

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LUSHMEADOWS MOUNTAIN ESTATE**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LUSHMEADOWS MOUNTAIN ESTATES**

**RECITALS**

A. The Declaration of Covenants and Restrictions for UNIT NO. 1, LUSHMEADOWS MOUNTAIN ESTATES (“Unit No. 1”), which was recorded on June 6, 1962, in Volume 79 of the Official Records of Mariposa County, California, at Page 622; the Declaration of Covenants and Restrictions for UNIT NO. 2, LUSHMEADOWS MOUNTAIN ESTATES (“Unit No. 2”), which was recorded on October 25, 1963, in Volume 86 of the Official Records of Mariposa County, California, at Page 483; the Declaration of Covenants and Restrictions for UNIT NO. 3, LUSHMEADOWS MOUNTAIN ESTATES (“Unit No. 3”), which was recorded on May 11, 1964, in Volume 89 of the Official Records of Mariposa County, California, at Page 171; the Declaration of Covenants and Restrictions for UNIT NO. 4, LUSHMEADOWS MOUNTAIN ESTATES (“Unit No. 4”), which was recorded on October 5, 1964, in Volume 91 of the Official Records of Mariposa County, California, at Page 280, all of the above having been executed by DECKER ENTERPRISES, INC., and the Declaration of Covenants and Restrictions for LUSHMEADOWS MOUNTAIN ESTATES (“Estates Declaration”), which was recorded on July 2, 1990, in the Official Records of Mariposa County, California, as Document No. 904235 and which was executed by Lowell J. Young, Jeanne Rhone, Ernie Eickworth, Audrey Foster, Larry Stewart, Joan Laity and Peggy Kain. All of the aforementioned documents being hereinafter collectively referred to as the “Original Declarations” and all of the aforementioned signatories of the Original Declarations being hereinafter and collectively referred to as the “Original Declarants.”

B. On \_\_\_\_\_TBD\_\_\_\_, 2003\_\_, a majority of all the Owners whose Lots are covered by the terms and provisions of Unit No. 1, Unit No.2, Unit No. 3, and Unit No. 4 and a majority of the Owners whose Lots are covered by the terms and provisions of Lushmeadows Mountain Estates Declaration, voted by written ballot to consolidate, amend and restate the Original Declarations, all in accordance with the procedures for amendment set forth in the provisions of the Previous Declarations. It is the intention of the Members to replace the Previous Declarations, in their entirety, with the recordation of this Declaration. The Owners’ action to amend and restate the Previous Declarations in the manner that is set forth herein and the fact that the requisite percentage of affirmative votes that were required by the provisions of the Original Declarations was achieved is attested to by the execution of the Declaration by the President of the Association, as required by the provisions of California Civil Code section 1355(a). As so consolidated, amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any portion thereof and shall inure to the benefit of each Owner

C. The Previous Declarations affected certain real property that is located in the County of Mariposa and they are hereby amended and restated in their entirety to read as follows.

D. This Amended and Restated Declaration of Covenants, Conditions and Restrictions for

Lushmeadows Mountain Estates is made on this \_TBD\_ day of \_\_\_TBD\_\_\_\_\_, 2003\_\_, by the Lushmeadows Association (“Declarant”).

E. Unless otherwise expressly provided for in the Declaration or unmistakably dictated by grammatical correctness, any capitalized words and/or phrases, when used herein, shall have the specified meanings given to them in **ARTICLE II** of the Declaration, entitled, “**DEFINITIONS.**”

F. The Original Declarants intended, in order to promote certain common objectives designed to preserve the value of as well as benefit the Property, to create a Planned Development thereon and impose certain reciprocal burdens and benefits on the Property. Said reciprocal burdens and benefits were designed to establish a common plan (“Common Plan”) for the subdivision, improvement and development, of each and every portion of the Property, together with any additional real property that may have been annexed to the Original Declarations. By perfecting and implementing the Common Plan the Original Declarants desired to secure the harmonious and uniform development of the Property.

G. Changing circumstances together with the desire of the Members to bring the provisions of the Previous Declarations to compliance with the present requirements for governing documents of a Planned Development, dictate that the Previous Declarations be consolidated, amended and restated.

## **ARTICLE I DECLARATION**

A. It is, therefore, the objective of the Declarant to replace the Original Declarations, in their entireties, with the recordation of the Declaration. As so consolidated, amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Property and shall be binding upon all of the parties having or acquiring any right, title or interest in the Property or any portion thereof.

1. The name of the subdivision shall be LUSHMEADOWS MOUNTAIN ESTATES.

## **ARTICLE II DEFINITIONS**

- 2.1 **ARCHITECTURAL RULES** – “Architectural Rules” shall mean and refer to the rules and regulations that have been adopted by the Architectural Committee with the approval of the Board, which interpret and implement the provisions of the Governing Documents by setting forth the guidelines, standards and procedures for the review and approval of proposed Improvements by the Architectural Committee.
- 2.2 **ARTICLES** – “Articles” shall mean and refer to the Association’s Articles of Incorporation and any amendments thereto.
- 2.3 **ASSESSMENT(S)** – “Assessment(s)” shall mean and refer to any Regular and/or Special Assessment, which is made or levied by the Association against an Owner and its, his, her or their Lot in accordance with the provisions of **ARTICLE VII** of the Declaration, entitled, “**ASSESSMENTS.**”

- 2.4 **ASSOCIATION** – “Association” shall mean and refer to the **LUSHMEADOWS ASSOCIATION**, a California nonprofit mutual benefit corporation and its successors and assigns.
- 2.5 **ASSOCIATION RULES** – “Association Rules” shall mean and refer to the rules, regulations and policies regulating the use and enjoyment of the Development, which may from time to time be adopted by the Board.
- 2.6 **BOARD OF DIRECTORS** – “Board of Directors” or “Board” shall mean and refer to the Board of Directors of the Association.
- 2.7 **BUDGET** – “Budget” shall mean and refer to a written, itemized estimate of the income and Common Expenses of the Association in performing its functions under the provisions of the Governing Documents.
- 2.8 **BYLAWS** – “Bylaws” shall mean and refer to the Association’s bylaws and any amendments thereto.
- 2.9 **COMMON AREA** – “Common Area” shall mean and refer to all of the real property owned by the Association together with any interest in real property which the Association has, for the common use and enjoyment of the Members and shall include those certain plots of land commonly known as “**DAWN LAKE**” and “**MALLARD LAKE**,” that are more fully described in two Grant Deeds which were filed of record in the Official Records of the County on February 15, 1966 in Volume No. 98, at Page 323, and on February 15, 1966 in Volume 98, at Page 326, together with any other plot of land and/or interest in real property that may be conveyed to the Association and designated as “Common Area.” Unless the context clearly indicates a contrary intent, any reference in the Declaration to the “Common Area” shall include any Common Facilities located thereon.
- 2.10 **COMMON EXPENSE(S)** – “Common Expense(s)” shall mean and refer to any use of the funds of the Association authorized by the provisions of **ARTICLE VII** of the Declaration, entitled, “**ASSESSMENTS**,” and the Bylaws, entitled “**POWERS AND DUTIES OF THE BOARD**”.
- 2.11 **COMMON FACILITY(IES)** – “Common Facility(ies)” shall mean and refer to the parking areas, ponds, recreation building, recreation building furnishings, trees, hedges, plantings, lawns, shrubs, landscaping, fences, berms, lighting fixtures and other facilities that have been constructed or installed, or are to be constructed or installed, within the Common Area.
- 2.12 **COUNTY** – “County” shall mean and refer to the County of Mariposa, California, the County in which the Development is located and its various departments, divisions, employees and representatives.
- 2.13 **DECLARATION** – “Declaration” shall mean and refer to the First Consolidated, Amended and Restated Declaration of Covenants, Conditions and Restrictions for Lushmeadows Mountain Estates, as it may from time to time be amended, modified or supplemented.
- 2.14 **DIRECTOR(S)** – “Director(s)” shall mean and refer to the members of the Board of Directors of the Association.
- 2.15 **DUE PROCESS REQUIREMENTS** – “Due Process Requirements” shall mean and refer to all of the requirements of the provisions of Section 3.7 of the Declaration, entitled, “**REQUIREMENTS TO COMPLY WITH DUE PROCESS**.”
- 2.16 **GOVERNING DOCUMENT(S)** – “Governing Document(s)” is a collective term that shall mean and refer to the Declaration, the Articles, the Bylaws as well as any Association Rules.
- 2.17 **MEMBERSHIP** – “Membership” shall mean and refer to the state or status of being a member of the **LUSHMEADOWS ASSOCIATION**.

- 2.18 **OWNER(S)** – “Owner(s)” shall mean and refer to each person or entity holding a record ownership interest in a Lot and any Contract Buyer, providing said buyer is in possession under a recorded contract of sale, as well as, except where the context otherwise requires, the family, guests, tenants and Invitees of an Owner. “Ownership” shall not include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation.
- 2.19 **PROPERTY** – “Property” shall mean and refer to all of the real property that is shown, designated and described on the Subdivision Maps as those lots defined in the Recitals, as well as any additional real property that may be annexed to the Development and become subject to the provisions of the Governing Documents.
- 2.20 **QUORUM** – A Quorum is such a number as must be included in the voting of a particular issue.
- 2.21 **REGULAR ASSESSMENT(S)** – “Regular Assessment(s)” shall mean annual Association dues.
- 2.22 **RESERVE ACCOUNT** – “Reserve Account” shall mean and refer to the bank account into which any Reserve Funds are deposited together with any funds received and not yet expended or disposed of from either a compensatory damage award or a settlement to the Association from any person for injuries to property, real or personal, arising from any construction or design defects. The latter funds shall be separately itemized from the Reserve Funds.
- 2.23 **RESERVE FUNDS** – “Reserve Funds” shall mean and refer to that portion of each annual Regular Assessment that has been set aside in such amounts as the Board, in its discretion, deems appropriate to meet the cost of any future repair, replacement, or addition to a Major Component.
- 2.24 **SPECIAL ASSESSMENT(S)** – “Special Assessment(s)” shall mean and refer to any Assessment that is levied by the Board in accordance with the provisions of Section 7.6 of the Declaration, entitled “**SPECIAL ASSESSMENTS – PURPOSE OF AND PROCEDURE FOR LEVYING.**”
- 2.25 **SUBDIVISION MAP(S)** – “Subdivision Map(s)” shall mean and refer to those certain maps, entitled, “LUSHMEADOWS MOUNTAIN ESTATES,” that was filed for record on May 10, 1962 in the Record of Surveys of the County as Map No. 1214a; “UNIT NO. 2, LUSHMEADOWS MOUNTAIN ESTATES,” that was filed for record on June 8, 1963 in the Record of Surveys of the County as Map No. 1290; “UNIT NO. 3, LUSHMEADOWS MOUNTAIN ESTATES,” that was filed for record on May 11, 1964 in the Record of Surveys of the County as Map No. 1328; and “UNIT NO. 4, LUSHMEADOWS MOUNTAIN ESTATES,” that was filed for record on October 5, 1964 in Record of Surveys of the County as Map No. 1357, and as amended on May 10, 1965 in Record of Surveys of the County as Map No. 1393
- 2.26 **VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS** – “Violation of a Provision of the Governing Documents” shall mean and refer to any single transgression or breach of any provision of the Governing Documents that occurs on any particular day.



**ARTICLE III  
PROPERTY RIGHTS, RIGHTS OF ENJOYMENT AND EASEMENTS**

**3.1 PERSONS SUBJECT TO THE GOVERNING DOCUMENTS.**

A. All present and future Owners, tenants and occupants of Lots shall be subject to and shall comply with, each and every provision of the Governing Documents.

**3.2 NONEXCLUSIVE COMMON AREA EASEMENTS.**

A. Every Owner has a nonexclusive easement of use, enjoyment, ingress, egress and support in, on, over and throughout the Common Area as well as any Improvements or Common Facilities that may be located on such area, as is applicable.

**ARTICLE IV  
COVENANTS AND USE RESTRICTIONS**

**4.1 ANIMALS.**

A. The Board shall have the right to establish and enforce rules and regulations imposing standards for the control and keeping of animals within the development.

**4.2 COMPLIANCE WITH LAW.**

A. Nothing shall be done or kept on any Lot or in the Common Area that might increase the rate of, or cause the cancellation of, any insurance for the Development or any portion of the Development. No Owner shall permit anything to be done or kept in its, his, her or their Lot that violates any covenant, restriction, law, ordinance, statute, rule, or regulation of the provisions of the Governing Documents and/or any local, county, state, or federal body.

**4.3 INDEMNIFICATION.**

A. Each Owner shall be liable to the Association for any damage to the Common Area or to any other Association-owned property that may be sustained by reason of the negligence of such Owner, such Owner's family members, Contract Buyers, tenants, guests, or Invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association. Each Owner by acceptance of its, his, her or their deed to a Lot, agrees personally and for its, his, her or their family members, Contract Buyers, tenants, guests and Invitees, to indemnify each and every other Owner and to hold them harmless from and defend them against any claim of any person for personal injury or property damage occurring within the Lot of the indemnifying Owner, except to the extent that such injury or damage is covered by liability insurance in favor of the Association.

**4.4 LEGAL REMEDIES FOR OWNER NONCOMPLIANCE WITH THE GOVERNING DOCUMENTS.**

A. Any Owner being in Violation of a Provision of the Governing Documents, shall give rise to a cause of action by the Association or any aggrieved Owner, as the case may be, for the recovery of damages or for injunctive relief, or both.

B. Nevertheless, the objective of the provisions of the Governing Documents is to promote and seek voluntary compliance by the 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, the Owner or tenant responsible for such violation shall receive a written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent provision(s) of the Governing Document. Said notice shall describe the non-complying condition, request that the Owner or tenant correct the condition within a reasonable time, which time shall be specified in the notice and advise the Owner or tenant of its, his, her or their appeal rights.

#### 4.5 **MACHINERY AND EQUIPMENT.**

A. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment that is usual or customary in connection with the use, maintenance or repair of a Residence or appurtenant structures within the Development or that have been approved by the Architectural Committee.

#### 4.6 **OFFENSIVE CONDUCT; NUISANCE.**

A. Nothing shall be done on or within the Development that may be or may become, an annoyance or nuisance to the residents of the Development, or that in any way interferes with the quiet enjoyment of occupants of the lots.

#### 4.7 **RESIDENTIAL USE.**

A. Except for those Lots that are being used for commercial purposes at the time of the recording of the Declaration, all other Lots shall be used solely for the construction of permanent Residences together with any customary appurtenances that are designed for single-family purposes in conformity with the requirements imposed by applicable zoning, or other governmental regulations and no part of the Development shall be used, caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes, except for the following:

1. Lots 1 through 10, inclusive, 39, and, 275 may be used for commercial purposes; provided that, the determination of what commercial ventures may be located on such Lots shall be at the sole discretion of the Board, who shall make such decisions in a reasonable manner that is based on any such commercial enterprise being compatible and in harmony with the residential character of the Development.
2. Any type of home occupation, provided that the proposed occupation meets the following criteria:
  - a. Any such occupation shall be conducted within no more than one (1) room of the Residence, excluding garages and artist studios;
  - b. There shall be no structural alterations of the exterior of the Residence to accommodate any such home occupation and the existence of said occupation shall not be apparent beyond the interior boundaries of the structure within which it is conducted;
  - c. No displays or advertising signs shall be permitted on the premises;

- d. Said occupation shall be strictly secondary and subordinate to the primary residential use and shall not change or detrimentally affect the residential character of the Residence, Property, or neighborhood.

#### 4.8 **SIGNS.**

A. No advertising signs or billboards shall be displayed on any Lot or posted within or upon any portion of the Common Area without the approval of the Board, except that Owners may display on their Lots any signs required by legal proceedings or a single “For Rent,” “For Lease” or “For Sale,” sign of reasonable dimensions and design.

#### 4.9 **TEMPORARY LIVING QUARTERS.**

A. No boat, truck, trailer, van, camper, recreational vehicle, or tent shall be used as a living area, temporary or otherwise, while located within the Development. However, trailers or temporary structures for use incidental to the initial construction of a Residence may be maintained within the Development, provided that such temporary accommodation does not unreasonably interfere with any Owner’s use of the Common Area. Such living accommodation shall not be allowed upon completion of any such construction.

B. The above restraints are not intended to preclude construction of outbuildings incidental to rural living, such as, but not limited to, quarters to house domestic help or a guesthouse.

#### 4.10 **TIME SHARING PROHIBITED.**

A. No Lot or any portion nor combination thereof, shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called “vacation license,” “travel club,” “extended vacation,” or other membership or time interval ownership arrangement. The term “time sharing” as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess a Lot or any portion thereof, rotates among various persons, either corporate, partnership, individual or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time. This section shall not be construed to limit the personal use of any Lot or any portion thereof, by any Owner or its, his, her or their social or familial guests.

#### 4.11 **TRASH DISPOSAL**

A. No trash, garbage, rubbish or other waste material shall be allowed to accumulate on any Lot unless stored in an appropriate sanitary, covered disposal container that is located within an enclosed area adjacent to the Owner’s Residence and screened from the view of any street or other Lot. An exception being, that on the scheduled day for trash pickup, such receptacles may be located in the places specifically designated for such pick-up purposes. Any extraordinary accumulation of rubbish, trash, garbage or debris, such as, but not limited to, debris generated upon vacating the premises or during the construction of modifications and Improvements, shall be removed from the development by the Owner or tenant on whose Lot such accumulation exist, at its, his, her or their expense. The Board shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed of in a manner inconsistent with the provisions of this Section.

**ARTICLE V  
POWERS AND DUTIES OF THE ASSOCIATION**

**5.1 INCORPORATION.**

A. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association is charged with the duties and invested with the powers set forth in the provisions of the Governing Documents.

**5.2 ACTION THROUGH DESIGNATED OFFICERS.**

A. Except as to the matters requiring the approval of the Owners as set forth in the provisions of the Governing Documents, the affairs of the Association, including the exercise of its powers and duties, shall be conducted by the Board, such officers as the Board may elect or appoint, or such persons or entities with delegated authority under the provisions of Section 5.6 of the Declaration, entitled, "**RIGHT OF THE BOARD TO DELEGATE POWERS AND DUTIES.**"

**5.3 ASSESSMENT RIGHTS.**

A. The Board shall establish, fix and levy Assessments against the Owners and collect and enforce payment of such Assessments, in accordance with the provisions of the Governing Documents.

**5.4 THE RIGHT TO ESTABLISH ASSOCIATION RULES.**

A. The Board may adopt, amend and repeal the Association Rules, as it considers appropriate. The Association Rules shall regulate the use and enjoyment of the Development and common areas. A copy of the current Association Rules as adopted, amended or repealed shall be delivered to each Owner and a copy shall be posted in a conspicuous place within the Development. If any provision of the Declaration, the Articles, or the Bylaws is inconsistent with or materially alters any Association Rule, the provisions of the Declaration, the Articles, or the Bylaws shall control to the extent of any such inconsistency.

**5.5 RIGHT TO IMPOSE SANCTIONS FOR A VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS.**

A. In addition to any other enforcement rights described in the provisions of the Governing Documents or authorized by law and subject to any restrictions on the Association's enforcement rights, including, but not limited to, the Due Process Requirements and/or the law, the Association may take any of the following actions against any person or entity, whose act or failure to act is a Violation or a threatened Violation of a Provision of the Governing Documents:

1. Impose monetary penalties, including late charges and interests;
2. Suspend voting rights in the Association;
3. Suspend use privileges for the Common Area; and
4. Commence a legal action for damages, injunctive relief, or both.

**5.6 RIGHT OF THE BOARD TO DELEGATE ITS POWERS AND DUTIES.**

A. The Board shall have the power to delegate their authority, duties and powers to committees, officers or employees of the Association, provided that the Board shall not delegate its responsibility:

1. To make expenditures for capital additions or Improvements chargeable against the Reserve Funds;
2. To conduct hearings concerning compliance of the Governing Documents by an owner;
3. To make a decision to levy monetary fines, impose Special Assessments , temporarily suspend an Owner’s rights as a Member or otherwise impose discipline;
4. To make a decision to levy Special Assessments; or
5. To make a decision to bring suit, or record a claim of lien for a default in the payment of Assessments.

5.7 **MANAGEMENT AND MAINTENANCE OF THE COMMON AREAS.**

- A. The Board shall manage and maintain the Common Areas.

5.8 **CONTRACTING FOR GOODS AND SERVICES.**

- A. The Board shall enter into such contracts for services or materials as may be necessary to perform its duties.

5.9 **PAYMENT OF TAXES AND ASSESSMENTS.**

- A. The Board shall pay all real and personal property taxes and Assessments and all other taxes levied against the Association, the Common Area or any personal property owned by the Association. Such taxes and Assessments may be contested or compromised by the Board, provided they are paid or that a bond insuring payment is posted before the sale or disposition of any property to satisfy the payment of such taxes.

5.10 **SECURING INSURANCE COVERAGE.**

- A. The Board shall obtain and maintain the insurance described in Sections 8.1, 8.2, and 8.5 of the Declaration, entitled “**LIABILITY INSURANCE,**” “**FIRE AND CASUALTY INSURANCE,**” and “**DIRECTOR AND OFFICER LIABILITY INSURANCE**” respectively.

5.11 **PREPARATION AND DISTRIBUTION OF FINANCIAL STATEMENTS, REPORTS AND COPIES OF THE GOVERNING DOCUMENTS.**

- A. The Board shall prepare and distribute to the owners, financial statements, reports and copies of Governing Documents as required by California Civil Code Section 1365

5.12 **OTHER DUTIES.**

- A. The Board shall perform such other acts as may be reasonably necessary to exercise its powers or perform its duties under any of the provisions of the Governing Documents and/or any Board actions.

5.13 **LIMITATION ON LIABILITY OF OFFICERS AND DIRECTORS.**

- A. Subject to the provisions of Subsection 5.13B, below, no Director, officer, committee

member, employee, or other agent of the Association, for the purposes of this Section 5.13 being collectively and individually hereinafter referred to as the “Released Party,” shall be personally liable to any of the Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities for their failure to provide any service required under the provisions of the Governing Documents, provided that, such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstance.

B. Without limiting the generality of the foregoing, such standard of care and limitation of liability shall extend to such matters as the establishment of the Budget, the funding of the Reserve Accounts, repair and maintenance of the Common Areas, the Common Facilities and enforcement of the provisions of the Governing Documents.

C. No person who suffers bodily injury, including, without limitation, emotional distress or wrongful death, as a result of the tortuous act or omission of a volunteer Director or officer of the Association shall recover damages from such Director and/or officer, if all of the following conditions are satisfied:

1. The act or omission was performed within the scope of the volunteer Director’s and/or officer’s Association duties;
2. The act or omission was performed in good faith;
3. The act or omission was not willful, wanton, or grossly negligent;
4. The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one (1) or more policies of insurance that included coverage for general liability of the Association and individual liability of the Directors and officers of the Association for negligent acts or omissions in their official capacities, with minimum coverage for both types of insurance being not less than one million dollars (\$1,000,000.00).

D. The payment of the actual expenses incurred by a Director and/or officer of the Association, in the execution of that person’s Association duties shall not affect that person’s status as a volunteer Director or officer of the Association for the purposes of the provisions of this Section 5.13.

E. The provisions of this Section 5.13 are intended to reflect the protections accorded to volunteer Released Parties of community associations under the provisions of California Civil Code section 1365.7. In the event said Civil Code section 1365.7 is amended or superseded by another compatible provision of the California statutes, the provisions of this Section 5.13 shall be deemed amended, without the necessity of further Owner approval, to correspond to such amended or successor Civil Code provisions.

#### 5.14 **LITIGATION.**

A. Subject to the provisions in California Civil Code section 1354, or any compatible superseding statutes, the Board has the authority to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation or administrative proceedings in matters pertaining to:

1. The enforcement of the provisions of the Governing Documents;
2. Damage to the Common Area;
3. Damage to any separate interest which the Association is obligated to maintain or repair; or
4. Damage to a separate interest, which arises out of, or is integrally related to, the Common Area or a separate interest that the Association is obligated to maintain or repair.

B. No person, firm or corporation lending money in good faith upon the security of a mortgage or deed of trust affecting an Association lot, and no person purchasing the said lot, in good faith, shall be liable, to owners of other parcels within the Association for any violation of the covenants and restrictions occurring before the sale of such property. The owners of said property shall be bound upon acquiring the said property to rectify any condition then existing that may constitute a violation of the covenants and restrictions.

C. These covenants and restrictions are to run with the land and shall be binding on all the parties and persons claiming under them for a period of 20 years from and after the date hereof, at which time said covenants and restrictions shall be automatically extended for successive periods of 20 years, unless by a vote of the majority of the owners of said lots it is agreed to change the said covenants and restrictions in whole or in part. Such change shall be accomplished by filing for record of Declaration of Amendment of covenants and restrictions.

## **ARTICLE VI PROVISIONS DECLARING MEMBERSHIP AND VOTING RIGHTS**

### **6.1 MEMBERSHIP APPURTENANT TO OWNERSHIP.**

A. Each Owner shall be a Member of the Association. Membership shall be appurtenant to each Lot and the holding of an ownership interest in the fee title to a Lot shall be the sole qualification for Membership, provided that no Owner shall hold more than one (1) Membership, even though such Owner owns an interest in more than one (1) Lot. Membership shall terminate automatically when the Owner no longer holds an ownership interest in a Lot. Membership may not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to a Lot and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall transfer automatically the appurtenant Membership to the transferee. Any party that holds an interest in a Lot merely as security for the performance of an obligation shall not be a Member.

B. Each Member shall have the right, duties and obligations as set forth in the provisions of the Governing Documents.

### **6.2 VOTING SYSTEM.**

A. Except as may otherwise be provided for in the provisions of the Governing Documents, all matters requiring approval of the Members shall be deemed approved if the Members who hold a majority of the total voting power of the Members assent to them by written consent or either in person or by proxy, by their affirmative vote at any duly called regular or special meeting.

### **6.3 JOINT OWNERSHIP VOTES.**

A. Each Lot having joint membership shall have one (1) vote attributed to it and such vote may not be cast on a fractional basis. If the Lot has more than one (1) Owner and the Owners are unable to agree as to how the vote should be cast, the vote shall be forfeited on the matter in question. If one (1) Owner casts the vote attributed to a Lot, the vote shall conclusively bind all of the Owners of that Lot. If more than one (1) Owner casts the vote attributed to a Lot in any manner in which only one (1) vote could be cast for that Lot, the vote cast by such Owners shall not be counted and shall be considered void.

**ARTICLE VII  
ASSESSMENTS**

**7.1 ASSESSMENTS – AGREEMENT TO PAY.**

A Each Owner by the acceptance of a deed that conveys an ownership interest in the fee title to a Lot, covenants and agrees for each Lot in which such an interest is held, to pay to the Association any Dues or Special Assessments levied in accordance with the provisions of the Governing Documents and to allow the Board to enforce any Assessment lien established in accordance with the provisions of the Governing Documents.

**7.2 ASSESSMENTS AS THE PERSONAL OBLIGATION OF AN OWNER.**

A. Any Dues or Special Assessment , together with any late charge, interest, collection costs and/or reasonable attorney’s fees that are associated with same, shall be the personal obligation of the Owner at the time such Dues or special Assessments, late charge, interest, collection cost and/or reasonable attorney’s fee becomes due and payable. If there is more than one (1) Owner of a particular Lot, each Owner shall be jointly and severally liable. The personal obligation for any delinquent dues or Special Assessment and related sums shall not pass to an Owner’s successor in interest unless expressly assumed by such successor in interest. No Owner may be relieved from the obligation to pay any Assessment, late charge, interest, collection cost and/or reasonable attorney’s fee by waiving the use or enjoyment of all or any portion of the Common Area or the Owner’s Lot, or by abandoning such Lot.

**7.3 SCOPE OF ASSESSMENT – AUTHORITY.**

A. The Dues and Special Assessments shall be levied in accordance with the Governing Documents.

**7.4 RESERVE FUNDS.**

A. Reserve Funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of the Major Components.

B. Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from the Reserve Account 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 Account. The Board shall exercise prudent fiscal management in maintaining the integrity of the Reserve Account and shall, if necessary, levy a Special Assessment to recover the full amount of any expended Reserve Funds within appropriate time limits. This Special Assessment shall be subject to the Assessment increase restrictions set forth in the provisions of Section 7.6 of the Declaration, entitled, “**RESTRICTING AMOUNT OF DUES AND SPECIAL ASSESSMENTS,**” and California Civil Code section 1366, or any compatible superseding statutes.

C. At least once every three (3) years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the Major Components as part of the Reserve Account Requirements if the current replacement value of the Major Components is equal to or greater than one-half (1/2) of the Budget, excluding the Reserve Account for that period. The Board shall



review this study annually and shall consider and implement the necessary adjustments to the Board's analysis of the Reserve Account Requirements as a result of that review.

7.5 **SPECIAL ASSESSMENTS – PURPOSE OF AND PROCEDURE FOR LEVYING.**

A. Subject to the restrictions described in the provisions of Section 7.6 of the Declaration, entitled, “**RESTRICTING AMOUNT OF DUES AND SPECIAL ASSESSMENTS,**” the Board may levy a Special Assessment if, for any particular Fiscal Year in which the Board, in its sole discretion, determines that for any reason, including, but not limited to, any unanticipated delinquencies, the costs of necessary and unforeseen construction or any unexpected repairs to or replacement of a Major Component, the Association's available funds are or will become inadequate to meet the estimated Common Expenses. The Board shall determine the amount necessary to meet such shortfall and, if the amount is approved by a majority vote of the Board, it shall become a Special Assessment. The Board, in its sole discretion, may levy such entire Special Assessment immediately or levy it in installments over a period the Board considers appropriate.

7.6 **RESTRICTING AMOUNT OF DUES AND SPECIAL ASSESSMENTS.**

A. Notwithstanding any other provisions in the Governing Documents to the contrary, the Board may not:

1. Impose Special Assessments for any Fiscal Year that, either by itself or in the aggregate with other Special Assessments levied for that Fiscal Year, would be in excess of fifty percent (50%) of the Common Expenses for such Fiscal Year.

B. The foregoing restrictions on Assessment increases do not apply to increases necessitated by emergency situations when approved by a majority of owners.

7.7 **ALLOCATION OF REGULAR AND SPECIAL ASSESSMENTS.**

A. Dues and Special Assessments levied by the Board shall be allocated among the Lots as follows:

1. Except as otherwise provided for herein, an Assessment shall be allocated among each Lot subject to the Assessment by dividing the total amount of the Assessments by the total number of Lots subject to the Assessment.

7.8 **ASSESSMENT PERIOD.**

Unless the Board determines otherwise, the Association's Fiscal Year shall be from July 1 through June 30 of each year and the Dues period shall commence on July 1 of each year and shall terminate on June 30 of the next calendar year.

7.9 **NOTICE OF INCREASE IN ASSESSMENTS.**

A. The Board shall provide a notice of any increase Special Assessment by first-class mail to all of the Owners who are subject to any such Assessments not less than thirty (30) nor more than sixty (60) days prior to any such increased Assessments.

7.10 **DUE DATE, LATE CHARGES AND INTEREST.**

A. Any Assessment payment, shall become delinquent if payment is not received by the Association within fifteen (15) days after its due date and there shall be a late charge of ten percent (10%) or ten dollars (\$10.00), whichever is greater. A late charge may not be imposed more than once on any delinquent payment, but it shall not eliminate or supersede any charges imposed on prior delinquent payments.

7.11 **DELIVERY OF REQUESTED ITEMS.**

A. Within ten (10) days of receipt by the Board of a written request by an Owner to do so, the Board shall provide such requesting Owner with the following items and information:

1. A copy of the Governing Documents;
2. Copies of all the current documents that have been distributed in accordance with the provisions of Section 5.13 of the Declaration, entitled “**PREPARATION AND DISTRIBUTION OF FINANCIAL STATEMENTS, REPORTS AND COPIES OF THE GOVERNING DOCUMENTS;**”
3. Whether, to the knowledge of the Association, the Owner or the Owner’s Lot is in Violation of a Provision of the Governing Documents; The amount of Dues and Special Assessments, that have been paid by the Owner during the Fiscal Year the request is received;
4. A statement in writing from an authorized representative of the Board showing the amount of the Association’s current Dues and Special Assessments and/or fees, any Assessments levied against the Owner and/or the Owner’s Lot that are unpaid on the date of such statement and any monetary fines or penalties that have been levied against the Owner and are unpaid as of the date of the statement

B. The Board may charge the requesting Owner a fee to recover its reasonable costs of preparing and delivering the requested items and information. Any prospective purchaser or Mortgagee of the requesting Owner’s Lot or Lots, as the case may be, may rely on the information that is contained in any statement provided to a requesting Owner under the provisions of this Section 7.11; provided that, reliance may not extend to any Violation of a Provision of the Governing Documents of which the Board does not have actual knowledge at the time such items and information was provided to the requesting Owner.

**ARTICLE VIII  
INSURANCE**

8.1 **LIABILITY INSURANCE.**

A. The Board shall obtain and maintain a comprehensive public liability insurance policy insuring the Association, any manager, the Owners and occupants of Lots as well as their respective

family members, guests, Invitees together with the agents and employees of each, against any liability incident to the ownership or use of the Common Area or any other Association-owned or maintained real or personal property and including, if obtainable, a cross liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than three million dollars (\$3,000,000.00), covering all claims for debt, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to Developments similar in construction, location and use.

## 8.2 **FIRE AND CASUALTY INSURANCE**

A. The Board shall obtain and maintain a master or blanket policy of fire and casualty insurance coverage for the full insurable value of all of the Improvements within the Common Area, if any, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies of this nature. If available, the policy shall contain the following endorsements or their equivalent: agreed amount, inflation guard, increased cost of construction, contingent liability from operation of building laws, extended coverage, theft, vandalism, malicious mischief, a special form endorsement, and a determinable cash adjustment clause or similar clause to permit cash settlement covering the full value of the Improvements in case of partial destruction and a decision not to rebuild or replace, and such other endorsements as the Board, in its discretion, shall elect. The policy shall name as insured, the Association

B. The policy shall be primary and noncontributing with any other policy of insurance covering the same loss.

C. The Association shall not carry an earthquake endorsement without the approval of a majority of the total voting power of the Members. If the Members elect to require the Association to obtain an earthquake endorsement, the endorsement may be subsequently cancelled on vote of a majority of the total voting power of the Members. If cancelled, the Board shall make reasonable efforts to notify the Members of the cancellation at least thirty (30) days before the effective date of any such cancellation.

D. Subject to any restrictions imposed by any Mortgagees, the Board shall have the power and right to deviate from the insurance requirements contained in the provisions of this Section 8.2 in any manner that the Board, in its sole discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in the provisions of this Section 8.2, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefore at least thirty (30) days before the effective date of the reduction.

E. The Association, the Board and officers of the association, shall have no liability to any Owner or Mortgagee if, after a good faith effort:

1. The Board is unable to obtain any insurance required hereunder because the insurance is no longer available;
2. If available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or
3. The Members fail to approve any Assessment increase needed to fund the insurance premiums.

## 8.3 **PROVISION APPOINTING TRUSTEE.**

A. All fire and casualty insurance proceeds payable under the provisions of Section 8.2 of the Declaration, entitled, “**FIRE AND CASUALTY INSURANCE**,” for losses to any real and/or personal property, may be paid to a Trustee to be held and expended for the benefit of the Association, the

Owners, any Mortgagees and others as their respective interests shall appear. The Trustee shall be a commercial bank or other financial institution, with trust powers in the County, that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for in the provisions of the Governing Documents.

8.4 **PROVISION TO ADJUST LOSSES.**

A. The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute any releases in favor of an insurer.

B. Each and every Owner, by acceptance of a deed to a Lot, irrevocably appoints the Board as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

8.5 **DIRECTOR AND OFFICER LIABILITY INSURANCE.**

To the extent insurance is available, the Board shall purchase and maintain insurance in an amount up to one million dollars (\$1,000,000.00) on behalf of any Director, officer or member of a committee of the Association, for the purposes of the provisions of this Section 8.5, collectively hereinafter referred to as the "Agents," against any liability asserted against or incurred by the Agents in such capacity or arising out of the Agents' status as such, regardless of whether the Association would have the power to indemnify the Agents against such liability under applicable law.

**ARTICLE IX  
PROTECTION OF MORTGAGEES**

9.1 **MORTGAGE PERMITTED.**

A. Any Owner may encumber its, his, her or their Lot with a Mortgage.

9.2 **SUBORDINATION.**

A. Any lien created or claimed under the provisions of the Governing Documents that has been made in good faith and for good value, is expressly made subject to and subordinate to the rights of any First Mortgage that encumbers all or a portion of the Development. No such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgagee of such Mortgage expressly subordinates its interest, in writing, to such lien. If any Lot is encumbered by a First Mortgage that has been made in good faith and for good value, the foreclosure of any lien created in accordance with the provisions of the Governing Documents for Assessments or any installments thereof, shall not operate to effect or impair such Mortgage. On foreclosure of any such Mortgage, the liens for any Assessments or the installments thereof that have accrued up to the date such foreclosure is commenced, shall be subordinate to the lien of such Mortgage, with the foreclosure-purchaser taking title to the Lot free of any lien for Assessments or installments that have accrued up to the time of such foreclosure sale. In taking title to any such Lot the foreclosure-purchaser thereof shall be obligated to pay only those Assessments or other charges levied or assessed by the Association against such Lot and/or the

Owner of same that became due or payable on or after such foreclosure-purchaser acquired title to such Lot. Any Assessments or other charges that are subsequently levied against such Lot and/or Owner, may include any previously unpaid Assessments or portions thereof that were levied against a foreclosed Lot.

9.3 **MORTGAGEE'S RIGHT TO EXAMINE BOOKS AND RECORDS.**

A. Institutional First Mortgagees shall have the right to examine the books and records of the Association and any Eligible Mortgage Holder shall have the right to require the submission of financial data concerning the Association including annual audit reports, Budgets and operating statements as furnished to the Owners.

9.4 **PRIORITY IN DISTRIBUTION OF INSURANCE AND CONDEMNATION PROCEEDS.**

A. No owner, or any other party, shall have priority over any right of an Institutional First Mortgagee of a Lot pursuant to the provisions of its, his, her or their Mortgage, in the case of a distribution to the Owners of insurance proceeds or a condemnation award for losses occasioned by the taking of any portion of a Lot and/or the Common Area. Any provision in the Governing Documents to the contrary is, to such extent, void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Institutional First Mortgagees, naming the Mortgagees as their interests may appear.

9.5 **STATUS OF AMENITIES.**

A. All of the Common Area and the Common Facilities, as may be appropriate, shall be available for the use of the Owners. All such Common Area and/or Common Facilities shall be owned by the Association, free of encumbrances, except for any easements granted for public utilities or other public purposes consistent with the intended use of such Common Area and/or Common Facilities by the Owners or by the Association.

9.6 **DEFAULT NOTICE REQUIREMENT.**

A. If any Owner has committed a Violation of a Provision of the Governing Documents and such Violation of a Provision of the Governing Documents is not cured within sixty (60) days after a written notice of such Violation of a Provision of the Governing Documents to the responsible Owner, the Association shall, upon request give to any Eligible Mortgage Holder of such Owner notice of such default and of the fact that a sixty (60) day period after receipt of the above referenced notice has expired.

9.7 **PAYMENT BY MORTGAGEES.**

A. Mortgagees of Lots may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, and may pay overdue premiums on insurance policies or secure new insurance coverage on the lapse of a policy that covers property of the Association. Upon making any such payments, such Mortgagees shall be owed immediate reimbursement from the Association. This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees. Upon request of any Mortgagee the Association shall execute and deliver to such Mortgagee a separate written agreement embodying this provision.

9.8 **LIEN NOT INVALIDATED.**

A. No Violation of a Provision of the Governing Documents shall invalidate the lien of any Mortgage that has been made in good faith and for value. Preceding text in this Section 9.8 notwithstanding, all of the covenants, conditions and restrictions contained in the Governing Documents shall be binding on any Owner whose title is derived through foreclosure sales, trustee's sale or otherwise.

9.9 **MORTGAGEE NEED NOT CURE A VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS.**

A. Any Mortgagee who acquires title to a Lot by foreclosure, by deed in lieu of foreclosure or by assignment in lieu of foreclosure, shall not be obligated to cure any Violation of a Provision of the Governing Documents that is non-curable or of a type that is not practical or feasible to cure.

9.10 **STATUS OF LOAN TO FACILITATE RESALE.**

A. Any First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure, by deed in lieu of foreclosure or by an assignment in lieu of foreclosure, shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protection of Mortgages under the provisions of the Governing Documents.

9.11 **RIGHT TO APPEAR AT MEETINGS.**

A. Because of its, his, her, or their, as the case may be, financial interest in the Development, any Mortgagee may appear, but cannot vote, at meetings of the Members as well as the Board, to draw attention to a Violation of a Provision of the Governing Documents that has not been corrected or that has been made the subject of remedial proceedings or a Special Assessment.

9.12 **RIGHT TO FURNISH INFORMATION.**

A. Any Mortgagee can furnish information to the Board concerning the status of its, his, her or their Mortgage.

9.13 **NOTICES TO ELIGIBLE MORTGAGE HOLDERS.**

A. An Eligible Mortgage Holder will be entitled to written notice of certain occurrences upon a request in writing to the Association, from said Eligible Mortgage Holder, identifying its, his, her or their names and mailing address together with the Lot number(s) or address(es) of the Lot or Lots encumbered by its, his, her or their Mortgage, asking that the Association provide it, him, her or them, as the case may be, with a notice of the occurrence of any of the following events:

1. Any condemnation or casualty loss which affects a material portion of the Development or any Lot on which there is a First Mortgage held by such Eligible Mortgage Holder;
2. Any Violation of a Provision of the Governing Documents and/or delinquency in the payment of an Assessment or charge, which is owed by an Owner of a Lot subject to a First Mortgage held by such Eligible Mortgage Holder that has remained uncured for a period of sixty (60) days;
3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

4. Any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders as delineated in this **ARTICLE IX**.

B. The Association shall discharge its obligation to notify an Eligible Mortgage Holder by sending the written notices required herein to such requesting parties, at the address given on its, his, her or their current request for any such notice, in the manner prescribed by Section 12.8 of the Declaration, entitled, “**NOTICES AND COMMUNICATION.**”

9.14 **CONTROL IF MORTGAGEE PROTECTION CONFLICTS WITH OTHER PROVISIONS OF THE DECLARATION.**

A. In the event of any conflict between any of the provisions of Sections 9.1 through 9.13, inclusive, of the Declaration and any other provisions of the Declaration, the provisions of Sections 9.1 through 9.15, inclusive, of the Declaration shall control.

**ARTICLE X  
ARCHITECTURAL CONTROL**

10.1 **DEVELOPMENT STANDARDS**

A. A committee of at least three (3) owners must approve in writing, a site drawing and all exterior plans for all residential and non-residential structures. If after submission to the Association no action has been taken within thirty (30) days, construction may be started without approval.

B. Variances to the Developmental Standards may be granted by the Board of Directors to allow for energy efficient designs or developmental hardships.

10.2 **REQUIREMENTS FOR ALL STRUCTURES:**

A. No structure shall be constructed on any parcel within forty (40) feet from the front property line. No shiny or reflective exterior siding, roofing or trim materials shall be permitted which are more reflective than semi-gloss paint.

B. Reflective glass coatings shall not be used on any structure.

10.3 **RESIDENTIAL STRUCTURE REQUIREMENTS:**

A. The roof pitch shall be no less than four (4) inches of vertical rise of each twelve (12) inches of horizontal run.

B. The roof shall overhang the vertical walls by at least twelve (12) inches.

C. No residential structures shall exceed two stories above grade as viewed from any public right of way.

10.4 **NON-RESIDENTIAL STRUCTURE REQUIREMENTS:**

- A. Structures containing less than 100 square feet shall be exempt from Association development controls or standards.
- B. Non-residential structures must be on a permanent foundation.
- C. No business enterprises shall be permitted in non-residential structures, except as allowed in Section 4.9.
- D. No non-residential structure shall exceed twenty (20) feet in height.

**ARTICLE XI  
AMENDMENT OF THE DECLARATION**

**11.1 PROCESS TO AMEND OR REVOKE THE PROVISIONS OF THE DECLARATION.**

A. The provisions of the Declaration may be amended and/or revoked in any respect by the vote or written consent of a simple majority of the voting power of the Members. Furthermore, if the consent or approval of any governmental authority, Mortgagee or other person, firm, agency, or entity is required under the provisions of the Governing Documents with respect to any amendment to, or revocation of, the text of the Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation shall be evidenced by an instrument that has been certified by the Secretary or other duly authorized officer of the Association, makes the appropriate reference to the provisions of the Declaration that has been amended or revoked, as the case may be, as well as any other prior amendments to the Declaration that have been made in compliance with the provisions of this **ARTICLE XI**, is appropriately acknowledged and has been recorded in the Office of the County Recorder of the County.

**11.2 CONTROL IF THE PROVISIONS OF ARTICLE XI CONFLICT WITH ANY MORTGAGEE PROTECTION OR OTHER PROVISIONS OF THE DECLARATION.**

A. To the extent any provision of **ARTICLE XI**, of the Declaration, entitled “**AMENDMENT OF THE DECLARATION**,” conflicts with any provision of **ARTICLE IX** of the Declaration, entitled “**PROTECTION OF MORTGAGES**,” or any other provisions of the Declaration, the provisions of said **ARTICLE IX** or any other conflicting provisions shall control.

**11.3 RELIANCE ON AMENDMENTS TO, OR REVOCATIONS OF, THE PROVISIONS OF THE DECLARATION.**

A. Any amendments to, or revocations of, the provisions of the Declaration that have been perfected in accordance with the provisions of the Governing Documents may be presumed valid by anyone relying on them in good faith.

**11.4 CONFORMING WITH MORTGAGEE REQUIREMENTS.**

A. It is the intent that the provisions of the Governing Documents and the Development in general, shall now and in the future, meet all of the requirements necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association and the Veterans Administration. Therefore, the Board and the Owners



shall take any action or adopt any resolutions that are reasonably required by any Mortgagee to conform to the provisions of the Governing Documents and/or the Development to the Mortgage requirements of any of the above referenced entities or agencies.

## **ARTICLE XII GENERAL PROVISIONS**

### **12.1 BINDING EFFECT.**

A. The Governing Documents shall inure to the benefit of and be binding on the personal representatives, grantees, tenants and assigns of the Owners.

### **12.2 CONFLICTS WITH OTHER DOCUMENTS.**

A. If there are conflicts or inconsistencies between the provisions of the Declaration and either the Articles of Incorporation, the Bylaws of the Association, the Association Rules or the Architectural Rules, the terms and provisions of the Declaration shall prevail.

### **12.3 CUMULATIVE REMEDIES.**

Each remedy provided for in the provisions of the Governing Documents shall be cumulative and not exclusive. Failure to exercise any remedy provided for in the provisions of the Governing Documents shall not, under any circumstances, be construed as a waiver of such remedy.

### **12.4 EASEMENTS RESERVED AND GRANTED.**

A. Any easements referred to in the provisions of the Governing Documents shall be deemed reserved or granted, or both reserved and granted, by reference to the appropriate provisions of the Governing Documents in any deed to any Lot.

### **12.5 HEADINGS.**

A. The headings used in the provisions of the Declaration are for convenience only and are not to be used to interpret the meaning of any such provisions.

### **12.6 LIBERAL CONSTRUCTION.**

A. The provisions of the Governing Documents should be liberally construed to effectuate their purpose of creating a Common Plan for the Property and for the maintenance of the Development as well as the operation of the Association.

### **12.7 NO FIXED TERM.**

A. The Declaration, as it may from time to time be amended, shall continue in full force and effect until it is revoked pursuant to **ARTICLE XI** of the Declaration, entitled, “**AMENDMENT OF THE DECLARATION.**”

12.8 **NOTICES AND COMMUNICATION.**

A. Unless otherwise expressly stated in the provisions of the Governing Documents, all notices and/or communications that may be required by the provisions of the Governing Documents shall comply with the following guidelines:

1. Any communication and/or notice of any kind permitted or required by the provisions of the Governing Documents shall be in writing and may be served, as an alternative to personal service, by mailing the notice as follows:
  - a. If to a Member, to the street address of such Member's Lot or to such other address that such Member may from time to time designate in writing to the Board.
  - b. If to the Association, to the Lushmeadows Association at the principal office of the Association, or to such other address as the Board may from time to time designate in writing to the Members.

12.9 **NUMBER; GENDER.**

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

12.10 **OWNER'S ACCESS TO BOOKS.**

A. Any Owner may, at any reasonable time and upon reasonable notice to the Board or the Manager, as the case may be, at its, his, her or their own expense, cause an audit or inspection to be made of the books and financial records of the Association.

12.11 **SEVERABILITY OF PROVISIONS.**

A. The provisions of the Declaration shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any provision or provisions shall not invalidate any other provision.

12.12 **A VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS AS NUISANCE.**

A. Every Violation of a Provision of the Governing Documents shall constitute a nuisance and, in addition to all other remedies that may be available, may be abated or enjoined by an Owner, any Director, the manager, if any, or the Association.

The Association has executed the Declaration as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**LUSHMEADOWS ASSOCIATION,  
a California non-profit, mutual benefit  
corporation**

By: \_\_\_\_\_  
Ed Drechsler, its President

**ACKNOWLEDGMENT**  
**STATE OF CALIFORNIA**

} SS.

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me,  
\_\_\_\_\_, a  
Notary Public in and for said County and State,  
personally appeared \_\_\_\_\_

\_\_\_\_\_ 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.

\_\_\_\_\_  
Signature of Notary