damaged or destroyed or, if, in the event of damage to or destruction of only a portion of the Common Facilities, the insurance proceeds available to the Association are insufficient in an amount exceeding five thousand dollars (\$5,000) to cover the estimated cost of repair, reconstruction, and restoration, then seventy-five percent (75%) of the Members 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.

7.1.4 Damage or Destruction of Residences. In the event of damage or destruction by fire or other casualty affecting a Residence, the Owner thereof must, within six (6) months thereafter, either:

7.1.4.1 Diligently commence to rebuild the Residence in accordance with the terms hereof, including without limitation, the architectural review provisions of Article 9 hereof; or

7.1.4.2 Clear and level the Lot, removing all wreckage, debris, and remains of the Residence therefrom and leaving the same in a level and clean condition.

7.2 Condemnation. If all or part of the Common Area is 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, 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 their attorney-in-fact for such purposes.

ARTICLE 8 MAINTENANCE OF PROPERTY

8.1 Association Responsibilities. The Association shall be solely responsible for all maintenance, repair, and replacement of all portions of the Common Areas. 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.

8.2 Owner Responsibilities.

8.2.1 Maintenance of Lots. Each Owner shall be exclusively responsible for the maintenance, repair and replacement of their Lot including the Residence and all improvements to such Lot. All Lots and the Residences and other Improvements erected or placed thereon, including, without limitation, landscaping, shall always be maintained in such a manner as to prevent their becoming unsightly.

8.2.2 Compliance with Architectural Provisions. An Owner's right and responsibility for maintaining, repairing, or replacing any structures, or other improvements, on their Lot shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control, including Architectural Rules adopted by the Association pursuant to Section 9.5.

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

8.3 Owner Failure to Maintain. The Board has the absolute discretion to determine whether any maintenance, repair, or replacement which is the responsibility of an Owner, is necessary to preserve the appearance, value, or safety of the property comprising the Development, or any portion thereof, and may notify an Owner of the work the Board deems necessary. Subject to the authority of the Board to authorize immediate emergency repairs as specified in Section 8.5, below, in the event an Owner fails to perform such work within fifteen (15) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

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

8.5 Authority for Entry of Lot. The Association or its agents may enter any Lot, when such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is responsible for which it is authorized to perform, including without limitation the authorization provided in Section 8.3, above. Although under no obligation to do so, the Board, in its complete and sole discretion, may enter or may authorize the Association's agents to enter any Lot to effect emergency repairs where such repairs are necessary for safety reasons or to prevent or discontinue damage to the entered Lot, any other Lot or the Common Area. The cost of performing any such emergency repairs shall be charged to the Owner as a Reimbursement Assessment. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

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

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

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

ARTICLE 9 ARCHITECTURAL CONTROL

9.1 Submission of Plans and Specifications. Except for Improvements made, or constructed by, or on behalf of, the Association, no Improvements including without limitation Residences, buildings, driveways, walls, solar panels, fences, awnings, walls, landscaping, screens, doors, patio covers, or other structures of any kind which is visible from the Common Area, streets, or other Lot within the Development, may be commenced, located, erected, painted or maintained within the Development, nor may any exterior addition to, or change, or alteration therein or alteration to the finished grade elevation, be made until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Committee as to: (a) quality of workmanship and design; (b) harmony of external design in relation to the nature and character of the Development and the Improvements thereon; (c) location in relation to surrounding structures, topography, finished grade elevation; and (d) compliance with the provisions of the Declaration.

9.2 Establishment of Architectural Committee.

9.2.1 Except as provided in Sections 9.2.2 and 9.2.3, below, the Board shall appoint an Architectural Committee shall consist of at least three (3) Members, who shall serve a term of one (1) year unless otherwise established by the Board, to be selected by the Board, who serve at the pleasure of the Board. The Board shall have the power, in its complete discretion and either with or without cause, to remove any member of the Architectural Committee. In the event of death, resignation, or removal of any member of the Architectural Committee, the Board shall have the full authority to designate a successor.

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

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

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

9.4 Meetings. The Architectural Committee may meet as necessary to properly perform its duties hereunder. Every act or decision made by a majority of the members of the Architectural Committee shall be the act or decision of the Architectural Committee. The Architectural Committee shall keep and maintain a record of all actions taken by it at any meetings or otherwise. Any Member whose Architectural Application is being considered by the Architectural Committee shall be entitled to appear at any meeting of the Architectural Committee at which their proposal has been scheduled for review and consideration.

The Member whose Architectural Application is being considered by the Architectural Committee shall be entitled to be heard on the matter and may be accompanied by their architect, engineer and/or contractor.

9.5 Architectural Rules. The Architectural Committee may, from time to time, and subject to the Board's approval, adopt, amend, and repeal rules and regulations to be known as Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards and procedures for Architectural Committee review and guidelines for architectural design, placement of Residences and other structures, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Development; provided, however, the Architectural Rules shall not be in derogation of the minimum standards required by this Declaration. The Architectural Rules may also impose limits on the days and hours of construction and impose any other restrictions and regulations which the Board deems appropriate to limit the impact of construction activities on the Residents. In its discretion, and subject to the Board review and Section 9.10, the Architectural Committee may grant variances from specific Architectural Rules subject to such terms and conditions as it deems appropriate.

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

9.7 Grant of Approval. The Architectural Committee shall grant approval only if:

9.7.1 The Owner has complied with the provisions of Sections 9.1, 9.6, and 9.7, above;

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

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

9.8 Form of Approval. All approvals and denials of requests for approval shall be in writing. The Architectural Committee may approve a request for approval subject to the Owner's consent to any modifications made by the Architectural Committee. If the Owner does not consent to the modifications, the request for approval shall be deemed denied in its entirety. Any denial of a request for approval shall

include: (a) an explanation of why the request for approval was denied; and (b) a description of the procedure for Board review of the denial as set forth in this Article and any applicable Architectural Rules.

9.9 Time for Architectural Committee Action. The Architectural Committee shall act on a request for approval within sixty (60) days from the date of receipt thereof by the Architectural Committee. Any request for approval which has not been acted on by the Architectural Committee within the preceding time frame shall be deemed approved. The Owner requesting approval shall have the burden of establishing the date of receipt of the request for approval by the Architectural Committee by evidence in the form of either a copy of such request for approval date-stamped by the Association or by certified mail provided by the U. S. Postal service acknowledging such request for approval was delivered to the Association.

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

9.11 Commencement. Upon receipt of approval by the Architectural Committee, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all installation, construction, reconstruction, refinishing, alterations, and excavations pursuant to such approval, commencement to occur, in all cases, within one (1) year from the effective date of such approval or upon such later date as the Board may in its discretion designate. If the Owner shall fail to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the time for commencement, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board there has been no change in the circumstances upon which the original approval was granted.

9.12 Completion. The Owner shall, in any event, complete the installation, construction, reconstruction, refinishing, or alteration of any Improvement, within one (1) year after commencing construction thereof (or in the case of projects under construction when this Declaration is Recorded, within one (1) year after the date of Recordation), except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or their agents. If an Owner fails to comply with this Section, the Board shall proceed in accordance with the provisions of Section 9.17, below, as though the failure to complete the Improvements was a noncompliance with approved plans.

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

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

9.13.2 Within thirty (30) days after the receipt of such written notice, the Architectural Committee, or its duly authorized representative, may inspect such Improvement to determine whether it was installed, constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the Architectural Committee finds such installation, construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such sixty (60) day period, specifying particulars of noncompliance and shall require the Owner to remedy such noncompliance.

9.13.3 If the Owner shall have failed to remedy such noncompliance upon the expiration of sixty (60) days from the date of such notification, the Architectural Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing shall be noticed and conducted in accordance with Section 8.1.4 of the Bylaws.

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

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

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

9.15 Liability. Neither the Board, the Architectural Committee nor any member or representative thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the Development of any property within the Development; (d) the execution and filing of an estoppel certificate pursuant to Section 9.15, above,

whether or not the facts therein are correct; provided, however, the Architectural Committee, the Board or any member or representative thereof has acted in good faith on the basis of such information as may be possessed by it or him or her; or (e) the execution and filing of a notice of noncompliance pursuant to Section 9.17, below, whether the facts therein are correct; provided, however, the Architectural Committee, the Board or any member or representative thereof has acted in good faith on the basis of such information as may be possessed by it or them. Without in any way limiting the generality of the foregoing, the Architectural Committee, the Board, or any member or representative thereof, may, but is not required to, consult with, or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Committee. Every purchaser, by acquiring title to a Lot or portion thereof agrees not to bring any action or suit against the Board, the Architectural Committee, or their members or representatives seeking to recover any such damages.

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

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

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

9.17.2 After the conclusion of the hearing, the Architectural Committee shall consult with the Board to render a determination to either grant or deny the request for variance in accordance with the standards set forth in this Section.

ARTICLE 10 ENFORCEMENT

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

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

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

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

10.5 Rights and Remedies of the Association.

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

10.5.2 Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or their tenants, Contract Purchasers, contractors, guests or invitees, the Board shall have the power to impose sanctions against the Owner. Such sanctions may include, without limitation, the imposition of fines and/or the suspension of an Owner's rights as a Member, including an Owner's right to use the recreational or community facilities on the Common Area. Except as provided in Section 10.7, below, imposition of sanctions shall be effective only after notice and an opportunity for hearing as provided in Section 8.1.4 of the Bylaws. The payment of any such fine may be enforced as an Enforcement Assessment as provided in Section 6.8 as well as in any manner permitted by law. Further, each Owner shall be obligated to pay Reimbursement Assessments as provided in Section 6.7, levied by the Board for reimbursement of any costs incurred by the Association relating to violation of any provisions of the Governing Documents by the members of such Owner's household and such Owner's tenants, Contract Purchasers, guests, pets, or other invitees.

10.5.3 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of Article 6, it is hereby declared a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the

property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its Officers or Board, or by any Owner or by their respective successors in interest.

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

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

10.7 Emergency Situations. The following shall constitute emergency situations: (a) an immediate and unreasonable threat to the safety of Residents of the Development; (b) a traffic or fire hazard; or (c) a threat of material damage to or destruction of the Development or any portion thereof.

10.8 Alternative Dispute Resolution. Compliance with Civil Code sections 5925–5965 and Civil Code sections 5900–5920 shall be required with respect to any dispute subject to such sections.

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

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

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

10.12 Indemnification. Each Owner, by acceptance of their deed, agrees for themselves and for the members of their household, their Contract Purchasers, tenants, guests or invitees, to: (a) indemnify

each and every other Owner for; (b) hold each and every other Owner harmless from; and (c) defend each and every other Owner against, any claim of any person for personal injury or property damage occurring within the Lot of such Owner, except such Owner's duty to indemnify, hold harmless and defend may be diminished to the extent the injury or damage occurred by reason of the negligence of any other Owner or person temporarily visiting in such Lot or is fully covered by the Owner's insurance.

ARTICLE 11 AMENDMENT

11.1 Amendments by Members. This Declaration may be amended by the affirmative vote or written consent of fifty-one percent (51%) of the Members. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officers of the Association and shall be Recorded.

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

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

11.3 Restatement of the Declaration. The Board may, by the affirmative vote of a majority of the Directors present at a meeting at which a quorum has been established, restate the Declaration when it has been properly amended pursuant to this Article. Any such restatement shall supersede any prior declarations and amendments in their entirety but shall not affect the priority of any previous declarations or amendments in the chain of title to all Lots within the Development as established by the initial date of recordation of the original declaration for the Development. Such restatement may also: (a) add, delete, or rearrange the text of the Declaration to maintain consistency with any amendments including, but not limited to, altering the title and numbering of the restatement; (b) delete material is no longer legally effective; (c) add text which indicates the Board has authorized the restatement and otherwise describes the background of the Development and the restatement process; and (d) correct any errors or inaccuracies in the Declaration, including but not limited to, the legal description of the properties in the Development.

ARTICLE 12 GENERAL PROVISIONS

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

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

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

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

12.5 Easements Reserved and Granted. All easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.

12.6 No Public Rights in the Development. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Development to the public or for any public use or purpose whatsoever.

12.7 Code References. All Code references made in this Declaration shall refer to the California Codes.

IN WITNESS WHEREOF, Members of the Merry Mountain Owners' Association, Inc. consisting at least a majority of the Total Voting Power of the Members, hereby affirm, approve, and adopt this *Second Amended and Restated Declaration of Covenants, Conditions & Restrictions of Merry Mountain* pursuant to the requirements of Article XVI, Section 1 of the First Restated Declaration.

DATED: _____, 20____

Merry Mountain Owners' Association, Inc.,
a California nonprofit mutual benefit corporation

President

Secretary

Exhibit "A"

Legal Description of the Properties

BEING a portion of Section 2, Township 19 North, Range 7 East, M. D. B. & M., were particularly described as follows:

COMMENCING at the Southeasterly corner of Lot 55 of Merry Mountain Village Subdivision Unit No. 1, which map was filed in the office of the Recorder of the County of Butte, State of California, on August 17, 1965 in Map Book 34, at pages 17, 18 and 19; thence from said point South 02° 30' 23" West 178.43 feet to the True Point of Beginning for the herein described parcel; thence from said Point of Beginning and along the arc of a 540.00 foot radius curve to the left, whose tangent at this point bears South 87° 18' 30" West through a central angle of 08° 16' 37" an arc length of 78.01 feet; thence South 79° 01' 53" West 546.81 feet to the beginning of a 1440.00 foot radius curve to the left; thence along the arc of said curve through a central angle of 10° 45' 15" an arc length of 271.96 feet to a point on the arc of a 20.00 foot radius curve to the left, whose tangent at this point bears South 51° 26' 52" East through a central angle of 59° 39' 17" an arc length of 20.82 feet to a point on the Northwesterly line of the Marysville-LaPorte Road and the beginning of a 1430.00 foot radius curve to the right; thence along the Northwesterly line of said Marysville-LaPorte Road and the arc of said curve, through a central angle of 10° 08' 02" an arc length of 252.92 feet; thence North 79° 01' 53" East 546.81 feet to the beginning of a 530.00 foot radius curve to the right; thence along the arc of said curve through a central angle of 08° 10' 43" an arc length of 75.65 feet; thence leaving said Northwesterly line of the Marysville-LaPorte Road North 02° 30' 23" East 10.04 feet to the point of beginning.

EXCEPTING THEREFROM that a portion thereof described as follows:

A strip of land being a portion of Parcel No. 1 as shown on Parcel Map filed in the office of the Recorder of the County of Butte, State of California, December 21, 1973, in Book 48 of Parcel Maps at page 81, more particularly described as follows:

BEGINNING at a 3/4 inch iron pipe with tag LS 3336 marking the Northeasterly corner of said Parcel No. 1, said point also being the Northwesterly corner of 1885 of Official Records, at page 472, records of Butte County, California; thence South 82° 58' 50" East 101.40 feet along the Northerly line of said Parcel No. 1 to a 3/4 inch iron pipe with Tag LS 3480; thence South 2° 30' 23" East 185.57 feet to a 3/4 inch iron pipe with Tag LS 3480; thence North 79° 01' 53" East 102.83 feet to a 3/4 inch iron pipe with TAG LS 3336 marking the Southeasterly corner of said Parcel No. 1 and also the Southwesterly corner of Parcel 2; thence North 2° 30' 23" East 178.38 feet along the line between Parcel 1 and Parcel 2 to the point of beginning.

Exhibit "B"

Legal Description of the Common Area

Those portions of land owned by the Merry Mountain Owners' Association, Inc. located on the subdivision map titled *Merry Mountain Village Subdivision Unit No. 1*, as recorded in the office of the Recorder of the County of Butte, State of California, on August 17, 1965 in Map Book 34, at pages 17, 18 and 19, more commonly referred to as: Merry Way, Siesta Circle, and Holiday Drive (APN 073-230-012); Access A (APN 073-240-027); Access B (APN 073-240-002); Siesta Circle Natural Area (APN 073-240-041); and Gusher Gulch Natural Area (APN 073-230-024).

Those portions of land owned by the Merry Mountain Owners' Association, Inc. located on the subdivision map titled *Merry Mountain Village Subdivision Unit No. 2*, as recorded in the office of the Recorder of the County of Butte, State of California, on October 30, 1968 in Map Book 35, at pages 32, 33, and 34, more commonly referred to as: Merry Way (APN 073-250-009), Winding Way (APN 073-260-011), Access A (APN 073-260-016), Access B (APN 073-260-023), Access C (APN 073-250-011), Grizzly Creek Natural Area (APN 073-250-012), and Loafer's Lair Natural Area (APN 073-260-022).

Those portions of land owned by the Merry Mountain Owners' Association, Inc. located on the subdivision map titled *Merry Mountain Village Subdivision Unit No. 3*, as recorded in the office of the Recorder of the County of Butte, State of California, on June 17, 1970 in Map Book 35, at pages 76 and 77, more commonly referred to as: Winding Way, Holiday Drive, Access A, Access B, Access C, and Access D (APN 073-270-026); and Gusher Gulch Natural Area (APN 073-270-025).

Those portions of land owned by the Merry Mountain Owners' Association, Inc. located on the subdivision map titled *Merry Mountain Village Subdivision Unit No. 4*, as recorded in the office of the Recorder of the County of Butte, State of California, on July 20, 1972 in Map Book 38, at pages 95 and 96, more commonly referred to as: Breezy Boulevard and Holiday Drive (APN 073-280-999); Access A (APN 073-290-016); Access B (APN 073-290-015); Access C (APN 073-280-023); Grizzly Creek Natural Area (APN 073-290-001); and Wildwood Natural Area (APN 073-280-001).p