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**FIRST RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MERRY MOUNTAIN VILLAGE**

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code.

**FIRST RESTATED DECLARATION
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FOR
MERRY MOUNTAIN VILLAGE**

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**FIRST RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MERRY MOUNTAIN VILLAGE**

Those certain Declarations of Protective Restrictions, Covenants and Agreements listed in Exhibit "A" (collectively, the "Original Declaration"), which were executed by Rollen Waterson and Associates, Butte County, a co-partnership (the "Declarant"), and Recorded in the Official Records of Butte County, California, at the book and page numbers of the Official Records identified in Exhibit "A", are hereby amended, consolidated and restated in their entirety to read as follows:

RECITALS

A. Declarant was the original owner of that certain real property located in the County of Butte, State of California, which is more particularly described in Exhibit "B" attached hereto and incorporated herein by reference (the "Properties").

B. Declarant conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

C. It was the further intention of the Declarant to sell and convey residential Lots to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in the Original Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties as a "planned development" as that term is defined in section 1351(k) of the California Civil Code. Finally, it was the intention of Declarant that the "Common Areas" and "Common Facilities" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

D. On March 19, 1996, the Owners of 65 percent of all Lots within the Properties voted by written ballot to amend, consolidate and restate the Original Declarations, all in accordance with the procedures for amendment set forth therein. It was the intention of the Owners to replace the Original Declarations, in their entirety, with the Recordation of this Declaration. The Owners' action to amend and restate the Original Declarations as set forth herein did not receive the requisite percentage of affirmative votes required in the Original Declarations of three fourths (3/4) of the total voting power of the membership. On April 26, 1996, the Association filed a Petition to Reduce Voting Percentages pursuant to Section 1356 of the California Civil Code in Butte County Superior Court. On June 25, 1996, the court ordered that the requirements imposed by the Original Declaration that all amendments of the Declaration be approved by three fourths (3/4) of the total voting power of Petitioner's members was dispensed with and approval of the First Restated Declaration was decreed by virtue of substantial compliance with the membership voting requirements as a result of the number of votes actually obtained by Petitioner from its members during the balloting process. That compliance is attested by the execution of this Declaration by duly authorized officers of the

Association, as required by section 1355(a) of the California Civil Code. As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I Definitions

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

Section 2. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of article IV of this Declaration.

Section 3. "Association" means Merry Mountain Owners' Association, Inc., a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an "association" as defined in section 1351(a) of the California Civil Code.

Section 4. "Association Rules" means the rules, regulations and policies adopted by the Board of Directors pursuant to article III, section 7 of this Declaration, as the same may be in effect from time to time.

Section 5. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 6. "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 "C", attached hereto. Unless the context clearly indicates a contrary intent, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon. With the exception of the private roads, the pool and picnic area and the office building, most of the Common Area is comprised of several open space natural areas with trails.

Section 7. "Common Expense" means any use of Association funds authorized by article IV hereof and article IX of the Bylaws, and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area or Common Facilities; (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors; and (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities.

Section 8. "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.

Section 9. "County" means the County of Butte, State of California, and its various departments, divisions, employees and representatives. If any portion of the Properties becomes a portion of an

incorporated city, then the term "County" shall be deemed to include the city in which that portion of the Properties is located.

Section 10. "Declaration" means this instrument, as it may be amended from time to time. The "Original Declaration" means and refers to the documents referenced in Exhibit "A", together with all amendments and annexations thereto adopted prior to adoption of this Declaration.

Section 11. "Governing Documents" is a collective term that means and refers to this Declaration and to the Articles of Incorporation, Bylaws and Rules of the Association.

Section 12. "Improvements" shall be defined as set forth in article V, section 1, of this Declaration.

Section 13. "Lot" means any parcel of real property designated by a number on the Subdivision Map, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other Improvements constructed or to be constructed on a Lot.

Section 14. "Majority of a Quorum" means the vote of a majority of the votes cast at a meeting or by written ballot when the number of Members attending the meeting in person or by proxy or casting written ballots equals or exceeds the minimum quorum requirement for Member action, as specified in the Bylaws or by statute.

Section 15. "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to article XIII, section 6 hereof.

Section 16. "Mortgage" means any security device encumbering all or any portion of the Properties, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

Section 17. "Owner" means any person, firm, corporation or other entity in which fee simple title to a Lot is vested as shown by the Official Records of the Office of the County Recorder. Except where the context otherwise requires, the term "Owner" shall include the family, guests, tenants and invitees of an Owner.

Section 18. "Properties" means all parcels of real property (Common Area and Lots) described in Exhibit "B", together with all Common Facilities and other Improvements located thereon.

Section 19. "Record" means, with respect to any document, the recordation or filing of such document in the Office of the County Recorder.

Section 20. "Regular Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with article IV, section 2, hereof.

Section 21. "Residence" means a private, single-family dwelling constructed or to be constructed on a Lot.

Section 22. "Single Family Residential Use" means occupancy and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

Section 23. "Special Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with article IV, section 3 hereof.

Section 24. "Special Individual Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with article IV, section 4 hereof.

Section 25. "Subdivision Map" means the Recorded subdivision map for any portion of the Properties.

ARTICLE II Property Rights and Obligations of Owners

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

(a) The right of the Association to limit the number of guests of Members who may use the swimming pool and to restrict access to the pool by means of a key or card lock system.

(b) The right of the Association to adopt Association Rules as provided in article III, section 7 hereof, regulating the use and enjoyment of the Properties for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or tenant, to initiate disciplinary action against the violating Owner or tenant in accordance with article XIII, section 6 of this Declaration. Such action may include the levying of fines and/or the temporary suspension of the voting rights.

(c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and Common Facilities.

(d) All easements affecting the Common Area which are described in article IX, below.

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

Section 3. Delegation of Use.

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

Any rental or lease of a Residence shall be subject to the provisions of the Governing Documents all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee who is scheduled to lease the Owner's Residence for 30 days or more with a current copy of either this Declaration or of a list, prepared by the Association, setting forth the property use restrictions and other portions of this document that are of principal importance to Owner-lessors and their tenants. Each Owner-lessor shall be responsible for compliance by the tenant or lessee with all of the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the Residence.

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

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

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

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

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

(A) A copy of the Governing Documents;

(B) The Association's most recent financial statement;

(C) A true statement in writing from an authorized representative of the Association as to: (1) the amount of any unpaid Assessments, together with information relating to late charges, attorneys' fees, interest, and costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold (the "delinquency statement"); and (2) the amount of the Association's current Regular and Special Assessments and fees; and

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

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

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

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

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

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

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

ARTICLE III Homeowners Association

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

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

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

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

Section 5. Powers and Authority of the Association.

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

(b) **Association's Right of Entry.**

(i) **Right of Entry, Generally.** Without limiting the generality of the foregoing enumeration of corporation powers, the Association is hereby authorized and empowered directly or through its agents to enter any Lot when necessary to perform the Association's obligations under this Declaration, including: (i) obligations to enforce the architectural, minimum construction standards, and land use restrictions of articles V, VI and VIII hereof; or (ii) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities.

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

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

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

(C) Except in the case of emergency, in no event shall the Association's right of entry hereunder be construed to permit the Association or its agents to enter any Residence without the Owner's express permission.

Section 6. Association Rules.

(a) Rule Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners ("Association Rules"). The Association Rules may concern, but need not be limited to: (i) matters pertaining to the maintenance, repair, management and use of the Common Area and Common Facilities by Owners, their tenants, guests and invitees, or any other person(s) who have rights of use and enjoyment of such Common Area and Common Facilities; (ii) architectural control and the rules of the Architectural Committee under article V, section 5, hereof; (iii) the conduct of disciplinary proceedings in accordance with article XIII, section 6 hereof; (iv) regulation of parking, pet ownership and other matters subject to regulation and restriction under article VIII, hereof; (v) collection and disposal of refuse; (vi) minimum standards for the maintenance of Improvements on any Lot; and (vii) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

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

(b) Distribution of Rules. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. A copy of the Association Rules shall also be available upon request.

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

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

Section 7. Breach of Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in article XIII hereof.

ARTICLE IV **Assessments**

Section 1. Assessments Generally.

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

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

(c) Creation of Assessment Lien. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this article may be subject to foreclosure as provided in section 10(b) hereof.

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

Section 2. Regular Assessments.

(a) Preparation of Annual Budget: Establishment of Regular Assessments. Not less than 45 days nor more than 60 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Members a budget satisfying the requirements of article XII, section 5 of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period specified in the first sentence of this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the Members' approval in accordance with section 8, below.

(b) Establishment of Regular Assessment by Board/Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year; provided, however, that, except as provided in section 5 of this article, the Board of Directors may not impose a Regular Assessment that is more than 20 percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the Members' prior approval in accordance with section 8, below.

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

(d) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and

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

(e) Mailing Notice of Assessment. Within the time requirements specified in subparagraph (a), above, the Board of Directors shall mail to each Owner, at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year.

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

(g) Payment of Assessment. The total Regular Assessment levied against each Owner and his or her Lot shall be due and payable to the Association in two equal installments on or before February 1 and August 1 of each year; provided, however, that the Association reserves the right to institute a program of quarterly or monthly collection of Assessment installments if it is determined to be to the advantage and in the best interests of the Association to do so.

Section 3. Special Assessments.

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

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for that fiscal year, then, except as prohibited by section 2(a) of this article, the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.

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

(b) Special Assessments Requiring Membership Approval. The following Special Assessments require prior membership approval in accordance with section 8, below: (i) any Special Assessments which, in the aggregate, exceed 5 percent of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied; and (ii) any Special Assessments imposed pursuant to subparagraph (a)(i) of this section when the Board has failed to distribute a budget to the Members within the time specified in section 2(a) of this article. The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any "emergency situation" as defined in section 5 of this article.

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

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

Section 4. Special Individual Assessments.

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

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

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

(iii) Required Maintenance on Lots. If any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, the Association shall have the right to enter the Lot, correct the condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry on the property of any Owner by the Association shall be effected in accordance with article III, section 6(b), hereof.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in subparagraph (a) of this section, such Special Individual Assessment shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to the affected Owner. The Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment.

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

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

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

(iii) An extraordinary expense necessary to repair or maintain the Common Areas and/or Common Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to section 2(a) of this article; provided, however, that prior to the imposition or collection of an assessment under this subparagraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

Section 6. Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively: (a) to promote the recreation, health, safety and welfare of individuals residing within the Properties; (b) to promote the enjoyment and use of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns; provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 7. Exemption of Certain of the Properties From Assessments. The following real property subject to this Declaration shall, unless devoted to the use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Properties dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Lot owned by the Association.

Section 8. Notice and Procedure for Member Approval Pursuant to Sections 2 and 3. If Member approval is required in connection with any increase or imposition of Assessments pursuant to sections 2 and 3 of this article, the affirmative vote required to approve the increase shall be a Majority of a Quorum of the Members. The quorum required for such membership action shall be a majority of the Members.

Section 9. Maintenance of Assessment Funds.

(a) **Bank Accounts.** All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of the account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code section 1365.5 and article XII, section 2 of the Bylaws. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

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

(c) **Separate Accounts; Commingling of Funds.** To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom; provided, however, that receipts and disbursements of Special Assessments made pursuant to section 3(a)(i) of this article shall be accounted for together with the receipts and disbursements of Regular Assessments, and a separate accounting shall be maintained for each capital improvement for which reserve funds for replacement are allocated.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated

from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

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

The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Properties, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this subparagraph (d). This Special Assessment is subject to the limitation imposed by California Civil Code section 1366 and section 3(b), above, unless the Special Assessment is to pay for legal costs associated with litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

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

Section 10. Collection of Assessments; Enforcement of Liens.

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

(b) Effect of Nonpayment of Assessments.

(i) Creation and Imposition of a Lien for Delinquent Assessments. As more particularly provided in section 1367 of the California Civil Code or comparable successor statute, the amount of any delinquent Regular or Special, or Special Individual Assessment, together with any late charges, interest and

costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed only when the Association Records a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth: (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this article and section 1366 of the California Civil Code; (B) the legal description of the Owner's Lot against which the Assessments and other sums are levied; (C) the name of the Owner of such Lot; (D) the name and address of the Association; and (E) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall Record a further notice stating the satisfaction and release of the lien thereof.

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

Section 11. Transfer of Lot by Sale or Foreclosure. The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Lot:

(a) Except as provided in subparagraph (b), below, the sale or transfer of any Lot shall not affect any Assessment lien which has been duly Recorded against the Lot prior to the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest and costs of collection incurred prior to the sale or transfer of a Lot pursuant to a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not pursuant to a deed-in-lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien Recorded against the Lot at any time prior to Recordation of the Association's Assessment lien (see section 12, below).

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

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

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

Section 12. Priorities. When a Notice of Delinquent Assessment has been Recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens or encumbrances Recorded subsequent thereto,

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

Section 13. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to section 2 of this article and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two installments, thirty days prior to the due date of each tax installment.

ARTICLE V Architectural Control

Section 1. Architectural Committee Approval of Improvements.

(a) Approval Generally. Before commencing construction or installation of any Improvement within the Properties, the Owner planning such Improvement must submit a request for approval to the Architectural Committee. The Owner's request shall include structural plans, specifications and plot plans satisfying the minimum requirements specified in the Architectural Rules (see section 5 of this article). Unless the Committee's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Architectural Committee shall base its decision to approve, disapprove or conditionally approve the proposed Improvement on the criteria described in section 5 of this article.

(b) Definition of "Improvement". The term "Improvement" as used herein includes, without limitation, the construction, installation, alteration, painting or remodeling of the exterior of any buildings, decks, fences, swimming pools, satellite reception dishes, antennas, or any other structure of any kind. In no event shall the term "Improvement" be interpreted to include Improvement projects which are restricted to the interior of any Residence.

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

In the event that it comes to the knowledge and attention of the Association, its Architectural Committee, or the agents or employees of either, that a work of Improvement, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified in this Declaration including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Architectural Committee review and approval is obtained.

Section 2. Composition of the Architectural Committee. The Committee shall be composed of three Members of the Association appointed by the Board. In selecting Members for the Committee, the Board shall endeavor to select individuals whose occupations or education will provide technical knowledge and expertise relevant to construction and improvement projects. Committee members shall serve one-year terms subject to the Board's power to remove any Committee member and to appoint his or her successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto.

Section 3. Meetings. The Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Committee members shall constitute the action of the Committee and the Committee shall keep and maintain a written record of all actions taken.

The Applicant shall be entitled to appear at any meeting of the Committee at which his or her proposal has been scheduled for review and consideration. The Applicant shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer and/or contractor. Other Owners whose properties may be affected by the proposed Improvement (in terms of the view or solar access of the Applicant's or any adjacent Lot, noise or other considerations) shall also be entitled to attend the meeting.

Reasonable notice of the time, place and proposed agenda for Committee meetings shall be communicated before the date of the meeting to any Applicant whose application is scheduled to be heard.

Section 4. Architectural Rules. The Architectural Committee may, from time to time and with approval of the Board of Directors, adopt, amend and repeal rules and regulations to be known as "Architectural Rules." The Architectural Rules shall interpret and implement the provisions hereof by setting forth: (a) the standards and procedures for Architectural Committee review; (b) guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular Improvement projects within the Properties; and (c) the criteria and procedures for requesting variances from any property use restrictions or minimum construction standards that would otherwise apply to the proposed Improvement under the Governing Documents. Notwithstanding the foregoing, no Architectural Rule shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail.

Section 5. Basis for Approval of Improvements. When a proposed Improvement is submitted to the Architectural Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion, makes the following findings regarding the proposed project:

(a) The Owner's plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Committee;

(b) The Improvement will be in harmony with the external design of other structures and/or landscaping within the Properties;

(c) The Improvement, as a result of its appearance, location or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her property; and

(d) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Properties and with the overall plan and scheme of development within the Properties.

The Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar Improvement/component has previously been approved for use at another location within the Properties if factors such as drainage, topography or visibility from roads, Common Areas or other Lots or prior adverse experience with the product, design or components used in construction of the Improvement. The Committee may also reject plans that the committee reasonably believes to be insufficient to withstand snow loading in the winter. Finally, it is expressly agreed that the Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposed Improvement project, so long as the Committee acts reasonably and in good faith.

In approving a request for construction of an Improvement, the Committee may condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement or similar mitigating conditions.

Section 6. Time Limits for Approval or Rejection. Within 30 days after submission of plans and specifications satisfying the requirements of section 7, above, the Architectural Committee shall return one set of such plans to the Applicant, with either written notice of approval or disapproval or with written suggestions of changes required for approval accompanying the returned set of plans. If the Committee recommends that the plans and specifications be modified, the Applicant may implement such changes to the plans and within 30 days resubmit plans incorporating such changes for approval to the Committee, which shall not unreasonably withhold its approval so long as the Applicant has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the Applicant within 30 days after the Owner's plans and specifications (or revisions thereto) are submitted to the Committee, the plans shall be deemed to have been approved as submitted.

Section 7. Proceeding With Work. Upon receipt of approval of an Improvement project from the Committee, the Owner shall, as soon as practical, satisfy all conditions thereof and diligently proceed with the commencement of construction and excavation pursuant to the approval. In all cases, work on an Improvement project shall commence within one year from the date of such approval. If the Owner fails to comply with this paragraph, any approval given pursuant to this article shall be deemed revoked unless the Committee, upon written request of the Owner prior to the expiration of the initial one year period, extends the time for commencement or completion. No such extension shall be granted except upon a finding by the Committee that there has been no change in the circumstances upon which the original approval was granted and that the Owner has a bona fide intention and ability to complete the Improvement project within the time specified in the extension request.

Section 8. Failure to Complete Work. Unless the Owner has been granted an extension of time to complete the project by the Committee, construction, reconstruction, refinishing or alteration of any such Improvement must be complete within one year after construction has commenced, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents. In the case of building Improvements the requirements of this section shall be deemed to have been met if, within the one year construction period, the Owner has completed construction of the building's foundation and all exterior surfaces (including the roof, exterior walls, windows and doors).

Section 9. Variances. The Architectural Committee shall be entitled to allow reasonable variances in any procedures specified in this article, the minimum construction standards specified in article VI or in any land use restrictions specified in article VIII to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardship to Applicants, provided all of the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a minimum construction standard or a property use restriction that would otherwise be applicable under this Declaration, the Architectural Committee must conduct a hearing on the proposed variance after giving prior written notice to the Board and to all Owners residing within 100 feet of the subject Lot. The notice shall also be posted in the Association's principal office within the Properties. The notice shall be posted and mailed to the interested Owners at least 15 days prior to the date when the Architectural Committee is scheduled to act on the requested variance. No decision shall be made with respect to the proposed variance until the 15-day comment period has elapsed.

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

Section 10. Limitation on Liability. Neither the Association, nor the Board or the Architectural Committee or any member thereof, shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any Improvement project, whether or not pursuant to approved plans, drawings or specifications; or (c) the development of any Lot within the Properties; provided, however, that such member has acted in good faith on the basis of such information as he or she possessed at the time the act or omission occurred.

Section 11. Compliance With Governmental Regulations. Review and approval by the Committee of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Owner who desires to construct, install, or modify the Improvement.

Section 12. Appeals. Appeals from decisions of the Architectural Committee may be made to the Board of Directors, which may elect, in its discretion, to hear the appeal or, in the alternative, to affirm the decision of the Architectural Committee. The Association Rules shall contain procedures to process appeals pursuant to this section.

ARTICLE VI

Minimum Construction Standards

Unless a variance is requested from, and granted by, the Architectural Committee in accordance with article V section 9, hereof, Improvements constructed on any Lot shall conform to the following minimum construction standards:

Section 1. Lots Shall be Used for Single Family Residences. No building, other than one single-family dwelling and appurtenant building including a garage for private use, shall be erected upon any Lots,

nor shall any Residence constructed on any Lots be used for any purpose other than a dwelling house, appurtenant building or garage for private use.

Section 2. Minimum Square Footage Requirements. No dwelling house having a ground-floor area of less than eight hundred (800) square feet (exclusive of open porches, terraces, stoops and the like) shall be constructed or placed upon any lot or plot in any residential subdivision.

Section 3. 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.

Section 4. No Further Subdivision of Lots. No Residence shall be erected upon any lot or plot resulting from rearrangement or subdivision of original Lots, as shown upon the recorded subdivision Map for any portion of the Properties.

Section 5. Restrictions on Temporary Structures of Manufactured Housing. No building of any kind shall be moved from elsewhere and placed upon any Lot in any residential subdivision, nor shall any sheds, tents, shelters or temporary garages be erected on any lot. No tent, trailer, garage or other outbuildings, temporary or permanent, shall be used as a dwelling house, except that a temporary permit may be given for a limited time during the erection of a Residence.

Section 6. Fences, Walls and Hedges. No fence, boundary, wall or hedge, other than an open wire fence surrounding a tennis court, badminton court and the like, 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 shall 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.

Section 7. Removal of Trees. Only such trees and limbs thereof may be removed as are necessary for the construction of the dwelling and appurtenant building, for the installation of utilities and for the safety of any building located on any lot; provided, however, that prior to any such removal, notice shall be given to the Architectural Control Committee, and the written approval therefor of the Architectural Committee, shall be first had and obtained. Notwithstanding the foregoing, it is understood and agreed that cutting and/or trimming of trees necessary for the public utility to properly maintain their lines shall be allowed in order that satisfactory service way be maintained in the areas.

Section 8. Restriction on Wells and Private Water Systems. No wells or private water systems, other than the system maintained and operated by the Association, shall be allowed.

Section 9. 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 one (1) toilet for each two (2) bedrooms or fraction thereof.

Section 10. Driveway Improvements. Before any construction begins, the driveways for each Lot shall be treated so that dust created by the work shall not cause an inconvenience to other persons.

Section 11. Licensed Contractor. Where required by law, residential structures shall be constructed by a contractor licensed under the laws of the State of California.

Section 12. Approval by Architectural Committee. No building, fence, wall or other permanent structure or Improvement shall be erected, altered or placed on any Lot until building plans, specifications and

a plot plan showing the location of structures on the Lots have been submitted to the Architectural Committee for review and approval as described in article V hereof.

Section 13. Colors and 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 will be used upon the finished Residence) and approved in writing by the Committee prior to initiation of construction. Color samples shall be submitted to the Committee along with the plans and specifications. The Committee is authorized to maintain a chart of approved colors.

Section 14. Roofing Materials. All roofs shall 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.

Section 15. Siding Materials. The exterior walls of any Residence, garage or other structure shall be finished with wood, rock or brick. Stucco, metal, or other siding shall not be permitted unless the Owner can demonstrate to the satisfaction of the Architectural Committee that the proposed siding material will present a natural appearance.

Section 16. 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 or parcels or Common Area Plans and 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.

Section 17. Concrete Foundations. All living structures must be installed on and attached to a continuous concrete foundation.

Section 18. Exterior Lighting and Fixtures. Fluorescent, mercury vapor, sodium, or amber vapor lights, or standards outdoor lights of the type used for security must be enclosed in a manner that 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 in its sole discretion.

ARTICLE VII

Association and Owner Maintenance Responsibilities

Section 1. Common Areas. The Association shall be solely responsible for all maintenance, repair, upkeep 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.

Section 2. Owner Maintenance Responsibility. Each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot. The Owner shall also be responsible for the maintenance of all of the exterior landscaping on his or her Lot.

Section 3. Association Recovery of Costs of Certain Repairs and Maintenance.

(a) Association Maintenance Necessitated by Owner Negligence. If the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder, is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by insurance policies maintained by the Association or the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with article IV, section 4 hereof.

(b) Owner Defaults in Maintenance Responsibilities. If an Owner fails to perform maintenance or repair functions on the Owner's Lot for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under article III, section 6(b) to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with article XIII, section 6, hereof.

Section 4. 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 performance of its work.

ARTICLE VIII
Use of Properties and Restrictions

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

Section 1. Use of Lots.

(a) In no event shall Residences be used regularly for sleeping large groups such as scout troops, church groups, etc., and in no event shall a Residence be occupied by more individuals than permitted by applicable law, zoning or other local governmental regulation.

(b) Each Residence and related structures erected on any Lot shall conform to the minimum construction standards set forth in article VI hereof, unless a variance has been granted by the Architectural Committee in accordance with article V, section 9 hereof.

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

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

(e) No camping, whether temporary or permanent, and no temporary structures of any kind shall be permitted on any Lot.

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

(g) No drilling, refining, quarrying or mining operations of any kind shall be permitted on any Lot.

(h) Other than to those Lots owned by the Association, there shall be no access to any Lot on the perimeter of the Properties except from the streets or roads within the Properties.

(i) No existing trees with a diameter greater than six inches (measured at grade) shall be destroyed, uprooted, cut down or removed from any Lot unless and until such action has been approved by the Architectural Committee.

Section 2. Common Areas. The Common Areas 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 the private use for aesthetic and recreational purposes by the Members, their tenants, families and guests, subject to the provisions of the Governing Documents. No Improvement, excavation or work which in any way alters any Common Area or Common Facility from its natural or existing state on the date such Common Area or Common Facility shall be made or done except by the Association and then only in strict compliance with the provisions of this Declaration.

Section 3. Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or Common Area nor shall anything be done within the Properties which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including, but not limited to barking dogs, to emanate from an Owner's Lot or from activities within the Common Area, which would unreasonably disturb any other resident's enjoyment of his or her Lot or the Common Area. For the purpose of protecting 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, old washing machines, stoves, broken down automobiles in non-running condition, and such other items commonly referred to as "junk" or "debris."

Section 4. Household Pets. The following restrictions regarding the care and maintenance of pets within the Properties shall be observed by each Owner and resident:

(a) A reasonable number of common household pets may be kept within each 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.

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

(c) No household pet shall be left chained or otherwise tethered within the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets on the Common Area.

(d) Each person bringing or keeping a pet on the Properties shall be solely responsible for the conduct of the owner's pets. The Association, its Board, officers, employees and agents shall have no liability

(whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet.

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

Section 5. Signs. No signs or billboards of any kind shall be displayed on any Lot or posted within or upon any portion of the Common Area except that Owners may post on their Lots any signs required by legal proceedings and a single "For Rent," "For Lease" or "For Sale" sign of reasonable dimensions. The Architectural Committee, in its discretion, shall be entitled to regulate or prevent altogether, the erection and maintenance of Owner's, agents or broker's directional signs along roadways or on any Common Areas within the Properties.

Section 6. Business Activities. No business or commercial activities of any kind whatsoever shall be conducted in any Residence, garage or out building or in any portion of any Lot without the prior written approval of the Board; provided, however, the foregoing restriction shall not apply to the 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 his or her personal library in his or her Residence; (b) keeping his or her personal business records or accounts therein; (c) handling his or her personal or professional telephone calls or correspondence therefrom; (d) leasing or renting his or her Residence in accordance with article II, section 3, hereof; (e) working at a home computer; 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 Properties. 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.

Section 7. Garbage. No rubbish, trash, or garbage shall be allowed to accumulate on Lots. Any trash that is accumulated by an Owner outside the interior walls of a Residence shall be stored entirely within appropriate covered disposal containers and facilities. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Properties to a public dump or trash collection area by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this section.

Section 8. Storage. Storage of personal property on any Lot shall be entirely within the Owner's Residence, garage or other appropriate storage areas. The Association shall have the right to establish and maintain within the Common Areas 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 Areas which the Association is obligated to repair and maintain.

Section 9. Antennas and Similar Devices. Owners are entitled to maintain antennas on their Residences which are designed for customary television and radio broadcast reception. Nevertheless, In order to ensure adequate aesthetic controls and to maintain the general attractive appearance of the Properties, no

Owner, resident or lessee shall, at his or her expense or otherwise, place or maintain any objects, such as masts, towers, poles, television and radio antennas, or television satellite reception dishes on or about the exterior of any building within the Properties unless architectural approval is first obtained in accordance with article V, hereof. Furthermore, no activity shall be conducted on any Lot which causes an unreasonable broadcast interference with television or radio reception on any neighboring Lot.

Section 10. Burning. Burning is permitted on Lots subject to prior notification to, and approval by, the Association and compliance with all local governmental fire safety and permit regulations. No Owner or resident shall permit any condition to exist on his or her Lot, including, without limitation, trash piles, or weeds, which create a fire hazard or is in violation of local fire regulations.

Section 11. Parking and Vehicle Restrictions. The following parking and vehicle restrictions shall apply within the Properties:

- (a) All driveways and garages shall be maintained in a neat and orderly condition.
- (b) No motor vehicle shall be constructed, reconstructed or repaired within the Properties and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Properties; provided, however that the provisions of this section shall not apply to emergency or occasional vehicle repairs.
- (c) 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.
- (d) The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding the parking and/or operation of vehicles within the Properties as may be deemed prudent and appropriate.

Section 12. Use of Private Streets.

- (a) Private streets within the Properties shall not be used for recreational purposes, including "joy riding" or racing. Motorcycles, mopeds, and cars shall be allowed on such private streets only for ingress and egress.
- (b) In order to prevent accelerated deterioration of private roadways, the Association Board shall be entitled to collect deposits from Owners and/or contractors in connection with construction projects within the Properties. Such deposits can be designated as nonrefundable or they can, in the Board's discretion, be applied to correct or repair specific damage caused by the construction.

Section 13. Variances. Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this article, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Board shall follow the procedures set forth in article V, section 9 for the granting of architectural variances.

Section 14. Enforcement of Property Use Restrictions. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an

architectural or property use infraction that does not necessitate immediate corrective action under article XIII, section 6 hereof, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her right to be heard on the matter.

ARTICLE IX Easements

Section 1. Street Easements. Each Owner and the Association shall have and is hereby granted a nonexclusive easement for street, roadway and vehicular traffic purposes over and along the private streets within the Properties.

Section 2. Blanket Utility Easement. There is hereby created a blanket easement upon, across, over and under all of the Common Areas 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 and electricity and the master television antenna or cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on the Properties except as initially designed and approved by the Declarant or thereafter approved by the Board of Directors. The easements provided for in this section shall in no way affect any other Recorded easement on the Properties.

Section 3. Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, 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 Areas, provided, however, that any entry by the Association or its agents onto any Lot shall only be undertaken in strict compliance with article III, section 6(b).

Section 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 Siesta Circle natural area and Access A as delineated on the Subdivision Map for access roads or driveways for the purpose of ingress and egress to said Lots.

Section 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 Properties and each Lot and Common Area as shown on the Subdivision Map for any portion of the Properties.

ARTICLE X Insurance

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

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

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

Such policy or the endorsement made a part thereof shall, to the extent available, provide that the insurer issuing the policy agrees to abide by the decision of the Association made in accordance with the provisions of article XI of this Declaration as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Facilities.

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

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

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

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

Section 4. Trustee. All insurance proceeds payable under section 1 of this article, may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. The trustee shall be a commercial bank in the County that agrees in writing to accept such trust.

Section 5. Adjustment of Losses. The Board is appointed attorney-in- fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to section 1 of this article. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

Section 6. Insurance on Lots and Residences. An Owner may carry whatever personal liability, property damage liability, fire and casualty insurance with respect to his or her Lot, Residence and personal property as the Owner desires. The Association shall have no responsibility for the adequacy or extent of such insurance coverage.

ARTICLE XI Damage or Destruction

Section 1. Common Facilities: Bids and Determination of Available Insurance Proceeds. In the event any Common Facilities are ever damaged or destroyed, then, and in such event, as soon as practical thereafter the Board of Directors shall: (a) obtain bids from at least two reputable, licensed contractors, which bids shall set forth in detail the work required to repair, reconstruct and restore the damaged or destroyed portions of the Common Facilities to substantially the same condition as they existed prior to the damage and the itemized price asked for such work; and (b) determine that amount of all insurance proceeds available to the Association for the purpose of effecting such repair, reconstruction and restoration.

Section 2. Common Facilities: Sufficient Insurance Proceeds. Subject to the provisions of section 1 hereof, if, in the event of damage to or destruction of any portion of any Common Facility, the insurance proceeds available to the Association are sufficient to cover the costs of repair, reconstruction and restoration, then the Association may cause such facilities to be repaired, reconstruction and restored; provided, however, that 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 the Board's opinion, architectural or design modifications to the Facilities will result in providing the Members with an improved facility which is suitable for substantially the same use and enjoyment as the destroyed facility.

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

Section 4. Damage or Destruction of Residences. In the event of damage or destruction by fire or other casualty affecting a Residence, the Owner thereof shall, within six months thereafter, either:

- (a) Diligently commence to rebuild the Residence in accordance with the terms hereof, including, without limitation, the architectural review provisions of article V hereof; or
- (b) Clear and level the Lot, removing all wreckage, debris and remains of the Residence therefrom and leaving the same in a level, clean condition.

ARTICLE XII Condemnation

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

ARTICLE XIII Breach and Default

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

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

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

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

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

Section 6. Rights and Remedies of the Association.

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

The decision of whether it is appropriate or necessary for the Association to take enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as exist by virtue of section 1354 of the California Civil Code or otherwise by law.

(b) **Schedule of Fines.** The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment.

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

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

Notwithstanding the foregoing, under circumstances involving conduct that constitutes: (A) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (B) a traffic or fire hazard; (C) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (D) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments), the Board of Directors, or its duly authorized agents, may undertake immediate

corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five days following the date when the fine is levied.

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

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

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

(f) **Rules Regarding Disciplinary Proceedings.** The Board shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

Section 7. Court Actions. Court actions to enforce the Governing Documents may only be initiated on behalf of the Association by resolution of the Board. Prior to the filing of any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either such action coupled with a claim for monetary damages not in excess of \$5,000), the Association shall first comply with the provisions of Civil Code section 1354 relating to alternative dispute resolution. The Association's own notice and hearing procedures may be drafted to satisfy these statutory requirements.

ARTICLE XIV

Notices

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

If to any Owner:

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

If to the Association:

Merry Mountain Owners' Association, Inc., at the principal office of the Association (or to such other address as the Association may from time to time designate in writing to the Owners)

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

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

ARTICLE XV

No Public Rights in the Properties

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

ARTICLE XVI

Amendment of Declaration

Section 1. Amendment in General. This Declaration may be amended or revoked in any respect by the vote or assent by written ballot of the holders of not less than 51 percent of the Owners of Lots within the Properties. Notwithstanding the foregoing, the percentage of affirmative votes necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

Section 2. Effective Date of Amendment. The amendment will be effective upon the Recording a Certificate of Amendment, duly executed and certified by the president and secretary of the Association, setting forth in full the amendment so approved and that the approval requirements of section 1 above have been duly met.

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

ARTICLE XVII

General Provisions

Section 1. Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Lots and the Common Area as herein provided, and shall inure to the

benefit of and be binding upon the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of 50 years from the date of the Recording of this Declaration. After the expiration of the initial term, the term of this Declaration shall be automatically extended for successive periods of 10 years each unless, within 6 months prior to the expiration of the initial 50-year term or any such 10-year extension period, a recordable written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association terminating the effectiveness of this Declaration, is Recorded.

Section 2. Construction.

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

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

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

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

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

DATED: July 12, 1996.

**MERRY MOUNTAIN OWNERS' ASSOCIATION,
INC.,** a California nonprofit mutual benefit corporation

By

JAMES FERNAN, President

By

PATRICIA E. SHIELDS Secretary

EXHIBIT "A"

Declaration of Protective Restrictions, Covenants and Agreements Affecting That Real Property Known as Merry Mountain Village," recorded on September 10, 1965 in Book 1389, page 594 of the Official Records of Butte County, California, as 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 in 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.

EXHIBIT "B"

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 $02^{\circ} 30' 23''$ 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 $87^{\circ} 18' 30''$ West through a central angle of $08^{\circ} 16' 37''$ an arc length of 78.01 feet; thence South $79^{\circ} 01' 53''$ 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 $10^{\circ} 45' 15''$ 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 $51^{\circ} 26' 52''$ East through a central angle of $59^{\circ} 39' 17''$ an arc length of 20.82 feet to a point on the Northwesternly line of the Marysville-LaPorte Road and the beginning of a 1430.00 foot radius curve to the right; thence along the Northwesternly line of said Marysville-LaPorte Road and the arc of said curve, through a central angle of $10^{\circ} 08' 02''$ an arc length of 252.92 feet; thence North $79^{\circ} 01' 53''$ 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 $08^{\circ} 10' 43''$ an arc length of 75.65 feet; thence leaving said Northwesternly line of the Marysville-LaPorte Road North $02^{\circ} 30' 23''$ 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 Northwesternly corner of 1885 of Official Records, at page 472, records of Butte County, California; thence South $82^{\circ} 58' 50''$ 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 $2^{\circ} 30' 23''$ East 185.57 feet to a 3/4 inch iron pipe with Tag LS 3480; thence North $79^{\circ} 01' 53''$ 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 $2^{\circ} 30' 23''$ East 178.38 feet along the line between Parcel 1 and Parcel 2 to the point of beginning.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

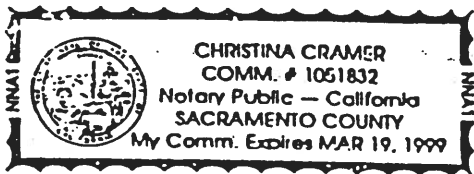
State of California

County of Sacramento

On July 12, 1996 before me, Christina Cramer, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared James Vernon and Patricia Shields
Name(s) of Signer(s)

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



WITNESS my hand and official seal.

Christina Cramer
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

**RIGHT THUMBPRINT
OF SIGNER**
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

**RIGHT THUMBPRINT
OF SIGNER**
Top of thumb here

Signer Is Representing: _____

