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VERA L. LYLE
COUNTY RECORDER

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When Recorded Return To:

VIA VERDE ESTATES, INC.
a California nonprofit mutual
benefit corporation

c/o Condominium Consultants, Inc.
Jeffrey L. Brown, Attorney
3268-1/2 Rosecrans Street
San Diego, California 92110
(619) 224-2891

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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
VIA VERDE ESTATES

[a Senior Citizen, Mobile Home Planned Residential Development]

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made this 8th day of November, 1985, by VIA VERDE ESTATES, INC., a California non-profit mutual benefit corporation, hereinafter called "Declarant.";

This Declaration is made with reference to the following:

RECITALS

A. Declarant is the Owner of the real property located in the City of Escondido, County of San Diego, State of California, more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

B. Declarant has or intends to improve the hereinabove described property by subdividing and improving said real property into a Planned Residential Development of one-hundred-fifteen (115) Lots, consisting of one-hundred-nine (109) Residential Lots and six (6) Common Area Lots (both hereinafter defined), all as shown on that certain Subdivision Map entitled ESCONDIDO TRACT NO. 596 in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248, filed in the Office of the San Diego County Recorder on June 5, 1985.

C. The Owners of the Project will receive title to a Residential Lot plus an appurtenant membership in the Corporation, which holds a freehold estate in the Common Area. The Corporation shall act as the management body for the Project.

D. Before selling or conveying any interests in the hereinabove described real property, Declarant desires to subject said property in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future owners of said property.

NOW, THEREFORE, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of all of the real property described, and has fixed and does hereby fix the following protective covenants, conditions and restrictions upon each and every ownership interest in property described above, under which said covenants, conditions and restrictions, each ownership interest in the property shall be hereafter held, used, occupied, leased, sold, encumbered, conveyed and/or transferred. Each and all of said covenants, conditions and restrictions are for the purpose of protecting the value and desirability of, and shall inure to the benefit of all of the real property described above, and shall run with and be binding upon and pass with property, and each and every ownership interest therein, and shall inure to the benefit of, apply to, and bind the respective successors in title or interest of Declarant.

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ARTICLE I

DEFINITIONS

1.1 **"ARTICLES"** shall mean and refer to the Articles of Incorporation as they may from time to time be amended.

1.2 **"BOARD"** shall mean and refer to the Board of Directors of the Corporation.

1.3 **"BYLAWS"** shall mean and refer to the Bylaws of the Corporation as they may from time to time be amended.

1.4 **"CITY"** shall mean and refer to the City of Escondido, a municipal corporation located in the County of San Diego, State of California.

1.5 **"COMMON AREA" or "COMMON AREA LOTS"** shall mean the entire Project except for Residential Lots (as defined in this Declaration); said Common Area is shown on the Subdivision Map as Lot No. 115 (being all streets not dedicated to public use), and Lots No. 110, 111, 112, 113 and 114 inclusive, including all improvements thereon.

1.6 **"CORPORATION" and/or "ASSOCIATION and/or "HOMEOWNERS ASSOCIATION"** shall mean and refer to VIA VERDE ESTATES, INC., a California non-profit mutual benefit corporation, incorporated under the Non-Profit Mutual Benefit Laws of the State of California, its successors and assigns.

1.7 **"DECLARANT"** shall mean and refer to VIA VERDE ESTATES, INC., a California non-profit mutual benefit corporation, incorporated under the Non-Profit Mutual Benefit Laws of the State of California, its successors and assigns.

1.8 **"DECLARATION"** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions recorded with the Office of the County Recorder of San Diego County, California, covering the property, including such amendments thereto as may from time to time be recorded.

1.9 **"DWELLING" or "RESIDENCE"** shall mean and refer to a mobile (manufactured) residential home structure, including enclosed yards, decks, patio areas, garages and carports located on a Residential Lot.

1.10 **"ELIGIBLE INSURER" or "GUARANTOR"** shall mean and refer to an insurer or governmental guarantor who has provided a written request to the Corporation, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Corporation.

1.11 **"ELIGIBLE MORTGAGE HOLDER"** shall mean and refer to the holder of a first mortgage or deed of trust on a Residential Lot, who has provided a written request to the Corporation, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or

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the Bylaws of the Corporation. Such notice must contain the Residential Lot number or the street address of the secured Residential Lot.

1.12 "FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation.

1.13 "FNMA" shall mean and refer to the Federal National Mortgage Association.

1.14 "MEMBER" shall mean and refer to a person entitled to membership in the Corporation as provided herein.

1.15 "MORTGAGE" shall mean and refer to a deed of trust as well as a mortgage.

1.16 "MORTGAGEE" shall mean and refer to a beneficiary or a holder of a deed of trust as well as a mortgagee.

1.17 "MORTGAGOR" shall mean and refer to the trustor of a Deed of Trust as well as a mortgagor.

1.18 "OWNER" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of a Residential Lot, including contract buyers but excluding those having such interest merely as security for the performance of an obligation.

1.19 "PARTY WALL" shall mean and refer to any wall that is located on or at the division line between adjoining Residential Lots, and used or intended to be used by the Owners of the adjoining Residential Lots in the maintenance of improvements on their respective Lots. For purposes of this Declaration, any fences or walls located on or at the division line between Residential Lots shall be treated as Party Walls.

1.20 "PROJECT" shall mean and refer to the entire parcel of real property, which is divided into Residential Lots and Common Area lots, including all structures and improvements erected or to be erected thereon.

1.21 "PROPERTY" shall mean and refer to that certain real property hereinbefore described.

1.22 "RESIDENTIAL LOT" or "LOT" means any of the lots located within the Project, including all improvements now or hereafter thereon, with the exception of the Common Area.

1.23 "RULES" shall mean and refer to the Rules and Regulations adopted by the Corporation or its Board pursuant to Section 2.5 of this Declaration.

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ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN CORPORATION

2.1 TYPES OF MEMBERS. Every Owner of a Residential Lot shall be a Member of the Corporation. Membership shall be appurtenant to and may not be separated from ownership of any Residential Lot. Each Owner is obligated promptly, fully and faithfully to comply with and conform to the Articles and Bylaws and the Rules and Regulations adopted thereunder from time to time by the Board and officers of the Corporation. Membership in the Corporation shall not be transferred, pledged or alienated in any way, except upon the sale of the Residential Lot to which it is appurtenant, and then only to the purchaser. The transfer of title to a Residential Lot or the sale of a Residential Lot and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant to such Residential Lot to the transferee.

2.2 QUALIFICATION FOR MEMBERSHIP. The Project is a Senior Mobile Home Park. A "qualifying Member" shall be a person fifty-five (55) years of age or older. Except for the initial owners purchasing Residential Lots from the Corporation, no person under fifty-five (55) years of age shall be a qualifying Member eligible for membership, except that a man and wife may become Members provided that one (1) spouse is at least fifty-five (55) years of age and the other is at least forty-five (45) years of age. Upon the death, dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying Member, the other person who was a Member by virtue of his or her marriage to a qualifying Member, shall be entitled to retain such membership.

2.3 CLASS OF MEMBERSHIP. The Corporation shall have one (1) class of voting membership, which shall be all Owners of a Residential Lot, who shall be entitled to one (1) vote for each Residential Lot owned. When more than one person holds an interest in any Residential Lot, all such persons shall be Members. The vote for such Residential Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Residential Lot.

2.4 RIGHTS OF CORPORATION. Except as otherwise provided herein, the Corporation acting through the Board and officers shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area or any portion thereof together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in this Declaration, the Articles and the Bylaws.

2.5 RIGHTS OF BOARD. The Board shall have the right to adopt reasonable rules not inconsistent with the provisions contained in this Declaration, and to amend the same from time to time relating to the use of the Common Area and other facilities situated thereon by Owners and by their tenants or guests, and the conduct of such persons with respect to automobile

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parking, outside storage of boats, trailers, bicycles and other objects, disposal of waste materials, drying of laundry, control of pets and other activities when, if not so regulated, might detract from the appearance of the community or offend or cause inconvenience or danger to persons residing or visiting therein. Such rules may provide that the Owner of a Residential Lot whose occupant leaves property on the Common Area in violation of the rules may be assessed after appropriate notice and an opportunity for a hearing before the Board to cover the expense incurred by the Corporation in removing such property and storing or disposing thereof.

2.6 RIGHT TO ENTER. For the purpose of performing the maintenance of the Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Corporation's agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Residential Lot. Such entry shall be made with as little inconvenience to the Lot Owner as is practicable, and any damage caused thereby shall be repaired by the Corporation at its own expense.

2.7 PERSONAL LIABILITY. In discharging their duties and responsibilities, the Board acts on behalf of and as representative of the Corporation which acts on behalf of and as representative of the Owners, and no Member thereof shall be individually or personally liable or obligated for performance of such duties or responsibilities unless he fails to act in good faith.

2.8 FINANCIAL REPORTS. The Board shall regularly prepare and distribute to all Members of the Corporation: (i) a balance sheet as of the end of the fiscal year; (ii) an operating (income) statement for the fiscal year; (iii) a statement of changes in financial position for the fiscal year; and (iv) for any fiscal year in which the gross income to the Corporation exceeds \$75,000, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. The provisions of this Section 8 shall be performed in accordance with Section 1730 of the California Civil Code (defined more fully in the Bylaws of the Corporation), as it may be amended from time to time.

ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENT TO CORPORATION

3.1 OBLIGATION OF ASSESSMENT. Each Owner of a Residential Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association:

(a) **Regular Assessments,** which shall include an adequate reserve fund for periodic maintenance, repair and replacement of the Common Area;

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(b) **Special Assessments** for capital improvements, such assessments to be established and collected as hereinafter provided.

The regular and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the Residential Lot and shall be a continuing lien upon the Residential Lot against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Residential Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title as their personal obligation unless expressly assumed by them.

3.2 RATE OF ASSESSMENTS. Both regular assessments and special assessments (other than special assessments imposed by reason of non-compliance with the Articles, Bylaws, this Declaration, particularly as provided in Article XI, Section 1(d) herein, or the rules and regulations adopted by the Board) shall be levied at a uniform rate for all Residential Lots and may be collected on a monthly basis or otherwise as determined by the Board. If for any reason whatsoever one or more Residential Lots is not required to pay assessments, each of the remaining Residential Lots shall bear assessments in the same proportion that each Lot now bears to the others.

3.3 COMMENCEMENT OF ASSESSMENTS; DUE DATES. The regular assessments shall commence as to all Residential Lots on the first day of the calendar month following the close of the first sale of a Residential Lot by Declarant. Written Notice of Assessment shall be given to every Owner subject thereto. Assessments may be collected on a monthly basis or otherwise as determined by the Board. The Corporation shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Corporation setting forth whether the assessments on a specified Residential Lot have been paid.

3.4 INTEREST ON ASSESSMENTS. Any assessment not paid within thirty (30) days after the date due shall bear interest from the date due at the rate provided in the Bylaws.

3.5 EFFECT OF NON-PAYMENT OF ASSESSMENTS. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Residential Lot from the time the assessment is due. At any time after any assessments levied by the Corporation affecting any Residential Lot have become delinquent, the Board may file for recording in the Office of the San Diego County Recorder a Notice of Delinquency as to such Residential Lot, which Notice shall state all amounts which have become delinquent with respect to such Residential Lot and the costs (including attorney's fees), penalties and interest which have accrued thereon, the amount of any assessments relating to such Residential Lot which are due and payable although not delinquent, a description of the Residential Lot with respect to which the delinquent assessments are owed, and the name of the record or reputed Owner of such Residential Lot. Such Notice shall be signed by the President or other

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Officer of the Board, or by a majority of the members of the Board, or by the Corporation's attorney or authorized representative. Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such Notice, together with the costs (including attorney's fees), penalties and interest accruing thereon, shall be and become a lien upon the Residential Lot described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Residential Lot following such recording, and all costs (including attorney's fees), penalties and interest accruing thereon. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Residential Lot prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record made in good faith and for value. In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Residential Lot, together with all costs (including attorney's fees), penalties and interest, which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further Notice, similarly signed, stating the satisfaction and releasing of such lien.

3.6 FORECLOSURE PROCEEDINGS. Each assessment lien may be foreclosed as and in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924 et seq. and Section 1356 of the California Civil Code, and to that end, a power of sale is hereby conferred upon the Corporation. The Corporation, acting on behalf of the Residential Lot Owners, shall have the power to bid for the Residential Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

3.7 SUBORDINATION OF ASSESSMENT LIENS. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage made in good faith and for value upon any Residential Lot. Sale or transfer of any Residential Lot shall not affect the assessment lien. However, the sale or transfer of any Residential Lot pursuant to judicial or nonjudicial foreclosure of such Mortgage, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Residential Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Residential Lot obtains title to the same as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Corporation chargeable to such Residential Lot which became due prior to the acquisition of title to such Residential Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Residential Lots, including such acquirer, his successors and assigns.

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3.8 MAINTENANCE FUND ESTABLISHED BY DECLARANT. Pursuant to Section 1086 of the City of Escondido Municipal Code, Declarant has deposited as a "contingency fund," with Security Pacific National Bank, the sum of \$21,800.00 (\$200 for each of the 109 Residential Lots), as principal payable to the City of Escondido. Upon the initial conveyance of record title to a Residential Lot to an Owner other than Declarant, the City shall transfer said funds, plus all interest and earnings thereon, to the Corporation, to be held for the purposes described in said Code Section 1086.

The Board shall establish no fewer than two (2) separate accounts ("Maintenance Funds"), into which shall be deposited all monies paid to the Corporation and from which disbursements shall be made, as provided herein, in the performance of functions by the Corporation under this Declaration. The Maintenance Funds shall be established as separate trust savings or trust checking accounts at any banking or savings institution insured by the Federal Deposit Insurance Corporation. The Maintenance Funds shall include: (i) an Operating Fund for current Common Expenses of the Corporation, (ii) a Reserve Fund for capital improvements, replacements, painting and repairs of the Common Area, and (iii) any other funds which the Board may establish to the extent necessary under the provisions of this Declaration. The Board shall not commingle any amounts deposited into any of the Maintenance Funds with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Declarant so long as the amounts assessed to, deposited into, and disbursed from any such Fund are earmarked for specified purposes authorized by the Declaration.

3.9 ASSESSMENTS ON RESIDENTIAL LOTS OWNED BY CORPORATION. Assessments which would normally become due on Residential Lots, but which Lots are owned by the Corporation during the time prior to sale to individual Owners or by virtue of the Corporation having acquired such Lots through foreclosure, shall be deemed to be common expenses collectible from all of the remaining Residential Lots in the same proportion that each Lot now bears to the others.

3.10 UNALLOCATED TAXES. In the event that any taxes are assessed against the Common Area, or the personal property of the Corporation, rather than against the Residential Lot, said taxes shall be included in the assessments made under the provisions of Section 3.1 and, if necessary, a special assessment may be levied against the Lots in any amount equal to said taxes, to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

ARTICLE IV

USE RESTRICTIONS

4.1 GENERAL USE OF LOTS. Each Lot shall be improved, used and occupied for private, mobile home, single-family dwelling purposes only, and no portion thereof, nor the Common Area, shall be used for any commercial purpose whatsoever; provided, however, Declarant may use any of the Residential Lots owned or leased by Declarant as "model homes" and sales offices

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during that period of time commencing when the Residential Lots are first sold or offered for sale to the public, and ending when all the Residential Lots in the Project are sold and conveyed by Declarant to separate Owners thereof. Not more than one (1) mobile home shall be placed on each Residential Lot.

4.2 LEASE OF RESIDENTIAL LOT OR DWELLING. Each Owner shall have the right to lease his Residential Lot or Lot plus Dwelling, provided that such lease is (i) in writing, (ii) does not exceed one year, after which time the Owner shall either reoccupy or sell his Residential Lot and Dwelling and (iii) provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board and that the failure to comply with the provisions of these documents shall be a default under the lease. No Owner shall lease his Dwelling for transient or hotel purposes. Any lease which is either for a period of less than thirty (30) days or pursuant to which the Lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes.

4.3 GUESTS. No person under the age of forty-five (45) shall stay as a guest or visitor with any Owner or qualifying resident for more than thirty (30) days in any twelve month period of time, without the expressed written approval of a majority of the Board.

4.4 TRAILERS, BOATS, RECREATIONAL VEHICLES AND TEMPORARY STRUCTURES. No boat, truck, trailer, camper, recreational vehicle and similar vehicles or equipment shall be parked or stored within the Project, except within the Owner's completely enclosed garage, or in such areas provided therefor as may be designated and approved by the Board by such persons and upon such terms and conditions and for such fees as may from time to time be determined by the Board. However, trailers or temporary structures for use incidental to the initial construction of the Project or the initial construction of property owned by Declarant or Declarant's designees and situated in the vicinity of the Project may be maintained within the Project, but shall be promptly removed on completion of all construction and sales.

4.5 INSURABILITY. Nothing shall be done or kept in any Lot or in the Common Area which shall cause any Lot or any part of the Common Area to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause the rate of insurance to increase, or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof.

4.6 PETS. Except as otherwise provided in the zoning ordinances of the City of Escondido, an Owner may keep and maintain in his Dwelling one (1) domesticated pet such as a dog, cat or other usual and ordinary household pet, subject to the Rules and Regulations adopted by the Board, provided that they are not kept, maintained or bred for any commercial purposes. Provided further, that upon the death of such pet, it shall not be replaced without

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the expressed written approval of the Board. If a Residential Lot is resold or rented, the new Owner or Tenant may not keep or maintain any pet without the expressed written approval of the Board.

Notwithstanding the foregoing, no pets may be kept in the Project which result in an annoyance or are obnoxious to other Owners or occupants. No pets shall be allowed in the Common Area except as may be permitted by rules of the Board. No dog shall enter the Common Area except while on a leash which is held by a person capable of controlling it. Declarant or any Owner may cause any unleashed dog found within the Common Area to be removed by Declarant (or any Owner) to a pound or animal shelter under the jurisdiction of the City of Escondido, or the County of San Diego, by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the dog. No dog whose barking disturbs other Owners or occupants shall be permitted to remain on the Project. Owners shall prevent their pets from soiling all portions of the Common Area where other persons customarily walk and shall promptly clean up any mess left by their pets.

4.7 INTERFERENCE OF OTHER OCCUPANTS. No Residential Lot shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur on any Residential Lot or in any Dwelling nor on the Common Area.

4.8 SIGNS. No signs other than one (1) sign of customary and reasonable dimensions, not to exceed 6 square feet in area, advertising a Residential Lot for sale or lease shall be erected or displayed on any Residential Lot so that it is visible from without such area without the prior written permission of the Board, and all signs must conform with applicable governmental ordinances. No signs shall be erected or displayed on the Common Area except signs placed by authority of the Board. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain during the sales period set forth in Section 1 above, such signs, poles and advertisements as it deems appropriate in connection with its sales program for the sale to the public of Residential Lots, provided such signs shall comply with the City of Escondido Zoning Ordinances and that they do not unreasonably interfere with the right of use and quiet enjoyment of the Residential Lot Owners.

4.9 ANTENNAE, FLAG POLES, ETC. There shall be no outside television or radio antennae, satellite disks, overhead wiring (telephone or electric), or any other wiring, rope or cable, masts, poles or flag poles constructed, installed or maintained on any Residential Lot or the Common Area for any purpose whatsoever without the prior written consent of the Board and necessary approvals and permits from the City of Escondido.

4.10 WELLS; SEPTIC TANKS. No well or septic tank shall be constructed in the Project except as designated by the Board.

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4.11 REGRADING OF LOTS. The surface or any part of any Residential Lot in the Project shall not be regraded without the prior consent of the Board.

4.12 OFFENSIVE ACTIVITIES AND CONDITIONS.

(a) No noxious or offensive activity shall be carried on in any Dwelling or on any Residential Lot or on the Common Area, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the other Owners other than construction or repair of improvements directed or approved by the Board, or at Declarant's instruction. Nothing shall be done in, on, or to the Common Area which will impair the structural integrity of any building located thereon. Except as otherwise provided herein, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board or an architectural committee appointed by the Board. All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Dwellings, streets and Common Area. No fences, hedges or walls shall be erected or maintained upon a Residential Lot, except such as are installed in accordance with the initial development by Declarant, or as provided by the Board. No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes on the Common Area, except in areas which may be approved by the Board.

(b) In the event any Residential Lot, including the landscaping or improvements thereon, is not maintained and kept clean, the Corporation shall have the right, either itself or through any other person, to furnish the labor and/or materials necessary to bring said Residential Lot, including landscaping and/or improvements thereon, up to a standard which meets the approval of the Board of Directors in its sole discretion and to maintain them according to such a standard. In such event, the Owner of any such Residential Lot shall pay to the Corporation an amount equal to all direct and indirect costs and expenses incurred by the Corporation to furnish such labor and/or materials, or have the same furnished; the amount that the Owner of any such Residential Lot is obligated to pay hereunder shall constitute a lien on any such Residential Lot and shall be payable within ten (10) days after the charge is made. Any such charge which is not paid within ten (10) days shall bear interest from the due date at the rate of nine percent (9%) per annum. The Corporation shall be entitled, but not limited to, enforce its rights hereunder by following the procedure provided for the sale of real property, as designated previously in Article III. This paragraph shall constitute a request by each Residential Lot Owner, under the conditions stated herein, for the Corporation to furnish any labor and/or materials which are furnished hereunder. Any claim against the Corporation or the Board shall not constitute a defense or offset in any action of the Corporation or the Board for nonpayment of any amounts which may be assessed hereunder.

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4.13 CAR MAINTENANCE AND POWER EQUIPMENT. No power equipment, hobby shops or car maintenance (other than emergency work) shall be permitted on a Residential Lot, except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections.

4.14 USE OF COMMON AREA. Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

(a) affording vehicular passage, parking, and pedestrian movement within the Project Property, including access to the Residential Lots;

(b) recreational use by the Owners and occupants of a Dwelling and their guests, subject to rules established by the Board;

(c) beautification of the Common Area and providing privacy to the residents of the Project through landscaping and such other means as the Board shall deem appropriate;

(d) parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions and for such fees as may from time to time be determined by the Board;

No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Area or in storage areas designated by the Board), nor in any manner which shall increase the rate of which insurance against loss by fire, or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Area and improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

4.15 LIABILITY FOR DAMAGE TO COMMON AREA. Each Owner shall be legally liable to the Corporation for all damages to the Common Area or to any improvements thereof or thereto, including but not limited to any buildings, facilities and landscaping caused by such Owner, his licensee(s) or any occupant of such Owner's Dwelling, as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws and rules of the Board by his guests, lessees and all occupants of Dwelling, and shall, after written notice and an appointment for a hearing, pay the fines and penalties assessed pursuant hereto, the Bylaws or Board rules for any violation by his guests, lessees and occupants of his Dwelling.

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ARTICLE V

ARCHITECTURAL AND DESIGN CONTROL

5.1 GENERAL. Except as otherwise provided in the zoning ordinances of the City of Escondido, anything contained in this Declaration to the contrary notwithstanding, no landscaping, building, fence, wall, addition or other structure or improvement shall be commenced, erected, placed, altered or permitted to remain on any Lot, or on the Common Area, until the location and the complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design, color and location to surrounding structures and topography by the Board or by an architectural committee composed of three (3) or more, but not to exceed five (5) representatives, appointed by the Board from the membership of the Corporation. The grade, level or drainage characteristics of the Residential Lot or any portion thereof shall not be altered without the prior written consent of the Board or its delegated committee. In the event that the Board or its designated Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this Article will be deemed to have been made. The provisions of this Section 1 shall not apply to the initial construction by Declarant of improvements on the Common Area.

5.2 REMODELING THE COMMON AREA. Except as otherwise provided in the zoning ordinances of the City of Escondido, and as otherwise specifically provided herein, nothing herein contained shall give any Owner or the Corporation the right to paint, decorate, remodel, landscape, adorn or construct or reconstruct upon any part or parcel of the Common Area without the written consent of the Board and without obtaining the necessary approvals and permits from the City of Escondido.

5.3 APPROVAL BY BOARD OF MOBILE HOME; MINIMUM SIZE; AGE. No mobile home may be placed on any Residential Lot until approved in writing by the Board, as to size, condition and appearance and together with proposed plans and specifications of exterior improvements. Said mobile home must have complete sanitary facilities, including, but not limited to: a lavatory, toilet, wash basin, tub or shower, kitchen sink, and must be connected to sewage outlets in conformity with State and local health requirements. The minimum size of any mobile home shall be double wide. No mobile home constructed prior to 1976 will be permitted.

5.4 EXTERIOR IMPROVEMENTS. The exterior improvements of Residential Lots must be completed within three (3) months immediately following the placement of a mobile home thereon.

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5.5 SETBACKS AND FENCING. The following setbacks shall be observed:

Front Yard: 10 feet with the exception that garages which do not open directly onto a street may have a 5 foot setback with an adequate turning radius to the satisfaction of the City of Escondido Planning Director; or where short lots or the topography will not so permit, then a 5 foot setback would be permissible.

Rear Yard: Minimum of 5 feet (3' to toe of slope);

Side Yard: Minimum of 5 feet (3' to toe of slope);

Setbacks for any accessory structure shall be as follows:

Side: A minimum of 3 feet from property line;

Rear: A minimum of 3 feet from property line;

Front: A minimum of 5 feet from property line.

Eaves on accessory structures may project up to 1 foot into front, side and rear setbacks.

No permanent or temporary structures or mobile homes shall be placed on or maintained on such side or rear yards. Extension of rear yard fencing or walls shall be as determined and approved or waived thereof in writing by the Board or its designated Committee.

5.6 ENCROACHMENTS INTO SETBACK AREAS. Eaves, awnings, fireplaces, stairs, door stoops and similar architectural features of a mobile home may extend into the front setback area (on those Lots only where a 10 foot front setback exists) for 4 feet (or 6 feet from the Lot line) and into the side yard setbacks for 2 feet (or 3 feet from the Lot line). The 4 foot encroachment does not apply to Lots with a 5 foot front setback (where a garage entry is turned sideways).

5.7 GARAGES, CARPORTS. Each Residential Lot shall have two (2) covered parking spaces consisting of (i) a one-car garage and carport, or (ii) a two-car garage, or (iii) two carports. A garage or carport may be attached or detached to the mobile home structure. A one-car garage must be setback a minimum of 28 feet, with covered parking for at least one car in front of the garage. A two-car garage must be set back either a minimum of 10 feet or 18 feet. The carport awning shall be equal to the front fascia or eave of the mobile home and extend back the full length of the mobile home. A garage turned sideways may be set back 5 feet. The pitch of the home roof and the garage roof must conform, and the peak of the garage roof shall not exceed the height of the peak of the mobile home. Any proposed deviation from the provisions of this Section 6, shall require the written approval of the Board or its designated Committee, and meet the provisions of the zoning ordinances of the City of Escondido.

5.8 **COLORS.** Mobile home exterior siding and trim shall be of "earth tone" colors. Roofs shall be a composition shingle (brown), shake or tile. Bright or reflective metal roofs are not permitted.

5.9 **NON-COMPLIANCE WITH LAWS.** Neither the Corporation, the Board or the Architectural Committee shall be responsible for any defect in, or non-compliance with any governmental law, rule or regulation of any building or other structures erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications, color scheme, plot plan or grading plan approved by the Corporation, the Board or the Architectural Committee or any conditions or requirements they may have imposed with respect thereto; provided, however, the Corporation shall be liable for damage and repair to City utilities in the event that such damage is caused by the Corporation in the course of repair or replacement of private facilities of the Project.

ARTICLE VI

RESPONSIBILITIES OF MAINTENANCE

6.1 **OWNER RESPONSIBILITY.** Each Owner of a Residential Lot shall maintain the exterior surfaces and roofing of his Dwelling in an attractive and cleanly manner. Any proposed changes in color or exterior material must be approved by the Board pursuant to Article V herein. Each Owner shall irrigate and maintain the landscaping of (including any slopes thereon) his Lot in an attractive and cleanly manner. No rubbish or debris of any kind shall be placed or permitted by an Owner to accumulate upon or adjacent to any Lot, so as to render such property or portion thereof unsanitary, unsightly, offensive or detrimental to other residents.

6.2 **RESPONSIBILITY OF CORPORATION.** The Corporation shall provide for adequate and reasonable maintenance and repair of the Common Area. Such maintenance shall include, but not be limited to, the clubhouse and recreation area, laundry area, the landscaped and parking areas around these facilities, all open space areas, the parkway wall and Project perimeter fencing, the parkway landscaped area and all street trees within the Project. In addition, the Corporation shall provide for the repair and maintenance of any sewer laterals, private streets and street lighting in the private streets, gutters, walks, water lines, drainage and storm facilities, brow ditches, swales, including keeping such facilities free from debris and obstructions, and the planting of trees and ground cover on, and the maintenance of the irrigation system in the Common Area. The Corporation shall be responsible for the maintenance of all slope banks in excess of 3 feet in height and all setbacks within 10 feet of the perimeter boundary of the Project. In the event that should such maintenance or repair result from the act or neglect of an Owner, his guests or licensees, the liability of the Owner shall be determined according to the Laws of the State of California.

ARTICLE VII**PARTY WALLS**

7.1 GENERAL. Each wall which is constructed as a part of a Residential Lot, and any part which is placed on the dividing line between Residential Lots, shall constitute a party wall, and with respect to such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of this Declaration, and to the extent not inconsistent herewith, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall be applied thereto.

7.2 DAMAGE BY ONE OWNER. In the event any such party wall is damaged or destroyed through the act of one adjoining Owner or any of his agents, guests, invitees, tenants or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of the aforementioned Owners shall forthwith proceed to rebuild and repair the same to as good a condition as formerly existed, without cost to the adjoining Owner.

7.3 DAMAGE BY OTHER CAUSE. In the event any such party wall is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one of the adjoining Owners, his tenants, guests or family, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly existed, at their joint expense.

7.4 ALTERATIONS. In addition to meeting the other requirements of this Declaration and of any building code or similar regulation or ordinance, any Owner proposing to modify, make additions to or rebuild his Dwelling in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner and the Corporation.

7.5 WEATHERPROOFING. Nothingwithstanding any other provisions of this Article VII, an Owner, who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole costs of furnishing the necessary protection against such elements.

7.6 ARBITRATION. In the event of a dispute between Owners with respect to a party wall, or under the provisions of this Article VII, each Owner shall choose an arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

7.7 BINDING EFFECT. The provisions of this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

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ARTICLE VIII

PARTITION PROHIBITED

Each of the Owners of a Residential Lot is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Project, except upon the showing that such partition is consistent with the requirements of California Civil Code Section 1354.

ARTICLE IX

POWER OF ATTORNEY

The Corporation is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the owners thereof when partition of the owners' interests in the Project may be had pursuant to Article VIII above. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate two-thirds (2/3) of the interest in the Common Area by any two (2) Members of the Board who are hereby authorized to record a certificate of exercise in the office of the County Recorder, San Diego County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

ARTICLE X

RIGHTS OF LENDERS

10.1 **MORTGAGEE APPROVALS.** Except as otherwise provided in Article VI above, unless sixty-seven percent (67%) of the first Mortgagees of Mortgages encumbering Residential Lots (based on one (1) vote for each Mortgage) have given their prior written approval, neither the Owners nor the Corporation shall:

(a) Seek, by act or omission, to abandon or terminate the Planned Unit Development Project, except as may be provided by statute;

(b) Change the pro-rata interest or obligations of any Residential Lot for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro-rata share of ownership of each Lot in the Common Area;

(c) Partition or subdivide any Residential Lot;

(d) Seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utility or other public purposes consistent with the uses of the Common Area shall not be deemed a transfer within the meaning of this provision;

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(e) Use hazard insurance proceeds for losses to improvements of the Common Area for other than the repairs, replacement or reconstruction of such property, except as may be provided by statute or upon substantial loss to the Lots and/or Common Area;

(f) Maintain fire and extended coverage insurance on the insurable portions of the Common Area on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurance value thereof, based on current replacement cost.

10.2 NOTIFICATION TO MORTGAGEE. Upon written request to the Corporation, identifying the name and address of the holder, insurer or guarantor and the Residential Lot number or address, any Eligible Mortgage Holder or Eligible Insurer will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Residential Lot on which there is a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer.

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Residential Lot subject to a first Mortgage held or insured, which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in the Bylaws or in this Declaration.

10.3 PRIORITY OF INSURANCE PROCEEDS DISTRIBUTION. Notwithstanding any other provision herein contained to the contrary, no provision of this Declaration or any other constituent documents shall give a Residential Lot Owner, or any other party, priority over any rights of the first mortgagee or beneficiary of the Residential Lot pursuant to its mortgage or deed of trust in the case of a distribution to such Lot owner of insurance proceeds or condemnation awards for losses to or a taking of Residential Lot and/or common elements.

10.4 NO RIGHT OF FIRST REFUSAL. This Declaration shall not be amended to provide for any right of first refusal, or other similar restriction in the Corporation to purchase a Residential Lot, without the prior written approval of at least two-thirds (2/3) of all First Mortgagees of Residential Lots within the Project. Should an amendment nevertheless be made with regard to the right of refusal, such restriction shall not apply to any first mortgagee.

10.5 MORTGAGEES FURNISHING INFORMATION. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any loan encumbering a Residential Lot.

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ARTICLE XI

DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA

11.1 **FIRE OR CASUALTY.** If any portion of the Common Area is damaged or destroyed by fire or other casualty, then:

(a) If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Corporation for the fiscal year during which the repairs or rebuilding is necessitated, the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor.

(b) If the cost of repairs or rebuilding exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Corporation for the fiscal year during which the repairs or rebuilding is necessitated, and if the Owners holding in aggregate more than fifty percent (50%) interest in Common Area agree to the repair or restoration of the Project, then the Board shall contract as provided in (a) above.

(c) If said Owners do not so agree to the repair or rebuilding of the Common Area, then each owner (and his Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of his Residential Lot as compared to the aggregate decrease in fair market values of all the Residential Lots caused by such damage or destruction. For purposes hereof fair market value shall be determined by an MAI appraiser (Member of the Appraisal Institute), selected by the board and hired by and at the expense of the Corporation. Should dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.

(d) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Residential Lot in proportion to the interest of each Owner in the Project to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessments and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Corporation to be used for such rebuilding.

11.2 **EMINENT DOMAIN.** If any portion of the Common Area is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the Owners of the Common Area, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award from such taking in proportion as insurance proceeds would be distributed pursuant

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to subsection (c) of Section 1 above, provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Corporation for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in Section 1 of this Article XI for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in Section 1 of this Article XI for determining whether to rebuild or repair following damage or destruction.

11.3 MASTER INSURANCE POLICY. The Corporation shall obtain and continue in effect the following insurance:

(a) A master policy of insurance with glass coverage, if applicable, and extended coverage endorsement for the full insurable value of all of the insurable improvements of the Common Area. The form and content of such policy must be satisfactory to all institutional first trust deed lenders and shall meet the maximum standards of the various institutional first trust deed lenders whose loan(s) encumber any of the Residential Lots.

(b) A public liability and property damage insurance policy with cross liability endorsement, if available, insuring the Corporation, any manager, the Declarant and the Owners against liability incident to ownership or use of the Common Area. The limits of such insurance shall not be less than \$1,000,000.00 covering all claims for death, personal injury and property damage arising out of a single occurrence.

(c) Such insurance covering officers and employees of the Corporation and employees of any manager or managing agent, whether or not any such persons are compensated for their services, against dishonest acts on their part, or in lieu thereof, a fidelity bond, naming the Corporation as obligee, written in an amount not less than one and one-half times the Corporation's estimated annual operating expenses and reserves.

(d) Worker's compensation insurance covering any employees of the Corporation.

Insurance premiums for the master policy shall be a common expense to be included in the monthly assessments levied by the Corporation. No Owner shall insure his Residential Lot in any manner which would cause the diminution in insurance proceeds from the master policy. Should any Owner violate this provision, he shall be responsible to the Corporation for any such diminution.

ARTICLE XII

EASEMENTS

12.1 NONEXCLUSIVE EASEMENTS. Each Residential Lot Owner shall have a nonexclusive easement for use and enjoyment of the Common Area and for ingress, egress, and support over and through the Common Area. These

easements shall be appurtenant to, and shall pass with the title to each Lot and shall be subordinate to any exclusive easements granted elsewhere in this Declaration, as well as to the right of the Corporation to regulate time and manner of use, to charge reasonable admission fees, and to perform its obligations under this Declaration.

12.2 DRAINAGE & SLOPES. The Owner of a Residential Lot shall permit free access by Owners of adjacent or adjoining Residential Lots to slopes or drainageways located on his property, which affect said adjacent or adjoining Residential Lots, when such access is essential for the maintenance of permanent stabilization on said slopes, or maintenance of the drainage facilities for the protection and use of property other than the Lot on which the slopes or drainageway is located. The Owner of any Residential Lot shall not in any way interfere with the established drainage pattern over his Lot from adjacent or adjoining Lots, and such Owner will make adequate provisions for property drainage in the event it is necessary to change the established drainage over his Lot. For the purpose herein, "established drainage" is defined as the drainage which occurred at the time the overall grading of the Project was completed.

12.3 OTHER EASEMENTS: The Corporation may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, and each Residential Lot Owner, in accepting his deed to the Lot, expressly consents to such easement. No such easement can be granted, however, if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his Lot.

12.4 EASEMENTS FOR MAINTENANCE OF ENCROACHMENTS. None of the rights and obligations of the Owners created herein, or by the deed creating the Planned Unit Development shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners.

ARTICLE XIII

ENFORCEMENT

13.1 RIGHT TO ENFORCE. The Corporation, the City of Escondido or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. Each Owner of a Residential Lot shall have a right of action against the Corporation for failure to comply with the provisions of the Declaration, the Bylaws or with the decisions of the Corporation which are made pursuant to authority granted the Corporation under the Declaration or Bylaws.

13.2 FAILURE TO ENFORCE. Failure by the Corporation, the City, or any Owner to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

13.3 ARBITRATION.

(a) In the event a dispute occurs between an Owner and an adjoining Residential Lot Owner over the application of these restrictions, operation, maintenance, repair or other matter in connection with said premises, the same shall be submitted to the Board of Directors in writing, which Board will act as an arbitrating tribunal.

(b) The arbitrating tribunal shall have complete control over the conduct of the arbitration and may specify any rules or regulation with the reference thereto, not to conflict herewith. The decision of the majority shall be the decision of the arbitrating tribunal and should be final. The technical rules of evidence shall be waived in the discretion of the tribunal. The parties are entitled to be represented by counsel and to be heard; provided, however, that nothing herein contained shall limit the power of the arbitrating tribunal to control the manner, method and conduct of the proceedings and presentation of the evidence, subject always to the requirement that parties be given a fair and impartial hearing. Where not inconsistent herewith, the rules of the American Arbitration Association apply.

(c) All hearings shall be held in San Diego County.

(d) In any arbitration the arbitrators shall have the broadest possible power permitted by law to frame their award or decision so as to do substantial justice between or among the parties. The Residential Lot Owners hereby agree that they will faithfully observe the contents of this document and the rules and that they will abide by and perform any award or decision rendered pursuant to this agreement, and a judgment of the court having jurisdiction may be entered upon the award.

(e) Provided, however, that this arbitration requirement shall not limit the right of the Corporation to enforce by any proceeding in law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration.

ARTICLE XIV

GENERAL PROVISIONS

14.1 SEVERABILITY. Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment of court order, the remaining provisions hereof shall be and remain in full force and effect.

14.2 TERM OF DECLARATION. The covenants, conditions and restrictions of this Declaration shall run with and bind the property, and shall inure to the benefit of and shall be enforceable by the Corporation, the City or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the Owners of the Residential Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to terminate the same.

14.3 ANNEXATION. Upon approval in writing of the Corporation, pursuant to three-fourths (3/4) majority of the voting power of its members, excluding the voting power or written assent of Declarant, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Corporation, may file of record a Declaration of Annexation.

14.4 AMENDMENTS. Except as may otherwise be stated in this Declaration, this Declaration may be amended at any time and from time to time by an instrument in writing signed by sixty-seven percent (67%) of the total voting power of members of the Corporation, any which amendment shall become effective upon the recording thereof with the Office of the County Recorder of San Diego County, California. Any amendment to Article IV, "USE RESTRICTIONS" or Article V, "ARCHITECTURAL AND DESIGN CONTROL" should be submitted to the City of Escondido for its approval prior to approval by the membership of the Corporation. Anything herein stated to the contrary notwithstanding, no material amendment to this Declaration shall be made without the prior written approval of no greater than sixty-seven percent (67%) of the Eligible Mortgage Holders whose mortgages encumber fifty-one percent (51%) or more of the Residential Lots within the Project which are subject to Eligible Mortgage Holder Mortgages. "Material change" shall mean, for purposes of this Section 4, any amendments to provisions of this Declaration governing any of the following subjects:

- (a) The percentage interest of the Lot Owners in the common elements of the Project.
- (b) The fundamental purpose for which the Project was created (such as a change from residential use to a different use).
- (c) Voting.
- (d) Assessments, assessment liens and subordination thereof.
- (e) The reserve for repair and replacement of common elements or any portion of the Lots.
- (f) Property maintenance obligations.

- (g) Casualty and Liability insurance.
- (h) Reconstruction in the event of damage or destruction.
- (i) Rights to use the common elements.
- (j) A decision by the Association to establish self-management when professional management had been required previously by an eligible mortgage holder.
- (k) Boundaries of the Lots.
- (l) Leasing of Lots.
- (m) Any provision, which by its terms, is specifically for the benefit of first mortgagees, or specifically confers rights on first mortgagees.

An addition or amendment to such document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

An Eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

14.5 LITIGATION. In the event the Corporation, the City, or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered.

14.6 NON-INTERFERENCE TO DECLARANT CONSTRUCTION EFFORT. Declarant is undertaking the work of construction of Residential Lots, a Common Area and incidental improvements upon the Project property. The completion of that work and the sale, rental and other disposal of said Residential Lots is essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and said Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Project property whatever is reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Project property such structures as may be reasonable and necessary for the conduct of its

business of completing said work and establishing said Project property as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

(c) Prevent Declarant from conducting on any part of the Project property its business of completing said work, and of establishing a plan of Residential Lot ownership and of disposing of said Residential Lots by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such sign or signs on any of the Residential Lots or Common Area as may be necessary for the sale, lease or disposition thereof; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his Lot or the Common Area.

Declarant, in exercising his rights under this Section 6 will not unreasonably interfere with the use of the Common Area by any Purchaser.

14.7 OWNER COMPLIANCE WITH DECLARATION. Each Owner, tenant or occupant of a Residential Lot shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Corporation or its duly authorized representative, as lawfully amended from time to time and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief.

14.8 BREACH OF DECLARATION. No breach of any provisions of these covenants, conditions and restrictions shall invalidate the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon Owner whose title is derived through foreclosure sale, Trustee's Sale or otherwise.

14.9 NOTICE. Any notice permitted or required by the Declaration, Articles or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two hours after a copy of the same has been deposited in the United States Mail, first class or certified, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Residential Lot of such person if no address has been given to the Secretary.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

DECLARANT:

VIA VERDE ESTATES, INC.
a California nonprofit mutual benefit corporation

E. Monroe Foster
E. Monroe Foster, President

Mary Jacobson
Mary Jacobson, Vice President

Constance Bellamy
Constance Bellamy, Treasurer

Dr. John Rice
Dr. John Rice, Secretary

Fred Walrod
Fred Walrod, Director

Sam Seigler
Sam Seigler, Director

Sarah V. Magnus
Sarah Magnus, Director

Alex Loeber
Alex Loeber, Director

William C. McGill
William C. McGill, Director

William H. Meek
William Meek, Director

Ruth M. Serr
Ruth Serr, Director

No 430633

853

443

EXHIBIT "A"

LEGAL DESCRIPTION:

Lots 1 through 115 inclusive of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248, filed in the Office of the County Recorder of San Diego County on June 5, 1985.

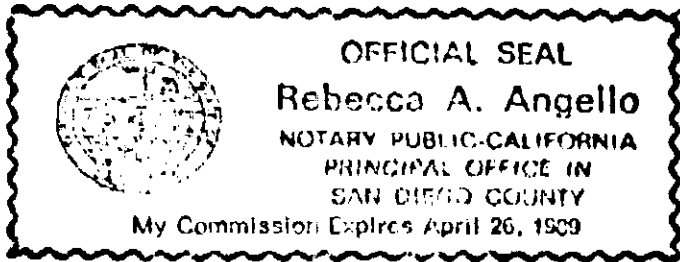
3002 (6/82) — (Corporation) First American Title Insurance Company

STATE OF CALIFORNIA
COUNTY OF San Diego
On November 8, 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared Mary Jacobson and personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as Vice President and Secretary, on behalf of Via Verde Estates, Inc.

the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature *Rebecca A. Angello*



(This area for official notarial seal)

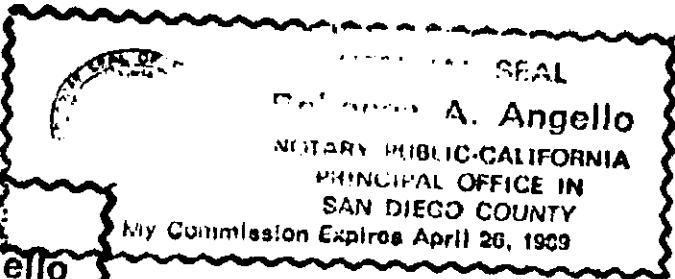
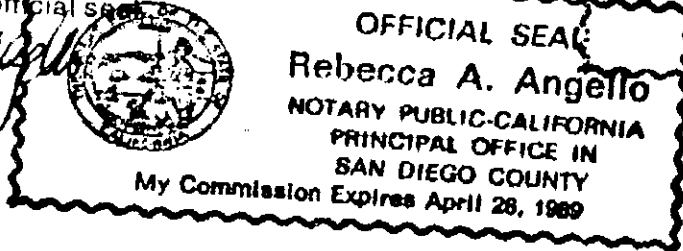
3002 (6/82) — (Corporation) First American Title Insurance Company

STATE OF CALIFORNIA
COUNTY OF San Diego
On November 8, 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared E. Monroe Foster and Dr. John Rice and personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as President and Secretary, on behalf of Via Verde Estates, Inc.

the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature *Rebecca A. Angello*



(This area for official notarial seal)

No 430633

853

3001 (6/82) (Individual) First American Title Company

STATE OF CALIFORNIA
COUNTY OF **San Diego**

ss.

On **November 8, 1985**, before me, the undersigned, a Notary Public in and for
said State, personally appeared **Alex Loeber, Sam Seigler, William C. McGill,**
Ruth M. Serr and Fred Walrod - - - - -

~~XXXXXXXXXXXX~~ proved to me on the basis of satis-
factory evidence) to be the person(s) whose name(s) is/are sub-
scribed to the within instrument and acknowledged to me that
he/she/they executed the same.



WITNESS my hand and official seal.

Signature

Mary B. Harrington

(This area for official notarial seal)

STATE OF CALIFORNIA
COUNTY OF **SAN DIEGO**

ss.

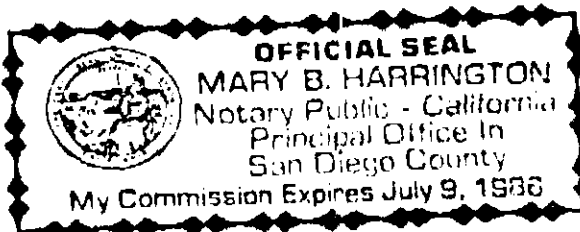
On **November 8, 1985**, before me, the undersigned, a Notary Public in and for
said State, personally appeared **CONSTANCE BELLAMY** - - - - -

~~XXXXXXXXXXXX~~ proved to me on the
basis of satisfactory evidence) to be the persons who executed the within instrument as

~~XXXXXXXXXX~~ Treasurer ~~XXXXXXXXXX~~, on behalf of
VIA VERDE ESTATES, INC.

the corporation therein named, and acknowledged to me that
such corporation executed the within instrument pursuant to its
by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.



Signature

Mary B. Harrington

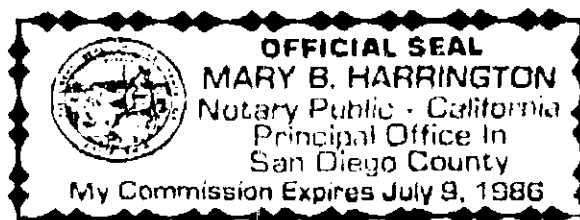
(This area for official notarial seal)

STATE OF CALIFORNIA
COUNTY OF **San Diego**

ss.

On **November 12, 1985**, before me, the undersigned, a Notary Public in and for
said State, personally appeared **William H. Meek and Sarah Magnus** - - - - -

~~XXXXXXXXXXXX~~ proved to me on the basis of satis-
factory evidence) to be the person(s) whose name(s) is/are sub-
scribed to the within instrument and acknowledged to me that
he/she/they executed the same.



WITNESS my hand and official seal.

Signature

Mary B. Harrington

(This area for official notarial seal)

No 430633

853

886597-17

RECORDED REQUEST OF FIRST AMERICAN TITLE CO.

Recording Requested By:

When Recorded, Return To:

C.C.I.
Attn: J.L. Brown, Attorney
410 West Elm Street
San Diego, California 92101-2510
(619) 231-1606

1360

89 038714

589 JAN 24 1992 05

RF 6
AR 4
MG 1

Space Above for Recorder's Use

FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
VIA VERDE ESTATES

(a Senior Citizen, Manufactured (Mobile) Home
Planned Residential Development)

This document is being recorded by
First American Title Insurance Co. as
an accommodation only. It has not
been examined as to execution or
impact on title.

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VIA VERDE ESTATES is made this 12th day of November, 1989 by VIA VERDE ESTATES, a California non-profit mutual benefit corporation (hereafter "Declarant"), with reference to the following:

RECITALS

A. Declarant caused to be recorded a "Declaration of Covenants, Conditions and Restrictions for Via Verde Estates" (hereafter "Declaration"), dated November 8, 1985 and recorded November 15, 1985 as File/Page No. 85-430633 of Official Records of the County Recorder of San Diego County covering that certain real property located in the City of Escondido, County of San Diego, State of California, more particularly described as follows:

Lots 1 through 115 inclusive of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248, filed in the Office of the County Recorder of San Diego County on June 5, 1985.

B. Declarant desires to amend the Declaration in the manner set forth below.

FIRST AMENDMENT

1. Section 2.2, Article II, of the Declaration is hereby deleted in its entirety and the following Section 2.2 is hereby inserted in its place:

2.2 QUALIFICATION FOR MEMBERSHIP. The Project is a Senior Manufactured (Mobile) Home Park. A "qualifying Member" of the Corporation shall be a person who is sixty-two (62) years of age or older; provided, however, any Member who does not meet the age requirement herein, but was a qualifying Member of the Corporation prior to the effective date of this First Amendment, shall be entitled to remain a qualifying Member.

2. The "effective date" of this First Amendment shall be as of the date it is recorded in the Official Records of the County Recorder of San Diego County Office, State of California.

3. Except as expressly amended herein, the remaining sections of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to the Declaration of Covenants, Conditions and Restrictions for Via Verde Estates is executed by the President of the Corporation on the date and year first hereinabove written.

VIA VERDE ESTATES, INC.,
a California non-profit mutual benefit corporation

By: *Harold M. Linnhardt*
President

Pursuant to California Civil Code Section 1355, I hereby certify and declare, under penalty of perjury, that the foregoing First Amendment to the Declaration of Covenants, Conditions and Restrictions for Via Verde Estates has been approved by the percentage of Owners required by the Declaration.

Executed at Escondido, California, on the 12th day of January, 1984.

By: *Harold M. Linnhardt*
President

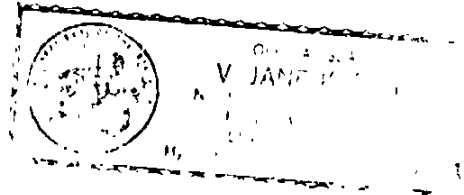
OFFICIAL RECORDS, SAN DIEGO COUNTY, VERAL L. LYLE, RECORDER

STATE OF CALIFORNIA)
) ss.
 COUNTY OF SAN DIEGO)

On January 12, 1961 before me, the undersigned, a Notary Public in and for said State, personally appeared: Thaine M. Simmonds, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the President of the Corporation that executed the within instrument and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

V. Lyle



OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

1205

Recording Requested By:

RECORDED REQUEST OF FIRST AMERICAN TITLE CO.

When Recorded Return To:

C.C.I. - Jeffrey L. Brown, Attorney
Att: Via Verde Estates
2130 Fourth Avenue
San Diego, California 92101-2110
(619) 231-1606

DOC #: 1991-0181891
22-APR-1991 03:59 PM

SAN DIEGO COUNTY RECORDER'S OFFICE
ANNETTE EVANS, COUNTY RECORDER
RF: 53.00 FEES: 105.00
AF: 51.00
MF: 1.00

Space Above for Recorder's Use

SECOND AMENDMENT TO AND RESTATEMENT OF
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR

"VIA VERDE ESTATES"

(a Senior Citizen, Manufactured Home
Planned Residential Development)

REVISED

CITY OF ESCONDIDO
PLANNING DEPARTMENT

APPROVED

Date: 3.12.91 By: [Signature]

This document is being recorded by
First American Title Insurance Co. as
an "as-is" transaction. It has not
been examined as to execution or
impact on title.

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Exhibit "A" - Legal Description

(v)

THIS SECOND AMENDMENT TO AND RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VIA VERDE ESTATES is made on the day and year hereinafter written by VIA VERDE ESTATES, INC., a California nonprofit mutual benefit corporation, hereinafter called "Declarant," being comprised of all of the Owners of that certain real property described in Exhibit "A" attached hereto and by reference made a part hereof, hereinafter called the "Property," with reference to the following:

RECITALS

A. On November 15, 1985 Declarant caused to be recorded a "Declaration of Covenants, Conditions and Restrictions for Via Verde Estates" (hereafter "Former Declaration"), as File/Page No. 85-430633 of Official Records of the County Recorder of San Diego County covering the Property. Said Former Declaration was amended by that certain "First Amendment to Declaration of Covenants, Conditions and Restrictions for Via Verde Estates" recorded January 24, 1989 as File/Page No. 89-038714 of Official Records of said County.

B. The Former Declaration provides in Section 14.4 thereof that it may be amended by an instrument in writing signed by sixty-seven percent (67%) of the total voting power of members of the Corporation, any which amendment shall become effective upon the recording thereof with the Office of the County Recorder of San Diego County, California. Notwithstanding the provisions of Section 14.4 of the Former Declaration, California Civil Code Section 1355(a) provides that the Former Declaration may be amended by approval of the percentage of owners required by the Former Declaration, the fact of which shall be certified in a writing executed and acknowledged by the president of the Corporation, whereupon such amendment and certification shall be effective upon its recordation in the Office of the San Diego County Recorder, California.

C. It is the intent and purpose of this SECOND AMENDMENT TO AND RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VIA VERDE ESTATES to amend, supercede and restate the Former Declaration in its entirety.

D. The Property is a Common Interest Development under the provisions of the Davis-Stirling Common Interest Development Act, more particularly described in California Civil Code Section 1351(k) as a Planned Development (the "Project"), consisting of one-hundred fourteen (114) Lots, comprised of one-hundred-nine (109) Residential Lots and five (5) Common Area Lots (both hereinafter defined), all as shown on that certain Subdivision Map entitled ESCONDIDO TRACT NO. 596 in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248, filed in the Office of the San Diego County Recorder on June 5, 1985.

VIA VERDE ESTATES
SECOND AMENDED DECLARATION

- 1 -

This document
First Amendment
amended
based on
impact on

E. The Owners of the Project shall hold title to a Residential Lot plus an appurtenant membership in the Corporation, which Corporation holds freehold estate in the Common Area. The Corporation shall act as the management body for the Project.

F. Declarant deems it desirable to subject the Property in accordance with a common plan to certain covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Property for the benefit of Declarant and any and all present and future Owners of the Property or any portion thereof.

NOW, THEREFORE, Declarant hereby certifies and declares that all of the Property is, and shall be, held, conveyed, transferred, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the limitations, covenants, conditions, restrictions and easements hereinafter set forth, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the subdivision, protection, maintenance, improvement, sale and lease of the Property, or any portion thereof. All of the limitations, covenants, conditions, restrictions and easements set forth herein are equitable servitudes and shall run with the land and shall be binding upon all parties having any right, title or interest in the Property, or any part thereof, their heirs, successive Owners and assigns; shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successive owners and each Owner and his or her respective successors-in-interest, and may be enforced by any Owner or by the Corporation.

ARTICLE 1. - DEFINITIONS

1.1. ARTICLES.

"Articles" shall mean and refer to the Articles of Incorporation, including such amendments thereto as may from time to time be made.

1.2. BOARD.

"Board" shall mean and refer to the Board of Directors of the Association.

1.3. BYLAWS.

"Bylaws" shall mean and refer to the Bylaws of the Corporation, including such amendments thereto as may from time to time be made.

1.4. CITY.

"City" shall mean and refer to the City of Escondido, a municipal corporation located in the County of San Diego, State of California.

VIA VERDE ESTATES
SECOND AMENDED DECLARATION

- 2 -

1.5. COMMON AREA; COMMON AREA LOTS.

"Common Area" or "Common Area Lots" shall mean the entire Project except for Residential Lots (as defined in this Declaration); said Common Area is shown on the Subdivision Map as Lots 110, 111, 112, 113 and 115, including all improvements thereon. Common Area Lot 115 consists of all streets not dedicated to public use. Lots 110 consists of recreation facilities, including clubhouse. Lots 111, 112 and 113 consist of landscaped area and parkway.

1.6. COMMON EXPENSES.

"Common Expenses" shall mean and refer to the actual and estimated costs and expenses incurred or to be incurred by the Corporation, including, but not limited to:

(a) Maintenance, management, operation, repair and replacement of the Common Area and all other areas within the Project, which are maintained by the Corporation;

(b) Due but unpaid assessments;

(c) Costs and expenses not paid by the Owner responsible for payment, when such costs and expenses are paid by the Corporation;

(d) Maintenance by the Corporation of areas within the public right-of-way of public streets in the vicinity of the Project as provided in this Declaration or pursuant to agreements with the City, if any;

(e) Costs of management and administration of the Corporation, including, but not limited to, compensation paid by the Corporation to managers, accountants, attorneys and employees;

(f) Costs and expense of leasing, owning, maintaining any vehicles for the use of the Members or employees, including insurance and reserves for replacement thereof;

(g) Costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their property to the extent such services are paid for by the Corporation;

(h) The costs of fire, casualty, liability, worker's compensation and other insurance covering the Common Area or other property owned by the Corporation;

(i) The costs of any other insurance obtained by the Corporation pursuant to the provisions of this Declaration;

(j) Reasonable reserves as deemed appropriate by the Board;

VIA VERDE ESTATES
SECOND AMENDED DECLARATION

(k) The costs of bonding of the Members of the Board or its delegated committees, any professional managing agent or any other person handling the funds of the Corporation;

(l) Taxes paid by the Corporation;

(m) Amounts paid by the Corporation for the discharge of any lien or encumbrance levied against the Common Area or portions thereof;

(n) Costs incurred by the Board or any of its delegated committees;

(o) The costs of any other item or items designated by, or in accordance with other expenses incurred by the Corporation for any reason whatsoever in connection with the operation or maintenance of the Common Area, or in furtherance of the purposes or the discharge of any obligation imposed on the Corporation by this Declaration or other Project Documents.

1.7. COUNTY.

"County" shall mean and refer to the County of San Diego, California.

1.8. CORPORATION; ASSOCIATION; HOMEOWNERS ASSOCIATION.

"Corporation," "Association" or "Homeowners Association" shall mean and refer to VIA VERDE ESTATES, INC., a California non-profit mutual benefit corporation, incorporated under the Non-Profit Mutual Benefit Laws of the State of California, its successors and assigns.

1.9. DECLARANT.

"Declarant" shall mean and refer to VIA VERDE ESTATES, INC. a California non-profit mutual benefit corporation, its successors and assigns.

1.10. DECLARATION.

"Declaration" shall mean and refer to this Declaration, recorded with the Office of the County Recorder of San Diego County, California, covering the Property, including such amendments thereto as may from time to time be recorded.

1.11. DWELLING; RESIDENCE; HOME.

"Dwelling," "Residence" or "Home" shall mean and refer to a manufactured residential home structure (some known as a "mobile home"), including enclosed yards, decks, patio areas, garages and carports located on a Residential Lot, unless the context otherwise indicates.

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1.12. ELIGIBLE INSURER, GUARANTOR.

"Eligible Insurer" and "Eligible Guarantor" shall mean and refer to an insurer or governmental guarantor who has provided a written request to the Homeowners Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Corporation.

1.13. ELIGIBLE MORTGAGE HOLDER.

"Eligible Mortgage Holder" shall mean and refer to the holder of a first mortgage or deed of trust on a Residential Lot, who has provided a written request to the Homeowners Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Corporation. Such notice must contain the Residential Lot number or the street address of the secured Residential Lot.

1.14. FHLMC.

"FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation.

1.15. FNMA.

"FNMA" shall mean and refer to the Federal National Mortgage Association.

1.16. FIRST MORTGAGE.

"First Mortgage" shall mean and refer to a first deed of trust as well as a first mortgage.

1.17. FIRST MORTGAGEE.

"First Mortgagee" shall mean and refer to the beneficiary or a holder of a first deed of trust as well as a First Mortgagee.

1.18. MEMBER.

"Member" shall mean and refer to a person entitled to membership in the Corporation as provided herein.

1.19. MORTGAGE.

"Mortgage" shall mean and refer to a deed of trust as well as a mortgage.

1.20. MORTGAGEE.

"Mortgagee" shall mean and refer to a beneficiary or a holder of a deed of trust as well as a mortgagee.

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1.21. MORTGAGOR.

"Mortgagor" shall mean and refer to the trustor of a Deed of Trust as well as a mortgagor.

1.22. OWNER.

"Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of a Residential Lot. The term "Owner" shall include a seller under an executory contract of sale, but shall exclude Mortgagees.

1.23. PARTY WALL.

"Party Wall" shall mean and refer to any wall that is located on or at the division line between adjoining Residential Lots, and used or intended to be used by the Owners of the adjoining Residential Lots in the maintenance of improvements on their respective Lots. For purposes of this Declaration, any fences or walls located on or at the division line between Residential Lots shall be treated as Party Walls.

1.24. PRIVATE ROAD.

"Private Road" shall mean and refer to that portion of the Common Area consisting of that certain private road or roads described as Lot 115, more particularly described in Exhibit "A".

1.25. PROJECT.

"Project" shall mean and refer to the entire parcel of real property described in Exhibit "A" herein.

1.26. PROJECT DOCUMENTS.

"Project Documents" means and includes this Declaration, the exhibits, if any, attached thereto, the Articles, the Bylaws and any Rules established by the Board, including any amendments to the aforescribed documents as may from time to time be made.

1.27. PROPERTY.

"Property" shall mean and refer to that certain real property located in San Diego County, California, more particularly described in Exhibit "A" herein.

1.28. RESIDENTIAL LOT; LOT.

"Residential Lot" or "Lot" means any of the lots located within the Project, including all improvements now or hereafter thereon, with the exception of Common Area lots.

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1.29. RULES.

"Rules" shall mean and refer to any rules or regulations adopted by the Corporation or its Board pursuant to this Declaration.

1.30. SLOPE BANK.

"Slope Bank" shall mean and refer to an expansive steep slope over three (3) feet in vertical height, which would be physically difficult to maintain; or, one where accessibility could be considered dangerous; or as may be determined by the Board.

ARTICLE 2. - MEMBERSHIP; VOTING

2.1. TYPE OF MEMBERS.

Every Owner of a Residential Lot shall be a Member of the Corporation. Membership shall be appurtenant to and may not be separated from ownership of any Residential Lot. Each Owner is obligated promptly, fully and faithfully to comply with and conform to the Articles and Bylaws and the Rules and Regulations adopted thereunder from time to time by the Board and officers of the Corporation. Membership in the Corporation shall not be transferred, pledged or alienated in any way, except upon the sale of the Residential Lot to which it is appurtenant, and then only to the purchaser. The transfer of title to a Residential Lot or the sale of a Residential Lot and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant to such Residential Lot to the transferee.

2.2. QUALIFICATION FOR MEMBERSHIP.

The Project is a Senior Manufactured (Mobile) Home Park. A "Qualifying Member" shall be a person who is fifty-five (55) years of age or older; provided, however, any Member who does not meet the age requirement herein, but was a qualifying Member of the Corporation prior to January 24, 1989, the date of recordation of the First Amendment to the Former Declaration, shall be entitled to remain a qualifying Member.

2.3. CLASS OF MEMBERSHIP.

The Corporation shall have one (1) class of voting membership, which shall be all Owners of a Residential Lot, who shall be entitled to one (1) vote for each Residential Lot owned. When more than one person holds an interest in any Residential Lot, all such persons shall be Members. The vote for such Residential Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Residential Lot.

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2.4. APPROVAL OF MEMBERS.

Unless specifically provided for otherwise, any provision of the Project Documents requiring the vote or written assent of the Corporation voting power shall be deemed satisfied by the following:

2.4.1. VOTE OF MAJORITY.

The vote of the majority at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members, unless a provision of this Declaration requires a special meeting only; provided, however that such majority must include the specified number of all Members entitled to vote at such meeting and not such a majority of a quorum of those Members present;

2.4.2. WRITING.

A writing or writings signed by a majority of the voting power; or

2.4.3. COMBINATION OF VOTES AND WRITING.

A combination of votes and written assent, provided that Members shall not change their vote or written assent after it is cast or delivered and provided further that only those written assents executed within sixty (60) days before or thirty (30) days after a meeting may be combined with votes cast at such meeting to constitute a majority.

2.5. NO PERSONAL LIABILITY OF BOARD MEMBERS.

In discharging their duties and responsibilities, the Board acts on behalf of and as representative of the Corporation which acts on behalf of and as representative of the Owners, and no Member thereof shall be individually or personally liable or obligated for performance of such duties or responsibilities unless he fails to act in good faith.

ARTICLE 3. - RIGHTS OF OWNERS, BOARD AND CORPORATION**3.1. RIGHTS OF OWNERS.**

Owners, and, to the extent permitted by such Owner, his family, guests, invitees, lessees, and contract purchasers who reside in such Owner's Dwelling, shall have the following rights and limitations:

3.1.1. RIGHT OF ACCESS AND USE OF DWELLING.

The right of access over the Common Area for ingress to and egress from such Owner's Dwelling, and of enjoyment and full use of such Dwelling, which right shall be appurtenant to and shall pass with title to the Owner's Residential Lot, subject to the limitations contained herein. This right cannot be forfeited or abridged by the failure by an owner to comply with provisions of the Project Documents or duly-enacted rules of operation for

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Common Areas and facilities thereon, except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Corporation.

3.1.2. RIGHT TO THE USE OF COMMON AREA.

The right of ingress and egress and of enjoyment in, to and over the Common Area, which shall be appurtenant to and shall pass with title to the Residential Lot, subject to the limitations and restrictions of the Project Documents.

3.1.3. RIGHT TO NOTICE AND HEARING.

The right to receive notice and an opportunity to be heard orally or in writing, as set forth in Section 7341 of the California Corporations Code (or any successor statute or law), prior to a decision by the Board to impose monetary penalties, a temporary suspension of an Owner's right as a Member of the Corporation, or other appropriate discipline for failure to comply with the Project Documents as described more fully in the Section entitled "Penalties Against Members" herein.

3.1.4. DELEGATION OF USE.

Any Owner may delegate his right of enjoyment to the Common Area to his tenants or contract purchasers who reside on his Lot; provided, however, that if any Owner delegates such right of enjoyment to tenants or contract purchasers, neither the Owner nor his family shall be entitled to use the Common Area by reason of ownership of the Residential Lot during the period of delegation. Guests of any Owner may use the Common Area only in accordance with the Rules adopted by the Board.

3.2. RIGHTS OF BOARD.

The Board shall have the following rights:

3.2.1. MANAGEMENT, OPERATION, CONTROL, ETC.

Except as otherwise provided herein, the Corporation acting through the Board and officers shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area or any portion thereof together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in this Declaration, the Articles and the Bylaws.

3.2.2. RULES AND REGULATIONS.

The right to establish uniform rules and regulations pertaining to the use of the Common Area not inconsistent with the provisions of this Declaration, and to amend the same from time to time relating to the use of the Common Area and other facilities situated thereon by Owners and by their tenants or

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1 guests, including the right to reasonably limit the number of guests using the
 2 Common Area and any facilities thereon, and the conduct of such persons with
 3 respect to automobile parking, outside storage of bicycles and other objects,
 4 disposal of waste materials, drying of laundry, control of pets and other
 5 activities which, if not so regulated, might detract from the appearance of the
 6 Community or offend or cause inconvenience or danger to persons residing or
 7 visiting therein. Such Rules may provide that the Owner of a Lot whose
 8 occupant leaves property on the Common Area in violation of the Rules may be
 9 assessed (after appropriate notice and an opportunity for a hearing before the
 10 Board as set forth herein) an amount to cover the expense incurred by the
 11 Corporation in removing such property and storing or disposing thereof.
 12

13 3.2.3. PENALTIES AGAINST MEMBERS.

14 The right to impose the following penalties against Members:
 15

16 (a) Suspension of the membership rights and privileges, together
 17 with the voting rights of any Member of the Corporation, for any period of time
 18 during which the assessment on a Member's Residential Lot remains unpaid;
 19

20 (b) Suspension of the membership rights and privileges, together
 21 with the voting rights of any Member of the Corporation, for any period not to
 22 exceed sixty (60) days for any infraction of the Corporation's Rules;
 23

24 Suspension may include the suspension of the right of a Member to the
 25 use of any recreational facilities on the Common Area; however, no such suspen-
 26 sion shall affect the rights of such Member to access to his Lot, except by
 27 judgment of a court or a decision arising out of arbitration or on account of
 28 foreclosure or sale under a power of sale for failure of the member to pay
 29 assessments duly levied by the Corporation.
 30

31 (c) Levying of monetary penalties against an individual Member as
 32 a disciplinary measure for failure of a Member, his tenants or guests to comply
 33 with provisions of the Project Documents, or as a means of causing the Member
 34 to reimburse the Corporation for costs and expenses incurred by the Corporation
 35 in the repair of damage to Common Areas and facilities for which the Member was
 36 allegedly responsible, or in bringing the Member into compliance with the Proj-
 37 ect Documents. Monetary penalties or "fines" may be levied against an individ-
 38 ual Member for each offense. The fine for the first of such offenses shall not
 39 exceed \$25.00. For repeated offenses, fines shall not exceed \$500.00 per
 40 offense. Provided, however, no such monetary penalty or fine may be character-
 41 ized or treated as an assessment which may become a lien against the Owner's
 42 subdivision interest enforceable by a sale of the interest in accordance with
 43 the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.
 44
 45
 46

47 3.2.4. NOTICE AND HEARING.

48 As set forth in Section 7341 of the California Corporations Code (or
 49 any successor statute or law), no suspension or monetary penalty shall be
 50 effective unless a Member receives fifteen (15) days' prior written notice of
 51 the proposed action and the reasons therefor and is given an opportunity to be
 52
 53
 54

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either heard orally or in writing before the Board not less than five (5) days before the proposed effective date of the action. The notice required hereby may be given by any method reasonably calculated to provide actual notice in accordance with the notice provisions described in the Article herein entitled "General Provisions".

It is provided, however, that the provisions of the preceding paragraph expressly do not apply to charges imposed against a Member consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Corporation for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments as more fully described in this Declaration and the Bylaws.

3.2.5. RIGHT TO ENTER RESIDENTIAL LOT.

The right of the Corporation's agents or employees to enter upon any Residential Lot when necessary in connection with any maintenance, landscaping, or construction for which the Corporation is responsible. Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused thereby shall be repaired by the Corporation at its own expense. In the case of an emergency, the right of entry shall be immediate. For the purpose herein, "emergency" is defined as an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property.

3.2.6. ACCESS TO COMMON AREA.

The right of Corporation access, ingress and egress over the Common Area and the right of installation and use of utilities and other improvements thereon for the benefit of the Community.

ARTICLE 4. - COVENANT FOR MAINTENANCE ASSESSMENT TO CORPORATION

4.1. OBLIGATION OF ASSESSMENT.

Each Owner of a Residential Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Corporation:

(a) Regular Assessments, which shall include an adequate reserve fund for periodic maintenance, repair and replacement of the Common Area, shall be established and collected as provided herein;

(b) Special Assessments for capital improvements, such assessments to be established and collected as provided herein.

All assessments, together with interest, costs, late charges and reasonable attorneys' fees, shall be a charge on the Residential Lot and shall be a continuing lien upon the Lot against which each such assessment is made, the

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lian to become effective upon recordation of a Notice of Delinquent Assessment, as provided in this Article. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Residential Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

4.2. PURPOSE OF ASSESSMENTS.

The assessments levied by the Corporation shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project and for the improvement and maintenance of the Common Area for the common good of the Project.

4.3. REGULAR ASSESSMENTS.

The Board shall fix and determine from time to time Regular Assessments to be paid by each Owner for the purpose of operation, maintaining and repairing the Common Area, paying the necessary expenditures of the Corporation as provided in this Declaration and the other Project Documents, and shall be in an amount sufficient to include an adequate reserve fund for maintenance, repairs and replacement of those portions of the Common Area which must be replaced on a periodic basis, subject to the limitations contained in the Section hereinafter entitled "*Limitations on Assessments*."

4.4. SPECIAL ASSESSMENTS.

If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Corporation for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs, replacement of or new capital improvements on the Common Area, the Board shall determine the approximate amount necessary to defray such expenses and, except as provided in the "*Limitations on Assessments*" Section hereinbelow, said amount shall become a Special Assessment. The Board may, in its discretion, prorate such special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Residential Lot. Special Assessments shall be levied on the same basis as Regular Assessments.

4.5. SINGLE BENEFIT ASSESSMENT.

The Board may establish a Single Benefit Assessment for reconstruction, capital improvements, extraordinary maintenance, or any other cost or expense not otherwise provided for in this Declaration which will benefit less than all of the Owners, and which will be assessed only against the Residential Lots of those Owners so benefitting.

(a) Except as provided in the paragraph immediately below, such Single Benefit Assessments may be imposed only by a vote of at least fifty-one percent (51%) of the Owners of the Residential Lots benefitted by the Single

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Benefit Assessment. Each Single Benefit Assessment shall be segregated in the Maintenance Accounts solely to the Residential Lots which derive the benefit therefrom. In the event that the Corporation obtains income directly related to an item which has been assessed as a Single Benefit Assessment, such income shall be allocated so as to reduce or offset such Single Benefit Assessment.

(b) Whenever the Corporation performs any service or accomplishes any item of repair or maintenance which is the duty of an Owner to accomplish, but which has not been accomplished by such Owner, or whenever the Corporation determines to preempt the performance of a specific Owner of a given act of maintenance or repair, the Corporation shall specifically charge the cost thereof, together with any financing costs and administrative costs incurred by the Corporation, to the Owner for whom such work was done, and shall include such additional cost as a Single Benefit Assessment for such Owner and his Residential Lot and shall be immediately paid by such Owner to the Corporation and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law). Any such Assessment shall constitute a lien upon the Residential Lot against which it is made, the lien to become effective upon the recordation of a Notice of Delinquency in accordance with the procedures described in the Section entitled "Effect of Non-Payment of Assessments" hereinbelow.

4.6. RATE OF ASSESSMENTS; DUE DATES.

Both Regular Assessments and Special Assessments shall be levied at a uniform rate for all Residential Lots and may be collected on a monthly basis or otherwise as determined by the Board. The Board shall determine and fix the amount of the Regular Assessment against each Residential Lot at least thirty (30) days in advance of each Regular Assessment period. Written notice of the Regular Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board.

4.7. RESIDENTIAL LOTS NOT SUBJECT TO ASSESSMENTS.

If for any reason whatsoever one or more Residential Lots is not required to pay assessments (e.g. a Residential Lot owned by the Corporation by virtue of the Corporation having acquired such Residential Lot through foreclosure), such assessments shall be deemed to be common expenses collectible from all of the remaining Residential Lot Owners in the same proportion as each Lot now bears to the others, less the number of Residential Lots owned or not assessed by the Corporation.

4.8. LIMITATIONS ON ASSESSMENTS.

(a) The Board of Directors of the Corporation shall not impose or collect an assessment, penalty, or fee that exceeds the amount necessary for the purpose or purposes for which it is levied. Annual increases in Regular Assessments for any fiscal year, as authorized by subsection (b) immediately hereinafter, shall not be imposed unless the Board has prepared and distributed the proforma operating budget described in the "Financial" Section of the Bylaws, in accordance with the provisions of Civil Code Section 1365(a) as it may from time to time be amended, with respect to that fiscal year, or has

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obtained the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

(b) From and after January 1st of the year immediately following the conveyance of the first Residential Lot to an Owner, the Board of Directors of the Corporation may not impose, except as provided herein, a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Corporation's preceding fiscal year or impose special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Corporation for that fiscal year without the approval of Owners constituting a quorum casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. These provisions, however, shall not limit assessment increases necessary for the following "emergency situations:"

(1) An extraordinary expense required by an order of a court;

(2) An extraordinary expense necessary to repair or maintain those portions of the Project or the Common Area for which the Corporation is responsible where a threat to personal safety is discovered;

(3) An extraordinary expense necessary to repair or maintain those portions of the Project or the Common Area for which the Corporation is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget described in the "Financial" Section of the Bylaws, in accordance with Civil Code Section 1365. Provided, however, that prior to the imposition or collection of an assessment under this paragraph, 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, and the resolution shall be distributed to the members with the Notice of Assessment.

(c) For purposes of this Section, "quorum" is defined as more than fifty percent (50%) of the Members of the Corporation.

(d) Any action authorized under this Section shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting.

4.9. LATE PENALTIES; INTEREST ON ASSESSMENTS.

Any assessment not paid within fifteen (15) days after the due date shall be delinquent and shall be subject to a reasonable late penalty not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, and shall bear interest on all sums including the delinquent assessment, reasonable costs for collection and late penalties at an

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annual percentage not exceeding twelve percent (12%) commencing thirty (30) days after the assessment becomes due, or at the maximum legal rate as defined in the California Civil Code Section 1366, or any successor statute or law.

4.10. EFFECT OF NON-PAYMENT OF ASSESSMENTS.

Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Residential Lot from the time the assessment is due. At any time after any assessments levied by the Corporation affecting any Residential Lot have become delinquent, the Board may file for recording in the Office of the San Diego County Recorder a Notice of Delinquency as to such Residential Lot, which Notice shall state all amounts which have become delinquent with respect to such Residential Lot and the costs (including attorney's fees), penalties and interest which have accrued thereon, the amount of any assessments relating to such Residential Lot which are due and payable although not delinquent, a description of the Residential Lot with respect to which the delinquent assessments are owed, and the name of the record or reputed Owner of such Residential Lot. Such Notice shall be signed by the President or other Officer of the Board, or by a majority of the members of the Board, or by the Corporation's attorney or authorized representative. Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such Notice, together with the costs (including attorney's fees), penalties and interest accruing thereon, shall be and become a lien upon the Residential Lot described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Residential Lot following such recording, and all costs (including attorney's fees), penalties and interest accruing thereon. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Residential Lot prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record made in good faith and for value. In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Residential Lot, together with all costs (including attorney's fees), penalties and interest, which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further Notice, similarly signed, stating the satisfaction and releasing of such lien.

4.11. FORECLOSURE PROCEEDINGS.

Each assessment lien may be foreclosed as and in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924, 2924(b), 2924(c) and 1367 of the California Civil Code, or any successor statute or law, and to that end, the right to enforce the lien by sale is hereby conferred upon the Corporation and its trustee designated in the Notice of Delinquent Assessment, or a trustee substituted pursuant to California Civil Code Section 2934a. The Corporation, acting on behalf of the Owners, shall have the power to bid for the Residential Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid

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assessments, costs, late penalties and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

4.12. SUBORDINATION OF ASSESSMENT LIENS.

The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage made in good faith and for value upon any Residential Lot. Sale or transfer of any Residential Lot shall not affect the assessment lien. However, the transfer of any Residential Lot pursuant to a "power-of-sale" or judicial foreclosure of a First Mortgage shall extinguish the lien of or obligation for such assessments as to payments which became due prior to the foreclosure transfer. No sale or transfer shall relieve such Residential Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Residential Lot obtains title to the same as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Corporation chargeable to such Residential Lot which became due prior to the acquisition of title to such Residential Lot by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Residential Lots, including such acquirer, his successors and assigns.

4.13. WAIVER OF EXEMPTIONS.

Each Owner, to the extent permitted by law, waives, to the extent any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any assessment or installment thereof becomes delinquent, or any lien is imposed.

4.14. FINANCIAL ACCOUNTS.

The Board shall establish no fewer than two (2) separate accounts ("Financial Accounts"), into which shall be deposited all monies paid to the Corporation and from which disbursements shall be made, as provided herein, in the performance of functions by the Corporation under this Declaration. The Financial Accounts shall be established as separate trust savings or trust checking accounts at any banking or savings institution insured by the Federal Deposit Insurance Corporation, or its successor or similar federal insuring agency. The Financial Accounts shall include: (i) an Operating Account for current Common Expenses of the Corporation, (ii) a Reserve Account for capital improvements, replacements, painting and repairs of the Common Area, and (iii) any other account which the Board may establish to the extent necessary under the provisions of this Declaration. The Board shall not commingle any amounts deposited into any of the Financial Accounts with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional Financial Accounts so long as the amounts assessed to, deposited into, and disbursed from any such Account are earmarked for specified purposes authorized by this Declaration or the Bylaws.

4.15. ASSESSMENTS ON RESIDENTIAL LOTS OWNED BY CORPORATION.

Assessments which would normally become due on Residential Lots, but which lots are owned by the Corporation during the time prior to sale to

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individual Owners or by virtue of the Corporation having acquired such Lots through foreclosure, shall be deemed to be common expenses collectible from all of the remaining Residential Lots in the same proportion that each Lot now bears to the others.

4.16. UNALLOCATED TAXES.

In the event that any taxes are assessed against the Common Area, or the personal property of the Corporation, rather than against the Residential Lot, said taxes shall be included in the assessments made under the provisions of Section entitled "*Obligation of Assessment*" hereinabove, if necessary, a Special Assessment may be levied against the Lots in any amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

ARTICLE 5. - USE RESTRICTIONS

5.1. GENERAL USE OF LOTS.

Each Lot shall be improved, used and occupied for private, single-family home dwelling purposes only, and no portion thereof, nor the Common Area, shall be used for any commercial purpose whatsoever. Not more than one Home shall be placed on each Residential Lot.

5.2. LEASE OF RESIDENTIAL LOT OR DWELLING.

Each Owner shall have the right to lease his Residential Lot or Lot plus Dwelling, provided that such lease is (i) in writing, (ii) does not exceed one year, after which time the Owner shall either reoccupy or sell his Residential Lot and Dwelling and (iii) provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board and that the failure to comply with the provisions of these documents shall be a default under the lease. No Owner shall lease his Dwelling for transient or hotel purposes. Any lease which is either for a period of less than thirty (30) days or pursuant to which the Lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes. Upon the lease of any Residential Lot or Dwelling, the Owner thereof shall, within ten (10) days thereafter, provide a copy of the lease agreement to the Corporation.

5.3. GUESTS.

No person under the qualifying age, as described in Section entitled "*Qualification for Membership*" hereinabove, shall stay as a guest or visitor with any Owner or Qualifying Member for more than thirty (30) days in any twelve month period of time, without the expressed written approval of a majority of the Board.

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5.4. TRAILERS, BOATS, RECREATIONAL VEHICLES AND TEMPORARY STRUCTURES.

No boat, truck, trailer, camper, recreational vehicle and similar vehicles or equipment shall be parked or stored within the Project, except within the Owner's completely enclosed garage.

5.5. INSURABILITY.

Nothing shall be done or kept in any Lot or in the Common Area which shall cause any Lot or any part of the Common Area to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause the rate of insurance to increase, or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof.

5.6. PETS.

Except as otherwise provided more stringently in the zoning ordinances of the City of Escondido, an Owner may keep and maintain in his Dwelling one (1) domesticated pet, not over twenty (20) pounds in weight when fully mature, such as a dog, cat or other usual and ordinary household pet, subject to the Rules adopted by the Board, provided that they are not kept, maintained or bred for any commercial purposes.

Notwithstanding the foregoing, no pets may be kept in the Project which result in an annoyance or are obnoxious to other Owners or occupants. No pets shall be allowed in the Common Area except as may be permitted by rules of the Board. No dog shall enter the Common Area except while on a leash which is held by a person capable of controlling it. The Board or any Owner may cause any unleashed dog found within the Common Area to be removed by the Board or any Owner to a pound or animal shelter under the jurisdiction of the City of Escondido, or the County of San Diego, by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the dog. No dog whose barking disturbs other Owners or occupants shall be permitted to remain on the Project. Owners shall prevent their pets from soiling all portions of the Common Area where other persons customarily walk and shall promptly clean up any mess left by their pets.

5.7. INTERFERENCE OF OTHER OCCUPANTS.

No Residential Lot shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur on any Residential Lot or in any Dwelling nor on the Common Area.

5.8. SIGNS.

No signs, placards, decals or other similar objects, visible from the Private Road, neighboring property or streets, shall be erected or displayed on any Residential Lot or the Common Area, without the prior written permission of the Board; provided however, subject to conformance with applicable local governmental ordinances, one (1) sign may be erected or by an Owner or an Owner's

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agent on the Owner's Residential Lot or on real property owned by another with that person's consent, which is reasonably located, in plain view of the public, and is of reasonable dimensions and design, advertising the following: (i) that the Residential Lot is for sale, lease or exchange by the Owner or the Owner's agent, (ii) directions to the Residential Lot, (iii) the Owner's or agent's name, and (iv) the Owner's or agent's address and telephone number.

5.9. ANTENNAE, FLAG POLES, ETC.

There shall be no outside television or radio antennae, satellite dishes, overhead wiring (telephone or electric), or any other wiring, rope or cable, masts, poles or flag poles constructed, installed or maintained on any Residential Lot or the Common Area for any purpose whatsoever without the prior written consent of the Board and necessary approvals and permits from the City of Escondido. The foregoing notwithstanding, nothing herein shall be construed to prevent any person that would otherwise have a legal right to display a Flag of the United States of America from a Residential Lot from exercising that right, subject to reasonable restrictions imposed by the appropriate local jurisdiction as to the time, place and manner of placement or display of such Flag, when necessary for the preservation of the public's health, safety or order; provided, however, no restrictions solely to promote aesthetic considerations may be imposed.

5.10. WELLS; SEPTIC TANKS.

No well or septic tank shall be constructed in the Project except as designated by the Board.

5.11. REGRADING OF LOTS.

The surface or any part of any Residential Lot in the Project shall not be regraded without the prior consent of the Board.

5.12. OFFENSIVE ACTIVITIES AND CONDITIONS.

No noxious or offensive activity shall be carried on in any Dwelling or on any Residential Lot or on the Common Area, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the other Owners other than construction or repair of improvements directed or approved by the Board. Nothing shall be done in, on, or to the Common Area which will impair the structural integrity of any building located thereon. Except as otherwise provided herein, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board or an architectural committee appointed by the Board. All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Dwellings, streets and Common Area. No fences, hedges or walls shall be erected or maintained upon a Residential Lot, except such may be approved by the Board, or the Architectural Committee in accordance with the provisions therefor contained herein. No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes on the Common Area, except in areas which may be approved by the Board.

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1 5.13. CAR MAINTENANCE AND POWER EQUIPMENT.
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4 No power equipment, hobby shops for commercial purposes or car
5 maintenance (other than emergency work) shall be permitted on a Residential
6 Lot, except with prior written approval of the Board. Approval shall not be
7 unreasonably withheld and in deciding whether to grant approval, the Board
8 shall consider the effects of noise, air pollution, dirt or grease, fire haz-
9 ard, interference with radio or television reception and similar objections.
10 The foregoing shall not be deemed to prevent the washing or polishing of motor
11 vehicles together with those activities normally incident to such activity.
12 The length of time allowed for emergency repair work shall be determined by the
13 Board through its Rules. The foregoing notwithstanding, no emergency or repair
14 work shall be permitted beyond any continuous period of forty-eight (48) hours.

15 5.14. USE OF COMMON AREA.
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17 Except as otherwise provided herein, the Common Area shall be
18 improved and used only for the following purposes:
19

20 (a) affording vehicular passage, parking, and pedestrian movement
21 within the Project Property, including access to the Residential Lots;
22

23 (b) recreational use by the Owners and occupants of a Dwelling and
24 their guests, subject to rules established by the Board;
25

26 (c) beautification of the Common Area and providing privacy to the
27 residents of the Project through landscaping and such other means as the Board
28 shall deem appropriate;
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30 (d) parking of automotive passenger vehicles in areas provided
31 therefor as may be designated and approved by the Board by such persons, upon
32 such terms and conditions and for such fees as may from time to time be
33 determined by the Board;
34

35 No part of the Common Area shall be obstructed so as to interfere
36 with its use for the purposes hereinabove permitted, nor shall any part of the
37 Common Area be used for storage purposes (except as incidental to one of such
38 permitted uses, or for storage of maintenance equipment used exclusively to
39 maintain the Common Area or in storage areas designated by the Board), nor in
40 any manner which shall increase the rate of which insurance against loss by
41 fire, or the perils of the extended coverage endorsement to the California
42 Standard Fire Policy form, or bodily injury, or property damage liability
43 insurance covering the Common Area and improvements situated thereon may be
44 obtained, or cause such premises to be uninsurable against such risks or any
45 policy or policies representing such insurance to be cancelled or suspended or
46 the company issuing the same to refuse renewal thereof.
47

48 5.15. TOWING.
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50 Any vehicle within the Community parked in violation of this
51 Declaration or the Rules and Regulations of the Board may be removed as
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provided for in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto, or in accordance with County statutes.

Notwithstanding the foregoing, the Corporation may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, or in a manner which interferes with any entrance to or exit from the Project or any Lot, parking space, garage or driveway located thereon.

The Corporation shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this Section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Corporation or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Corporation shall state the grounds for the removal of the vehicle.

5.16. LIABILITY FOR DAMAGE TO COMMON AREA.

Each Owner shall be legally liable to the Corporation for all damages to the Common Area or to any improvements thereof or thereto, including but not limited to any buildings, facilities and landscaping caused by such Owner, his licensee(s) or any occupant of such Owner's Dwelling, as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws and rules of the Board by his guests, lessees and all occupants of Dwelling, and shall, after written notice and an appointment for a hearing, pay the fines and penalties assessed pursuant hereto, the Bylaws or Board rules for any violation by his guests, lessees and occupants of his Dwelling.

ARTICLE 6. - ARCHITECTURAL AND DESIGN CONTROL

6.1. GENERAL.

Except as otherwise provided in the zoning ordinances of the City of Escondido, anything contained in this Declaration to the contrary notwithstanding, no landscaping, building, fence, wall, addition or other structure or improvement shall be commenced, erected, placed, altered or permitted to remain on any Lot, or on the Common Area, until the location and the complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design, color and location to surrounding structures and topography by the Board or by an architectural committee composed of three (3) or more, but not to exceed five (5) representatives, appointed by the Board from the membership of the Corporation. The grade, level or drainage characteristics of the Residential Lot or any portion thereof shall not be altered without the prior written consent of the Board or its delegated committee. In the event that the Board or its designated Committee fails to approve or disapprove such design and location within thirty (30) days after said plans

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1 and specifications have been submitted to it, approval will not be required and
2 compliance with this Article will be deemed to have been made. In the event of
3 a dispute, the Board has final authority.
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5 **6.2. DUTIES.**

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7 It shall be the duty of the Architectural Committee to consider and
8 act upon any and all proposals or plans submitted to it pursuant to this
9 Declaration and any Architectural Standards adopted by the Committee, to insure
10 that any improvements constructed on the Property by anyone other than Declar-
11 ant conform herewith, to perform other duties delegated to it by Corporation
12 within the time periods set forth herein, and to carry out all other duties
13 which may be imposed upon it by this Declaration. The Committee, in its own
14 name or on behalf of the Corporation, may exercise all available legal and
15 equitable remedies to prevent or remove any unauthorized and unapproved
16 construction or improvements on the Property or any portion thereof. The
17 Committee shall have the right, upon reasonable notice, to inspect any and all
18 improvements made by an Owner. The Committee shall have a duty to keep and
19 maintain a record of all action from time to time taken by the Committee at all
20 meetings or otherwise.
21

22 **6.3. COMPENSATION.**

23
24 Architectural Committee or Board members shall receive no
25 compensation for services rendered, other than reimbursement by the Corporation
26 for expenses incurred by them in the performance of their duties hereunder.
27 Provided, however, an Architectural Committee or a Board member may receive
28 compensation in the event he or she renders services in a professional capacity
29 in connection with architectural review, subject to the unanimous approval of
30 the Board.
31

32 **6.4. FEE FOR REVIEW.**

33
34 The Architectural Committee shall have the right, subject to approval
35 by the Board, to establish a fee for the review and approval of plans and speci-
36 fications which must be submitted to the Architectural Committee pursuant to
37 the provisions of this Article or the Bylaws, which shall be reasonably related
38 to the duties performed and to cover any expense incurred in obtaining profes-
39 sional review assistance from licensed engineers, architects or contractors.
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41 **6.5. ARCHITECTURAL STANDARDS.**

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43 The Architectural Committee may, from time to time and in its sole
44 discretion, adopt, amend and repeal, by unanimous vote, rules and regulations
45 to be known as "Architectural Standards." Said Standards shall interpret
46 and implement the provisions of this Article by setting forth the standards and
47 procedures for Architectural Committee review and guidelines for architectural
48 design, landscaping, color schemes exterior finishes and materials and similar
49 features which are recommended for use in the Project; provided, however, that
50 said Architectural Standards shall not be in derogation of the standards
51 required by this Declaration.
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6.6. ESTOPPEL CERTIFICATE.

Within thirty days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Corporation of a reasonable fee (as fixed from time to time pursuant to the Section hereinabove entitled "Fee for Review"), the Architectural Committee shall provide the Owner with an estoppel certificate certifying that as of the date thereof, either: (a) all improvements made and other work completed by said Owner comply with this Declaration, or (b) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchase from the Owner, or from anyone deriving any interest in said Residential Lot through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Corporation and Owners and such persons deriving any interest through them.

6.7. LIABILITY.

Neither the Board nor the Architectural Committee shall be liable to the Corporation or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the neighborhood; or (d) the execution and filing of an estoppel certificate whether or not the facts therein are correct; provided, however, that such Architectural Committee member has acted in good faith on the basis of such information as may be possessed by him.

6.8. ENFORCEMENT.

In the event of a violation of any of the provisions of this Article, by any Owner including, without limitation, failure of any Owner to comply with the written directive or order from the Architectural Committee, the Architectural Committee shall have the right and authority to enforce, pursuant to the "Enforcement" Article hereinafter, the performance of the subject matter of such directive, including, if necessary, the right to enter the Residential Lot where a violation of these restrictions exists and perform remedial work, and the cost of such performance shall be charged to the Owner of the Dwelling in question. Such costs shall be due within five (5) days after receipt of written demand therefor, and shall bear interest at the maximum rate allowed by law. Said costs may be recovered by the Architectural Committee together with such interest and reasonable attorney's fees and costs in an action at law against such Owner.

6.9. APPROVAL BY GOVERNMENTAL JURISDICTION.

Prior to commencing any alteration or improvements approved by the Architectural Committee, the Owner shall comply with all appropriate governmental jurisdiction laws and regulations. Approval by the Architectural Committee shall not be considered to satisfy the appropriate approvals that may be

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required by any governmental entity with appropriate jurisdiction. The Corporation shall not be obligated to enforce the provisions of this Section. An Owner's failure to obtain such governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of Architectural Committee, which penalties shall be the responsibility of such Owner."

6.10. REMODELING THE COMMON AREA.

Except as otherwise provided in the zoning ordinances of the City of Escondido, and as otherwise specifically provided herein, nothing herein contained shall give any Owner or the Corporation the right to paint, decorate, remodel, landscape, adorn or construct or reconstruct upon any part or parcel of the Common Area without the written consent of the Board and without obtaining the necessary approvals and permits from the City of Escondido.

6.11. APPROVAL BY BOARD OF RESIDENCE MINIMUM SIZE; AGE.

No Residence may be placed on any Residential Lot until approved in writing by the Board, as to size, condition and appearance and together with proposed plans and specifications of exterior improvements. A manufactured Home must have complete sanitary facilities, including, but not limited to: a lavatory, toilet, wash basin, tub or shower, kitchen sink, and must be connected to sewage outlets in conformity with State and local health requirements. The minimum width of any manufactured Home shall be twenty-four feet (24'). No Home constructed more than six (6) years prior to its installation in the Project shall be permitted.

6.12. EXTERIOR IMPROVEMENTS.

The exterior improvements, including landscaping, of Residential Lots must be completed within three (3) months immediately following the completion of a Home thereon.

6.13. SETBACKS AND FENCING.

The following setbacks shall be observed:

Front Yard: 10 feet with the exception that garages which do not open directly onto a street may have a 5 foot setback with an adequate turning radius to the satisfaction of the City of Escondido Planning Director.

Rear Yard: Minimum of 5 feet (3' to toe of slope);

Side Yard: Minimum of 5 feet (3' to toe of slope);

Setbacks for any accessory structure shall be as follows:

Side: A minimum of 3 feet from property line;

Rear: A minimum of 3 feet from property line;

Front: A minimum of 5 feet from property line.

Eaves on accessory structures may project up to one (1) foot into front, side and rear setbacks.

No permanent or temporary structures or any portion of the Homes shall be placed on or maintained on such side or rear yards. Extension of rear yard fencing or walls shall be as determined and approved or waived thereof in writing by the Board or its designated Committee.

6.14. ENCROACHMENTS INTO SETBACK AREAS.

Eaves, awnings, fireplaces, stairs, door stoops and similar architectural features of a Home may extend into the front setback area (on those Lots only where a 10 foot front setback exists) for 4 feet (or 6 feet from the Lot line) and into the side yard setbacks for 2 feet (or 3 feet from the Lot line). The 4 foot encroachment does not apply to Lots with a 5 foot front setback (where a garage entry is turned sideways).

6.15. GARAGES, CARPORTS.

Each Residential Lot shall have two (2) covered parking spaces consisting of (i) a one-car garage and carport, or (ii) a two-car garage, or (iii) two carports. A garage or carport may be attached or detached to the Home structure. A one-car garage must be setback a minimum of 28 feet, with covered parking for at least one car in front of the garage. A two-car garage must be set back either a minimum of 10 feet or 18 feet. The carport awning shall be equal to the front fascia or eave of the Home and extend back the full length of the Home. A garage turned sideways may be set back 5 feet. The pitch of the Home roof and the garage roof must conform, and the peak of the garage roof shall not exceed the height of the peak of the Home. Any proposed deviation from the provisions of this Section, shall require the written approval of the Board or its designated Committee, and meet the provisions of the zoning ordinances of the City of Escondido.

6.16. COLORS.

Home exterior siding and trim shall be of brown or tan "earth tone" colors. Roofs shall be a brown composition shingle, brown shake or brown tile. Bright or reflective metal roofs are not permitted.

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1 6.17. NON-COMPLIANCE WITH LAWS.
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4 Neither the Corporation, the Board or the Architectural Committee
5 shall be responsible for any defect in, or non-compliance with any governmental
6 law, rule or regulation of any building or other structures erected, construct-
7 ed, installed, placed, altered or maintained in accordance with or pursuant to
8 any plans and specifications, color scheme, plot plan or grading plan approved
9 by the Corporation, the Board or the Architectural Committee or any conditions
10 or requirements they may have imposed with respect thereto; provided, however,
11 the Corporation shall be liable for damage and repair to City utilities in the
12 event that such damage is caused by the Corporation in the course of repair or
13 replacement of private facilities of the Project.

14 6.18. REBUILDING IN THE EVENT OF DAMAGE OR DESTRUCTION.
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16 In the event of damage or destruction to any Dwelling or improvement
17 on a Residential Lot, the Owner of such Lot shall repair or reconstruct the
18 improvement in accordance with the original as-built plans and specifications,
19 modified as may be required by applicable building codes and regulations in
20 force at the time of such repair or reconstruction or any new plans and
21 specifications that may be approved by the Board or its appointed Architectural
22 Committee. The repair or reconstruction shall commence no later than ninety
23 (90) days after the date of such damage or destruction, and shall be completed
24 no later than one hundred eighty (180) days after such date, subject to delays
25 that are beyond the control of the Owner. The foregoing notwithstanding, the
26 Owner immediately shall take such steps as may be reasonably required to secure
27 any hazardous conditions resulting from the damage or destruction."
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29 6.19. FINAL INSPECTION.
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31 Final inspection and correction of defects therein, if any, shall
32 proceed as follows:
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34 (a) Upon the completion of any work for which approved plans are
35 required under this Article, the Owner shall give written "Notice of
36 Completion" to the Architectural Committee.
37

38 (b) Within sixty (60) days thereafter, the Architectural Committee
39 or its duly authorized representative, may inspect such improvement. If the
40 Committee finds that such work was not done in substantial compliance with the
41 approved plans, it shall notify the Owner in writing of such noncompliance
42 within such sixty (60) day period, specifying the particulars of noncompliance,
43 and shall require the Owner to remedy the same.
44

45 (c) If, upon the expiration of thirty (30) days from the date of
46 such notification, the Owner shall have failed to remedy such noncompliance,
47 the Architectural Committee shall notify the Board in writing of such failure.
48 After affording such Owner notice and hearing, in accordance with the Section
49 entitled "Notice and Hearing" in the "Rights of Owners, Board and
50 Association" Article herein, the Board shall determine whether there is a
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noncompliance and, if so, the nature thereof and the estimated costs of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the non-complying improvement or remedy the noncompliance, and the Owner shall reimburse the Corporation, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Corporation, the Board shall levy a special non-lien assessment against such Owner for reimbursement.

(d) If, for any reason the Architectural Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt of said written notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans."

ARTICLE 7. - RESPONSIBILITIES OF MAINTENANCE

7.1. OWNER RESPONSIBILITY.

Each Owner of a Residential Lot shall maintain the exterior surfaces and roofing of his Dwelling in an attractive and cleanly manner. Any proposed changes in color or exterior material must be approved by the Board or its duly appointed committee pursuant to the Article entitled "*Architectural and Design Control*" herein. Each Owner shall irrigate and maintain the landscaping (including any slopes thereon) of his Lot in an attractive and cleanly manner. No rubbish or debris of and kind shall be placed or permitted by an Owner to accumulate upon or adjacent to any Lot, so as to render such property or portion thereof unsanitary, unsightly, offensive or detrimental to other residents.

7.2. OWNER'S FAILURE TO MAINTAIN; WILLFUL OR NEGLIGENT ACT.

In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, or if an Owner, or his guests, tenants, invitees or pets, cause the willful or negligent act or neglect of the same or any other area within the Project, the Board shall notify the Owner of the work required and request that the same be done within a reasonable time under the specific circumstances, provided, however, that the Board shall have the right to approve the person or company who shall perform the maintenance or repairs and the method of repair. In the event the Owner fails to carry out such maintenance or repair within said reasonable time period, the Board may cause such work to be done and all direct and indirect costs and expenses therefor shall become a Single Benefit Assessment against such Owner and his Residential Lot and shall be immediately paid by such Owner to the Corporation and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law). Any such Assessment shall constitute a lien upon the Residential Lot against which it is made, the lien to become effective upon the recordation of a Notice of Delinquency in accordance with the procedures described in the Section entitled "*Effect of Non-Payment of Assessments*" hereinabove. Provided, however,

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no such Corporation action to cause such work to be done shall be made unless the Owner of the Residential Lot receives fifteen (15) days' prior written notice of the proposed action and the reasons therefor and is given an opportunity to be either heard orally or in writing before the Board not less than five (5) days before the proposed date of the action. The notice required hereby may be given by any method reasonably calculated to provide actual notice in accordance with the notice provisions described in the Article herein entitled "General Provisions".

7.3. RESPONSIBILITY OF CORPORATION.

The Corporation shall provide for adequate and reasonable maintenance and repair of the Common Area. Such maintenance shall include, but not be limited to, the clubhouse and recreation area, the landscaped and parking areas around these facilities, all open space areas, the parkway wall and Project perimeter fencing, the parkway landscaped area and all street trees within the Project. In addition, the Corporation shall provide for the repair and maintenance of any sewer laterals, private streets and street lighting in the private streets, gutters, walks, water lines, drainage and storm facilities, brow ditches, swales, including keeping such facilities free from debris and obstructions, and the planting of trees and ground cover on, and the maintenance of the irrigation system in the Common Area. The Corporation shall be responsible for the maintenance of all slope banks in excess of three feet (3') in height and all setbacks within ten feet (10') of the perimeter boundary of the Project. In the event that should such maintenance or repair result from the act or neglect of an Owner, his guests or licensees, the liability of the Owner shall be determined according to the Laws of the State of California.

ARTICLE 8. - PARTY WALLS

8.1. GENERAL.

Each wall which is constructed as a part of a Residential Lot, and any part which is placed on the dividing line between Residential Lots, shall constitute a party wall, and with respect to such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of this Declaration, and to the extent not inconsistent herewith, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall be applied thereto.

8.2. DAMAGE BY ONE OWNER.

In the event any such party wall is damaged or destroyed through the act of one adjoining Owner or any of his agents, guests, invitees, tenants or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of the aforementioned Owners shall forthwith proceed to rebuild and repair the same to as good a condition as formerly existed, without cost to the adjoining Owner.

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8.3. DAMAGE BY OTHER CAUSE.

In the event any such party wall is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one of the adjoining Owners, his tenants, guests or family, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly existed, at their joint expense.

8.4. ALTERATIONS.

In addition to meeting the other requirements of this Declaration and of any building code or similar regulation or ordinance, any Owner proposing to modify, make additions to or rebuild his Dwelling in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner and the Corporation.

8.5. WEATHERPROOFING.

Nothingwithstanding any other provisions of this Article, an Owner, who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole costs of furnishing the necessary protection against such elements.

8.6. ARBITRATION.

In the event of a dispute between Owners with respect to a party wall, or under the provisions of this Article, each Owner shall choose an arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE 9. - RIGHTS OF LENDERS**9.1. GENERAL.**

No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Residential Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Any provision within the Project Documents to the contrary notwithstanding, First Mortgagees shall have the rights expressly provided in this Article.

9.2. NO RIGHT OF FIRST REFUSAL.

This Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Corporation before a Residential Lot can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any first mortgagee to:

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(a) foreclose or take title to a Residential Lot pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (c) sell or lease a Residential Lot acquired by the Mortgagee.

9.3. UNPAID DUES OR CHARGES.

Where the Mortgagee of a first Mortgage of record or other purchaser of a Residential Lot obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Corporation chargeable to such Residential Lot which became due prior to the acquisition of title to such Residential Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Residential Lots including such acquirer, his successors and assigns.

9.4. ACTION REQUIRING MORTGAGEE APPROVAL.

Unless at least two-thirds (2/3) of the First Mortgagees (based upon one (1) vote for each mortgage owned), or two-thirds (2/3) of the Owners of the individual Residential Lots in the Project have given their prior written approval, the Corporation and/or the Owners shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, or any property owned, directly or indirectly, by the Corporation (the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Corporation is not a transfer in the meaning of this clause);

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner; or

(c) By act or omission, change, waiver or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance or exterior maintenance of Lots, the maintenance of the Common Area walks or fences and driveways, or the upkeep of landscaping in the Common Area; or

(d) Fail to maintain fire and extended coverage on insurable Corporation Common Area improvements on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

(e) Use hazard insurance proceeds for losses to Corporation common property for other than the repair, replacement or reconstruction of such Common Area property.

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9.5. PAYMENT OF TAXES AND INSURANCE.

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

9.6. PRIORITY OF PROCEED OR AWARD DISTRIBUTION.

Any other provision herein contained to the contrary notwithstanding, no provision of this Declaration or any other Project Document shall give a Residential Lot Owner, or any other party, priority over any rights of the First Mortgagee of a Residential Lot pursuant to its mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of the of Common Area property.

9.7. NOTIFICATION TO MORTGAGEE.

Upon written request to the Corporation, identifying the name and address of the holder, insurer or guarantor and the Residential Lot number or address, any Eligible Mortgage Holder or Eligible Insurer will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or the Residential Lot insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer;

(b) Any default in the performance by an Owner of any obligation under the Project Documents not cured within sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation; and

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required by the Project Documents.

9.8. AGREEMENT FOR MANAGEMENT.

Any management agreement of the Project, or any portion thereof shall be terminable for cause upon thirty (30) days written notice, and without cause or payment of a termination fee upon ninety (90) days, or fewer, written notice and shall have a term of not more than two (2) years, renewable with the consent of the Corporation and the management agent. The Board shall not terminate professional management of the Project and assume self-management, when professional management had been required previously by an Eligible Mortgage

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Holder, without the prior written approval of Mortgagees holding seventy-five percent (75%) or more of the First Mortgages on Dwellings.

9.9. INSPECTION OF PROJECT DOCUMENTS, BOOKS and RECORDS.

The Corporation shall make available to Eligible Mortgage Holders, current copies of the Project Documents and the books, records and financial statements of the Corporation. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

9.10. NON-CURABLE BREACH.

Any Mortgagee who acquires title to a Residential Lot by foreclosure or by deed-in-lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure. A "breach", as used herein, shall not apply to any lien of or obligation for assessments owed to the Corporation which became due prior to the acquisition of title by deed or assignment in lieu of foreclosure.

9.11. LOAN TO FACILITATE.

Any First Mortgage given to secure a loan to facilitate the resale of a Residential Lot after acquisition by foreclosure or by a 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 protections of this Article.

9.12. MORTGAGEES FURNISHING INFORMATION.

Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

9.13. FINANCIAL STATEMENT.

Any First Mortgagee shall be entitled, on written request therefor, to have an audited financial statement for the immediately preceding fiscal year prepared at its own expense if one is not otherwise available. Such statement shall be furnished within a reasonable time following such request.

9.14. TERMINATION WITHOUT SUBSTANTIAL DESTRUCTION.

Neither the Corporation nor Owners may elect to terminate the legal status of the Project for reasons other than substantial destruction or condemnation of the Project without the written consent of Eligible Mortgage Holders who represent at least two-thirds (2/3) of the votes of the mortgaged Residential Lots.

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ARTICLE 10. - DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA**10.1. FIRE OR CASUALTY.**

If any portion of the Common Area is damaged or destroyed by fire or other casualty, then:

(a) If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Corporation for the fiscal year during which the repairs or rebuilding is necessitated, the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor.

(b) If the cost of repairs or rebuilding exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Corporation for the fiscal year during which the repairs or rebuilding is necessitated, and if the Owners holding in aggregate more than fifty percent (50%) interest in Common Area agree to the repair or restoration of the Project, then the Board shall contract as provided in (a) above.

(c) If said Owners do not so agree to the repair or rebuilding of the Common Area, then each owner (and his Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of his Residential Lot as compared to the aggregate decrease in fair market values of all the Residential Lots caused by such damage or destruction. For purposes hereof fair market value shall be determined by an MAI appraiser (Member of the Appraisal Institute), selected by the board and hired by and at the expense of the Corporation. Should dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.

(d) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Residential Lot in proportion to the interest of each Owner in the Project to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessments and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Corporation to be used for such rebuilding.

10.2. EMINENT DOMAIN.

If any portion of the Common Area is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the Owners of the Common Area, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award from such taking in proportion as insurance proceeds would be distributed pursuant to subsection (c) of the Section immediately above, provided, however, that should it be determined to

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1 repair or rebuild any portion of the Common Area, such proceeds shall be paid
 2 to the Corporation for that purpose in the same manner and subject to the same
 3 terms, conditions and limitations as are set forth in the Section immediately
 4 above of this Article for repairing damaged or destroyed portions of the Common
 5 Area. A decision to repair or rebuild shall be made in the same manner and
 6 subject to the same conditions and limitations as provided the Section
 7 immediately above for determining whether to rebuild or repair following damage
 8 or destruction.
 9

10 10.3. MASTER INSURANCE POLICY.

11 The Corporation shall obtain and continue in effect the following
 12 insurance:
 13

14 (a) A master policy of insurance with glass coverage, if
 15 applicable, and extended coverage endorsement for the full insurable value of
 16 all of the insurable improvements of the Common Area. The form and content of
 17 such policy must be satisfactory to all institutional first trust deed lenders
 18 and shall meet the maximum standards of the various institutional first trust
 19 deed lenders whose loan(s) encumber any of the Residential Lots.
 20

21 (b) A public liability and property damage insurance policy with
 22 cross liability endorsement, if available, insuring the Corporation, any mana-
 23 ger and the Owners against liability incident to ownership or use of the Common
 24 Area. The limits of such insurance shall not be less than \$1,000,000.00
 25 covering all claims for death, personal injury and property damage arising out
 26 of a single occurrence. The general liability policy shall also include such
 27 provisions as may be required by the provisions of California Civil Code
 28 Section 1365.7, or any successor statute, to limit the monetary liability of
 29 volunteer directors and officers of the Corporation. The policy shall, in any
 30 event, contain a "severability of interest" endorsement or the equivalent
 31 which shall preclude the insurer from denying the claim of an Owner because of
 32 wanton or grossly negligent acts or omissions of the Association or other
 33 Owners.
 34

35 (c) Such insurance covering directors, officers and employees of
 36 the Corporation and employees of any manager or managing agent, whether or not
 37 any such persons are compensated for their services, against dishonest acts on
 38 their part, or in lieu thereof, a fidelity bond, naming the Corporation as
 39 obligee, written in an amount not less than one and one-half times the
 40 Corporation's estimated annual operating expenses and reserves.
 41

42 (d) Worker's compensation insurance covering any employees of the
 43 Corporation.
 44

45 (e) Such other insurance as the Board in its discretion considers
 46 necessary or advisable.
 47

48 Insurance premiums for the master policy shall be a common expense to
 49 be included in the monthly assessments levied by the Corporation.
 50

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 55

10.4. WAIVER OF SUBROGATION; INSPECTION OF POLICIES.

Any insurance maintained by the Corporation shall contain "waiver of subrogation" as to the Corporation and its officers, directors and Members, the Owners and occupants of the Dwellings and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The Corporation shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Corporation to determine the adequacy of the coverage and to adjust the policies accordingly.

10.5. NOTICE OF CANCELLATION; CORPORATION TO SERVE AS TRUSTEE.

All insurance policies shall provide that they shall not be cancellable by the insurer without first giving at least ten (10) days' prior notice in writing to the Corporation. Each Owner appoints the Corporation or any insurance trustee designated by the Corporation to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Corporation, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

10.6. INSPECTION OF POLICIES.

Copies of all Corporation insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Corporation and be open for inspection by Owners at any reasonable times.

10.7. OWNERS' INSURANCE.

Each Owner shall obtain and maintain, at the Owner's sole expense, (a) fire and casualty coverage as may be required by any mortgagee of the Owner's Lot and in no event less than the full replacement value (i.e. one hundred percent (100%)) of current "replacement cost," exclusive of land, foundation, excavation and other items normally excluded from coverage, of all of the improvements within a Residential Lot, without deduction for depreciation, with an "agreed amount endorsement" or its equivalent, and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement," if available; such insurance shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, costs of demolition, vandalism, malicious mischief, windstorm, water damage and such other risks as shall customarily be covered with respect to similar Dwellings in the area of the Project; and (b) personal liability insurance in an amount not less than One Hundred Thousand Dollars (\$100,000). All such individually carried insurance shall contain a waiver of subrogation by the carrier as to the other Owners, the Corporation, and the mortgagees of such Lot. Each Owner shall deliver, or cause to be delivered, to the Corporation a certificate of insurance evidencing the placement and continued maintenance of such required insurance. All insurance policies shall provide that they shall not be cancellable by the insurer without first giving at least

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ten (10) days' prior notice in writing to the Corporation. In the event an Owner fails to maintain such insurance, the Corporation shall have the right to obtain such required insurance on behalf of such failing Owner and to lien such Owner's Residential Lot in the manner therefor provided in the Bylaws. No Owner shall insure his Residential Lot in any manner which would cause the diminution in insurance proceeds from the Master Insurance Policy; should any Owner violate this provision, he shall be responsible to the Corporation for any such diminution.

10.8. FAILURE TO ACQUIRE.

The Corporation, and its directors and officers, shall have no liability to any Owner or mortgagee if, after a good faith effort, it is unable to obtain the liability insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretions determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any mortgagee entitled to notice that the liability insurance will not be obtained or renewed.

10.9. INDEMNIFICATION.

(a) MEMBERS OF THE CORPORATION.

Each Owner shall be liable to the Corporation for any damage to the Common Areas caused by the negligence or willful misconduct of the Owner or his family, guests, invitees or lessees, to the extent that the damage shall not be covered by insurance. Each Owner shall indemnify, hold harmless, and pay any costs of defense of each other Owner from claims for personal injury or property damage occurring within any Residential Lot owned by the indemnitor, provided that this protection shall not extend to any indemnitee whose negligence or willful misconduct caused or contributed to the injury or damage; provided, further, that this Section is not intended to be for the benefit of any insurer and shall not affect nor limit the duty of any insurer to pay any claim which would be payable by said insurer but for this Section.

(b) BOARD MEMBERS, COMMITTEE MEMBERS, AGENTS, EMPLOYEES.

No Member of the Board, or of any committee of the Corporation, shall be personally liable to any Owner, or to any other Party, including the Corporation, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Corporation, the Board or any representative, agent, employee, officer, or committee member, including the Architectural Committee, of the Corporation, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct. In all cases where any Member of the Board or any Corporation representative, agent, employee, officer or committee member has any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence other than willful or intentional misconduct, the Corporation shall indemnify and hold said person harmless from any judgment or settlement and any costs of defense of any such action, including attorney's fees, as may be reasonable and proper.

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ARTICLE 11. - EASEMENTS**11.1. NONEXCLUSIVE EASEMENTS.**

Each Residential Lot Owner shall have a nonexclusive easement for use and enjoyment of the Common Area and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to each Lot and shall be subordinate to any exclusive easements granted elsewhere in this Declaration, as well as to the right of the Corporation to regulate time and manner of use, to charge reasonable admission fees, and to perform its obligations under this Declaration.

11.2. DRAINAGE & SLOPES.

The Owner of a Residential Lot shall permit free access by Owners of adjacent or adjoining Residential Lots to slopes or drainageways located on his property, which affect said adjacent or adjoining Residential Lots, when such access is essential for the maintenance of permanent stabilization on said slopes, or maintenance of the drainage facilities for the protection and use of property other than the Lot on which the slopes or drainageway is located. The Owner of any Residential Lot shall endeavor to not in any way interfere with the established drainage pattern over his Lot where it will affect the drainage pattern from adjacent or adjoining Lots, and, in the event that a change in the established drainage pattern is necessary, such Owner will make adequate provisions for the maintenance of proper drainage therefrom over his Lot. For the purpose herein, "established drainage" is defined as the drainage which occurred at the time the overall grading of the Project was completed.

11.3. OTHER EASEMENTS.

The Corporation may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, and each Residential Lot Owner, in accepting his deed to the Lot, expressly consents to such easement. No such easement can be granted, however, if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his Lot.

11.4. EASEMENTS FOR MAINTENANCE OF ENCROACHMENTS.

None of the rights and obligations of the Owners created herein, or by the deed creating the Planned Unit Development shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners.

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ARTICLE 12. - ENFORCEMENT; ARBITRATION**12.1. RIGHT TO ENFORCE.**

The Corporation, the City of Escondido or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. Each Owner of a Residential Lot shall have a right of action against the Corporation for failure to comply with the provisions of the Declaration, the Bylaws or with the decisions of the Corporation which are made pursuant to authority granted the Corporation under the Declaration or Bylaws.

12.2. NUISANCE.

The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Corporation or any Member. Each remedy provided by this Declaration shall be cumulative and not exclusive.

12.3. FAILURE TO ENFORCE.

Failure by the Corporation, the City, or any Owner to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

12.4. VIOLATION OF LAW.

Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Residential Lot within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

12.5. ARBITRATION.

(a) In the event a dispute occurs between an Owner and an adjoining Residential Lot Owner over the application of these restrictions, operation, maintenance, repair or other matter in connection with said premises, the same shall be submitted to the Board of Directors in writing, which Board will act as an arbitrating tribunal.

(b) The arbitrating tribunal shall have complete control over the conduct of the arbitration and may specify any rules or regulation with the reference thereto, not to conflict herewith. The decision of the majority shall be the decision of the arbitrating tribunal and should be final. The technical rules of evidence shall be waived in the discretion of the tribunal.

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The parties are entitled to be represented by counsel and to be heard; provided, however, that nothing herein contained shall limit the power of the arbitrating tribunal to control the manner, method and conduct of the proceedings and presentation of the evidence, subject always to the requirement that parties be given a fair and impartial hearing. Where not inconsistent herewith, the rules of the American Arbitration Association apply.

(c) All hearings shall be held in San Diego County.

(d) In any arbitration the arbitrators shall have the broadest possible power permitted by law to frame their award or decision so as to do substantial justice between or among the parties. The Residential Lot Owners hereby agree that they will faithfully observe the contents of this document and the rules and that they will abide by and perform any award or decision rendered pursuant to this agreement, and a judgment of the court having jurisdiction may be entered upon the award.

(e) Provided, however, that this arbitration requirement shall not limit the right of the Corporation to enforce by any proceeding in law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration.

ARTICLE 13. - GENERAL PROVISIONS

13.1. SEVERABILITY.

Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment of court order, the remaining provisions hereof shall be and remain in full force and effect.

13.2. TERM OF DECLARATION.

The covenants, conditions and restrictions of this Declaration shall run with and bind the property, and shall inure to the benefit of and shall be enforceable by the Corporation, the City or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the Owners of the Residential Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to terminate the same.

13.3. ANNEXATION.

Upon approval in writing of the Corporation, pursuant to three-fourths (3/4) majority of the voting power of its Members, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Corporation, may file of record a Declaration of Annexation.

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13.4. AMENDMENTS.

Except as may otherwise be stated in this Declaration, this Declaration may be amended at any time and from time to time by an instrument in writing signed by *sixty-seven percent (67%)* of the total voting power of members of the Corporation, any which amendment shall become effective upon the recording thereof with the Office of the County Recorder of San Diego County, California. Any amendment to the Articles entitled "USE RESTRICTIONS" or "ARCHITECTURAL AND DESIGN CONTROL" should be submitted to the City of Escondido for its approval prior to approval by the membership of the Corporation. Anything herein stated to the contrary notwithstanding, no material amendment to this Declaration shall be made without the prior written approval of no greater than sixty-seven percent (67%) of the Eligible Mortgage Holders whose mortgages encumber fifty-one percent (51%) or more of the Residential Lots within the Project which are subject to Eligible Mortgage Holder Mortgages. "Material amendment" shall mean any amendments to provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (a) Voting rights;
- (b) Assessments, assessment liens, or the priority of assessment liens;
- (c) Reserves for maintenance, repair, and replacement;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Project, or rights to their use;
- (f) Redefinition of the boundaries of any Residential Lot;
- (g) Convertibility of Residential Lots into Common Areas or visa versa;
- (h) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (i) Insurance or fidelity bond coverage;
- (j) Leasing of Dwellings;
- (k) Imposition of any restrictions on an Owner's right to sell or transfer his or her Dwelling;
- (l) Any decision by the Board to establish self-management when professional management had been required previously by the Project Documents or by an Eligible Mortgage Holder;

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- (m) The restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (n) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- (o) Any provisions that expressly benefit Mortgage Holders, insurers or guarantors.

An addition or amendment to such document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only; such amendments may be made upon the majority vote of the Board.

Any Eligible Mortgage Holder or Eligible Insurer who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request, provided that notice was delivered by certified or registered mail, with a "return receipt" requested.

13.5. LITIGATION.

In the event the Corporation, the City, or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered.

13.6. OWNER COMPLIANCE WITH DECLARATION.

Each Owner, tenant or occupant of a Residential Lot shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Corporation or its duly authorized representative, as lawfully amended from time to time and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief.

13.7. BREACH OF DECLARATION.

No breach of any provisions of these covenants, conditions and restrictions shall invalidate the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon Owner whose title is derived through foreclosure sale, Trustee's Sale or otherwise.

13.8. NOTICE.

Any notice permitted or required by the Declaration, Articles or Bylaws may be delivered either personally or by mail. If delivery is by mail,

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1 it shall be deemed to have been delivered seventy-two hours after a copy of the
 2 same has been deposited in the United States Mail, first class or certified,
 3 postage prepaid, addressed to the person to be notified at the current address
 4 given by such person to the Secretary of the Board or addressed to the
 5 Residential Lot of such person if no address has been given to the Secretary.
 6

7 13.9. REPORTS TO PROSPECTIVE PURCHASERS; ESTOPPEL CERTIFICATE.

8 In accordance with California Civil Code Section 1368, or any
 9 successor statute or law, the Owner of a Residential Lot shall, as soon as
 10 practicable before transfer of title or execution of a real property sales
 11 contract therefor, as defined in California Civil Code Section 2985, provide
 12 the following to the prospective purchaser:
 13

14 (a) A copy of the Declaration, Bylaws, Articles and Corporation
 15 Rules, if any;
 16

17 (b) A copy of the most recent financial reports as required by the
 18 Bylaws;
 19

20 (c) A certificate signed by an authorized representative of the
 21 Corporation as to the amount of any assessments levied upon the Owner's
 22 interest in his Residential Lot which are unpaid on the date of the Statement.
 23 The certificate shall also include information on late charges, interest and
 24 costs of collection which, as of the date of the certificate, are or may be
 25 made a lien upon the Owner's Residential Lot, pursuant to California Civil Code
 26 Section 1367, or any successor statute or law. A properly executed certificate
 27 of the Corporation as to the status of assessments on a Residential Lot is
 28 binding upon the Corporation as of the date of its issuance.
 29

30 Upon written request, the Corporation shall, within ten (10) days of
 31 the mailing or delivery of the request, provide the Owner of a Residential Lot
 32 with a copy of the items specified hereinabove. The Corporation may charge a
 33 fee for this service, as well as a fee or assessment to change its records in
 34 connection with the transfer of title to a Residential Lot. Any fees or
 35 assessments contained in this Section shall not exceed the reasonable costs to
 36 prepare and reproduce the requested items or the actual costs to change
 37 records.
 38

39 13.10. NOTIFICATION OF SALE OR CONVEYANCE.

40 Concurrently with the consummation of the sale or other conveyance of
 41 any Residential Lot where the transferee becomes an Owner of the Lot, or within
 42 five (5) business days thereafter, the transferee shall notify the Corporation
 43 in writing of such sale or conveyance. Such notification shall set forth the
 44 name of the transferee and his Mortgagee and transferror, the common address of
 45 the Lot purchased by the transferee, the transferee's and the Mortgagee's mail-
 46 ing address, and the date of sale or conveyance. Before the receipt of such
 47 notification, any and all communications required or permitted to be given by
 48 the Corporation, the Board, the Board's delegated committee or the Corpora-
 49 tion's manager shall be deemed to be duly made and given to the transferee if
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1 duly and timely made and given to the transferee's transferror. Mailing
2 addresses may be changed at any time upon written notification to the
3 Corporation. Notices shall be deemed given and given in accordance with the
4 provisions of the Section herein entitled "Notice."
5

6 **13.11. CITY APPROVAL REQUIRED TO TERMINATE DECLARATION.**
7

8 This Declaration, and specifically Article 5 - USE RESTRICTIONS,
9 Article 6 - ARCHITECTURAL AND DESIGN CONTROL and Article 7 - RESPONSIBILITIES
10 OF MAINTENANCE herein, shall not be terminated without the approval of the
11 City of Escondido.
12

13 **13.12. GOVERNING DOCUMENTS.**
14

15 In the event of a conflict between this Declaration and any other
16 Project Document, the provisions of this Declaration shall control.
17

18 **13.13. SINGULAR INCLUDES PLURAL.**
19

20 Whenever the context of this Declaration requires same, the singular
21 shall include the plural and the masculine shall include the feminine.
22

23 **13.14. LIBERAL CONSTRUCTION.**
24

25 The provisions of this Declaration shall be liberally construed to
26 effectuate its purpose of creating a uniform plan for the development of a
27 residential community and for the maintenance of the Project. The titles or
28 headings of the Articles or Sections of this Declaration have been inserted for
29 convenience only and shall not be considered or referred to in resolving
30 questions or interpretation or construction."
31
32
33
34

35
36
37 **VIA VERDE ESTATES**
38 **SECOND AMENDED DECLARATION**

- 43 -

1
2
3 IN WITNESS WHEREOF, this SECOND AMENDMENT TO AND RESTATEMENT OF
4 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VIA VERDE ESTATES is
5 executed by the President of the Corporation on this _____ day
6 of April 12, 1991.
7
8

9 VIA VERDE ESTATES, INC.
10 a California nonprofit mutual benefit corporation
11

12
13 By: Thaine M. Simmonds
14 President
15
16
17
18
19

20 I hereby certify and declare, under penalty of perjury, that the
21 foregoing SECOND AMENDMENT TO AND RESTATEMENT OF DECLARATION OF COVENANTS,
22 CONDITIONS AND RESTRICTIONS FOR VIA VERDE ESTATES has been duly approved by the
23 percentage of Owners required by the Former Declaration.
24
25

26
27 VIA VERDE ESTATES, INC.
28 a California nonprofit mutual benefit corporation
29
30
31

32
33 By: Thaine M. Simmonds
34 President
35
36
37

SECOND AMENDMENT TO AND RESTATEMENT OF DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR VIA VERDE ESTATES

SEALED



ACKNOWLEDGEMENT - CORPORATION
STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } SS
On APRIL 12, 1991, before me,
the undersigned Notary Public, personally appeared XXXXXXXXXXXXXXXXXXXX
-----THAINE M. SIMMONDS-----
(known to me to be the person whose name is subscribed to the foregoing instrument, and he proved on the basis of satisfactory evidence) to be
the VIA VERDE ESTATES----- President, XXXX
XX
XX
XX
Secretary of the corporation that executed the within instrument to be the
person who executed the within instrument on behalf of the corporation
therein named, and acknowledged to me that such corporation executed
the same, pursuant to its laws, or a resolution of its Board of Directors.
Signature Christine Gaines
CHRISTINE GAINES
SAY-192 (8/90)

HomeFedBank FSB

1255

EXHIBIT "A"

LEGAL DESCRIPTION:

Lots 1 through 113, inclusive, and Lot 115 of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248, filed in the Office of the County Recorder of San Diego County on June 5, 1985.

**VIA VERDE ESTATES
SECOND AMENDED DECLARATION**

- 45 -

PLEASE COMPLETE THIS INFORMATION.

RECORDING REQUESTED BY:

Via Verde Estates, Inc.

AND WHEN RECORDED MAIL TO:

Via Verde Estates, Inc.
1021 Yuma Glen
Escondido, CA 92026

DOC # 1995-0089822
02-MAR-1995 11:39 AM

593

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY SMITH, COUNTY RECORDER
RF: 58.00 FEES: 166.00
AF: 107.00
MF: 1.00

THIS SPACE FOR RECORDER'S USE ONLY

SECOND AMENDMENT TO AND RESTATEMENT OF
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR "VIA VERDE ESTATES"

(Please fill in document title(s) on the this line)

ARTICLE 5, SECTION 5.3 - USE RESTRICTIONS

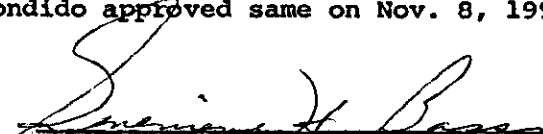
NO PERSON UNDER THE QUALIFYING AGE, AS DESCRIBED IN SECTION ENTITLED
"QUALIFICATION FOR MEMBERSHIP" HEREINABOVE REFERRED TO, SHALL STAY
AS A GUEST OR VISITOR WITH ANY OWNER OR QUALIFYING MEMBER FOR MORE
THAN THIRTY (30) DAYS IN ANY TWELVE MONTH PERIOD OF TIME, EXCEPT THAT
UPON WRITTEN REQUEST BY A MEMBER THE BOARD MAY GRANT ONLY ONE THIRTY
(30) DAY EXTENSION FOR GUESTS IN THE SAME TWELVE MONTH PERIOD OF TIME.

NOTE: This change is merely a clarification of the term a 'guest'
may be a visitor of a member with time limitation extension.

The following certify that by virtue of a ballot by all Via Verde
Estates Homeowners in excess of a two-thirds approval this
amendment was passed. The City of Escondido approved same on Nov. 8, 1994.


Eric Morse, President

3/01/95


Genevieve H. Bassi, Secretary

3/01/95

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Additional recording fee applies)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CaliforniaCounty of San DiegoOn March 1, 1995 before me, Sue Danover/Notary Public

DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared ERIC MORSE AND GENEVIEVE H. BASSI

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.

SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☒ INDIVIDUAL☒ CORPORATE OFFICERPresident & Secretary

TITLE(S)

☐ PARTNER(S)☐ LIMITED☐ GENERAL☐ ATTORNEY-IN-FACT☐ TRUSTEE(S)☐ GUARDIAN/CONSERVATOR☐ OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Second Amendment to CCRs for Via Verde Estates

TITLE OR TYPE OF DOCUMENT

One

NUMBER OF PAGES

3/1/95

DATE OF DOCUMENT

NA

SIGNER(S) OTHER THAN NAMED ABOVE

1205

DOC #: 1991-0181891
22-APR-1991 03:59 PM

Recording Requested By:

RECORDED REQUEST OF FIRST AMERICAN TITLE CO.

595

When Recorded Return To:

SAN DIEGO COUNTY RECORDER'S OFFICE
ANNETTE EVANS, COUNTY RECORDER
RF: 53.00 FEES: 105.00
AF: 51.00
MF: 1.00

C.C.I. - Jeffrey L. Brown, Attorney
Att: Via Verde Estates
2130 Fourth Avenue
San Diego, California 92101-2110
(619) 231-1606

Space Above for Recorder's Use

SECOND AMENDMENT TO AND RESTATEMENT OF
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR

"VIA VERDE ESTATES"

(a Senior Citizen, Manufactured Home
Planned Residential Development)

REVISED

CITY OF ESCONDIDO
PLANNING DEPARTMENT

APPROVED

Date: 3.12.91 By: [Signature]

NOTE: THIS DOCUMENT IS BEING RE-RECORDED TO REFLECT
AN AMENDMENT TO ARTICLE 5, SECTION 5.3 USED BY RESTRICTIONS.

This document is being re-recorded by
First American Title Insurance Co. as
an accommodation only. It has not
been examined as to execution or
impact on title.

ser

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Exhibit "A" - Legal Description

(v)

THIS SECOND AMENDMENT TO AND RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VIA VERDE ESTATES is made on the day and year hereinafter written by VIA VERDE ESTATES, INC., a California nonprofit mutual benefit corporation, hereinafter called "**Declarant**," being comprised of all of the Owners of that certain real property described in Exhibit "A" attached hereto and by reference made a part hereof, hereinafter called the "**Property**," with reference to the following:

RECITALS

A. On November 15, 1985 Declarant caused to be recorded a "**Declaration of Covenants, Conditions and Restrictions for Via Verde Estates**" (hereafter "**Former Declaration**"), as File/Page No. 85-430633 of Official Records of the County Recorder of San Diego County covering the Property. Said Former Declaration was amended by that certain "**First Amendment to Declaration of Covenants, Conditions and Restrictions for Via Verde Estates**" recorded January 24, 1989 as File/Page No. 89-038714 of Official Records of said County.

B. The Former Declaration provides in Section 14.4 thereof that it may be amended by an instrument in writing signed by sixty-seven percent (67%) of the total voting power of members of the Corporation, any which amendment shall become effective upon the recording thereof with the Office of the County Recorder of San Diego County, California. Notwithstanding the provisions of Section 14.4 of the Former Declaration, California Civil Code Section 1355(a) provides that the Former Declaration may be amended by approval of the percentage of owners required by the Former Declaration, the fact of which shall be certified in a writing executed and acknowledged by the president of the Corporation, whereupon such amendment and certification shall be effective upon its recordation in the Office of the San Diego County Recorder, California.

C. It is the intent and purpose of this SECOND AMENDMENT TO AND RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VIA VERDE ESTATES to amend, supercede and restate the Former Declaration in its entirety.

D. The Property is a Common Interest Development under the provisions of the *Davis-Stirling Common Interest Development Act*, more particularly described in California Civil Code Section 1351(k) as a Planned Development (the "**Project**"), consisting of one-hundred fourteen (114) Lots, comprised of one-hundred-nine (109) Residential Lots and five (5) Common Area Lots (both hereinafter defined), all as shown on that certain Subdivision Map entitled ESCONDIDO TRACT NO. 596 in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248, filed in the Office of the San Diego County Recorder on June 5, 1985.

VIA VERDE ESTATES
SECOND AMENDED DECLARATION

- 1 -

This document is being recorded by
First American Title Insurance Company
an accommodation only. It has not
been examined as to execution or
impact on title.

1 E. The Owners of the Project shall hold title to a Residential
2 Lot plus an appurtenant membership in the Corporation, which Corporation holds
3 freehold estate in the Common Area. The Corporation shall act as the
4 management body for the Project.
5

6 F. Declarant deems it desirable to subject the Property in accord-
7 ance with a common plan to certain covenants, conditions, restrictions, reser-
8 vations, easements, equitable servitudes, liens and charges, all running with
9 the Property for the benefit of Declarant and any and all present and future
10 Owners of the Property or any portion thereof.
11

12
13 NOW, THEREFORE, Declarant hereby certifies and declares that all of
14 the Property is, and shall be, held, conveyed, transferred, hypothecated, encum-
15 bered, leased, rented, used, occupied and improved, subject to the limitations,
16 covenants, conditions, restrictions and easements hereinafter set forth, all of
17 which are for the purpose of uniformly enhancing and protecting the value, at-
18 tractiveness and desirability of the Property, in furtherance of a general plan
19 for the subdivision, protection, maintenance, improvement, sale and lease of
20 the Property, or any portion thereof. All of the limitations, covenants, condi-
21 tions, restrictions and easements set forth herein are equitable servitudes and
22 shall run with the land and shall be binding upon all parties having any right,
23 title or interest in the Property, or any part thereof, their heirs, successive
24 Owners and assigns; shall inure to the benefit of every portion of the Property
25 and any interest therein; and shall inure to the benefit of and be binding upon
26 Declarant, its successive owners and each Owner and his or her respective
27 successors-in-interest, and may be enforced by any Owner or by the Corporation.
28

29
30 ARTICLE 1. - DEFINITIONS
31

32 1.1. ARTICLES.
33

34 "Articles" shall mean and refer to the Articles of Incorporation,
35 including such amendments thereto as may from time to time be made.
36

37 1.2. BOARD.
38

39 "Board" shall mean and refer to the Board of Directors of the Associa-
40 tion.
41

42 1.3. BYLAWS.
43

44 "Bylaws" shall mean and refer to the Bylaws of the Corporation,
45 including such amendments thereto as may from time to time be made.
46

47 1.4. CITY.
48

49 "City" shall mean and refer to the City of Escondido, a municipal
50 corporation located in the County of San Diego, State of California.
51

52
53 VIA VERDE ESTATES
54 SECOND AMENDED DECLARATION
55

1.5. COMMON AREA; COMMON AREA LOTS.

"Common Area" or "Common Area Lots" shall mean the entire Project except for Residential Lots (as defined in this Declaration); said Common Area is shown on the Subdivision Map as Lots 110, 111, 112, 113 and 115, including all improvements thereon. Common Area Lot 115 consists of all streets not dedicated to public use. Lots 110 consists of recreation facilities, including clubhouse. Lots 111, 112 and 113 consist of landscaped area and parkway.

1.6. COMMON EXPENSES.

"Common Expenses" shall mean and refer to the actual and estimated costs and expenses incurred or to be incurred by the Corporation, including, but not limited to:

(a) Maintenance, management, operation, repair and replacement of the Common Area and all other areas within the Project, which are maintained by the Corporation;

(b) Due but unpaid assessments;

(c) Costs and expenses not paid by the Owner responsible for payment, when such costs and expenses are paid by the Corporation;

(d) Maintenance by the Corporation of areas within the public right-of-way of public streets in the vicinity of the Project as provided in this Declaration or pursuant to agreements with the City, if any;

(e) Costs of management and administration of the Corporation, including, but not limited to, compensation paid by the Corporation to managers, accountants, attorneys and employees;

(f) Costs and expense of leasing, owning, maintaining any vehicles for the use of the Members or employees, including insurance and reserves for replacement thereof;

(g) Costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their property to the extent such services are paid for by the Corporation;

(h) The costs of fire, casualty, liability, worker's compensation and other insurance covering the Common Area or other property owned by the Corporation;

(i) The costs of any other insurance obtained by the Corporation pursuant to the provisions of this Declaration;

(j) Reasonable reserves as deemed appropriate by the Board;

VIA VERDE ESTATES
SECOND AMENDED DECLARATION

- 3 -

(k) The costs of bonding of the Members of the Board or its delegated committees, any professional managing agent or any other person handling the funds of the Corporation;

(l) Taxes paid by the Corporation;

(m) Amounts paid by the Corporation for the discharge of any lien or encumbrance levied against the Common Area or portions thereof;

(n) Costs incurred by the Board or any of its delegated committees;

(o) The costs of any other item or items designated by, or in accordance with other expenses incurred by the Corporation for any reason whatsoever in connection with the operation or maintenance of the Common Area, or in furtherance of the purposes or the discharge of any obligation imposed on the Corporation by this Declaration or other Project Documents.

1.7. COUNTY.

"County" shall mean and refer to the County of San Diego, California.

1.8. CORPORATION; ASSOCIATION; HOMEOWNERS ASSOCIATION.

"Corporation," "Association" or "Homeowners Association" shall mean and refer to VIA VERDE ESTATES, INC., a California non-profit mutual benefit corporation, incorporated under the Non-Profit Mutual Benefit Laws of the State of California, its successors and assigns.

1.9. DECLARANT.

"Declarant" shall mean and refer to VIA VERDE ESTATES, INC. a California non-profit mutual benefit corporation, its successors and assigns.

1.10. DECLARATION.

"Declaration" shall mean and refer to this Declaration, recorded with the Office of the County Recorder of San Diego County, California, covering the Property, including such amendments thereto as may from time to time be recorded.

1.11. DWELLING; RESIDENCE; HOME.

"Dwelling," "Residence" or "Home" shall mean and refer to a manufactured residential home structure (some known as a "mobile home"), including enclosed yards, decks, patio areas, garages and carports located on a Residential Lot, unless the context otherwise indicates.

VIA VERDE ESTATES
SECOND AMENDED DECLARATION

- 4 -

1.12. ELIGIBLE INSURER, GUARANTOR.

"Eligible Insurer" and "Eligible Guarantor" shall mean and refer to an insurer or governmental guarantor who has provided a written request to the Homeowners Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Corporation.

1.13. ELIGIBLE MORTGAGE HOLDER.

"Eligible Mortgage Holder" shall mean and refer to the holder of a first mortgage or deed of trust on a Residential Lot, who has provided a written request to the Homeowners Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Corporation. Such notice must contain the Residential Lot number or the street address of the secured Residential Lot.

1.14. FHLMC.

"FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation.

1.15. FNMA.

"FNMA" shall mean and refer to the Federal National Mortgage Association.

1.16. FIRST MORTGAGE.

"First Mortgage" shall mean and refer to a first deed of trust as well as a first mortgage.

1.17. FIRST MORTGAGEE.

"First Mortgagee" shall mean and refer to the beneficiary or a holder of a first deed of trust as well as a First Mortgagee.

1.18. MEMBER.

"Member" shall mean and refer to a person entitled to membership in the Corporation as provided herein.

1.19. MORTGAGE.

"Mortgage" shall mean and refer to a deed of trust as well as a mortgage.

1.20. MORTGAGEE.

"Mortgagee" shall mean and refer to a beneficiary or a holder of a deed of trust as well as a mortgagee.

VIA VERDE ESTATES
SECOND AMENDED DECLARATION

- 5 -

1.21. **MORTGAGOR.**

"Mortgagor" shall mean and refer to the trustor of a Deed of Trust as well as a mortgagor.

1.22. **OWNER.**

"Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of a Residential Lot. The term "Owner" shall include a seller under an executory contract of sale, but shall exclude Mortgagees.

1.23. **PARTY WALL.**

"Party Wall" shall mean and refer to any wall that is located on or at the division line between adjoining Residential Lots, and used or intended to be used by the Owners of the adjoining Residential Lots in the maintenance of improvements on their respective Lots. For purposes of this Declaration, any fences or walls located on or at the division line between Residential Lots shall be treated as Party Walls.

1.24. **PRIVATE ROAD.**

"Private Road" shall mean and refer to that portion of the Common Area consisting of that certain private road or roads described as Lot 115, more particularly described in Exhibit "A".

1.25. **PROJECT.**

"Project" shall mean and refer to the entire parcel of real property described in Exhibit "A" herein.

1.26. **PROJECT DOCUMENTS.**

"Project Documents" means and includes this Declaration, the exhibits, if any, attached thereto, the Articles, the Bylaws and any Rules established by the Board, including any amendments to the aforescribed documents as may from time to time be made.

1.27. **PROPERTY.**

"Property" shall mean and refer to that certain real property located in San Diego County, California, more particularly described in Exhibit "A" herein.

1.28. **RESIDENTIAL LOT; LOT.**

"Residential Lot" or "Lot" means any of the lots located within the Project, including all improvements now or hereafter thereon, with the exception of Common Area lots.

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1.29. RULES.

"Rules" shall mean and refer to any rules or regulations adopted by the Corporation or its Board pursuant to this Declaration.

1.30. SLOPE BANK.

"Slope Bank" shall mean and refer to an expansive steep slope over three (3) feet in vertical height, which would be physically difficult to maintain; or, one where accessibility could be considered dangerous; or as may be determined by the Board.

ARTICLE 2. - MEMBERSHIP; VOTING

2.1. TYPE OF MEMBERS.

Every Owner of a Residential Lot shall be a Member of the Corporation. Membership shall be appurtenant to and may not be separated from ownership of any Residential Lot. Each Owner is obligated promptly, fully and faithfully to comply with and conform to the Articles and Bylaws and the Rules and Regulations adopted thereunder from time to time by the Board and officers of the Corporation. Membership in the Corporation shall not be transferred, pledged or alienated in any way, except upon the sale of the Residential Lot to which it is appurtenant, and then only to the purchaser. The transfer of title to a Residential Lot or the sale of a Residential Lot and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant to such Residential Lot to the transferee.

2.2. QUALIFICATION FOR MEMBERSHIP.

The Project is a Senior Manufactured (Mobile) Home Park. A "Qualifying Member" shall be a person who is fifty-five (55) years of age or older; provided, however, any Member who does not meet the age requirement herein, but was a qualifying Member of the Corporation prior to January 24, 1989, the date of recordation of the First Amendment to the Former Declaration, shall be entitled to remain a qualifying Member.

2.3. CLASS OF MEMBERSHIP.

The Corporation shall have one (1) class of voting membership, which shall be all Owners of a Residential Lot, who shall be entitled to one (1) vote for each Residential Lot owned. When more than one person holds an interest in any Residential Lot, all such persons shall be Members. The vote for such Residential Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Residential Lot.

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2.4. APPROVAL OF MEMBERS.

Unless specifically provided for otherwise, any provision of the Project Documents requiring the vote or written assent of the Corporation voting power shall be deemed satisfied by the following:

2.4.1. VOTE OF MAJORITY.

The vote of the majority at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members, unless a provision of this Declaration requires a special meeting only; provided, however that such majority must include the specified number of all Members entitled to vote at such meeting and not such a majority of a quorum of those Members present;

2.4.2. WRITING.

A writing or writings signed by a majority of the voting power; or

2.4.3. COMBINATION OF VOTES AND WRITING.

A combination of votes and written assent, provided that Members shall not change their vote or written assent after it is cast or delivered and provided further that only those written assents executed within sixty (60) days before or thirty (30) days after a meeting may be combined with votes cast at such meeting to constitute a majority.

2.5. NO PERSONAL LIABILITY OF BOARD MEMBERS.

In discharging their duties and responsibilities, the Board acts on behalf of and as representative of the Corporation which acts on behalf of and as representative of the Owners, and no Member thereof shall be individually or personally liable or obligated for performance of such duties or responsibilities unless he fails to act in good faith.

ARTICLE 3. - RIGHTS OF OWNERS, BOARD AND CORPORATION**3.1. RIGHTS OF OWNERS.**

Owners, and, to the extent permitted by such Owner, his family, guests, invitees, lessees, and contract purchasers who reside in such Owner's Dwelling, shall have the following rights and limitations:

3.1.1. RIGHT OF ACCESS AND USE OF DWELLING.

The right of access over the Common Area for ingress to and egress from such Owner's Dwelling, and of enjoyment and full use of such Dwelling, which right shall be appurtenant to and shall pass with title to the Owner's Residential Lot, subject to the limitations contained herein. This right cannot be forfeited or abridged by the failure by an owner to comply with provisions of the Project Documents or duly-enacted rules of operation for

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Common Areas and facilities thereon, except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Corporation.

3.1.2. RIGHT TO THE USE OF COMMON AREA.

The right of ingress and egress and of enjoyment in, to and over the Common Area, which shall be appurtenant to and shall pass with title to the Residential Lot, subject to the limitations and restrictions of the Project Documents.

3.1.3. RIGHT TO NOTICE AND HEARING.

The right to receive notice and an opportunity to be heard orally or in writing, as set forth in Section 7341 of the California Corporations Code (or any successor statute or law), prior to a decision by the Board to impose monetary penalties, a temporary suspension of an Owner's right as a Member of the Corporation, or other appropriate discipline for failure to comply with the Project Documents as described more fully in the Section entitled "*Penalties Against Members*" herein.

3.1.4. DELEGATION OF USE.

Any Owner may delegate his right of enjoyment to the Common Area to his tenants or contract purchasers who reside on his Lot; provided, however, that if any Owner delegates such right of enjoyment to tenants or contract purchasers, neither the Owner nor his family shall be entitled to use the Common Area by reason of ownership of the Residential Lot during the period of delegation. Guests of any Owner may use the Common Area only in accordance with the Rules adopted by the Board.

3.2. RIGHTS OF BOARD.

The Board shall have the following rights:

3.2.1. MANAGEMENT, OPERATION, CONTROL, ETC.

Except as otherwise provided herein, the Corporation acting through the Board and officers shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area or any portion thereof together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in this Declaration, the Articles and the Bylaws.

3.2.2. RULES AND REGULATIONS.

The right to establish uniform rules and regulations pertaining to the use of the Common Area not inconsistent with the provisions of this Declaration, and to amend the same from time to time relating to the use of the Common Area and other facilities situated thereon by Owners and by their tenants or

1 guests, including the right to reasonably limit the number of guests using the
2 Common Area and any facilities thereon, and the conduct of such persons with
3 respect to automobile parking, outside storage of bicycles and other objects,
4 disposal of waste materials, drying of laundry, control of pets and other
5 activities which, if not so regulated, might detract from the appearance of the
6 Community or offend or cause inconvenience or danger to persons residing or
7 visiting therein. Such Rules may provide that the Owner of a Lot whose
8 occupant leaves property on the Common Area in violation of the Rules may be
9 assessed (after appropriate notice and an opportunity for a hearing before the
10 Board as set forth herein) an amount to cover the expense incurred by the
11 Corporation in removing such property and storing or disposing thereof.
12

13 3.2.3. PENALTIES AGAINST MEMBERS.

14 The right to impose the following penalties against Members:

15 (a) Suspension of the membership rights and privileges, together
16 with the voting rights of any Member of the Corporation, for any period of time
17 during which the assessment on a Member's Residential Lot remains unpaid;
18

19 (b) Suspension of the membership rights and privileges, together
20 with the voting rights of any Member of the Corporation, for any period not to
21 exceed sixty (60) days for any infraction of the Corporation's Rules;
22

23 Suspension may include the suspension of the right of a Member to the
24 use of any recreational facilities on the Common Area; however, no such suspen-
25 sion shall affect the rights of such Member to access to his Lot, except by
26 judgment of a court or a decision arising out of arbitration or on account of
27 foreclosure or sale under a power of sale for failure of the member to pay
28 assessments duly levied by the Corporation.
29

30 (c) Levying of monetary penalties against an individual Member as
31 a disciplinary measure for failure of a Member, his tenants or guests to comply
32 with provisions of the Project Documents, or as a means of causing the Member
33 to reimburse the Corporation for costs and expenses incurred by the Corporation
34 in the repair of damage to Common Areas and facilities for which the Member was
35 allegedly responsible, or in bringing the Member into compliance with the Proj-
36 ect Documents. Monetary penalties or "fines" may be levied against an individ-
37 ual Member for each offense. The fine for the first of such offenses shall not
38 exceed \$25.00. For repeated offenses, fines shall not exceed \$500.00 per
39 offense. Provided, however, no such monetary penalty or fine may be character-
40 ized or treated as an assessment which may become a lien against the Owner's
41 subdivision interest enforceable by a sale of the interest in accordance with
42 the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.
43
44

45 3.2.4. NOTICE AND HEARING.

46 As set forth in Section 7341 of the California Corporations Code (or
47 any successor statute or law), no suspension or monetary penalty shall be
48 effective unless a Member receives fifteen (15) days' prior written notice of
49 the proposed action and the reasons therefor and is given an opportunity to be
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1 either heard orally or in writing before the Board not less than five (5) days
2 before the proposed effective date of the action. The notice required hereby
3 may be given by any method reasonably calculated to provide actual notice in
4 accordance with the notice provisions described in the Article herein entitled
5 "General Provisions".
6

7 It is provided, however, that the provisions of the preceding para-
8 graph expressly do not apply to charges imposed against a Member consisting of
9 reasonable late payment penalties for delinquent assessments and/or charges to
10 reimburse the Corporation for the loss of interest and for costs reasonably
11 incurred (including attorneys' fees) in its efforts to collect delinquent
12 assessments as more fully described in this Declaration and the Bylaws.
13

14 3.2.5. RIGHT TO ENTER RESIDENTIAL LOT.

15
16 The right of the Corporation's agents or employees to enter upon any
17 Residential Lot when necessary in connection with any maintenance, landscaping,
18 or construction for which the Corporation is responsible. Such entry shall be
19 made with as little inconvenience to the Owner as possible and any damage
20 caused thereby shall be repaired by the Corporation at its own expense. In the
21 case of an emergency, the right of entry shall be immediate. For the purpose
22 herein, "emergency" is defined as an unforeseen occurrence or condition calling
23 for immediate action to avert imminent danger to life, health, or property.
24

25 3.2.6. ACCESS TO COMMON AREA.

26
27 The right of Corporation access, ingress and egress over the Common
28 Area and the right of installation and use of utilities and other improvements
29 thereon for the benefit of the Community.
30

31 ARTICLE 4. - COVENANT FOR MAINTENANCE ASSESSMENT TO CORPORATION

32 4.1. OBLIGATION OF ASSESSMENT.

33
34 Each Owner of a Residential Lot, by acceptance of a deed therefor,
35 whether or not it shall be so expressed in such Deed, is deemed to covenant and
36 agree to pay to the Corporation:
37

38 (a) Regular Assessments, which shall include an adequate reserve
39 fund for periodic maintenance, repair and replacement of the Common Area, shall
40 be established and collected as provided herein;
41

42 (b) Special Assessments for capital improvements, such assess-
43 ments to be established and collected as provided herein.
44

45 All assessments, together with interest, costs, late charges and rea-
46 sonable attorneys' fees, shall be a charge on the Residential Lot and shall be
47 a continuing lien upon the Lot against which each such assessment is made, the
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lien to become effective upon recordation of a Notice of Delinquent Assessment, as provided in this Article. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Residential Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

4.2. PURPOSE OF ASSESSMENTS.

The assessments levied by the Corporation shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project and for the improvement and maintenance of the Common Area for the common good of the Project.

4.3. REGULAR ASSESSMENTS.

The Board shall fix and determine from time to time Regular Assessments to be paid by each Owner for the purpose of operation, maintaining and repairing the Common Area, paying the necessary expenditures of the Corporation as provided in this Declaration and the other Project Documents, and shall be in an amount sufficient to include an adequate reserve fund for maintenance, repairs and replacement of those portions of the Common Area which must be replaced on a periodic basis, subject to the limitations contained in the Section hereinafter entitled "*Limitations on Assessments*."

4.4. SPECIAL ASSESSMENTS.

If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Corporation for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs, replacement of or new capital improvements on the Common Area, the Board shall determine the approximate amount necessary to defray such expenses and, except as provided in the "*Limitations on Assessments*" Section hereinbelow, said amount shall become a Special Assessment. The Board may, in its discretion, prorate such special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Residential Lot. Special Assessments shall be levied on the same basis as Regular Assessments.

4.5. SINGLE BENEFIT ASSESSMENT.

The Board may establish a Single Benefit Assessment for reconstruction, capital improvements, extraordinary maintenance, or any other cost or expense not otherwise provided for in this Declaration which will benefit less than all of the Owners, and which will be assessed only against the Residential Lots of those Owners so benefitting.

(a) Except as provided in the paragraph immediately below, such Single Benefit Assessments may be imposed only by a vote of at least fifty-one percent (51%) of the Owners of the Residential Lots benefitted by the Single

Benefit Assessment. Each Single Benefit Assessment shall be segregated in the Maintenance Accounts solely to the Residential Lots which derive the benefit therefrom. In the event that the Corporation obtains income directly related to an item which has been assessed as a Single Benefit Assessment, such income shall be allocated so as to reduce or offset such Single Benefit Assessment.

(b) Whenever the Corporation performs any service or accomplishes any item of repair or maintenance which is the duty of an Owner to accomplish, but which has not been accomplished by such Owner, or whenever the Corporation determines to preempt the performance of a specific Owner of a given act of maintenance or repair, the Corporation shall specifically charge the cost thereof, together with any financing costs and administrative costs incurred by the Corporation, to the Owner for whom such work was done, and shall include such additional cost as a Single Benefit Assessment for such Owner and his Residential Lot and shall be immediately paid by such Owner to the Corporation and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law). Any such Assessment shall constitute a lien upon the Residential Lot against which it is made, the lien to become effective upon the recordation of a Notice of Delinquency in accordance with the procedures described in the Section entitled "Effect of Non-Payment of Assessments" hereinbelow.

4.6. RATE OF ASSESSMENTS; DUE DATES.

Both Regular Assessments and Special Assessments shall be levied at a uniform rate for all Residential Lots and may be collected on a monthly basis or otherwise as determined by the Board. The Board shall determine and fix the amount of the Regular Assessment against each Residential Lot at least thirty (30) days in advance of each Regular Assessment period. Written notice of the Regular Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board.

4.7. RESIDENTIAL LOTS NOT SUBJECT TO ASSESSMENTS.

If for any reason whatsoever one or more Residential Lots is not required to pay assessments (e.g. a Residential Lot owned by the Corporation by virtue of the Corporation having acquired such Residential Lot through foreclosure), such assessments shall be deemed to be common expenses collectible from all of the remaining Residential Lot Owners in the same proportion as each Lot now bears to the others, less the number of Residential Lots owned or not assessed by the Corporation.

4.8. LIMITATIONS ON ASSESSMENTS.

(a) The Board of Directors of the Corporation shall not impose or collect an assessment, penalty, or fee that exceeds the amount necessary for the purpose or purposes for which it is levied. Annual increases in Regular Assessments for any fiscal year, as authorized by subsection (b) immediately hereinafter, shall not be imposed unless the Board has prepared and distributed the proforma operating budget described in the "Financial" Section of the Bylaws, in accordance with the provisions of Civil Code Section 1365(a) as it may from time to time be amended, with respect to that fiscal year, or has

obtained the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

(b) From and after January 1st of the year immediately following the conveyance of the first Residential Lot to an Owner, the Board of Directors of the Corporation may not impose, except as provided herein, a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Corporation's preceding fiscal year or impose special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Corporation for that fiscal year without the approval of Owners constituting a quorum casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. These provisions, however, shall not limit assessment increases necessary for the following "emergency situations:"

(1) An extraordinary expense required by an order of a court;

(2) An extraordinary expense necessary to repair or maintain those portions of the Project or the Common Area for which the Corporation is responsible where a threat to personal safety is discovered;

(3) An extraordinary expense necessary to repair or maintain those portions of the Project or the Common Area for which the Corporation is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget described in the "Financial" Section of the Bylaws, in accordance with Civil Code Section 1365. Provided, however, that prior to the imposition or collection of an assessment under this paragraph, 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, and the resolution shall be distributed to the members with the Notice of Assessment.

(c) For purposes of this Section, "quorum" is defined as more than fifty percent (50%) of the Members of the Corporation.

(d) Any action authorized under this Section shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting.

4.9. LATE PENALTIES; INTEREST ON ASSESSMENTS.

Any assessment not paid within fifteen (15) days after the due date shall be delinquent and shall be subject to a reasonable late penalty not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, and shall bear interest on all sums including the delinquent assessment, reasonable costs for collection and late penalties at an

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1 annual percentage not exceeding twelve percent (12%) commencing thirty (30)
2 days after the assessment becomes due, or at the maximum legal rate as defined
3 in the California Civil Code Section 1366, or any successor statute or law.
4

5 **4.10. EFFECT OF NON-PAYMENT OF ASSESSMENTS.**
6

7 Any assessment made in accordance with this Declaration shall be a
8 debt of the Owner of a Residential Lot from the time the assessment is due. At
9 any time after any assessments levied by the Corporation affecting any Residen-
10 tial Lot have become delinquent, the Board may file for recording in the Office
11 of the San Diego County Recorder a Notice of Delinquency as to such Residential
12 Lot, which Notice shall state all amounts which have become delinquent with
13 respect to such Residential Lot and the costs (including attorney's fees),
14 penalties and interest which have accrued thereon, the amount of any assess-
15 ments relating to such Residential Lot which are due and payable although not
16 delinquent, a description of the Residential Lot with respect to which the
17 delinquent assessments are owed, and the name of the record or reputed Owner of
18 such Residential Lot. Such Notice shall be signed by the President or other
19 Officer of the Board, or by a majority of the members of the Board, or by the
20 Corporation's attorney or authorized representative. Immediately upon record-
21 ing of any notice of delinquency pursuant to the foregoing provisions of this
22 Section, the amounts delinquent, as set forth in such Notice, together with the
23 costs (including attorney's fees), penalties and interest accruing thereon,
24 shall be and become a lien upon the Residential Lot described therein, which
25 lien shall also secure all other payments and/or assessments which shall become
26 due and payable with respect to said Residential Lot following such recording,
27 and all costs (including attorney's fees), penalties and interest accruing
28 thereon. When a notice of assessment has been recorded, such assessment shall
29 constitute a lien on each respective Residential Lot prior and superior to all
30 other liens, except (i) all taxes, bonds, assessments and other levies which,
31 by law, would be superior thereto, and (ii) the lien or charge of any first
32 Mortgage of record made in good faith and for value. In the event the delin-
33 quent assessments and all other assessments which have become due and payable
34 with respect to the same Residential Lot, together with all costs (including
35 attorney's fees), penalties and interest, which have accrued on such amounts,
36 are fully paid or otherwise satisfied prior to the completion of any sale held
37 to foreclose the lien provided for in this Article, the Board shall record a
38 further Notice, similarly signed, stating the satisfaction and releasing of
39 such lien.
40

41 **4.11. FORECLOSURE PROCEEDINGS.**
42

43 Each assessment lien may be foreclosed as and in the same manner as
44 the foreclosure of a mortgage upon real property under the laws of the State of
45 California, or may be enforced by sale pursuant to Sections 2924, 2924(b),
46 2924(c) and 1367 of the California Civil Code, or any successor statute or law,
47 and to that end, the right to enforce the lien by sale is hereby conferred upon
48 the Corporation and its trustee designated in the Notice of Delinquent Assess-
49 ment, or a trustee substituted pursuant to California Civil Code Section 2934a.
50 The Corporation, acting on behalf of the Owners, shall have the power to bid
51 for the Residential Lot at a foreclosure sale, and to acquire and hold, lease,
52 mortgage and convey the same. Suit to recover a money judgment for unpaid
53
54

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assessments, costs, late penalties and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

4.12. SUBORDINATION OF ASSESSMENT LIENS.

The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage made in good faith and for value upon any Residential Lot. Sale or transfer of any Residential Lot shall not affect the assessment lien. However, the transfer of any Residential Lot pursuant to a "power-of-sale" or judicial foreclosure of a First Mortgage shall extinguish the lien of or obligation for such assessments as to payments which became due prior to the foreclosure transfer. No sale or transfer shall relieve such Residential Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Residential Lot obtains title to the same as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Corporation chargeable to such Residential Lot which became due prior to the acquisition of title to such Residential Lot by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Residential Lots, including such acquirer, his successors and assigns.

4.13. WAIVER OF EXEMPTIONS.

Each Owner, to the extent permitted by law, waives, to the extent any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any assessment or installment thereof becomes delinquent, or any lien is imposed.

4.14. FINANCIAL ACCOUNTS.

The Board shall establish no fewer than two (2) separate accounts ("*Financial Accounts*"), into which shall be deposited all monies paid to the Corporation and from which disbursements shall be made, as provided herein, in the performance of functions by the Corporation under this Declaration. The Financial Accounts shall be established as separate trust savings or trust checking accounts at any banking or savings institution insured by the Federal Deposit Insurance Corporation, or its successor or similar federal insuring agency. The Financial Accounts shall include: (i) an Operating Account for current Common Expenses of the Corporation, (ii) a Reserve Account for capital improvements, replacements, painting and repairs of the Common Area, and (iii) any other account which the Board may establish to the extent necessary under the provisions of this Declaration. The Board shall not commingle any amounts deposited into any of the Financial Accounts with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional Financial Accounts so long as the amounts assessed to, deposited into, and disbursed from any such Account are earmarked for specified purposes authorized by this Declaration or the Bylaws.

4.15. ASSESSMENTS ON RESIDENTIAL LOTS OWNED BY CORPORATION.

Assessments which would normally become due on Residential Lots, but which Lots are owned by the Corporation during the time prior to sale to

individual Owners or by virtue of the Corporation having acquired such Lots through foreclosure, shall be deemed to be common expenses collectible from all of the remaining Residential Lots in the same proportion that each Lot now bears to the others.

4.16. UNALLOCATED TAXES.

In the event that any taxes are assessed against the Common Area, or the personal property of the Corporation, rather than against the Residential Lot, said taxes shall be included in the assessments made under the provisions of Section entitled "*Obligation of Assessment*" hereinabove, if necessary, a Special Assessment may be levied against the Lots in any amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

ARTICLE 5. - USE RESTRICTIONS

5.1. GENERAL USE OF LOTS.

Each Lot shall be improved, used and occupied for private, single-family home dwelling purposes only, and no portion thereof, nor the Common Area, shall be used for any commercial purpose whatsoever. Not more than one Home shall be placed on each Residential Lot.

5.2. LEASE OF RESIDENTIAL LOT OR DWELLING.

Each Owner shall have the right to lease his Residential Lot or Lot plus Dwelling, provided that such lease is (i) in writing, (ii) does not exceed one year, after which time the Owner shall either reoccupy or sell his Residential Lot and Dwelling and (iii) provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board and that the failure to comply with the provisions of these documents shall be a default under the lease. No Owner shall lease his Dwelling for transient or hotel purposes. Any lease which is either for a period of less than thirty (30) days or pursuant to which the Lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes. Upon the lease of any Residential Lot or Dwelling, the Owner thereof shall, within ten (10) days thereafter, provide a copy of the lease agreement to the Corporation.

5.3. GUESTS.

No person under the qualifying age, as described in Section entitled "*Qualification for Membership*" hereinabove, shall stay as a guest or visitor with any Owner or Qualifying Member for more than thirty (30) days in any twelve month period of time, without the expressed written approval of a majority of the Board.

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1 **5.4. TRAILERS, BOATS, RECREATIONAL VEHICLES AND TEMPORARY STRUCTURES.**

2
3 No boat, truck, trailer, camper, recreational vehicle and similar
4 vehicles or equipment shall be parked or stored within the Project, except
5 within the Owner's completely enclosed garage.
6

7 **5.5. INSURABILITY.**

8
9 Nothing shall be done or kept in any Lot or in the Common Area which
10 shall cause any Lot or any part of the Common Area to be uninsurable against
11 loss by fire or the perils of the extended coverage endorsement to the Califor-
12 nia Standard Fire Policy form, or cause the rate of insurance to increase, or
13 cause any such policy or policies representing such insurance to be cancelled
14 or suspended, or the company issuing the same to refuse renewal thereof.
15

16 **5.6. PETS.**

17
18 Except as otherwise provided more stringently in the zoning
19 ordinances of the City of Escondido, an Owner may keep and maintain in his
20 Dwelling one (1) domesticated pet, not over twenty (20) pounds in weight when
21 fully mature, such as a dog, cat or other usual and ordinary household pet,
22 subject to the Rules adopted by the Board, provided that they are not kept,
23 maintained or bred for any commercial purposes.
24

25 Notwithstanding the foregoing, no pets may be kept in the Project
26 which result in an annoyance or are obnoxious to other Owners or occupants. No
27 pets shall be allowed in the Common Area except as may be permitted by rules of
28 the Board. No dog shall enter the Common Area except while on a leash which is
29 held by a person capable of controlling it. The Board or any Owner may cause
30 any unleashed dog found within the Common Area to be removed by the Board or
31 any Owner to a pound or animal shelter under the jurisdiction of the City of
32 Escondido, or the County of San Diego, by calling the appropriate authorities,
33 whereupon the Owner may, upon payment of all expenses connected therewith,
34 repossess the dog. No dog whose barking disturbs other Owners or occupants
35 shall be permitted to remain on the Project. Owners shall prevent their pets
36 from soiling all portions of the Common Area where other persons customarily
37 walk and shall promptly clean up any mess left by their pets.
38

39 **5.7. INTERFERENCE OF OTHER OCCUPANTS.**

40
41 No Residential Lot shall be used in such manner as to obstruct or
42 interfere with the enjoyment of occupants of other such areas or annoy them by
43 unreasonable noise or otherwise, nor shall any nuisance be committed or permit-
44 ted to occur on any Residential Lot or in any Dwelling nor on the Common Area.
45

46 **5.8. SIGNS.**

47
48 No signs, placards, decals or other similar objects, visible from the
49 Private Road, neighboring property or streets, shall be erected or displayed on
50 any Residential Lot or the Common Area, without the prior written permission of
51 the Board; provided however, subject to conformance with applicable local gov-
52 ernmental ordinances, one (1) sign may be erected or by an Owner or an Owner's
53
54

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agent on the Owner's Residential Lot or on real property owned by another with that person's consent, which is reasonably located, in plain view of the public, and is of reasonable dimensions and design, advertising the following: (i) that the Residential Lot is for sale, lease or exchange by the Owner or the Owner's agent, (ii) directions to the Residential Lot, (iii) the Owner's or agent's name, and (iv) the Owner's or agent's address and telephone number.

5.9. ANTENNAE, FLAG POLES, ETC.

There shall be no outside television or radio antennae, satellite dishes, overhead wiring (telephone or electric), or any other wiring, rope or cable, masts, poles or flag poles constructed, installed or maintained on any Residential Lot or the Common Area for any purpose whatsoever without the prior written consent of the Board and necessary approvals and permits from the City of Escondido. The foregoing notwithstanding, nothing herein shall be construed to prevent any person that would otherwise have a legal right to display a Flag of the United States of America from a Residential Lot from exercising that right, subject to reasonable restrictions imposed by the appropriate local jurisdiction as to the time, place and manner of placement or display of such Flag, when necessary for the preservation of the public's health, safety or order; provided, however, no restrictions solely to promote aesthetic considerations may be imposed.

5.10. WELLS; SEPTIC TANKS.

No well or septic tank shall be constructed in the Project except as designated by the Board.

5.11. REGRADING OF LOTS.

The surface or any part of any Residential Lot in the Project shall not be regraded without the prior consent of the Board.

5.12. OFFENSIVE ACTIVITIES AND CONDITIONS.

No noxious or offensive activity shall be carried on in any Dwelling or on any Residential Lot or on the Common Area, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the other Owners other than construction or repair of improvements directed or approved by the Board. Nothing shall be done in, on, or to the Common Area which will impair the structural integrity of any building located thereon. Except as otherwise provided herein, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board or an architectural committee appointed by the Board. All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Dwellings, streets and Common Area. No fences, hedges or walls shall be erected or maintained upon a Residential Lot, except such may be approved by the Board, or the Architectural Committee in accordance with the provisions therefor contained herein. No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes on the Common Area, except in areas which may be approved by the Board.

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5.13. CAR MAINTENANCE AND POWER EQUIPMENT.

No power equipment, hobby shops for commercial purposes or car maintenance (other than emergency work) shall be permitted on a Residential Lot, except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections. The foregoing shall not be deemed to prevent the washing or polishing of motor vehicles together with those activities normally incident to such activity. The length of time allowed for emergency repair work shall be determined by the Board through its Rules. The foregoing notwithstanding, no emergency or repair work shall be permitted beyond any continuous period of forty-eight (48) hours.

5.14. USE OF COMMON AREA.

Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

- (a) affording vehicular passage, parking, and pedestrian movement within the Project Property, including access to the Residential Lots;
- (b) recreational use by the Owners and occupants of a Dwelling and their guests, subject to rules established by the Board;
- (c) beautification of the Common Area and providing privacy to the residents of the Project through landscaping and such other means as the Board shall deem appropriate;
- (d) parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions and for such fees as may from time to time be determined by the Board;

No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Area or in storage areas designated by the Board), nor in any manner which shall increase the rate of which insurance against loss by fire, or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Area and improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

5.15. TOWING.

Any vehicle within the Community parked in violation of this Declaration or the Rules and Regulations of the Board may be removed as

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provided for in accordance with the provisions of *California Vehicle Code Section 22658.2* and any amendments thereto, or in accordance with County statutes.

Notwithstanding the foregoing, the Corporation may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, or in a manner which interferes with any entrance to or exit from the Project or any Lot, parking space, garage or driveway located thereon.

The Corporation shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this Section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Corporation or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Corporation shall state the grounds for the removal of the vehicle.

5.16. LIABILITY FOR DAMAGE TO COMMON AREA.

Each Owner shall be legally liable to the Corporation for all damages to the Common Area or to any improvements thereof or thereto, including but not limited to any buildings, facilities and landscaping caused by such Owner, his licensee(s) or any occupant of such Owner's Dwelling, as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws and rules of the Board by his guests, lessees and all occupants of Dwelling, and shall, after written notice and an appointment for a hearing, pay the fines and penalties assessed pursuant hereto, the Bylaws or Board rules for any violation by his guests, lessees and occupants of his Dwelling.

ARTICLE 6. - ARCHITECTURAL AND DESIGN CONTROL

6.1. GENERAL.

Except as otherwise provided in the zoning ordinances of the City of Escondido, anything contained in this Declaration to the contrary notwithstanding, no landscaping, building, fence, wall, addition or other structure or improvement shall be commenced, erected, placed, altered or permitted to remain on any Lot, or on the Common Area, until the location and the complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design, color and location to surrounding structures and topography by the Board or by an architectural committee composed of three (3) or more, but not to exceed five (5) representatives, appointed by the Board from the membership of the Corporation. The grade, level or drainage characteristics of the Residential Lot or any portion thereof shall not be altered without the prior written consent of the Board or its delegated committee. In the event that the Board or its designated Committee fails to approve or disapprove such design and location within thirty (30) days after said plans

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and specifications have been submitted to it, approval will not be required and compliance with this Article will be deemed to have been made. In the event of a dispute, the Board has final authority.

6.2. DUTIES.

It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to this Declaration and any Architectural Standards adopted by the Committee, to insure that any improvements constructed on the Property by anyone other than Declarant conform herewith, to perform other duties delegated to it by Corporation within the time periods set forth herein, and to carry out all other duties which may be imposed upon it by this Declaration. The Committee, in its own name or on behalf of the Corporation, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction or improvements on the Property or any portion thereof. The Committee shall have the right, upon reasonable notice, to inspect any and all improvements made by an Owner. The Committee shall have a duty to keep and maintain a record of all action from time to time taken by the Committee at all meetings or otherwise.

6.3. COMPENSATION.

Architectural Committee or Board members shall receive no compensation for services rendered, other than reimbursement by the Corporation for expenses incurred by them in the performance of their duties hereunder. Provided, however, an Architectural Committee or a Board member may receive compensation in the event he or she renders services in a professional capacity in connection with architectural review, subject to the unanimous approval of the Board.

6.4. FEE FOR REVIEW.

The Architectural Committee shall have the right, subject to approval by the Board, to establish a fee for the review and approval of plans and specifications which must be submitted to the Architectural Committee pursuant to the provisions of this Article or the Bylaws, which shall be reasonably related to the duties performed and to cover any expense incurred in obtaining professional review assistance from licensed engineers, architects or contractors.

6.5. ARCHITECTURAL STANDARDS.

The Architectural Committee may, from time to time and in its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural Standards." Said Standards shall interpret and implement the provisions of this Article by setting forth the standards and procedures for Architectural Committee review and guidelines for architectural design, landscaping, color schemes exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that said Architectural Standards shall not be in derogation of the standards required by this Declaration.

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6.6. ESTOPPEL CERTIFICATE.

Within thirty days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Corporation of a reasonable fee (as fixed from time to time pursuant to the Section hereinabove entitled "*Fee for Review*"), the Architectural Committee shall provide the Owner with an estoppel certificate certifying that as of the date thereof, either: (a) all improvements made and other work completed by said Owner comply with this Declaration, or (b) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchase from the Owner, or from anyone deriving any interest in said Residential Lot through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Corporation and Owners and such persons deriving any interest through them.

6.7. LIABILITY.

Neither the Board nor the Architectural Committee shall be liable to the Corporation or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the neighborhood; or (d) the execution and filing of an estoppel certificate whether or not the facts therein are correct; provided, however, that such Architectural Committee member has acted in good faith on the basis of such information as may be possessed by him.

6.8. ENFORCEMENT.

In the event of a violation of any of the provisions of this Article, by any Owner including, without limitation, failure of any Owner to comply with the written directive or order from the Architectural Committee, the Architectural Committee shall have the right and authority to enforce, pursuant to the "Enforcement" Article hereinafter, the performance of the subject matter of such directive, including, if necessary, the right to enter the Residential Lot where a violation of these restrictions exists and perform remedial work, and the cost of such performance shall be charged to the Owner of the Dwelling in question. Such costs shall be due within five (5) days after receipt of written demand therefor, and shall bear interest at the maximum rate allowed by law. Said costs may be recovered by the Architectural Committee together with such interest and reasonable attorney's fees and costs in an action at law against such Owner.

6.9. APPROVAL BY GOVERNMENTAL JURISDICTION.

Prior to commencing any alteration or improvements approved by the Architectural Committee, the Owner shall comply with all appropriate governmental jurisdiction laws and regulations. Approval by the Architectural Committee shall not be considered to satisfy the appropriate approvals that may be

required by any governmental entity with appropriate jurisdiction. The Corporation shall not be obligated to enforce the provisions of this Section. An Owner's failure to obtain such governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of Architectural Committee, which penalties shall be the responsibility of such Owner."

6.10. REMODELING THE COMMON AREA.

Except as otherwise provided in the zoning ordinances of the City of Escondido, and as otherwise specifically provided herein, nothing herein contained shall give any Owner or the Corporation the right to paint, decorate, remodel, landscape, adorn or construct or reconstruct upon any part or parcel of the Common Area without the written consent of the Board and without obtaining the necessary approvals and permits from the City of Escondido.

6.11. APPROVAL BY BOARD OF RESIDENCE MINIMUM SIZE; AGE.

No Residence may be placed on any Residential Lot until approved in writing by the Board, as to size, condition and appearance and together with proposed plans and specifications of exterior improvements. A manufactured Home must have complete sanitary facilities, including, but not limited to: a lavatory, toilet, wash basin, tub or shower, kitchen sink, and must be connected to sewage outlets in conformity with State and local health requirements. The minimum width of any manufactured Home shall be twenty-four feet (24'). No Home constructed more than six (6) years prior to its installation in the Project shall be permitted.

6.12. EXTERIOR IMPROVEMENTS.

The exterior improvements, including landscaping, of Residential Lots must be completed within three (3) months immediately following the completion of a Home thereon.

6.13. SETBACKS AND FENCING.

The following setbacks shall be observed:

Front Yard: 10 feet with the exception that garages which do not open directly onto a street may have a 5 foot setback with an adequate turning radius to the satisfaction of the City of Escondido Planning Director.

Rear Yard: Minimum of 5 feet (3' to toe of slope);

Side Yard: Minimum of 5 feet (3' to toe of slope);

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Setbacks for any accessory structure shall be as follows:

Side: A minimum of 3 feet from property line;

Rear: A minimum of 3 feet from property line;

Front: A minimum of 5 feet from property line.

Eaves on accessory structures may project up to one (1) foot into front, side and rear setbacks.

No permanent or temporary structures or any portion of the Homes shall be placed on or maintained on such side or rear yards. Extension of rear yard fencing or walls shall be as determined and approved or waived thereof in writing by the Board or its designated Committee.

6.14. ENCROACHMENTS INTO SETBACK AREAS.

Eaves, awnings, fireplaces, stairs, door stoops and similar architectural features of a Home may extend into the front setback area (on those Lots only where a 10 foot front setback exists) for 4 feet (or 6 feet from the Lot line) and into the side yard setbacks for 2 feet (or 3 feet from the Lot line). The 4 foot encroachment does not apply to Lots with a 5 foot front setback (where a garage entry is turned sideways).

6.15. GARAGES, CARPORTS.

Each Residential Lot shall have two (2) covered parking spaces consisting of (i) a one-car garage and carport, or (ii) a two-car garage, or (iii) two carports. A garage or carport may be attached or detached to the Home structure. A one-car garage must be setback a minimum of 28 feet, with covered parking for at least one car in front of the garage. A two-car garage must be set back either a minimum of 10 feet or 18 feet. The carport awning shall be equal to the front fascia or eave of the Home and extend back the full length of the Home. A garage turned sideways may be set back 5 feet. The pitch of the Home roof and the garage roof must conform, and the peak of the garage roof shall not exceed the height of the peak of the Home. Any proposed deviation from the provisions of this Section, shall require the written approval of the Board or its designated Committee, and meet the provisions of the zoning ordinances of the City of Escondido.

6.16. COLORS.

Home exterior siding and trim shall be of brown or tan "earth tone" colors. Roofs shall be a brown composition shingle, brown shake or brown tile. Bright or reflective metal roofs are not permitted.

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1 **6.17. NON-COMPLIANCE WITH LAWS.**

2
3 Neither the Corporation, the Board or the Architectural Committee
4 shall be responsible for any defect in, or non-compliance with any governmental
5 law, rule or regulation of any building or other structures erected, construct-
6 ed, installed, placed, altered or maintained in accordance with or pursuant to
7 any plans and specifications, color scheme, plot plan or grading plan approved
8 by the Corporation, the Board or the Architectural Committee or any conditions
9 or requirements they may have imposed with respect thereto; provided, however,
10 the Corporation shall be liable for damage and repair to City utilities in the
11 event that such damage is caused by the Corporation in the course of repair or
12 replacement of private facilities of the Project.
13

14 **6.18. REBUILDING IN THE EVENT OF DAMAGE OR DESTRUCTION.**

15
16 In the event of damage or destruction to any Dwelling or improvement
17 on a Residential Lot, the Owner of such Lot shall repair or reconstruct the
18 improvement in accordance with the original as-built plans and specifications,
19 modified as may be required by applicable building codes and regulations in
20 force at the time of such repair or reconstruction or any new plans and
21 specifications that may be approved by the Board or its appointed Architectural
22 Committee. The repair or reconstruction shall commence no later than ninety
23 (90) days after the date of such damage or destruction, and shall be completed
24 no later than one hundred eighty (180) days after such date, subject to delays
25 that are beyond the control of the Owner. The foregoing notwithstanding, the
26 Owner immediately shall take such steps as may be reasonably required to secure
27 any hazardous conditions resulting from the damage or destruction."
28

29 **6.19. FINAL INSPECTION.**

30
31 Final inspection and correction of defects therein, if any, shall
32 proceed as follows:
33

34 (a) Upon the completion of any work for which approved plans are
35 required under this Article, the Owner shall give written "Notice of
36 Completion" to the Architectural Committee.
37

38 (b) Within sixty (60) days thereafter, the Architectural Committee
39 or its duly authorized representative, may inspect such improvement. If the
40 Committee finds that such work was not done in substantial compliance with the
41 approved plans, it shall notify the Owner in writing of such noncompliance
42 within such sixty (60) day period, specifying the particulars of noncompliance,
43 and shall require the Owner to remedy the same.
44

45 (c) If, upon the expiration of thirty (30) days from the date of
46 such notification, the Owner shall have failed to remedy such noncompliance,
47 the Architectural Committee shall notify the Board in writing of such failure.
48 After affording such Owner notice and hearing, in accordance with the Section
49 entitled "**Notice and Hearing**" in the "**Rights of Owners, Board and**
50 **Association**" Article herein, the Board shall determine whether there is a
51
52

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1 noncompliance and, if so, the nature thereof and the estimated costs of
2 correcting or removing the same. If a noncompliance exists, the Owner shall
3 remedy or remove the same within a period of not more than thirty (30) days
4 from the date of announcement of the Board ruling. If the Owner does not
5 comply with the Board ruling within such period, the Board, at its option, may
6 either remove the non-complying improvement or remedy the noncompliance, and
7 the Owner shall reimburse the Corporation, upon demand, for all expenses
8 incurred in connection therewith. If such expenses are not promptly repaid by
9 the Owner to the Corporation, the Board shall levy a special non-lien
10 assessment against such Owner for reimbursement.

11
12 (d) If, for any reason the Architectural Committee fails to notify
13 the Owner of any noncompliance within sixty (60) days after receipt of said
14 written notice of completion from the Owner, the improvement shall be deemed to
15 be in accordance with said approved plans."

16 17 18 ARTICLE 7. - RESPONSIBILITIES OF MAINTENANCE

19 20 7.1. OWNER RESPONSIBILITY.

21
22 Each Owner of a Residential Lot shall maintain the exterior surfaces
23 and roofing of his Dwelling in an attractive and cleanly manner. Any proposed
24 changes in color or exterior material must be approved by the Board or its duly
25 appointed committee pursuant to the Article entitled "**Architectural and**
26 **Design Control**" herein. Each Owner shall irrigate and maintain the landscap-
27 ing (including any slopes thereon) of his Lot in an attractive and cleanly
28 manner. No rubbish or debris of and kind shall be placed or permitted by an
29 Owner to accumulate upon or adjacent to any Lot, so as to render such property
30 or portion thereof unsanitary, unsightly, offensive or detrimental to other
31 residents.

32 33 7.2. OWNER'S FAILURE TO MAINTAIN; WILLFUL OR NEGLIGENT ACT.

34
35 In the event an Owner fails to maintain the areas described herein
36 pursuant to the standards set by the Board, or if an Owner, or his guests,
37 tenants, invitees or pets, cause the willful or negligent act or neglect of the
38 same or any other area within the Project, the Board shall notify the Owner of
39 the work required and request that the same be done within a reasonable time
40 under the specific circumstances, provided, however, that the Board shall have
41 the right to approve the person or company who shall perform the maintenance or
42 repairs and the method of repair. In the event the Owner fails to carry out
43 such maintenance or repair within said reasonable time period, the Board may
44 cause such work to be done and all direct and indirect costs and expenses
45 therefor shall become a Single Benefit Assessment against such Owner and his
46 Residential Lot and shall be immediately paid by such Owner to the Corporation
47 and until paid shall bear interest at the rate of twelve percent (12%) per
48 annum (but no greater than the maximum rate authorized by law). Any such
49 Assessment shall constitute a lien upon the Residential Lot against which it is
50 made, the lien to become effective upon the recordation of a Notice of Delin-
51 quency in accordance with the procedures described in the Section entitled
52 "**Effect of Non-Payment of Assessments**" hereinabove. Provided, however,

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no such Corporation action to cause such work to be done shall be made unless the Owner of the Residential Lot receives fifteen (15) days' prior written notice of the proposed action and the reasons therefor and is given an opportunity to be either heard orally or in writing before the Board not less than five (5) days before the proposed date of the action. The notice required hereby may be given by any method reasonably calculated to provide actual notice in accordance with the notice provisions described in the Article herein entitled "**General Provisions**".

7.3. RESPONSIBILITY OF CORPORATION.

The Corporation shall provide for adequate and reasonable maintenance and repair of the Common Area. Such maintenance shall include, but not be limited to, the clubhouse and recreation area, the landscaped and parking areas around these facilities, all open space areas, the parkway wall and Project perimeter fencing, the parkway landscaped area and all street trees within the Project. In addition, the Corporation shall provide for the repair and maintenance of any sewer laterals, private streets and street lighting in the private streets, gutters, walks, water lines, drainage and storm facilities, brow ditches, swales, including keeping such facilities free from debris and obstructions, and the planting of trees and ground cover on, and the maintenance of the irrigation system in the Common Area. The Corporation shall be responsible for the maintenance of all slope banks in excess of three feet (3') in height and all setbacks within ten feet (10') of the perimeter boundary of the Project. In the event that should such maintenance or repair result from the act or neglect of an Owner, his guests or licensees, the liability of the Owner shall be determined according to the Laws of the State of California.

ARTICLE 8. - PARTY WALLS

8.1. GENERAL.

Each wall which is constructed as a part of a Residential Lot, and any part which is placed on the dividing line between Residential Lots, shall constitute a party wall, and with respect to such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of this Declaration, and to the extent not inconsistent herewith, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall be applied thereto.

8.2. DAMAGE BY ONE OWNER.

In the event any such party wall is damaged or destroyed through the act of one adjoining Owner or any of his agents, guests, invitees, tenants or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of the aforementioned Owners shall forthwith proceed to rebuild and repair the same to as good a condition as formerly existed, without cost to the adjoining Owner.

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1
2 **8.3. DAMAGE BY OTHER CAUSE.**
3

4 In the event any such party wall is damaged or destroyed by some
5 cause (including ordinary wear and tear and deterioration from lapse of time),
6 other than the act of one of the adjoining Owners, his tenants, guests or
7 family, both such adjoining Owners shall proceed forthwith to rebuild or repair
8 the same to as good condition as formerly existed, at their joint expense.
9

10 **8.4. ALTERATIONS.**
11

12 In addition to meeting the other requirements of this Declaration and
13 of any building code or similar regulation or ordinance, any Owner proposing to
14 modify, make additions to or rebuild his Dwelling in any manner which requires
15 the extension or other alteration of any party wall shall first obtain the
16 written consent of the adjoining Owner and the Corporation.
17

18 **8.5. WEATHERPROOFING.**
19

20 Nothingwithstanding any other provisions of this Article, an Owner,
21 who by his negligent or willful act causes the party wall to be exposed to the
22 elements shall bear the whole costs of furnishing the necessary protection
23 against such elements.
24

25 **8.6. ARBITRATION.**
26

27 In the event of a dispute between Owners with respect to a party
28 wall, or under the provisions of this Article, each Owner shall choose an
29 arbitrator, and such arbitrators shall choose one additional arbitrator, and
30 the decision shall be by a majority of all the arbitrators.
31

32
33 **ARTICLE 9. - RIGHTS OF LENDERS**
34

35 **9.1. GENERAL.**
36

37 No breach of any of the covenants, conditions and restrictions herein
38 contained, nor the enforcement of any lien provisions herein, shall render
39 invalid the lien of any First Mortgage on any Residential Lot made in good
40 faith and for value, but all of said covenants, conditions and restrictions
41 shall be binding upon and effective against any Owner whose title is derived
42 through foreclosure or trustee's sale, or otherwise. Any provision within the
43 Project Documents to the contrary notwithstanding, First Mortgagees shall have
44 the rights expressly provided in this Article.
45

46 **9.2. NO RIGHT OF FIRST REFUSAL.**
47

48 This Declaration neither contains nor shall be amended to contain any
49 provision creating a "right of first refusal" to the Corporation before a
50 Residential Lot can be sold. Should any such rights nevertheless be created in
51 the future, such rights shall not impair the rights of any first mortgagee to:
52
53

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(a) foreclose or take title to a Residential Lot pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (c) sell or lease a Residential Lot acquired by the Mortgagee.

9.3. UNPAID DUES OR CHARGES.

Where the Mortgagee of a first Mortgage of record or other purchaser of a Residential Lot obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Corporation chargeable to such Residential Lot which became due prior to the acquisition of title to such Residential Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Residential Lots including such acquirer, his successors and assigns.

9.4. ACTION REQUIRING MORTGAGEE APPROVAL.

Unless at least two-thirds (2/3) of the First Mortgagees (based upon one (1) vote for each mortgage owned), or two-thirds (2/3) of the Owners of the individual Residential Lots in the Project have given their prior written approval, the Corporation and/or the Owners shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, or any property owned, directly or indirectly, by the Corporation (the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Corporation is not a transfer in the meaning of this clause);

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner; or

(c) By act or omission, change, waiver or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance or exterior maintenance of Lots, the maintenance of the Common Area walks or fences and driveways, or the upkeep of landscaping in the Common Area; or

(d) Fail to maintain fire and extended coverage on insurable Corporation Common Area improvements on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

(e) Use hazard insurance proceeds for losses to Corporation common property for other than the repair, replacement or reconstruction of such Common Area property.

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1 **9.5. PAYMENT OF TAXES AND INSURANCE.**

2 First Mortgagees may, jointly or singly, pay taxes or other charges
3 which are in default and which may or have become a charge against the Common
4 Area property and may pay overdue premiums on hazard insurance policies, or
5 secure new hazard insurance coverage on the lapse of a policy, for such Common
6 Area property. First Mortgagees making such payments shall be owed immediate
7 reimbursement from the Corporation. This provision shall constitute an agree-
8 ment by the Corporation for the express benefit of all First Mortgagees, and
9 upon the request of any First Mortgagee, the Corporation shall execute and de-
10 liver to such Mortgagee a separate written agreement embodying this provision.

11 **9.6. PRIORITY OF PROCEED OR AWARD DISTRIBUTION.**

12 Any other provision herein contained to the contrary notwithstanding,
13 no provision of this Declaration or any other Project Document shall give a
14 Residential Lot Owner, or any other party, priority over any rights of the
15 First Mortgagee of a Residential Lot pursuant to its mortgage in the case of a
16 distribution to such Lot Owner of insurance proceeds or condemnation awards for
17 losses to or a taking of the of Common Area property.

18 **9.7. NOTIFICATION TO MORTGAGEE.**

19 Upon written request to the Corporation, identifying the name and
20 address of the holder, insurer or guarantor and the Residential Lot number or
21 address, any Eligible Mortgage Holder or Eligible Insurer will be entitled to
22 timely written notice of:

23 (a) Any condemnation loss or any casualty loss which affects a
24 material portion of the Project or the Residential Lot insured or guaranteed by
25 such Eligible Mortgage Holder or Eligible Insurer;

26 (b) Any default in the performance by an Owner of any obligation
27 under the Project Documents not cured within sixty (60) days;

28 (c) Any lapse, cancellation or material modification of any insur-
29 ance policy or fidelity bond maintained by the Corporation; and

30 (d) Any proposed action which would require the consent of a
31 specified percentage of Eligible Mortgage Holders as required by the Project
32 Documents.

33 **9.8. AGREEMENT FOR MANAGEMENT.**

34 Any management agreement of the Project, or any portion thereof shall
35 be terminable for cause upon thirty (30) days written notice, and without cause
36 or payment of a termination fee upon ninety (90) days, or fewer, written notice
37 and shall have a term of not more than two (2) years, renewable with the con-
38 sent of the Corporation and the management agent. The Board shall not termin-
39 ate professional management of the Project and assume self-management, when
40 professional management had been required previously by an Eligible Mortgage
41 Holder.

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Holder, without the prior written approval of Mortgagees holding seventy-five percent (75%) or more of the First Mortgages on Dwellings.

9.9. INSPECTION OF PROJECT DOCUMENTS, BOOKS and RECORDS.

The Corporation shall make available to Eligible Mortgage Holders, current copies of the Project Documents and the books, records and financial statements of the Corporation. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

9.10. NON-CURABLE BREACH.

Any Mortgagee who acquires title to a Residential Lot by foreclosure or by deed-in-lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure. A "breach", as used herein, shall not apply to any lien of or obligation for assessments owed to the Corporation which became due prior to the acquisition of title by deed or assignment in lieu of foreclosure.

9.11. LOAN TO FACILITATE.

Any First Mortgage given to secure a loan to facilitate the resale of a Residential Lot after acquisition by foreclosure or by a 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 protections of this Article.

9.12. MORTGAGEES FURNISHING INFORMATION.

Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

9.13. FINANCIAL STATEMENT.

Any First Mortgagee shall be entitled, on written request therefor, to have an audited financial statement for the immediately preceding fiscal year prepared at its own expense if one is not otherwise available. Such statement shall be furnished within a reasonable time following such request.

9.14. TERMINATION WITHOUT SUBSTANTIAL DESTRUCTION.

Neither the Corporation nor Owners may elect to terminate the legal status of the Project for reasons other than substantial destruction or condemnation of the Project without the written consent of Eligible Mortgage Holders who represent at least two-thirds (2/3) of the votes of the mortgaged Residential Lots.

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ARTICLE 10. - DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA**10.1. FIRE OR CASUALTY.**

If any portion of the Common Area is damaged or destroyed by fire or other casualty, then:

(a) If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Corporation for the fiscal year during which the repairs or rebuilding is necessitated, the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor.

(b) If the cost of repairs or rebuilding exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Corporation for the fiscal year during which the repairs or rebuilding is necessitated, and if the Owners holding in aggregate more than fifty percent (50%) interest in Common Area agree to the repair or restoration of the Project, then the Board shall contract as provided in (a) above.

(c) If said Owners do not so agree to the repair or rebuilding of the Common Area, then each owner (and his Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of his Residential Lot as compared to the aggregate decrease in fair market values of all the Residential Lots caused by such damage or destruction. For purposes hereof fair market value shall be determined by an MAI appraiser (Member of the Appraisal Institute), selected by the board and hired by and at the expense of the Corporation. Should dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.

(d) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Residential Lot in proportion to the interest of each Owner in the Project to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessments and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Corporation to be used for such rebuilding.

10.2. EMINENT DOMAIN.

If any portion of the Common Area is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the Owners of the Common Area, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award from such taking in proportion as insurance proceeds would be distributed pursuant to subsection (c) of the Section immediately above, provided, however, that should it be determined to

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1 repair or rebuild any portion of the Common Area, such proceeds shall be paid
2 to the Corporation for that purpose in the same manner and subject to the same
3 terms, conditions and limitations as are set forth in the Section immediately
4 above of this Article for repairing damaged or destroyed portions of the Common
5 Area. A decision to repair or rebuild shall be made in the same manner and
6 subject to the same conditions and limitations as provided the Section
7 immediately above for determining whether to rebuild or repair following damage
8 or destruction.
9

10 **10.3. MASTER INSURANCE POLICY.**
11

12 The Corporation shall obtain and continue in effect the following
13 insurance:
14

15 (a) A master policy of insurance with glass coverage, if
16 applicable, and extended coverage endorsement for the full insurable value of
17 all of the insurable improvements of the Common Area. The form and content of
18 such policy must be satisfactory to all institutional first trust deed lenders
19 and shall meet the maximum standards of the various institutional first trust
20 deed lenders whose loan(s) encumber any of the Residential Lots.
21

22 (b) A public liability and property damage insurance policy with
23 cross liability endorsement, if available, insuring the Corporation, any mana-
24 ger and the Owners against liability incident to ownership or use of the Common
25 Area. The limits of such insurance shall not be less than \$1,000,000.00
26 covering all claims for death, personal injury and property damage arising out
27 of a single occurrence. The general liability policy shall also include such
28 provisions as may be required by the provisions of California Civil Code
29 Section 1365.7, or any successor statute, to limit the monetary liability of
30 volunteer directors and officers of the Corporation. The policy shall, in any
31 event, contain a "severability of interest" endorsement or the equivalent
32 which shall preclude the insurer from denying the claim of an Owner because of
33 wanton or grossly negligent acts or omissions of the Association or other
34 Owners.
35

36 (c) Such insurance covering directors, officers and employees of
37 the Corporation and employees of any manager or managing agent, whether or not
38 any such persons are compensated for their services, against dishonest acts on
39 their part, or in lieu thereof, a fidelity bond, naming the Corporation as
40 obligee, written in an amount not less than one and one-half times the
41 Corporation's estimated annual operating expenses and reserves.
42

43 (d) Worker's compensation insurance covering any employees of the
44 Corporation.
45

46 (e) Such other insurance as the Board in its discretion considers
47 necessary or advisable.
48

49 Insurance premiums for the master policy shall be a common expense to
50 be included in the monthly assessments levied by the Corporation.
51

52
53
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10.4. WAIVER OF SUBROGATION; INSPECTION OF POLICIES.

Any insurance maintained by the Corporation shall contain "waiver of subrogation" as to the Corporation and its officers, directors and Members, the Owners and occupants of the Dwellings and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The Corporation shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Corporation to determine the adequacy of the coverage and to adjust the policies accordingly.

10.5. NOTICE OF CANCELLATION; CORPORATION TO SERVE AS TRUSTEE.

All insurance policies shall provide that they shall not be cancellable by the insurer without first giving at least ten (10) days' prior notice in writing to the Corporation. Each Owner appoints the Corporation or any insurance trustee designated by the Corporation to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Corporation, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

10.6. INSPECTION OF POLICIES.

Copies of all Corporation insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Corporation and be open for inspection by Owners at any reasonable times.

10.7. OWNERS' INSURANCE.

Each Owner shall obtain and maintain, at the Owner's sole expense, (a) fire and casualty coverage as may be required by any mortgagee of the Owner's Lot and in no event less than the full replacement value (i.e. one hundred percent (100%)) of current "replacement cost," exclusive of land, foundation, excavation and other items normally excluded from coverage, of all of the improvements within a Residential Lot, without deduction for depreciation, with an "agreed amount endorsement" or its equivalent, and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement," if available; such insurance shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, costs of demolition, vandalism, malicious mischief, windstorm, water damage and such other risks as shall customarily be covered with respect to similar Dwellings in the area of the Project; and (b) personal liability insurance in an amount not less than One Hundred Thousand Dollars (\$100,000). All such individually carried insurance shall contain a waiver of subrogation by the carrier as to the other Owners, the Corporation, and the mortgagees of such Lot. Each Owner shall deliver, or cause to be delivered, to the Corporation a certificate of insurance evidencing the placement and continued maintenance of such required insurance. All insurance policies shall provide that they shall not be cancellable by the insurer without first giving at least

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ten (10) days' prior notice in writing to the Corporation. In the event an Owner fails to maintain such insurance, the Corporation shall have the right to obtain such required insurance on behalf of such failing Owner and to lien such Owner's Residential Lot in the manner therefor provided in the Bylaws. No Owner shall insure his Residential Lot in any manner which would cause the diminution in insurance proceeds from the Master Insurance Policy; should any Owner violate this provision, he shall be responsible to the Corporation for any such diminution.

10.8. FAILURE TO ACQUIRE.

The Corporation, and its directors and officers, shall have no liability to any Owner or mortgagee if, after a good faith effort, it is unable to obtain the liability insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretions determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any mortgagee entitled to notice that the liability insurance will not be obtained or renewed.

10.9. INDEMNIFICATION.

(a) MEMBERS OF THE CORPORATION.

Each Owner shall be liable to the Corporation for any damage to the Common Areas caused by the negligence or willful misconduct of the Owner or his family, guests, invitees or lessees, to the extent that the damage shall not be covered by insurance. Each Owner shall indemnify, hold harmless, and pay any costs of defense of each other Owner from claims for personal injury or property damage occurring within any Residential Lot owned by the indemnitor, provided that this protection shall not extend to any indemnitee whose negligence or willful misconduct caused or contributed to the injury or damage; provided, further, that this Section is not intended to be for the benefit of any insurer and shall not affect nor limit the duty of any insurer to pay any claim which would be payable by said insurer but for this Section.

(b) BOARD MEMBERS, COMMITTEE MEMBERS, AGENTS, EMPLOYEES.

No Member of the Board, or of any committee of the Corporation, shall be personally liable to any Owner, or to any other Party, including the Corporation, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Corporation, the Board or any representative, agent, employee, officer, or committee member, including the Architectural Committee, of the Corporation, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct. In all cases where any Member of the Board or any Corporation representative, agent, employee, officer or committee member has any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence other than willful or intentional misconduct, the Corporation shall indemnify and hold said person harmless from any judgment or settlement and any costs of defense of any such action, including attorney's fees, as may be reasonable and proper.

ARTICLE 11. - EASEMENTS**11.1. NONEXCLUSIVE EASEMENTS.**

Each Residential Lot Owner shall have a nonexclusive easement for use and enjoyment of the Common Area and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to each Lot and shall be subordinate to any exclusive easements granted elsewhere in this Declaration, as well as to the right of the Corporation to regulate time and manner of use, to charge reasonable admission fees, and to perform its obligations under this Declaration.

11.2. DRAINAGE & SLOPES.

The Owner of a Residential Lot shall permit free access by Owners of adjacent or adjoining Residential Lots to slopes or drainageways located on his property, which affect said adjacent or adjoining Residential Lots, when such access is essential for the maintenance of permanent stabilization on said slopes, or maintenance of the drainage facilities for the protection and use of property other than the Lot on which the slopes or drainageway is located. The Owner of any Residential Lot shall endeavor to not in any way interfere with the established drainage pattern over his Lot where it will affect the drainage pattern from adjacent or adjoining Lots, and, in the event that a change in the established drainage pattern is necessary, such Owner will make adequate provisions for the maintenance of proper drainage therefrom over his Lot. For the purpose herein, "established drainage" is defined as the drainage which occurred at the time the overall grading of the Project was completed.

11.3. OTHER EASEMENTS.

The Corporation may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, and each Residential Lot Owner, in accepting his deed to the Lot, expressly consents to such easement. No such easement can be granted, however, if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his Lot.

11.4. EASEMENTS FOR MAINTENANCE OF ENCROACHMENTS.

None of the rights and obligations of the Owners created herein, or by the deed creating the Planned Unit Development shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners.

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ARTICLE 12. - ENFORCEMENT; ARBITRATION**12.1. RIGHT TO ENFORCE.**

The Corporation, the City of Escondido or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. Each Owner of a Residential Lot shall have a right of action against the Corporation for failure to comply with the provisions of the Declaration, the Bylaws or with the decisions of the Corporation which are made pursuant to authority granted the Corporation under the Declaration or Bylaws.

12.2. NUISANCE.

The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Corporation or any Member. Each remedy provided by this Declaration shall be cumulative and not exclusive.

12.3. FAILURE TO ENFORCE.

Failure by the Corporation, the City, or any Owner to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

12.4. VIOLATION OF LAW.

Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Residential Lot within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

12.5. ARBITRATION.

(a) In the event a dispute occurs between an Owner and an adjoining Residential Lot Owner over the application of these restrictions, operation, maintenance, repair or other matter in connection with said premises, the same shall be submitted to the Board of Directors in writing, which Board will act as an arbitrating tribunal.

(b) The arbitrating tribunal shall have complete control over the conduct of the arbitration and may specify any rules or regulation with the reference thereto, not to conflict herewith. The decision of the majority shall be the decision of the arbitrating tribunal and should be final. The technical rules of evidence shall be waived in the discretion of the tribunal.

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The parties are entitled to be represented by counsel and to be heard; provided, however, that nothing herein contained shall limit the power of the arbitrating tribunal to control the manner, method and conduct of the proceedings and presentation of the evidence, subject always to the requirement that parties be given a fair and impartial hearing. Where not inconsistent herewith, the rules of the American Arbitration Association apply.

(c) All hearings shall be held in San Diego County.

(d) In any arbitration the arbitrators shall have the broadest possible power permitted by law to frame their award or decision so as to do substantial justice between or among the parties. The Residential Lot Owners hereby agree that they will faithfully observe the contents of this document and the rules and that they will abide by and perform any award or decision rendered pursuant to this agreement, and a judgment of the court having jurisdiction may be entered upon the award.

(e) Provided, however, that this arbitration requirement shall not limit the right of the Corporation to enforce by any proceeding in law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration.

ARTICLE 13. - GENERAL PROVISIONS

13.1. SEVERABILITY.

Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment of court order, the remaining provisions hereof shall be and remain in full force and effect.

13.2. TERM OF DECLARATION.

The covenants, conditions and restrictions of this Declaration shall run with and bind the property, and shall inure to the benefit of and shall be enforceable by the Corporation, the City or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the Owners of the Residential Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to terminate the same.

13.3. ANNEXATION.

Upon approval in writing of the Corporation, pursuant to three-fourths (3/4) majority of the voting power of its Members, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Corporation, may file of record a Declaration of Annexation.

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13.4. AMENDMENTS.

Except as may otherwise be stated in this Declaration, this Declaration may be amended at any time and from time to time by an instrument in writing signed by **sixty-seven percent (67%)** of the total voting power of members of the Corporation, any which amendment shall become effective upon the recording thereof with the Office of the County Recorder of San Diego County, California. Any amendment to the Articles entitled **"USE RESTRICTIONS"** or **"ARCHITECTURAL AND DESIGN CONTROL"** should be submitted to the City of Escondido for its approval prior to approval by the membership of the Corporation. Anything herein stated to the contrary notwithstanding, no material amendment to this Declaration shall be made without the prior written approval of no greater than sixty-seven percent (67%) of the Eligible Mortgage Holders whose mortgages encumber fifty-one percent (51%) or more of the Residential Lots within the Project which are subject to Eligible Mortgage Holder Mortgages. **"Material amendment"** shall mean any amendments to provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (a) Voting rights;
- (b) Assessments, assessment liens, or the priority of assessment liens;
- (c) Reserves for maintenance, repair, and replacement;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Project, or rights to their use;
- (f) Redefinition of the boundaries of any Residential Lot;
- (g) Convertibility of Residential Lots into Common Areas or visa versa;
- (h) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (i) Insurance or fidelity bond coverage;
- (j) Leasing of Dwellings;
- (k) Imposition of any restrictions on an Owner's right to sell or transfer his or her Dwelling;
- (l) Any decision by the Board to establish self-management when professional management had been required previously by the Project Documents or by an Eligible Mortgage Holder;

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- (m) The restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (n) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- (o) Any provisions that expressly benefit Mortgage Holders, insurers or guarantors.

An addition or amendment to such document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only; such amendments may be made upon the majority vote of the Board.

Any Eligible Mortgage Holder or Eligible Insurer who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request, provided that notice was delivered by certified or registered mail, with a "return receipt" requested.

13.5. LITIGATION.

In the event the Corporation, the City, or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered.

13.6. OWNER COMPLIANCE WITH DECLARATION.

Each Owner, tenant or occupant of a Residential Lot shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Corporation or its duly authorized representative, as lawfully amended from time to time and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief.

13.7. BREACH OF DECLARATION.

No breach of any provisions of these covenants, conditions and restrictions shall invalidate the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon Owner whose title is derived through foreclosure sale, Trustee's Sale or otherwise.

13.8. NOTICE.

Any notice permitted or required by the Declaration, Articles or Bylaws may be delivered either personally or by mail. If delivery is by mail,

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it shall be deemed to have been delivered seventy-two hours after a copy of the same has been deposited in the United States Mail, first class or certified, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Residential Lot of such person if no address has been given to the Secretary.

13.9. REPORTS TO PROSPECTIVE PURCHASERS; ESTOPPEL CERTIFICATE.

In accordance with California Civil Code Section 1368, or any successor statute or law, the Owner of a Residential Lot shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in California Civil Code Section 2985, provide the following to the prospective purchaser:

(a) A copy of the Declaration, Bylaws, Articles and Corporation Rules, if any;

(b) A copy of the most recent financial reports as required by the Bylaws;

(c) A certificate signed by an authorized representative of the Corporation as to the amount of any assessments levied upon the Owner's interest in his Residential Lot which are unpaid on the date of the Statement. The certificate shall also include information on late charges, interest and costs of collection which, as of the date of the certificate, are or may be made a lien upon the Owner's Residential Lot, pursuant to California Civil Code Section 1367, or any successor statute or law. A properly executed certificate of the Corporation as to the status of assessments on a Residential Lot is binding upon the Corporation as of the date of its issuance.

Upon written request, the Corporation shall, within ten (10) days of the mailing or delivery of the request, provide the Owner of a Residential Lot with a copy of the items specified hereinabove. The Corporation may charge a fee for this service, as well as a fee or assessment to change its records in connection with the transfer of title to a Residential Lot. Any fees or assessments contained in this Section shall not exceed the reasonable costs to prepare and reproduce the requested items or the actual costs to change records.

13.10. NOTIFICATION OF SALE OR CONVEYANCE.

Concurrently with the consummation of the sale or other conveyance of any Residential Lot where the transferee becomes an Owner of the Lot, or within five (5) business days thereafter, the transferee shall notify the Corporation in writing of such sale or conveyance. Such notification shall set forth the name of the transferee and his Mortgagee and transferror, the common address of the Lot purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale or conveyance. Before the receipt of such notification, any and all communications required or permitted to be given by the Corporation, the Board, the Board's delegated committee or the Corporation's manager shall be deemed to be duly made and given to the transferee if

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SECOND AMENDED DECLARATION**

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1 duly and timely made and given to the transferee's transferror. Mailing
2 addresses may be changed at any time upon written notification to the
3 Corporation. Notices shall be deemed given and given in accordance with the
4 provisions of the Section herein entitled "Notice."

5
6 **13.11. CITY APPROVAL REQUIRED TO TERMINATE DECLARATION.**

7
8 This Declaration, and specifically Article 5 - USE RESTRICTIONS,
9 Article 6 - ARCHITECTURAL AND DESIGN CONTROL and Article 7 - RESPONSIBILITIES
10 OF MAINTENANCE herein, shall not be terminated without the approval of the
11 City of Escondido.

12
13 **13.12. GOVERNING DOCUMENTS.**

14
15 In the event of a conflict between this Declaration and any other
16 Project Document, the provisions of this Declaration shall control.

17
18 **13.13. SINGULAR INCLUDES PLURAL.**

19
20 Whenever the context of this Declaration requires same, the singular
21 shall include the plural and the masculine shall include the feminine.

22
23 **13.14. LIBERAL CONSTRUCTION.**

24
25 The provisions of this Declaration shall be liberally construed to
26 effectuate its purpose of creating a uniform plan for the development of a
27 residential community and for the maintenance of the Project. The titles or
28 headings of the Articles or Sections of this Declaration have been inserted for
29 convenience only and shall not be considered or referred to in resolving
30 questions or interpretation or construction."
31
32
33
34

1
2
3 IN WITNESS WHEREOF, this SECOND AMENDMENT TO AND RESTATEMENT OF
4 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VIA VERDE ESTATES is
5 executed by the President of the Corporation on this _____ day
6 of April 12, 1991.
7
8

9 VIA VERDE ESTATES, INC.

10 a California nonprofit mutual benefit corporation
11

12
13
14 By:

Harold L. Simmons
15 President
16
17
18
19

20 I hereby certify and declare, under penalty of perjury, that the
21 foregoing SECOND AMENDMENT TO AND RESTATEMENT OF DECLARATION OF COVENANTS,
22 CONDITIONS AND RESTRICTIONS FOR VIA VERDE ESTATES has been duly approved by the
23 percentage of Owners required by the Former Declaration.
24
25
26

27 VIA VERDE ESTATES, INC.

28 a California nonprofit mutual benefit corporation
29

30
31
32
33
34 By:

Harold L. Simmons
35 President
36
37
38

JS

39
40
41 VIA VERDE ESTATES
42 SECOND AMENDED DECLARATION

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SECOND AMENDMENT TO AND RESTATEMENT OF DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR VIA VERDE ESTATES

SEALED

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

} SS

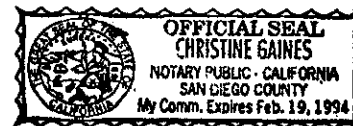
On APRIL 12, 1991, before me,
the undersigned Notary Public, personally appeared XXXXXXXXXXXXXXXXXX

THAINE M. SIMMONDS
~~(personally known to me)~~ (proved on the basis of satisfactory evidence) to be
the VIA VEERDE ESTATES President, ~~XXXX~~

~~XX~~
~~(personally known to me)~~ (proved on the basis of satisfactory evidence) to be
~~the XXX~~

~~Secretary~~ of the corporation that executed the within instrument to be the
person who executed the within instrument on behalf of the corporation
therein named, and acknowledged to me that such corporation executed
the same, pursuant to its laws, or a resolution of its Board of Directors.

Signature *Christine Gaines*
CHRISTINE GAINES



HomeFed Bank FSB

ACKNOWLEDGEMENT - CORPORATION

SAV-192 (8/90)

EXHIBIT "A"

LEGAL DESCRIPTION:

Lots 1 through 113, inclusive, and Lot 115 of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248, filed in the Office of the County Recorder of San Diego County on June 5, 1985.

VIA VERDE ESTATES
SECOND AMENDED DECLARATION

3476

DOC # 2001-0037955



2001-0037955

JAN 23, 2001 11:12 AM

Recording Requested By:
VIA VERDE ESTATES, INC.

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 20.00

When Recorded, Return To:

Sheryl J. Rosander, Esq.
Epsten Grinnell & Howell, APC
555 West Beech St., Suite 500
San Diego, CA 92101

For Recorder's Use

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR VIA VERDE ESTATES, INC.**

THIS AMENDMENT is made on this 16 day of January, 2001, by Via Verde Estates, Inc., a California nonprofit mutual benefit corporation, hereinafter referred to as "**Association**," and its membership, with reference to the following:

RECITALS

A. The Association is the management body for the common interest subdivision located in the City of Escondido, County of San Diego, State of California, more particularly described as follows:

LEGAL DESCRIPTION:

Lots 1 to 113, inclusive, and Lot 115 of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248, filed in the Office of the County Recorder of San Diego County on June 5, 1985.

hereinafter referred to as "**Property**;"

B. The Property is subject to the covenants, conditions and restrictions contained in:

1. That certain Declaration of Covenants, Conditions and Restrictions for Via Verde Estates recorded on November 15, 1985 as File/Page No. 85-430633;

VIA VERDE
DECLARATION AMENDMENT

- 1 of 4 -

SD 152205 v 1

2. First Amendment to Declaration of Covenants, Conditions and Restrictions for Via Verde Estates recorded on January 24, 1989 as File/Page No. 89-038714;

3. Second Amendment to and Restatement of Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded on April 22, 1991 as File/Page No. 1991-0181891; and

4. Second Amendment to and Restatement of Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded on March 2, 1995 as File/Page No. 1995-0089822.

All of the above are recorded in the Official Records of the County Recorder of San Diego County, California, and are hereinafter referred to together as "**Declaration**," unless the context clearly indicates otherwise.

C. Article 13, Section 13.4 of the Declaration provides that the Declaration may be amended with the approval of sixty-seven percent (67%) of the total voting power of the Members. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of Association Members has been obtained.

D. The Association and its members now wish to amend the Declaration as set forth herein.

DECLARATION

NOW THEREFORE, the Declaration is hereby amended to add a new Article 5a as follows:

1. **ARTICLE 5a. - STATUS OF COMMON INTEREST COMMUNITY DEVELOPMENT CONTAINING MANUFACTURED HOMES AS PROVIDER OF HOUSING FOR OLDER PERSONS**

5a.1. DEFINITION OF LAW.

For the purpose of this article, "Law" shall include, without limitation, all statutes, ordinances and other forms of legislative enactments, administrative regulations administrative rulings and guidelines, as each may be amended from time to time, and decisions and interpretations from or arising out of administrative enforcement proceedings and court decisions.

5a.2. MINIMUM AGE REQUIREMENTS.

Dwellings shall be occupied only by persons who are 55 years of age or older or a Qualifying Member as defined in Section 2.2 "Qualification for Membership", except as stated below.

5a.2.1. GUESTS.

A person under the age of 55 who would otherwise fail to qualify for residency, who is a guest of an occupant or resident Qualifying Member who is age 55 or older, may temporarily reside at the Project in compliance with Section 5.3 of this Restated Declaration as amended.

5a.2.2. RIGHT TO SHARE DWELLING WITH RELATIVE WHO REQUIRES CARE.

A resident Qualifying Member or occupant who is age 55 or older may share his or her Dwelling with any person 18 years of age or older if that person is a parent, sibling, child, or grandchild of the senior homeowner and requires live-in health care, live-in supportive care, or supervision pursuant to a written treatment plan prepared by a physician and surgeon. Any person who is permitted to reside in the Dwelling as set forth in this section, shall have no rights of tenancy in, and shall comply with the Rules and Regulations of the Association, including any requirements to provide verification of the written treatment plan before residing in the Dwelling.

5a.3. CONFLICTS OF LAW AND INTERPRETATION OF ARTICLE.

If there is any inconsistency or conflict between the provisions of this Article and any other provision of the Declaration, the terms of this Article shall control. In the event of an inconsistency among the provisions of federal Law, state Law, and local Law, this Declaration, and the Association's Rules and Regulations, the Association's Rules and Regulations and the Declaration shall be controlled by the provision of federal Law, state Law and local Law, in that order. Rules or Declaration provisions of the Association which exceed minimum requirements for qualification as a provider of housing for older persons set by Law, shall not be interpreted as an inconsistency or conflict.

5a.4. BOARD POWER TO AMEND SENIOR HOUSING RULES AND RESTRICTIONS NECESSARY TO PRESERVE STATUS AS HOUSING FOR OLDER PERSONS.

To avoid the need for costly and time-consuming amendments to this Declaration which may be needed in the future due to amendments to the Law pertaining to housing for older persons, the Association's Board of Directors shall be empowered to promulgate and amend Rules and

Regulations to achieve compliance with any changes in the Laws pertaining to age restrictions. If any Law, now or hereafter in force, should require or be interpreted to require that specific restrictions applicable to housing for older persons must be recorded as part of this Declaration, then the Board shall be empowered to record an appropriate amendment to the Declaration to ensure that this Property continues to qualify as housing for older persons or senior citizens under all applicable Laws. The Board may record such an amendment without the need for any approval by the voting power of the Owners or Members, notwithstanding the amendment provisions located elsewhere in this Declaration. The powers given to the Board under this paragraph to enact and to amend rules and to amend this Declaration shall be limited solely to the powers necessary to preserve and enforce the Property's status as housing for older persons.


2. Except as expressly amended herein, the remaining portions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment is executed on the day and year hereinabove written by the undersigned Directors.

VIA VERDE ESTATES, INC.

a California nonprofit mutual benefit corporation

By: 
President

By: 
Secretary

(Attach Proper Notary Certificate(s) of Acknowledgment)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

San Diego

} ss.

On January 16, 2001

Date

before me,

GWILA RAY Notary Public

Name and Title of Officer (e.g., "Jane Doe/ Notary Public")

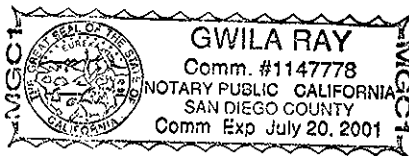
personally appeared

Robert E. Lee and M. Shannon Caldwell

Name(s) of Signer(s)

☐ personally known to me☒ 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.

GWILA RAY
Signature of Notary Public

Place Notary Seal Above

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 Amendment to Declaration of
Title or Type of Document: Conveyance, Conditional and Restrictions for Via Verde
Estates, Inc

Document Date: January 16, 2001 Number of Pages: four

Signer(s) Other Than Named Above: none

Capacity(ies) Claimed by SignerSigner's Name: Robert E. Lee and M. Shannon Caldwell☐ Individual☒ Corporate Officer — Title(s): President and Secretary☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**

Top of thumb here

DOC # 2001-0235019

APR 17, 2001 11:59 AM

Recording Requested By:

VIA VERDE ESTATES, INC.

When Recorded, Return To:

Via Verde Estates
Attn: Robert E. Lee
1021 Yuma Glen
Escondido, CA 92026

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 24.00

7145



For Recorder's Use

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR VIA VERDE ESTATES, INC.**

THIS AMENDMENT is made on this 12th day of April, 2001, by
Via Verde Estates, Inc., a California nonprofit mutual benefit corporation, hereinafter
referred to as "**Association**," and its membership, with reference to the following:

RECITALS

A. The Association is the management body for the common interest
subdivision located in the City of Escondido, County of San Diego, State of California,
more particularly described as follows:

LEGAL DESCRIPTION:

Lots 1 to 113, inclusive, and Lot 115 of Escondido Tract No. 596, in the City
of Escondido, County of San Diego, State of California, according to Map
thereof No. 11248, filed in the Office of the County Recorder of San Diego
County on June 5, 1985

hereinafter referred to as "**Property**,"

B. The Property is subject to the covenants, conditions and restrictions
contained in:

1. That certain Declaration of Covenants, Conditions and Restrictions for Via
Verde Estates recorded on November 15, 1985 as File/Page No. 85-430633;

- 1 of 3 -

2. First Amendment to Declaration of Covenants, Conditions and Restrictions for Via Verde Estates recorded on January 24, 1989 as File/Page No. 89-038714;

3. Second Amendment to and Restatement of Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded on April 22, 1991 as File/Page No. 1991-0181891; and

4. Second Amendment to and Restatement of Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded on March 2, 1995 as File/Page No. 1995-0089822.

5. Second Amendment to and Restatement of Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded on January 23, 2001 as File/Page No. 2001-0037955.

All of the above are recorded in the Official Records of the County Recorder of San Diego County, California, and are hereinafter referred to together as "**Declaration**," unless the context clearly indicates otherwise.

C. Article 5, Section 5a.4 of the Declaration provides that the Association's Board of Directors is empowered to amend Rules and Regulations to achieve compliance with any changes in the Laws pertaining to age restrictions. The Board may record such an amendment without the need of any approval by the voting power of the Owners or Members. The undersigned President and Secretary of the Association certify that, the affirmative vote of the Association's Board of Directors has been obtained.

D. The Association and its members now wish to amend the Declaration as set forth herein.

DECLARATION

NOWHEREFORE, the Declaration is hereby amended to add a new Article 5a.2.3 as follows:

5.a.2.3 RIGHT TO SHARE DWELLING WITH CARE GIVER

A resident Qualifying Member or occupant who is age 55 or older may share his or her Dwelling with any person 18 years of age or older if that person is providing live-in health care, live-in supportive care, or supervision to the senior homeowner pursuant to a written treatment plan prepared by a physician and surgeon. Any person who is permitted to reside in the Dwelling as set forth in this section, shall have no rights of tenancy in, and shall comply with the Rules and Regulations of the Association,

including any requirements to provide verification of the written treatment plan before residing in the Dwelling.

2. Except as expressly amended herein, the remaining portions of the Declaration shall remain in full force and effects.

IN WITNESS WHEREOF, this Amendment is executed on the day and the year herein above written by the undersigned Directions.

VIA VERDE ESTATES, INC.

a California nonprofit mutual benefit corporation

By: Robert C. Lee
President

By: M. Shannon Caldwell
Secretary

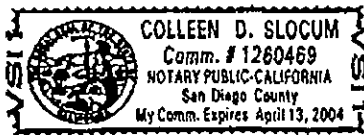
(Attach Proper Notary Certificate(s) of Acknowledgement)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of CaliforniaCounty of San DiegoOn April 12, 2001 before me, Colleen D. Slocum, Notary
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"personally appeared Robert E. Lee and M Shannon Caldwell
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.

Colleen D. Slocum

SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☒ CORPORATE OFFICER

President, Secretary
TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

- ☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Amendment to declaration of covenants, conditions

TITLE OR TYPE OF DOCUMENT

3

NUMBER OF PAGES

April 12 2001

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

Via Verde Estates, Inc.

SIGNER(S) OTHER THAN NAMED ABOVE

Recording requested by:

VIA VERDE ESTATES

When recorded Return to

Via Verde Estates
Attn: Charles V. Clark
1021 Yuma Glen
Escondido, CA 92026

16614

DOC # 2003-0889060

JUL 25, 2003 10:14 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 24.00



2003-0889060

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND

RESTRICTIONS FOR VIA VERDE ESTATES, INC.

THIS AMENDMENT is made on this 24th day of July, 2003 by Via Verde Estates, Inc., a California nonprofit mutual benefit corporation, hereinafter referred to as "**ASSOCIATION**," and its membership, with reference to the following:

RECITALS

A. The Association is the management body for the common interest subdivision located in the City of Escondido, County of San Diego, State of California, more particularly described as follows:

LEGAL DESCRIPTION:

Lots 1 to 113, inclusive, and Lot 115 of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248, filed in the Office of the County Recorder of San Diego County on June 5, 1985.

Hereinafter referred to as "**Property**,"

B. The Property is subject to the Covenants, Conditions and Restrictions contained herein.

1. That certain Declaration of Covenants, Conditions and Restrictions for Via Verde Estates recorded on November 15, 1985 as File/Page No. 85-430633.

2. First Amendment and Restatement of Section 2.2, Qualification for membership to Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded on January 24, 1989 as File/Page No. 89-038714.

3. Second Amendment to and Restatement of Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded on April 22, 1991 as File/Page No. 1991-0181891.

VIA VERDE

DECLARATION AMENDMENT

- 1 of 3 -

4. Second Amendment to and Restatement of Article 5, Section 5.3, Use Restrictions to Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded on March 2, 1995 as File/Page No. 1995-0089822.

5. Second Amendment to and Restatement of Article 5a, Status of Common Interest Development Containing Manufactured Homes as provided of Housing for older persons of Restatement of Declaration of Covenants, Conditions, and Restrictions for "Via Verde Estates" recorded on January 23, 2001 as File/Page No. 2001-0037955.

6. Second Amendment to and Restatement of Article 5a, Section 2.3, Right to Share Dwelling with care giver to Restatement of Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded on April 17, 2001 as File/Page No. 2001-0235019.

All of the above are recorded in the Official Records of the County Recorder of San Diego County, California, and are hereinafter referred to together as "**Declaration**," unless the context clearly indicates otherwise.

C. Article 5, Section 5a.4 of the Declaration provides that the Association's Board of Directors is empowered to amend Rules and Regulations to achieve compliance with any changes in the Laws pertaining to age restrictions. The Board may record such an amendment without the need of any approval by the voting power on the Owners or members. The undersigned President and Secretary of the Association certify that, the affirmative vote of the Association's Board of Directors has been obtained.

D. The Association and its members now wish to amend the Declaration as set forth herein.

DECLARATION

NOWHEREFORE, the Declaration for Article 6.16 is hereby amended as follows:

ARTICLE 6.16 - COLORS

1. Home exterior siding and trim shall be soft muted colors. Paint samples must be submitted to and approved by the Architectural Committee. Roof shall be brown composition shingles or brown tile. Bright or reflective metal roofs are not permitted.

2. Except as expressly amended herein, the remaining portions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment is executed on the day and the year herein above written by the undersigned Directors.

VIA VERDE


DECLARATION AMENDMENT

- 2 of 3 -

16616

VIA VERDE ESTATES, INC.

A California Nonprofit Mutual Benefit Corporation

By 
President

By 
Secretary

(Attach proper notary certificate(s) of acknowledgment).

*See Attached
Notary*

VIA VERDE

DECLARATION AMENDMENT

- 3 of 3 -

16617

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

San Diego

} ss.

On 7-22-03

Date

before me,

Calvin Bishop Notary

Name and Title of Officer (e.g., Jane Doe, Notary Public)

personally appeared

Sue M'Gee and Charles V. Clark

Name(s) of Signer(s)

☐ personally known to me☒ 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 Public

Place Notary Seal Above

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: _____

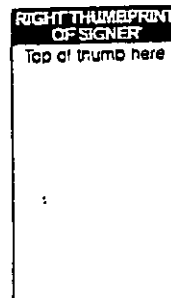
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____



5033

DOC # 2006-0354264



MAY 19, 2006 8:32 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 173.00
PAGES: 56



2006-0354264

For Recorder's Use

72 P
56
100m
Recording Requested By:

When Recorded, Return To:

Susan Hawks McClintic, Esq.
EPSTEN GRINNELL & HOWELL, APC
9980 Carroll Canyon Road, Second Floor
San Diego, CA 92131

2006 AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

VIA VERDE ESTATES

A Residential Planned Development Senior Housing Community

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, and may be removed pursuant to section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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AMENDED DECLARATION - VIA VERDE ESTATES
DRAFT DATE: May 17, 2006

SD 234751v1

(ii)

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2006 AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
VIA VERDE ESTATES

THIS 2006 AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made on the day and year hereinafter written, by Via Verde Estates, Inc., a California nonprofit mutual benefit corporation ("Declarant"), with reference to the following Recitals.

RECITALS

A. Declarant is a corporation that owns the Common Area lots and whose Members are the Owners of all the residential Lots within that certain real property described as Lots 1 through 113, inclusive, and Lot 115 of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248 filed June 5, 1985 in the Office of the San Diego County Recorder ("*Community*").

B. The Community was developed as a Planned Development, as defined in section 1351(k) of the California Civil Code, and consists of one hundred nine residential Lots and five Common Area Lots.

C. The Community is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the following documents:

1. The Declaration of Covenants, Conditions and Restrictions for Via Verde Estates recorded November 15, 1985 as File/Page No. 85-430633;
2. The First Amendment to Declaration of Covenants, Conditions and Restrictions for Via Verde Estates recorded January 24, 1989 as File/Page No. 89-038714;
3. The Second Amendment to and Restatement of Declaration of Covenants, Conditions and Restrictions for Via Verde Estates recorded April 22, 1991 as File/Page No. 1991-0181891;

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4. The Second Amendment to and Restatement of Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded March 2, 1995 as File/Page No. 1995-0089822;
5. The Amendment to Declaration of Covenants, Conditions and Restrictions for Via Verde Estates, Inc. recorded January 23, 2001 as File/Page No. 2001-0037955;
6. The Amendment to Declaration of Covenants, Conditions and Restrictions for Via Verde Estates, Inc. recorded April 17, 2001 as File/Page No. 2001-0235019; and
7. The Amendment to Declaration of Covenants, Conditions and Restrictions for Via Verde Estates, Inc. recorded July 25, 2003 as File/Page No. 2003-0889060;

all of Official Records of the County Recorder of San Diego County, hereinafter referred to together as "*Declaration*," unless the context clearly indicates otherwise.

D. Declarant now desires to amend and restate the Declaration and replace it in its entirety with this Restated Declaration. Declarant further desires that, upon recordation of this Restated Declaration, the Community shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens, and charges contained herein, and that this Restated Declaration take the place of and relate back in time to the recording of the original Declaration.

E. The Declaration, in Article 13, Section 13.4, provides that it may be amended by the affirmative vote or written consent of sixty-seven percent of the total voting power of the Association. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of Association Members has been obtained.

NOW, THEREFORE, Declarant hereby declares that all of the Community is and shall continue to be held, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Restated Declaration, and as may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Community. All provisions of this Restated Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Community, and shall be binding on and for the benefit of all of the Community and all parties having or acquiring any right, title, or interest in all or any part of the Community, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of a Lot.

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DECLARATION

ARTICLE 1 - DEFINITIONS

1.1 **"Architectural Rules"** means the Rules and Regulations regulating modifications and alterations to the Lots adopted by the Board pursuant to Section 9.9 herein.

1.2 **"Articles"** means the Restated Articles of Incorporation of Via Verde Estates, Inc., filed in the Office of the Secretary of State of the State of California on February 11, 1991 as File No. 1237962, and any amendments thereto now existing or hereafter adopted.

1.3 **"Association" and "Declarant"** means Via Verde Estates, Inc., a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development.

1.4 **"Board"** means the Board of Directors of the Association. One or more members of the Board of Directors may be referred to as a "Director" or "Directors."

1.5 **"Bylaws"** means the Bylaws of the Association and any amendments thereto.

1.6 **"Common Area"** means those portions of the Community and all improvements thereon owned by the Association for the common use and enjoyment of the Owners, consisting of Lot Nos. 110, 111, 112, 113 and 115 as more fully described in Recital "A" above.

1.7 **"Community"** means the entire common interest development as described in Recital "A" herein, including all improvements thereon.

1.8 **"Director" or "Directors"** means one or more members of the Board of Directors.

1.9 **"Dwelling"** means a manufactured or component residential structure or structures, including any yard, patio areas and garages located on a Lot.

1.10 **"Electronic Transmission"** means a communication delivered by facsimile, electronic mail or other means of electronic communication as more fully described in California Corporations Code sections 20 and 21.

1.11 **"Eligible Lender"** means a holder, insurer or guarantor of a First Mortgage that provides a written request to the Association stating the name and address of such holder, insurer or guarantor and the Lot number, and requesting notice to which such Eligible Lender is due under the Governing Documents.

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1.12 **"Governing Documents"** means this Restated Declaration and any other documents such as the Articles, Bylaws, Rules and Regulations, or Architectural Rules which govern the operation of the Association.

1.13 **"Lender"** means a person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. "Institutional Lender" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). "First Lender" means a mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Lot or other portions of the Community. The term "Beneficiary" shall be synonymous with the term "Lender."

1.14 **"Lot"** means all the residential Lots within the Community, including all improvements now or hereafter thereon. Lot does not mean the Common Area.

1.15 **"Member"** means every person or entity entitled to membership in the Association as provided in this Restated Declaration.

1.16 **"Mortgage"** means a mortgage or deed of trust encumbering a Lot or any other portion of the Community. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Lot or other portions of the Community.

1.17 **"Officers"** means the Officers of the Association appointed by the Board of Directors pursuant to the Bylaws.

1.18 **"Owner"** means any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Lot, as shown on the most recent deed for the Lot recorded in the Office of the San Diego County Recorder, including Association, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Lot merely as security for performance of an obligation. For purposes of exercising membership rights, including the right to serve as a Director, and incurring membership obligations when an Owner is a corporation, firm, limited liability company or other entity, any director, officer, employee or agent designated in writing by the Owner may exercise the membership rights attributable to the Owner. When an Owner is a trust, the trustee may exercise the membership rights attributable to the trust unless otherwise designated in writing by the trustee.

1.19 **"Restated Declaration"** means this Amended and Restated Declaration of Restrictions and any amendments hereto.

1.20 **"Rules and Regulations"** means any Rules and Regulations, including the Architectural Rules, for the Association regulating the use of the Lots, the Common Areas, the Community and any facilities located thereon adopted by the Board pursuant to Subsection 3.5.2 and Section 9.9 herein.

1.21 **"Slope Bank"** means an expansive steep slope over three feet in vertical height, which would be physically difficult to maintain; or, one where accessibility could be considered dangerous; or as may be determined by the Board.

ARTICLE 2 - THE COMMUNITY

2.1 **Community Subject to Restated Declaration.** The entire Community shall be subject to this Restated Declaration upon recordation hereof.

2.2 **Equitable Servitudes.** The covenants and restrictions set forth in this Restated Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both.

2.3 **Prohibition Against Partition.** There shall be no judicial partition of the Community or any part of it, nor shall the Association or any person acquiring an interest in the Community or any part of it seek any judicial partition, except upon showing that such partition is consistent with the requirements of section 1359 of the California Civil Code.

2.4 **Prohibition Against Severance of Elements.** Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Lot shall include all interests and appurtenances as shown in the original deed of conveyance. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's membership interest in the Association, as provided in Article 3 herein. Any transfer that attempts to sever those component interests shall be void.

2.5 **Drainage Easements.** The Owner of a Lot shall permit free access by Owners of adjacent or adjoining Lots, or the Association and its agents, to slopes or drainageways located on his or her Lot, when such access is essential for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities for the protection and use of property other than the Lot on which the slopes or drainageway is located. The Owner of any Lot shall not in any way interfere with established slope ratios or create erosion or sliding problems. The Owner of any Lot shall not interfere with the established drainage pattern over his or her Lot from adjacent or adjoining Lots, without prior Board approval and unless the Owner makes adequate provisions for continued drainage over his or her Lot from adjacent or adjoining Lots. For the purpose herein, "established drainage" is defined as the drainage which occurred at the time a Lot was first conveyed from the Community developer to an Owner.

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2.6 Association Easements Over Lots. The Association has an easement over each Lot, as the servient tenement, for the purpose of allowing the Association's agents to enter the Lot to perform such duties and exercise such powers as may be set forth by the Governing Documents.

2.7 Owner Easements Over Common Area. Each Owner shall have a nonexclusive easement for use and enjoyment of the Common Area now or hereafter owned by the Association and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to each Lot and shall be subordinate to any exclusive easements granted elsewhere in this Restated Declaration, as well as to the right of the Association pursuant to the Governing Documents to perform its obligations under this Restated Declaration, or otherwise regulate the Common Area as provided in the Governing Documents. Each of the easements reserved or granted herein shall be covenants running with the land for the use and benefit of the Owners and their Lots superior to all other encumbrances applied against or in favor of any portion of the Community. Individual grant deeds to Lots may, but shall not be required to, set forth the easements specified in this Article.

2.8 Association Grant of Easements. The Association may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, or for any other purpose reasonably related to the operation and maintenance of the Community. No such easement may be granted, however, if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot without the approval of the affected Owner.

2.9 Encroachment Easements. None of the rights and obligations of the Owners created herein, or by the deed creating the Community, shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments over the Common Area or Lots upon which the encroachment exists so long as the encroachments shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners. In the event a structure on a Lot is partially or totally destroyed and then rebuilt or repaired, the Owners of any adjoining Lots agree that minor encroachments over the adjoining Lots shall be permitted and there shall be easements for maintenance of such encroachment so long as they shall exist.

2.10 Utility Easements. In the case where utility facilities are located on a Lot or Lots owned by other than the Owner of a Lot served by the utility facilities, the Owners of any Lots served by the utility facilities shall have the right of reasonable access for themselves or their agents to repair, replace and generally maintain the utility facilities as and when the same may be necessary. A Lot Owner shall be entitled to reasonable access to the Common Area for the purpose of maintaining utility facilities servicing such Owner's Lot. The access shall be subject to the consent of the Association, whose

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approval shall not be unreasonably withheld, and which may include such conditions as the Board determines reasonable.

In the case of utility facilities which serve more than one Lot, the Owner of each Lot served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility facilities as service his or her Lot.

ARTICLE 3 - ASSOCIATION

3.1 Organization of the Association. The Association is incorporated as a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. The Association is created for the purpose of managing the Community and is charged with the duties and invested with the powers prescribed by law and set forth in the Governing Documents.

3.2 Board of Directors. The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in Article 3 of the Bylaws.

3.3 Membership. Every Owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Lot is the sole qualification for membership. Each Member shall have the rights, duties, privileges, and obligations as set forth in the Governing Documents. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Lot. All memberships shall be appurtenant to the Lot conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Lot shall automatically transfer the appurtenant membership to the qualified transferee.

3.4 Membership Class; Voting Rights. 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. On matters presented to the membership for a vote, each Lot shall be assigned one vote, subject to the provisions of the Bylaws.

3.5 General Powers and Authority. The Association shall have all the powers of a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in the Governing Documents. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it. Its powers shall include, but are not limited to:

- 3.5.1 The power to establish, fix, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set forth in Article 4 herein.

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3.5.2 The power to adopt reasonable Rules and Regulations governing the use of the Lots, Dwellings, Common Area, any common facilities and Association owned property, and the conduct at Board and Members' meetings, in accordance with the following:

- (a) The Rules and Regulations may include, but are not limited to:
 - (i) Reasonable restrictions on use of the Common Area, Lots and Dwellings by the Owners and their families, guests, employees, tenants and invitees.
 - (ii) Reasonable restrictions on the conduct of Owners and their families, guests, employees, tenants and invitees as to activities on the Common Area, Lots and Dwellings.
 - (iii) In accordance with Section 3.14 of the Bylaws, the establishment of reasonable hearing procedures and a schedule of monetary penalties and fines which may be imposed for violations of any provisions of the Governing Documents.
 - (iv) The campaign, election and voting information required by Civil Code section 1363.03.
- (b) The Board must comply with Civil Code section 1357.130 when adopting any Rules and Regulations.
- (c) A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be given to each Owner within thirty days of adoption by the Board.
- (d) If any provision of the Rules and Regulations conflicts with any provision of this Restated Declaration, the Articles, or the Bylaws, the Restated Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

3.5.3 The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to:

- (a) Enforcement of the Governing Documents.

- (b) Damage to the Common Area.
- (c) Damage to any Lots that the Association is obligated to maintain or repair.
- (d) Damage to the Lots that arises out of, or is integrally related to, damage to the Common Area or Lots that the Association is obligated to maintain or repair.
- (e) Enforcement of payment of assessments in accordance with the provisions of Section 4.14 herein.
- (f) Any other matter in which the Association is a party, including, but not limited to, contract disputes.

- 3.5.4 Subject to the limitations set forth in Section 3.14 of the Bylaws, the right to discipline a Member for violation of any of the provisions of the Governing Documents by (a) suspending the Member's membership rights, including the Member's voting rights, right to run as a candidate for election to the Board of Directors, and the rights and privileges to use the Common Area recreational facilities, (b) imposing monetary fines, and (c) recording a notice of noncompliance in the Office of the County Recorder of San Diego County encumbering the Lot of the Owner.
- 3.5.5 The power to establish in cooperation with a local governmental authority, a special tax assessment district for the performance of all or a portion of the maintenance or other functions now within the responsibility of the Association.
- 3.5.6 The right for its agents and employees to enter any Lot when necessary in connection with any maintenance, landscaping, or construction work for which the Association is or may be responsible or to reduce the likelihood of or prevent damage to the Common Areas or another Lot. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any entry into the Dwelling shall only be made with the prior written consent of the resident except in an emergency or when the resident has abandoned the Dwelling. Any entry by the Association to investigate a reported or suspected water intrusion shall be deemed an emergency.

- 3.5.7 Notwithstanding any nonexclusive easement rights to the Common Area granted herein or by any deed or other conveyance, the right to allow one or more Owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Lot, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Community unless that Owner consents to the use.
- 3.5.8 The power to remove any vehicle within the Community parked in violation of this Restated Declaration or the Rules and Regulations in accordance with the provisions of California Vehicle Code section 22658.2 and any amendments thereto.
- 3.5.9 The power to separately meter and charge owners for use of utilities by such means as may be determined in the sole discretion of the Board.

3.6 ***Duties of the Association.*** In addition to the duties of the Association, its agents and employees set forth elsewhere in the Governing Documents, the Association shall be responsible for the following:

- 3.6.1 The Association, acting through the Board, shall operate, maintain, repair, and replace those components assigned to the Association by Section 7.3 or contract for the performance of that work, subject to the provisions of the Governing Documents.
- 3.6.2 The Association shall use the general operating fund described in Article 4 herein to, among other things, acquire and pay for goods and services for the Community, including, but not limited to:
- (a) Water, sewer, refuse, electrical, telephone, gas, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Lots. If any utility service to a Lot is separately metered by either the utility provider or the Association and the Association is liable for payment to the utility provider, the costs thereof may be assessed against Owners as a utility assessment or as otherwise provided herein.
 - (b) The insurance policies described herein.

- (c) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area and the Association.
- (d) Legal and accounting services necessary or proper in the operation of the Common Area and the Association or the enforcement of the Governing Documents.

ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 *Covenant to Pay.* Each Owner by acceptance of the deed to the Owner's Lot is deemed to covenant and agrees to pay to the Association all assessments described in this Article and all other charges duly levied by the Association pursuant to the provisions of this Restated Declaration. An assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall also be a personal debt of each Owner of the Lot at the time the assessment or other sums are levied. Co-Owners of a Lot shall be jointly and severally liable for all charges levied by the Association on that Lot. No Owner may waive or otherwise escape liability for these assessments by non-use of the Common Area or abandonment of the Owner's Lot.

4.2 *Purpose of Assessments.* Except as provided herein, the Association shall levy assessments sufficient to perform its obligations. The assessments levied by the Association shall be used exclusively to promote the recreation and welfare of the Owners; for the operation, replacement, improvement, and maintenance of the Community, and to discharge any other obligations of the Association under this Restated Declaration. All assessment payments shall be put into general operating and reserve funds to be used for the foregoing purposes.

4.3 *Regular Assessments.* Concurrently with preparation of the financial documents and budget as required in Section 3.13 of the Bylaws, the Board shall estimate the net charges to be paid during that next fiscal year, including a reasonable provision for contingencies, replacements and reserves, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the regular assessments for the budgeted year. Regular assessments shall be divided equally among all Lots. Failure of the Board to estimate the net charges within the time period stated herein shall not void any assessment imposed by the Board. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

4.4 *Special Assessments.* If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements upon the Common Area, or any other reason, it shall make a special

assessment for the additional amount needed, subject to any limitations imposed by law or the Governing Documents. Special assessments shall be levied equally against each Lot and collected in the same manner as regular assessments. The Board may levy a special assessment in one lump sum or in installments over a period of time the Board determines appropriate.

4.5 Limitations on Regular and Special Assessments. Except in emergency situations, the Board may not, without the approval of Members constituting a quorum of the Owners and casting a majority of the votes at a meeting or election of the Association conducted in accordance with Corporations Code sections 7510-7527 and 7613, impose a regular assessment per Lot that is more than twenty percent greater than the regular assessment for the preceding fiscal year, or levy special assessments that in the aggregate exceed five percent of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section, a "quorum" means more than fifty percent of the Owners of the Association. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

- 4.5.1 Required by a court order.
- 4.5.2 Necessary to repair or maintain the Community or any part of it for which the Association is responsible when a threat to personal safety in the Community is discovered.
- 4.5.3 Necessary to repair or maintain the Community or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget. Before the Board may impose or collect an assessment in this emergency situation, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

4.6 Owner Notice of Regular and Special Assessments. The Association shall provide notice by first-class mail to the Owners of any increase in the regular assessments or the imposition of a special assessment not less than thirty nor more than sixty days prior to the increase in the regular assessment or special assessment becoming due.

4.7 Individual Assessments. Subject to the limitations of the Governing Documents and in addition to regular and special assessments, the Board may levy individual assessments against Owners and Lots whenever the Association (a) performs any service or accomplishes any item of repair or maintenance which is the duty of any

Owner to accomplish, but which has not been accomplished by such Owner, or (b) incurs any costs which by law or as required by the Governing Documents must be reimbursed by an Owner. Such individual assessment shall include the cost thereof, together with any financing costs and administrative costs incurred by the Association. Prior to levying an individual assessment, the Board shall provide the Owner with notice and an opportunity for a hearing in accordance with the Bylaws. The notice and opportunity for a hearing regarding the levy of an individual assessment may be combined with the notice and opportunity for a hearing regarding any underlying violation. Duly levied individual assessments shall be subject to the provisions in the Governing Documents regarding costs, late charges and interest for delinquent payment, and may become a lien on the Lot, in the same manner as regular and special assessments.

4.8 Utility Assessments. In addition to any other assessment levied against a Lot, the Association may impose a utilities assessment for any utilities that are not separately metered and charged to the Lot by the utility company. If any such utility assessment is imposed by the Association, each Owner shall be obligated to pay to the Association, or its agent, a utilities assessment comprised of the costs for those utilities used by each Lot as determined by the Board in its discretion. The amount of the utilities assessment levied by the Association against a Lot shall be based upon each Lot Owner's and/or tenant's actual use of the utility and may vary from month to month based upon such actual usage. The rate charged to each Lot shall be based upon the utility company's rate for residential dwellings or an equivalent designation established by the utility company. The utility assessment may include a nominal fee charged by a person or firm to read any submeter and administer the utility assessment.

Anything in this Restated Declaration to the contrary notwithstanding, the utilities assessment shall be separate from, and not considered a part of either regular or special assessments, and shall not be subject to the limitations on the increases or decreases thereof contained in this Restated Declaration or in section 1366 of the California Civil Code or any successor statute or law. Duly levied utility assessments shall be subject to Section 4.11 herein regarding costs, late charges and interest for delinquent payment, and may become a lien on the Lot, in the same manner as regular and special assessments.

4.9 Monetary Penalty Assessments. The Board of Directors may levy, subject to the limitations of the Governing Documents, monetary penalties or fines against an Owner and his or her Lot. In the event the Board of Directors imposes a monetary penalty or fine, that fine shall be subject to costs, late charges and interest as described in Section 4.11 for delinquent payment, and may become a lien on the Lot, collectible by the Association through judicial foreclosure as allowed by Section 4.14 herein. In no event may the Association collect a monetary penalty or fine through nonjudicial foreclosure.

4.10 Lots Not Subject To Assessment. Assessments which would normally become due on Lots, but which Lots are owned by the Association by virtue of the Association having acquired such Lots through foreclosure, shall be deemed to be

common expenses collectible from all of the remaining Lots in the same proportion that each Lot bears to the others less the number of Lots owned by the Association.

4.11 Costs, Late Charges and Interest. Late charges may be levied by the Association against an Owner for the delinquent payment of assessments, including monetary penalty assessments. An assessment, including any installment payment, is delinquent fifteen days after its due date. If an assessment is delinquent, the Association may recover all of the following from the Owner:

- 4.11.1 Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees.
- 4.11.2 A late charge not exceeding ten percent of the delinquent assessment or ten dollars, whichever is greater, or the maximum amount allowed by law.
- 4.11.3 Interest on the foregoing sums, at an annual percentage rate of twelve percent commencing thirty days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. The amounts delinquent, including the entire unpaid balance and any related costs described herein, may be collected by the Association as provided in Section 4.14 hereinbelow.

4.12 Priority of Payments. The Board, in its sole discretion, may enact policies, in compliance with applicable law, including Civil Code sections 1367 and 1367.1, regarding how payments received from Owners will be applied to any outstanding balances due the Association from that Owner.

4.13 No Offsets. All assessments shall be payable in the amounts specified by the Association, and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

4.14 Enforcement of Assessments and Late Charges. A delinquent assessment, and any related late charges, reasonable costs of collection (including actual attorneys' fees), and interest assessed in accordance with Section 4.11 herein, shall become a lien upon the Lot when a Notice of Assessment Lien is duly recorded as provided in section 1367 or section 1367.1 of the California Civil Code or applicable statute. Unless otherwise provided by statute, the Notice of Assessment Lien shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Restated Declaration, the legal description of the Lot, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial

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foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice may be signed by any Officer or Director of the Association, or any employee or agent of the Association authorized to do so by the Board. The Notice shall be mailed by certified mail to every person whose name is shown as an Owner of the Lot in the Association's records, and the notice shall be mailed no later than ten calendar days after recordation.

Unless otherwise allowed by statute, the Notice of Assessment Lien may not be recorded until after the Association has mailed, via certified mail, a written demand for payment to the delinquent Owner. The written demand shall comply with the requirements of Civil Code sections 1367, 1367.1 or any other applicable statute.

If not paid in full within thirty days after recordation of the Notice of Assessment Lien, any lien described herein may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice or by a trustee substituted pursuant to section 2924(a) of the California Civil Code, in accordance with the provisions of sections 2924, 2924(b), and 2924(c) of the California Civil Code.

If all sums specified in the Notice of Assessment Lien are paid before the completion of any judicial or nonjudicial foreclosure, the Association shall (i) record a notice of satisfaction and release of lien, and (ii) upon receipt of a written request by the Owner, shall also record a notice of rescission of any recorded notice of default and demand for sale.

The Notice of Assessment Lien is not required to be amended by the Association or Trustee to reflect any partial payments made on the account of the delinquent Owner after its recordation, and any such partial payments received shall not be construed to invalidate the Notice of Assessment Lien. The Notice of Assessment Lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments.

Notwithstanding any other provision herein, a monetary penalty or fine may not become a lien on a Lot enforceable by the sale of the Lot through nonjudicial foreclosure. Any Notice of Assessment Lien recorded to enforce a monetary penalty or fine must specifically state that such lien may not be enforceable by sale of the Lot through nonjudicial foreclosure.

4.15 Priority of Assessment Lien. As set forth hereinbelow, the assessment lien referred to in Section 4.14 shall be superior to all other liens, except (i) all taxes, bonds and governmental assessments which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of record. Notwithstanding any other provision to the contrary, the following provisions shall govern the priority and obligation for payment of the assessment lien:

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- 4.15.1 Only the judicial or nonjudicial foreclosure of the First Mortgage shall operate to transfer title free of the assessment lien or obligation for any assessment lien, and then only as to payments which became due prior to the date of sale, and excluding those assessment liens recorded prior to the recording of the First Mortgage.
- 4.15.2 Neither the transfer of a Lot pursuant to a foreclosure of any Mortgage, nor an election by the Association to proceed against any new Owner for payment, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent assessments and charges which accrued during such Owner's period of ownership.
- 4.15.3 No sale or transfer of any Lot shall relieve such Lot or its new Owner from liability for any future assessments which accrue during such Owner's period of ownership.

4.16 **Statement of Delinquent Assessment.** The Association shall provide any Owner, upon written request, with a statement specifying the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Lot.

ARTICLE 5 - SENIOR HOUSING COMMUNITY

5.1 **Statement of Intent to Provide Housing for Seniors.** The Community is a senior citizens housing development, also referred to as "housing for older persons." To the fullest extent permitted by federal, state and local Law, it is the intent of the Community to operate as housing for persons 55 years of age or older ("Senior Citizens"), and to that end, occupancy of Dwellings in this Community shall be restricted to Senior Citizens, except as otherwise provided hereinbelow.

5.2 **Definition of Law.** For purposes of this Article, "Law" shall mean, without limitation, all statutes, ordinances and other forms of legislative enactments, administrative regulations administrative rulings and guidelines, as each may be amended from time to time, and decisions and interpretations from or arising out of administrative enforcement proceedings and court decisions.

5.3 **Definition of Senior Citizen.** For purposes of this Article, "Senior Citizen" shall mean persons 55 years of age or older.

5.4 **Minimum Age Requirements.** Dwellings shall be occupied only by Senior Citizens, except as stated below.

5.5 ***Residency Restrictions.***

- 5.5.1 **Permissible Occupants and Requirement that Eighty Percent of the Dwellings Shall be Occupied by a Senior Citizen.** Any person commencing any occupancy of a Dwelling in this Community shall be a Senior Citizen who intends to occupy the Dwelling in the Community as his or her primary residence on a permanent basis. All other persons occupying the Dwelling at any time shall reside with the Senior Citizen pursuant to Section 5.6 or 5.7 below. These persons shall be collectively referred to as "Qualified Occupants."
- 5.5.2 **Age Verification.** All occupants of the Community must provide verification of age, in a form and at the time or times directed by the Board. The Board is specifically empowered to enact Rules and Regulations to assure compliance with Laws regarding housing for older persons, including age verification; furthermore, said rules and regulations shall include pre-screening requirements for all new residents in the Community.
- 5.5.3 **Guests.** A person not otherwise qualified for residency may remain in the Dwelling as a guest of the Senior Citizen for a period not to exceed sixty days in any calendar year. Any person who resides in the Dwelling for more than sixty days in any calendar year shall be deemed a resident; said person must submit an age verification in the form specified by the Community, and must be qualified for residence (that is, must be a Senior Citizen or reside with the Senior Citizen pursuant to Section 5.6 or 5.7 below) in order to remain. For the purpose of calculating the sixty day period described in this Section, presence in the Dwelling for more than twelve hours of a day, or overnight, shall constitute a day's stay. Notwithstanding the foregoing, if a person is determined to occupy the Dwelling on a permanent basis, that person shall become a resident, and not a guest, regardless of the length of the stay, and must qualify for residency pursuant to this Article.

5.6 ***Right to Share Dwelling with Relative Who Requires Care.*** A resident Senior Citizen may share his or her Dwelling with any person 18 years of age or older if that person is a parent, sibling, child, or grandchild of the resident Senior Citizen and requires live-in health care, live-in supportive care, or supervision pursuant to a written treatment plan prepared by a physician or surgeon. Any person who is permitted to reside

in the Dwelling as set forth in this Section, shall have no rights of tenancy in the Dwelling after the Senior Citizen no longer resides in the Dwelling, and shall comply with the Rules and Regulations of the Association, including any requirements to provide verification of the written treatment plan before residing in the Dwelling.

5.7 Right to Share Dwelling with Care Giver. A resident Senior Citizen may share his or her Dwelling with any person 18 years of age or older if that person is providing live-in health care, live-in supportive care, or supervision to the Senior Citizen pursuant to a written treatment plan prepared by a physician or surgeon. Any person who is permitted to reside in the Dwelling as set forth in this Section shall have no rights of tenancy in the Dwelling after the Senior Citizen no longer resides in the Dwelling, and shall comply with the Rules and Regulations of the Association, including any requirements to provide verification of the written treatment plan before residing in the Dwelling.

5.8 Conflicts of Law and Interpretation of Article. If there is any inconsistency or conflict between the provisions of this Article and any other provision of the Restated Declaration, the terms of this Article shall control. In the event of an inconsistency among the provisions of federal Law, state Law, and local Law, this Restated Declaration, and the Association's Rules and Regulations, the Association's Rules and Regulations and the Restated Declaration shall be controlled by the provision of federal Law, state Law and local Law, in that order. Provisions of the Governing Documents which exceed minimum requirements for qualification as a provider of housing for older persons set by Law, shall not be interpreted as an inconsistency or conflict.

5.9 Board Power to Amend Senior Housing Rules and Restrictions Necessary to Preserve Status as Housing for Older Persons. To avoid the need for costly and time-consuming amendments to this Restated Declaration which may be needed in the future due to amendments to the law pertaining to housing for older persons, the Association's Board of Directors shall be empowered to promulgate and amend Rules and Regulations to achieve compliance with any changes in the laws pertaining to age restrictions. If any Law, now or hereafter in force, should require or be interpreted to require that specific restrictions applicable to housing for older persons must be recorded as part of this Restated Declaration, then the Board shall be empowered to record an appropriate amendment to the Restated Declaration to ensure that this Community continues to qualify as housing for older persons or senior citizens under all applicable Laws. The Board may record such an amendment without the need for any approval by the voting power of the Owners, notwithstanding the amendment provisions located elsewhere in this Restated Declaration. The powers given to the Board under this paragraph to enact and to amend rules and to amend this Restated Declaration shall be limited solely to the powers necessary to preserve and enforce the Community's status as housing for older persons.

ARTICLE 6 - USE RESTRICTIONS AND COVENANTS

6.1 **General.** The use and enjoyment of the Community by Owners and their tenants, guests, invitees or any other person deriving rights from such Owner, shall be subject to the covenants and restrictions contained in this Restated Declaration. Each such person shall comply with the provisions hereof and be subject to any enforcement actions in the event of violations. Unless otherwise stated in the Governing Documents, the Association, through the Board of Directors, shall be responsible for the enforcement of these provisions.

6.2 **Common Area.** The following provisions govern the use and enjoyment of the Common Area:

- 6.2.1 Owners may use the Common Area subject to the provisions of this Restated Declaration.
- 6.2.2 An Owner who has sold his or her Lot to a contract purchaser or who has leased the Lot shall be deemed to have delegated his or her rights to use and enjoy the Common Area to such contract purchaser or tenant, subject to reasonable regulation by the Board. If the Owner is deemed to have delegated such rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective. The rights of a contract purchaser or tenant shall be subject to the same restrictions and regulations in the Governing Documents as are applicable to Owners.
- 6.2.3 The Board may:
 - (a) Adopt and enforce reasonable Rules and Regulations for the use of the Common Area and the Community.
 - (b) Reasonably limit the number of guests and tenants using the Common Area.
 - (c) Charge a fee or deposit for use of any Common Area recreational facilities and improvements.
 - (d) Set fees and deposits for supplying and replacing keys, key codes, or other access devices to Common Areas, including charges calculated to limit distribution and deter loss of keys, codes or access devices.

- (e) Establish speed limits and other traffic regulations within the Community.
- (f) Establish fire lanes within the Common Area.
- (g) Assign or otherwise control the use of any unassigned parking spaces within the Common Area.
- (h) Require the use of parking passes or decals.
- (i) Remove any vehicle within the Community parked in violation of this Restated Declaration or the Rules and Regulations of the Board in accordance with the provisions of California Vehicle Code section 22658.2 and any amendments thereto.
- (j) Suspend the right of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area recreational facilities for any period during which the Owner is delinquent in the payment of any assessment, is in violation of the Governing Documents, or as otherwise provided in the Governing Documents.
- (k) Cause the construction of additional improvements in the Common Area, or cause the alteration or removal of existing improvements on the Common Area.
- (l) Dedicate, grant, or join in the grant or conveyance of easements, licenses or rights-of-way in, on and over the Common Area as may be determined by the Board to be in the best interests of the Association; provided that no such easement, license or right-of-way may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of the Owner's Lot without the approval of the affected Owner.
- (m) Approve any proposed alteration of or modification to the Common Area.

6.3 General Restrictions on Use. In exercising the right to occupy or use a Lot or the Common Area and its improvements, the Owner and the Owner's family, guests, employees, tenants, and invitees shall not:

- 6.3.1 Modify, construct, build or otherwise alter any portion of his or her Lot or Dwelling other than as provided in Article 9, below.
- 6.3.2 Attempt to further subdivide a Lot.
- 6.3.3 Occupy or use a Lot, or permit all or any part of a Lot to be occupied or used, without Board approval, for any purpose other than as a single, private residence. The Board may establish guidelines in the Rules and Regulations to allow certain home occupations which (a) are consistent and compatible with the typical residential use of the Community, and (b) do not have any detrimental effect on neighboring Lots or the Community.
- 6.3.4 Lease a Lot in derogation of the following:
 - (a) All leases must be in writing.
 - (b) All leases must be for the entire Dwelling, and not any part thereof. A carport, garage or parking space may not be leased separate and apart from the Dwelling to which it is appurtenant.
 - (c) No lease shall be for a period of less than one year or for hotel, transient or time-share purposes.
 - (d) All leases shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease which may be cured by eviction of the tenant either by the Owner or the Association. If the Association must evict the tenant, the Association may recover all the costs and expenses, including attorneys' fees, from the Owner whether or not the matter actually proceeds to court.
 - (e) Any Owners leasing their Lot shall promptly notify the Association in writing of the names of all tenants and members of a tenant's family occupying such Lot, provide the make, model and license number of all residents' vehicles, a telephone number for the tenant, keep all information current, and provide the Association with a complete copy of the lease agreement and any other information reasonably needed and requested by the Association.

- (f) Any Owners leasing their Lot shall promptly notify the Association of the address and telephone number where such Owner can be reached.
- (g) All tenants must comply with the age restriction requirements of Article 5 herein. To ensure their compliance and determine their qualifications to reside in the Community, prospective tenants must meet with at least two Board members and provide any information needed to verify their qualification to reside in the Community before entering into a lease.

- 6.3.5 Permit anything to obstruct the Common Area or store anything on the Common Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents.
- 6.3.6 Perform any act or keep anything on or in any Lot or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept on his or her Lot or in the Common Area that would result in the cancellation of insurance on any Lot or on any part of the Common Area or that would violate any law.
- 6.3.7 Store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Area or in any Lot; provided, however, that amounts of these liquids, substances or materials which are reasonable for household use may be placed in appropriate containers and properly stored.
- 6.3.8 Discharge anything other than water and residue allowed by applicable water quality ordinances into the streets, gutters and drains of the Association or into the Common Area.
- 6.3.9 Discharge or cause the emission of any dust, sweepings, dirt, cinders, odors, gases, mold spores, or other substances into the atmosphere other than those caused by normal residential use.
- 6.3.10 Erect or display any sign on or from any Lot except as allowed by sections 712, 713, 799.1.5, 799.10 and 1353.6 of the California Civil Code and the Rules and Regulations. No signs may be erected or displayed on the Common Area without the prior written approval of the Board.

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- 6.3.11 Erect or display any radio or television antenna, satellite dish or other equipment or apparatus for transmitting or receiving transmissions. Notwithstanding the foregoing, an Owner may erect a video or television antenna, including a satellite dish, as allowed by any applicable statute or law, with Board approval. The Board may impose reasonable restrictions on its approval.
- 6.3.12 Raise or keep pets or other animals in violation of the following:
- (a) Owners or residents of the Community may keep and raise no more than one usual and ordinary domestic pet on the Lot subject to the provisions of the Rules and Regulations; provided, however, that no Owner or other occupant of a Lot may raise or keep pets which interfere with, or have a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Lot to the peaceful and quiet enjoyment of the Lot. In the event the Board determines that any pet or other animal creates an unreasonable annoyance or nuisance to any Owner or other occupant of a Lot, the raising or keeping thereof shall be discontinued within a reasonable time after such determination.
 - (b) No pets or other animals shall be permitted in the Common Area except as specifically permitted by the Rules and Regulations, and then only when on a leash held by a person capable of controlling the animal.
 - (c) No Owners may raise or keep animals for commercial purposes.
 - (d) The Association, its Board, Officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person on the Community, for any damage or injury to persons or property caused by any pet, absent any willful or wanton negligence on the part of the Association, or its Board, Officers, employees and agents.
- 6.3.13 Allow rubbish, trash, and garbage to accumulate within the Lot or Common Area.
- 6.3.14 Use power equipment, or set up a hobby shop for commercial purposes, except upon the written consent of the Board.

- 6.3.15 Engage in any illegal, noxious or offensive activity in any part of the Community, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Community.
- 6.3.16 Allow brush, weeds, or undergrowth to accumulate upon any Lot so as to render the Lot or any portion of it a fire hazard, unsightly, or detrimental to other Lots or the Common Area.
- 6.3.17 Engage in any type of harassment, illegal, noxious or offensive activity toward any Owners, residents, Association representatives, management representatives, Board members and/or vendors working in the Community.
- 6.3.18 Alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.
- 6.3.19 Convert or use any garage for purposes other than parking of the number of vehicles such garage was designed to contain and storage of reasonable amounts of household goods that do not interfere with the ability to park the number of vehicles such garage was designed to accommodate or create a fire or safety hazard.
- 6.3.20 Park any automobile or other motor vehicle in the Community except wholly within a garage or in a space designated for the Owner by the Board or the Governing Documents. No junk or derelict vehicle or unregistered vehicle shall be kept upon any portion of the Community so as to be visible from the Common Area or another Lot. No boat, truck, trailer, camper, recreational vehicle or similar vehicles or equipment may be parked or stored within the Community, except within a garage. The Board, in its discretion, may adopt reasonable Rules and Regulations governing the operation, maintenance, storage and parking of any vehicle, trailer or watercraft on the Common Area and on the Lots, including within the garages or driveways.
- 6.3.21 Perform any vehicle overhaul, repair, or non-emergency maintenance within the Community.
- 6.3.22 Alter or modify the cable television system except upon the written consent of the Board.

6.4 ***Mechanic's Lien.*** No labor performed or services or materials furnished with the consent of, or at the request of, an Owner, the Owner's agents or contractors shall be the basis for the filing of a lien against any other Lot or Common Area or any other

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Owner in the Community unless that other Owner has expressly consented to or requested the performance of the labor or furnishings of the materials or services. However, express consent shall be deemed to have been given by the Owner of any Lot in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Common Areas, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner of any Lot may remove his or her Lot from a lien against two or more Lot or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien which is attributable to the Owner's Lot.

6.5 Damage Liability. Each Owner shall be liable to the Association for any damage to the Common Area or to Association owned property, including any access control systems, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment, repair, or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the case of joint ownership of a Lot, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

6.6 Owner Responsibility. Owners shall be responsible for their family members, guests, tenants, contract purchasers, and invitees while in the Community and may be held responsible for any violations of the Governing Documents committed by such persons.

ARTICLE 7 - REPAIR AND MAINTENANCE

7.1 General; Standards of Maintenance. The Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article "maintenance" shall include, without limitation, painting, weatherproofing and cleaning to keep in a clean, safe, properly ventilated, watertight, dry and sanitary condition necessary to preserve the attractive appearance of the Lots, Dwellings, and the Community, and protect the values thereof. The Dwellings and improvements on the Lots shall be kept in good condition and repair and landscaping shall be neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. The Board shall have the power to determine the standards of such maintenance.

7.2 Owner Responsibility. Each Owner shall maintain his or her Dwelling and Lot, except any Slope Bank on the Lot. Each Owner shall irrigate and maintain the landscaping of his Lot in an attractive and clean manner. No rubbish or debris of any kind shall be placed or permitted by an Owner to accumulate upon or adjacent to any Lot, so as to render such property or portion thereof unsanitary, unsightly, offensive or detrimental to other residents.

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7.3 Responsibility of Association. The Association shall provide for adequate and reasonable maintenance and repair of the Common Area and any Slope Banks on the Lots. Such maintenance shall include, but not be limited to, the clubhouse and recreation area, the landscaped and parking areas around these facilities, all open space areas, the parkway wall and Community perimeter fencing, the parkway landscaped area and all street trees within the landscaped Common Area. In addition, the Association shall provide for the repair and maintenance of any sewer laterals, private streets and street lighting in the private streets, gutters, walks, water lines, drainage and storm facilities, brow ditches, swales, including keeping such facilities free from debris and obstructions, and the planting of trees and ground cover on, and the maintenance of the irrigation system in the Common Area. The Association shall be responsible for the maintenance of all Slope Banks and all setbacks within ten feet of the perimeter boundary of the Community.

7.4 Owner Improvements. Each Owner shall be responsible for the maintenance, repair, and replacement of any improvements installed or planted anywhere within the Community by the Owner, any resident in the Owner's Dwelling, or the Owner's predecessor in interest. The Owner is also responsible for any damages to the Common Area caused by such installation, maintenance, use, or repair. Installation of any improvement within the Community is subject to the provisions of Article 9 herein.

7.5 Access over Common Area. The Owner of the Lot shall be entitled to reasonable access over and through the Common Area, subject to the consent of the Association and to any other conditions reasonably imposed by the Association, for the purposes of performing any maintenance, repairs or replacement as required by the Governing Documents. The Association's consent shall not be unreasonably withheld.

7.6 Failure to Maintain. In the event an Owner fails to maintain, repair or replace the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within a reasonable time from the giving of such notice. In the event the Owner fails to carry out such maintenance within said time period, the Board may, following notice and an opportunity for hearing, as provided in Section 3.14 of the Bylaws, cause such work to be done and the cost thereof shall be paid by such Owner to the Association within five days and until paid shall bear interest at the rate of twelve percent per annum (but no greater than the maximum rate authorized by law). The Association shall have an easement over the Lots pursuant to Section 2.6 herein for the purpose of performing the work described herein.

7.7 Termite Control. The responsibility for control of wood destroying pests or organisms shall be as follows:

7.7.1 Each Owner shall be responsible for the maintenance and repair of their personal property, their Dwelling and any other Lot improvements as required to control the presence of or damage caused by wood-destroying pests or organisms.

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7.7.2 The Association shall be responsible for the maintenance and repair of the Common Area, as required to control the presence of or damage caused by wood destroying pests or organisms in accordance with the provisions of Civil Code section 1364. The Board shall determine the method and timing of any treatment in its sole discretion.

7.7.3 Neither the Association, the Board, Officers, agents nor employees shall have any liability, absent willful or wanton negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment.

7.8 ***Damage Caused by Owner or Item Under Control of Owner.*** Should any damage to the Common Area, any Lot or Dwelling result from the willful or negligent act or neglect of any Owner, or such Owner's tenants, guests, invitees, pets or other person or entity deriving any interest through such Owner, or from any item the maintenance, repair or replacement of which an Owner is responsible, the cost of all repairs shall be borne solely by the responsible Owner.

The Association shall be responsible for performing the repair of any damage to the Common Area or items over which the Association has control at the responsible Owner's expense. The responsible Owner shall perform the repair of any damage to his or her own property. The Owner of any other property which sustained damage shall perform the repair of any such damage, and may charge the cost of repairs and any relocation costs to the responsible Owner.

If the responsible Owner disputes or refuses to pay any repair costs incurred by the Association or the Owner of any other property which sustained damage, the Association, after reasonable notice and an opportunity for a hearing, may charge the cost of those repairs to such Owner as an individual assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the Association, the Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the responsible Owner shall pay the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, or the Board elects not to submit the claim, the responsible Owner shall be responsible for the total cost of repair.

All repairs performed to correct any damage shall be sufficient to return the damaged property only to its condition prior to the damage, with upgrades as may be required to conform with any applicable building codes in effect at the time the damage is repaired.

7.9 Limitation of Liability. The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or loss of any property, or the cost of repair or replacement of any damaged property or portions of such Owner's Lot unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

7.10 Damages to Lot; Water Intrusion Damage. Each Owner shall be solely responsible for the repair or replacement of any damage to any and all interior items of his or her Dwelling and Lot, and the cost thereof, including, but not limited to, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, fixtures or other items therein, or any exterior items such as landscaping, caused by any Common Area component or improvement or any other component or improvement maintained by the Association, including water intrusion from any Common Area source. An Owner may obtain and maintain such insurance, at his or her sole expense, to protect against any damage or loss of property, or the cost of repair or replacement of damaged items for which such Owner is responsible. The Association shall not be liable for damage to property in the Lot or Dwelling resulting from water which may leak or flow from outside of any Lot, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, unless caused by the gross negligence of the Association, its Board, Officers, agents or employees.

Owners shall cause notice to be given to the Association of any water within, or water intrusion into, their Lot immediately upon discovery of such leak or water intrusion. Within twenty-four hours or sooner of the discovery of a leak or water intrusion, Owner shall cause all water to be extracted, and the Dwelling and Lot cleaned. If Owner has not had water extraction and cleaning performed within forty-eight hours of discovery of the leak or water intrusion, Association may cause such work to be done and assess the cost of the work to the Owner as an individual assessment. If repairs are required to a Dwelling or Lot following a leak or water intrusion, all work shall be performed by a licensed contractor experienced in water extraction and mold remediation. Containment procedures designed to prevent contamination of the affected Lots, other Lots and the Common Areas shall be utilized. Owner and his or her tenants, guests, invitees, agents and employees shall hold the Association harmless for any claim for property damage or personal injury alleged to arise from the presence of mold or fungi in his or her Lot unless the damages or injuries were caused by the gross negligence of the Association, its Board, Officers, agents or employees.

7.11 Owner Notification to Association. If, at any time, an Owner discovers or otherwise becomes aware of any condition within the Common Area that may constitute a risk to the health, safety or welfare of the Owners, their family members, tenants, and any other persons entering the Community, the Owner shall notify Association representatives of the condition as soon as possible.

ARTICLE 8 - COMMON WALLS

8.1 **Party Walls.** Each wall and fence which is placed on the dividing line between the Lots shall constitute a Party Wall (thus the term "Party Walls" refers to both shared walls and fences). To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

8.2 **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the Party Wall in equal proportion to such use.

8.3 **Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the Party Wall may restore it, and if the other Owner thereafter makes use of the Party Wall, they shall contribute to the cost of restoration thereof in equal proportion without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

8.4 **Weatherproofing.** Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his or her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

8.5 **Alterations.** In addition to meeting the other requirements of this Restated Declaration and of any building code or similar regulation or ordinance, any Owner proposing to modify, make additions to or rebuild his Dwelling in any manner which requires the extension or other alteration of any Party Wall shall first obtain the written consent of the adjoining Owner and the Association.

8.6 **Rights of Contribution Are Appurtenant.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

8.7 **Arbitration.** In the event of a dispute between Owners with respect to a Party Wall, or under the provisions of this Article, the Owners involved in the dispute shall choose an arbitrator to resolve the dispute. All arbitration expenses shall be paid by the Owners.

ARTICLE 9 - ARCHITECTURAL AND DESIGN CONTROL

9.1 **General.** Any change or improvement to the exterior of a Dwelling or a Lot shall be governed by this Article. Changes or improvements to the Common Area by the Association do not need to comply with the requirements of this Article. The Board may establish an architectural committee as provided herein to assist the Board in reviewing architectural submittals, to provide recommendations to the Board with regard to approval or disapproval of any submittal, or the Board may delegate some of its authority to the committee.

9.2 **General Modifications Requiring Prior Approval.** Nothing may be erected, placed or planted on the exterior of any Dwelling or Lot, or on the Common Area by any Owner, including any building, fence, wall, pool, spa, obstruction, wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, overhead wiring, cable, masts, poles, trellis, tree, grass, shrub or other landscaping, any improvement or structure of any kind, nor may any excavation or demolition commence without the prior written approval of the Board or committee in accordance with this Article. Additionally, and except as provided in Section 9.9 below, prior written approval shall be required for any alteration, modification, painting or other change, addition or deletion to any existing improvement or landscaping.

9.3 **Approval of Residence Minimum Size; Age.** No Dwelling may be placed on any Lot until approved in writing by the Board or committee, as to size, condition and appearance and together with proposed plans and specifications of exterior improvements. A manufactured home Dwelling must have complete sanitary facilities, including, but not limited to: a toilet, wash basin, tub or shower, kitchen sink and must be connected to sewage outlets in conformity with state and local health requirements. The minimum width of any manufactured home Dwelling shall be twenty-four feet. No Dwelling constructed more than six years prior to its installation in the Community shall be permitted.

9.4 **Setbacks.** Any proposed attached or detached additions shall meet all City and/or County setback requirements.

9.5 **Garages, Carports.** Any proposed changes to existing carports or garages shall require the written approval of the Board or committee, and meet the provisions of the zoning ordinances of the City of Escondido.

9.6 **Colors.** Dwelling exterior siding and trim shall be soft muted colors. Paint samples must be submitted to and approved in writing by the Board or committee. Roofs shall be a composition shingle or tile in a color compatible with other existing Dwelling roofs or as otherwise allowed by Board approval.

9.7 Additional Specific Modifications. The following provisions govern the specific changes and modifications outlined below:

- 9.7.1 Modifications or alterations of the exterior of any Dwelling or other portion of the Lot or Common Area to facilitate handicapped access as provided by section 1360 of the California Civil Code must have the prior written consent of the Board or committee. Any approval of such handicapped access modification to the Common Area may be conditioned on such modification's removal by the Owner at his or her sole expense once the handicapped access is no longer necessary for the Lot.
- 9.7.2 Installation of any landscaping, either "hard-scape" or "soft-scape," must have prior approval of the Board or committee. Replacement of such landscaping will require approval only if it differs from the landscaping being replaced (e.g., replacing stone walkway with concrete, or annual flowers with shrubs).
- 9.7.3 Maintenance of the landscaping, Lot and Dwelling (e.g., pruning trees, trimming shrubs, replacing annual flowers, etc.) shall not be considered a modification for purposes of this Article.
- 9.7.4 Interior shutters, blinds, curtains, drapes or other appurtenances in or on any window or door do not need prior approval but must be in conformance with any standards established by the Board. Owners shall be responsible for correcting any nonconforming appurtenances.
- 9.7.5 Except as provided by the Governing Documents, Owners shall not have the right to paint, decorate, remodel or alter the Common Area without the prior written consent of the Board or committee.
- 9.7.6 Nothing herein shall be construed to limit the right of an Owner to paint the interior of his or her Dwelling any color desired, or to improve or alter any improvements within the interior of the Dwelling; provided such improvement or alteration does not impair or alter the Common Area, any utilities, or other systems servicing the Common Area or other Lots.

9.8 Procedure for Obtaining Approval of Architectural Changes. The procedure for obtaining approval of any architectural change shall be as follows:

- 9.8.1 Complete plans and specifications showing the nature, kind, shape, color, size, height, materials to be used and location of

any proposed improvements, alterations or landscaping, as well as the proposed contractor and any other information as required by the Board or committee, shall be prepared by the requesting Owner and submitted to the Association along with any fee or deposit established in the Architectural Rules. The Board may establish a construction deposit and require that it be paid with the plans and specifications.

- 9.8.2 The Board or committee shall review the submission within thirty days of its receipt and provide a written response to the requesting Owner, including an explanation of the reasons for any disapproval.
- 9.8.3 In the event the Board or committee fails to provide a written response to the requesting Owner within sixty days of receipt of the request from the Owner, the Owner may notify the Board in writing that a response has not been received. If the Board or committee fails to respond within 30 days of the receipt of the notice, approval will not be required and the related covenants shall be deemed to have been fully satisfied.
- 9.8.4 If the committee disapproves a submittal, the Owner shall have the right to appeal the committee's decision to the Board as set forth in the Architectural Rules.
- 9.8.5 Once an Owner has obtained approval for an architectural submittal, work on such approved submittal shall promptly commence and shall be completed within a reasonable time.

9.9 Architectural Rules. The Board may, in its sole discretion, adopt, amend and repeal, as it deems necessary, Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards for review by the Board and architectural committee and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Community; provided, however, that said Architectural Rules shall not be in derogation of the standards required by this Restated Declaration. The Architectural Rules may also address the information which is required to be presented in connection with an architectural submittal.

9.10 **Standard of Architectural Review.** An architectural submittal made by an Owner shall be reviewed for conformity with the Architectural Rules. Additional factors to be considered include, but are not limited to, the quality of proposed workmanship, the design and harmony of the improvement with existing structures, the location of the improvement in relation to surrounding structures, topography, and finish grade elevation, Owner and contractor insurance coverage, compliance with governmental permit requirements and contractor license status.

9.11 **Architectural Committee.** The architectural committee shall consist of at least five members, formed as follows:

- 9.11.1 The Board shall have the right to appoint all of the members of the committee.
- 9.11.2 Members appointed to the committee by the Board must be Members of the Association.
- 9.11.3 Members shall be appointed for terms as prescribed by the Board. All members of the committee may be removed by the Board at any time with or without cause.
- 9.11.4 The committee shall meet as often as it deems necessary to properly carry out the obligations imposed upon it, unless otherwise directed by the Board.
- 9.11.5 The vote or written consent of the majority of the committee shall be required for any recommendation or action.

9.12 **Fee for Review.** The Board shall have the right to establish a fee for the review and approval of plans and specifications which must be submitted to it pursuant to the provisions of this Article, which shall be reasonably related to the duties performed. Owners shall be responsible for the Association's costs incurred for review of their plans.

9.13 **Compensation.** The members of the Board and architectural committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder.

Notwithstanding the above, the Board may hire an architect or other design professional to consult with the committee and Board and the Association may compensate the architect or design professional for services rendered to the Association.

9.14 **Liability.** Neither the Board, the architectural committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any

work, whether or not pursuant to approved plans, drawings, and specifications; or (c) the development of any property within the neighborhood; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

9.15 Enforcement. In addition to other enforcement remedies set forth in this Restated Declaration, the Board shall have enforcement rights with respect to any matters required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or in equity in accordance with this Section.

- 9.15.1 No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation or commencement of a suit to enjoin such work.
- 9.15.2 The Board shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Board or if it does not conform to the plans and specifications submitted to the Board.
- 9.15.3 The Board or committee may periodically enter any Lot to ensure that construction is proceeding according to any approved plans.
- 9.15.4 If the Owner fails to remedy any noticed noncompliance within the time specified by the Board, the Board shall set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The notice and an opportunity for a hearing shall comply with the requirements of Section 3.14 of the Bylaws.
- 9.15.5 At the hearing, the Owner, a representative(s) of the architectural committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance.
- 9.15.6 If a noncompliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Board, at its discretion, may grant.
- 9.15.7 If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board at its option, may pursue all legal and equitable remedies available to remedy or remove the noncomplying improvement and the Owner shall

reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the Association, the Board shall recover such expenses through the levy of an individual assessment against such Owner.

9.15.8 The approval by the Board of any plans, drawings or specifications for any work of improvement done or proposed, or for any other matter requiring the approval of the Board under this Restated Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different location for improvements, the size of the structure, proximity to other Dwellings or the Common Area and other factors may be taken into consideration by the Board and committee in reviewing a particular submittal.

9.15.9 Notwithstanding any other provisions herein, the Board of Directors shall have the authority to obtain a restraining order or injunction at any time after discovery that work is proceeding without approval of the Board or in a manner that is different than that approved by the Board, if the Board deems such action necessary to protect the Association's interests.

9.16 **Non-Compliance with Laws.** Neither the Association, the Board, nor the architectural committee shall be responsible for any non-compliance with any governmental law, rule or regulation of any building or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or any defect in any conditions or requirements they may have imposed with respect thereto.

9.17 **Governmental Approval.** Prior to commencing any alteration or improvements approved by the Board, the Owner shall comply with all appropriate governmental laws and regulations. The Association shall not be obligated to enforce the provisions of this Section. Approval by the Board shall not be considered to satisfy the approvals that may be required by any governmental entity with appropriate jurisdiction, nor shall the approval of any governmental entity be considered to satisfy the requirement of Board approval. An Owner's failure to obtain any required governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Board, which penalties shall be the responsibility of such Owner.

ARTICLE 10 - INSURANCE

10.1 ***Fire and Casualty Insurance.*** The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of the improvements in the Common Area. The Association shall have no obligation to insure any Dwelling or any improvements or fixtures such as cabinets, built-in appliances or floor or wall coverings, fences, walls or landscaping within the Lot. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Lenders, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Restated Declaration. If required by any First Lender who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an inflation guard endorsement, and a construction code endorsement.

10.2 ***General Liability Insurance.*** The Association shall obtain and maintain a comprehensive public liability and property damage liability policy or policies insuring the Association, its officers, directors, agents and employees and the Owners against any liability for bodily injury, death, and property damage arising from ownership and use of the Common Area. Limits of liability under the insurance shall not be less than Three Million Dollars covering all claims for death, personal injury, and property damage arising out of a single occurrence.

10.3 ***Directors and Officers Liability Insurance.*** The Association shall obtain and maintain one or more policies of insurance which include coverage for individual liability of Officers and Directors of the Association for negligent acts or omissions of those persons acting in their capacity as Officers and Directors. Limits of liability under this insurance shall be determined by the Board at its sole discretion.

10.4 ***Fidelity Coverage.*** The Association shall purchase and maintain fidelity coverage for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If an agent handles Association funds, such agent shall be covered by the Association's coverage, unless such agent provides similar coverage. The Association's coverage may be in the form of a separate bond, a separate policy (e.g., crime policy), or may be added by endorsement to the general policies carried by the Association. The Board shall have the discretion to determine the amount of coverage. The bond or policy must contain a provision that it may not be cancelled or substantially modified without at least ten days' prior written notice to the Association.

10.5 ***Other Association Insurance.*** The Association shall purchase and maintain worker's compensation insurance to the extent necessary to comply with any applicable laws. The Association may purchase such other insurance that the Board considers necessary or advisable, including earthquake insurance coverage.

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10.6 Review of Insurance; Notice of Cancellation or Modification. The limits and coverage of insurance carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion. Such policies shall include a provision for at least ten days' prior written notice to the Association, and, if available, to each First Lender which is listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation or substantial modification by any party.

10.7 Qualifications of Insurance Carriers. The Association shall use generally acceptable insurance carriers from which to purchase and maintain the coverage required herein.

10.8 Failure to Acquire Insurance. The Association, and its Directors and Officers, shall have no liability to any Owner or Lender if, after a good faith effort, it is unable to obtain any insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Association Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any Lender entitled to notice that the specific insurance will not be obtained or renewed.

The Association, and its Directors and Officers, shall also have no liability to any Owner or Lender if it does not obtain any of the insurance referenced hereunder which is not required but may be obtained at the discretion of the Association. The Board may, in good faith in its sole discretion, determine that obtaining any of the discretionary insurance is unreasonable or unnecessary under the circumstances. In making a determination as to whether to acquire any such discretionary insurance, the Board may, but is not required to, base its decision upon, among other things, a vote of the Owners.

10.9 Trustee for Policies. The Association, acting through its Board, is appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described in Article 11 herein. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

10.10 Insurance Premiums. Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular or special assessments. That portion of the assessments necessary for the required insurance premiums shall be used solely for the payment of the premiums when due.

10.11 Insurance Policy Deductibles. The Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association insurance coverage is used, the responsibility for payment of any deductible shall be as follows:

- 10.11.1 Owners shall be responsible for the cost of any deductible if the damage or loss occurs to the Owners' real or personal property, or other property for which the Owner is responsible ("Owner Property").
- 10.11.2 The Association shall be responsible for the cost of any deductible if the damage or loss occurs to any real or personal property owned by the Association, or for which the Association is responsible ("Association Property").
- 10.11.3 If the damage or loss occurs to any Owner Property and any Association Property or to more than one Owner's Property, the responsibility for the payment of any deductible shall be apportioned among the affected parties on the basis of the ratio of each party's cost of repair to the total costs of repair.
- 10.11.4 The foregoing notwithstanding, if the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner or is the Owner's responsibility pursuant to Section 7.8 herein, such Owner shall be liable for the full amount of the deductible.

10.12 Owner Notification of Insurance. The Association shall disclose such information regarding insurance coverage as and when required by any applicable statute or law. Failure to disclose such information shall not impose any liability upon the Association or Board other than that provided for in such statute or law.

10.13 Individual Property Insurance. An Owner is responsible for obtaining and maintaining such insurance, at his or her sole expense, to protect against any damage to, or loss of the Owner's real or personal property, and the cost of repair or replacement of damaged items, including, but not limited to, any improvements made by an Owner, any personal property, decorations, floor and wall coverings, appliances, cabinets, fixtures or other items therein, or any exterior items for which such Owner is responsible such as landscaping, which is caused by any Common Area component or any component maintained by the Association or by any failure thereof. The Owner's policy shall be the primary policy for any claims for damages to or loss of Owner's property. The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or

loss of any such property, or the cost of repair or replacement of any damaged property or portions of such Owner's Lot, unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

10.14 **Individual Liability Insurance.** An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Lot that he or she desires.

ARTICLE 11 - DAMAGE OR DESTRUCTION

11.1 **Duty to Restore Lot.** If all or any portion of any Lot or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Lot to rebuild, repair or reconstruct the Dwelling and the Lot in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the Board. The Owner of any damaged Lot or Dwelling and the Board shall be obligated to proceed with all due diligence hereunder, and such Owner shall mitigate any danger presented by such damage or destruction and thereafter cause reconstruction to commence within three months after the damage occurs and be completed within one year after damage occurs, unless prevented by causes beyond his or her reasonable control.

11.2 **Duty to Restore Common Area.** If all or any portion of the Common Area is damaged or destroyed, it must be repaired or replaced promptly by the Association unless:

- 11.2.1 The Community is terminated;
- 11.2.2 Repair or replacement would be illegal under a state statute or municipal ordinance; or
- 11.2.3 The damaged or destroyed portion of the Community is partitioned in accordance with Section 2.3, above.

11.3 **Cost of Repair.** Any cost of repair or replacement of the Common Area in excess of insurance proceeds and reserves shall be a common expense, levied against Lots as a special assessment.

11.4 **Repair Plans.** The Common Area must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved in writing by the Board and a majority of Owners. Updates to conform to currently applicable building codes shall be deemed to be repairs and restoration in accordance with the original plans.

11.5 Insurance Proceeds. An insurance trustee appointed by the Board or insurance company, or if there is no trustee, then the Board, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and Lenders. Subject to the provisions of this Restated Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property. The Association, Owners and Lenders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the Common Areas have been completely repaired or restored, or unless the Community is terminated.

11.6 Disbursements to Owners and Lenders. Any insurance proceeds distributed to Owners and Lenders shall be distributed proportionately according to the fair market values of the Lots at the time of the destruction as determined by an independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Board and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

11.7 Certificates By Board. The trustee, if any, may rely on the following certifications in writing made by the Board:

- 11.7.1 Whether or not damaged or destroyed property is to be repaired or restored; and
- 11.7.2 The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

11.8 Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Owners or Lenders, then the Board and the trustee, if any, shall obtain and may rely on a title insurance company's or attorney's title certificate or a title insurance policy based on a search of the Official Records of the County Recorder, stating the names of the Owners and the Lenders.

ARTICLE 12 - EMINENT DOMAIN

12.1 Association as Trustee for Owners. If all or part of the Common Area is threatened to be, or 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, shall be payable to the Association as trustee for all Owners and Lenders according to the loss or damages to their respective interest in the Common Area. The Association, acting through the Board, shall have the right to act on behalf of the Owners with respect to the negotiation, settlement and litigation of the issues with respect to the taking and compensation affecting the Common Area. Each Owner hereby designates and appoints the Association as his or her attorney-in-fact for such purposes.

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12.2 **Condemnation of a Lot.** If all or any part of a Lot is taken by eminent domain, the award shall be disbursed to the Owner of the Lot subject to the rights of the Owner's Lenders. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Community, including membership in the Association, and the interest of the remaining Owners shall be adjusted accordingly.

ARTICLE 13 - RIGHTS OF LENDERS

13.1 **General.** No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Lender on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

13.2 **No Right of First Refusal.** This Restated Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Lot can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any First Lender to: (a) foreclose or take title to a Lot pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a Borrower, or (c) sell or lease a Lot acquired by the Lender.

13.3 **Unpaid Dues or Charges.** Where the Lender of a First Mortgage of record or other purchaser of a Lot obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his or her successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Lots, including such acquirer, his or her successors and assigns.

13.4 **Action Requiring Lender Approval.** Except as provided by statute in case of condemnation or substantial loss to the Lots and Common Area, unless at least two-thirds of the First Lenders (based upon one vote for each Mortgage owned), or two-thirds of the total voting power of the Association have given their prior written approval, the Association and/or the Owners shall not be entitled to:

- 13.4.1 By act or omission seek to abandon or terminate the Community (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain).

- 13.4.2 Change the pro rata interest or obligations of any individual Lot for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Lot in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner.
- 13.4.3 Partition or subdivide any Lot.
- 13.4.4 By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, or any property owned, directly or indirectly, by the Association (the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association is not a transfer in the meaning of this clause).
- 13.4.5 Use hazard insurance proceeds for losses to any of the Community (whether to Lots or to Common Area) for other than the repair, replacement or reconstruction of such property.

13.5 **Payment of Taxes and Insurance.** First Lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area property. First Lenders making such payments shall be owed immediate reimbursement from the Association.

13.6 **Priority of Proceed or Award Distribution.** Any other provision herein contained to the contrary notwithstanding, no provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the First Lender pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

13.7 **Notification of Lender.** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any Eligible Lender will be entitled to timely written notice of:

- 13.7.1 Any condemnation loss or any casualty loss which affects a material portion of the Community or the Lot insured or guaranteed by such Eligible Lender;
- 13.7.2 Any default in the performance by an Owner of any obligation under the Governing Documents not cured within sixty days;

13.7.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

13.7.4 Any proposed action which would require the consent of a specified percentage of Eligible Lenders as required by the Governing Documents.

13.8 **Termination of Professional Management.** Provided professional management has previously been required by any Eligible Lender, any decision to establish self-management by the Association shall require the consent of at least sixty-seven percent of the total voting power of the Association and at least fifty-one percent of Eligible Lenders; provided that so long as any Mortgage which is a lien on a Lot is insured or guaranteed by the Federal Housing Administration, any termination and failure to replace professional management shall require the prior written approval of the Federal Housing Administration.

13.9 **Inspection of Documents, Books and Records.** The Association shall make available to Eligible Lenders, current copies of the Governing Documents and the accounting books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

13.10 **Non-Curable Breach.** Any Lender who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Restated Declaration that is non-curable or of a type that is not practical or feasible to cure.

13.11 **Loan to Facilitate.** Any First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by a 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 protections of this Article.

13.12 **Lenders Furnishing Information.** Any Lender shall be entitled and authorized to furnish information to the Board concerning the status of any Mortgage.

13.13 **Financial Statement.** Any First Lender shall be entitled, on written request therefor, to have the Association provide an audited financial statement for the immediately preceding fiscal year, which statement shall be furnished within a reasonable time following such request.

13.14 Termination without Substantial Destruction. Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Community, the consent of at least sixty-seven percent of the total voting power of the Association and the approval of fifty-one percent of Eligible Lenders shall be required to terminate the Community; provided that if termination is for reasons other than substantial destruction or condemnation, the agreement of sixty-seven percent of Eligible Lenders is required.

ARTICLE 14 - ENFORCEMENT

14.1 Right to Enforce; Remedies. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the Governing Documents. Each Owner of a Lot shall have a right of action against the Association or any Owner for failure to comply with the provisions of the Governing Documents. The remedies provided for herein are to be considered cumulative and the use of one remedy shall not preclude the use of any other.

14.2 Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in the Governing Documents is violated in whole or in part, is declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner and/or the Association. Each remedy provided herein shall be cumulative and not exclusive.

14.3 Failure to Enforce. Failure by the Association or any Owner to enforce any provisions of the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

14.4 Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Lot within the Community is declared to be a violation of this Restated Declaration and subject to any or all of the enforcement procedures herein set forth.

14.5 Compliance with Statute. All activities to enforce the provisions of the governing documents shall be conducted in accordance with all applicable laws, statutes and ordinances. This Section shall apply to both the Association and to all Owners.

ARTICLE 15 - AMENDMENTS

15.1 Owner Approval of Amendments. This Restated Declaration may be amended by the vote or written consent of Owners representing a majority of the voting power of the Association or as otherwise provided in Article 5, Section 5.9 and Section 15.4

AMENDED DECLARATION - VIA VERDE ESTATES
DRAFT DATE: May 17, 2006

below. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Restated Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (a) the approval of the required percentage of Owners has been given, (b) that fact has been certified in the form of a written document executed and acknowledged by an Officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association and (c) the document has been recorded in San Diego County.

15.2 Eligible Lender Approval of Amendments. Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Community, the consent of a majority of the voting power of the Association and the approval of fifty-one percent of Eligible Lenders shall be required to add or amend (i) any provision which is for the express benefit of holders or insurers of First Mortgages, or (ii) any material provisions of this Restated Declaration which establish, provide for, govern or regulate any of the following:

- 15.2.1 Voting rights;
- 15.2.2 Increases in assessments greater than twenty-five percent, assessment liens or the priority of such liens;
- 15.2.3 Reductions in reserves for maintenance, repair and replacement of the Common Area;
- 15.2.4 Insurance or fidelity bonds;
- 15.2.5 Rights to use the Common Area;
- 15.2.6 Responsibility for maintenance and repair of the several portions of the Community;
- 15.2.7 Expansion or contraction of the Community, or the addition, annexation or withdrawal of property to or from the Community;
- 15.2.8 Restoration or repair of the Community after damage or partial condemnation, in a manner other than that specified in the Governing Documents;
- 15.2.9 Convertibility of Lots into Common Area, or Common Area into Lots;
- 15.2.10 Restrictions on leasing of Lots;

AMENDED DECLARATION - VIA VERDE ESTATES
DRAFT DATE: May 17, 2006

SD 234751v1

- 45 -

- 15.2.11 Imposition of any restriction on the right of an Owner to sell, transfer or otherwise convey his or her Lot; or
- 15.2.12 Any provisions that expressly benefit mortgage holders, insurers or guarantors.

15.3 Eligible Lender Approval Response. An Eligible Lender who receives a written request to approve additions or amendments by certified or registered mail, return receipt requested, addressed to the address provided by such Eligible Lender, who does not deliver or post to the requesting party a negative response within thirty days after the notice of the proposed addition or amendment, shall be deemed to have approved such request. No Lender may charge a fee in connection with reviewing a request for a response. Any response from a Lender which only requests a fee for review shall not be deemed a "negative response" for the purposes of determining Lender consent within the meaning of this Section.

15.4 Amendment of Restated Declaration or Bylaws by Board Vote. The Board of Directors shall have the power to amend this Restated Declaration or the Bylaws, as the case may be, but only as this Section permits. By a majority vote of the full Board, the Board shall have the power to prepare and, in the case of the Restated Declaration, to record an amendment for the following purposes:

- 15.4.1 To correct any printing or grammatical error or omission in this Restated Declaration or Bylaws.
- 15.4.2 To make any change in the Restated Declaration or Bylaws required by a change in any applicable law, including court decisions, which obligate the Association, the Board or the Owners to conform their conduct with the terms of the law.
- 15.4.3 To make any change in the Restated Declaration or Bylaws needed to comply with any requirements of an Institutional Lender.

If the Board approves an amendment using the procedure in this subsection 15.4.2 or 15.4.3, the amendment shall not be recorded or filed until the following procedure is implemented. The Board shall first send notice of such action to the Owners, which notice shall include the text of the proposed amendment and an opinion from legal counsel that the proposed change in the Governing Documents is either required by law or by an Institutional Lender. An amendment shall be considered ratified, unless within thirty days after the date such notice is sent to the Owners, the Owners entitled to cast twenty percent of the votes in the Association, sign a written petition to reconsider the Board's action and file it with the Board. If such a petition is filed, the Board shall call a special meeting of the Members to reconsider the Board's action. At the meeting, unless a majority of the total voting power of the Association rejects the proposed amendment, the amendment shall be considered ratified, whether or not a quorum is present at the special meeting.

This section shall not restrict the powers of the Owners to amend this Restated Declaration or the Bylaws by any other method, but is intended to authorize a simple process for amendment where the property rights of Owners are not materially or adversely affected.

15.5 Statute of Limitations to Challenge Amendments. No action to challenge the terms or validity of any amendment to this Restated Declaration or to the Bylaws may be made more than one year after the recording date in the case of an amendment to the Restated Declaration, or more than one year after the official tally of the vote in the case of an amendment to the Bylaws.

ARTICLE 16 - GENERAL PROVISIONS

16.1 Term. The provisions of this Restated Declaration shall continue in effect for a term of fifty years from the date of execution. Thereafter, it shall be automatically extended for successive periods of ten years, until the membership of the Association decides to terminate it.

16.2 Nonwaiver of Remedies. Each remedy provided for in this Restated Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

16.3 Severability. The provisions of this Restated Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision. If for any reason this Restated Declaration is declared completely invalid in its entirety, the Declaration shall be deemed to have survived and thereafter become effective without any further action.

16.4 Binding. This Restated Declaration, as well as any amendment thereto and any valid action or directive made pursuant to it, shall be binding on the Owners and their heirs, grantees, tenants, successors, and assigns.

16.5 Interpretation. The provisions of this Restated Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a common interest development. Failure to enforce any provision of this Restated Declaration shall not constitute a waiver of the right to enforce that provision or any other provision of this Restated Declaration.

16.6 Limitation of Liability. The liability of any Owner for performance of any of the provisions of this Restated Declaration shall terminate upon sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Lot but only with respect to obligations arising from and after the date of the divestment.

AMENDED DECLARATION - VIA VERDE ESTATES
DRAFT DATE: May 17, 2006

16.7 Fair Housing. Neither Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, leasing, or occupancy of the Owner's Lot to any person on the basis of race, color, sex, sexual orientation, religion, ancestry, national origin, marital status, physical handicap or any other classification prohibited by law.

16.8 Number and Headings. As used in this Restated Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Restated Declaration, and shall not affect the interpretation of any provision.

16.9 Attorneys' Fees. In the event an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its attorneys' fees and costs so incurred, whether or not such controversy proceeds to litigation. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Said costs and attorneys' fees shall constitute a lien on the Lot which is enforceable pursuant to Article 4 herein. This Section shall also apply to attorneys' fees incurred to collect any post-judgment costs.

16.10 Variances. The Board may authorize variances from compliance with any of the architectural or use provisions of this Restated Declaration as follows:

- 16.10.1 Variances may be granted, without limitation, to restrictions upon use contained in Article 6, restrictions on repair and maintenance in Article 7, and architectural restrictions in Article 9, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant.
- 16.10.2 Variances shall be in writing and shall become effective upon final approval by the Board.
- 16.10.3 When a variance is granted, no violation of the Restated Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Restated Declaration for any purpose except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the premises, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the County of San Diego or any other governmental authority.

- 16.10.4 The Association may charge a reasonable fee to cover any costs associated with the variance approval process, or for issuance of a variance.
- 16.10.5 The Board may enact additional rules and regulations regarding the variance approval process, the circumstances under which a variance may be granted, and may require the execution of indemnity or other agreements by the Owner as a condition to issuance of a variance.

16.11 Governing Document Priorities. In the event of a conflict between the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) the Articles, (2) this Restated Declaration, (3) the Bylaws, and (4) the Rules and Regulations.

16.12 Conflict with Statutes. Provided any federal, state or local statute, law or ordinance is inconsistent with any provision or provisions of the Governing Documents, and compliance with that statute, law or ordinance is mandatory, neither the Association, the Board nor any member thereof shall have any liability for complying with the federal, state or local statute, law or ordinance and not with the inconsistent provision or provisions of the Governing Documents.

16.13 References to Code Sections. In the event any of the statutes or laws referenced herein are amended, modified, or otherwise changed, the references herein shall be deemed to refer to the statutes or laws as amended, modified or otherwise changed. If a statute or law is deleted, any reference herein shall be deemed to refer to any successor statute or law.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of Restrictions this 12 day of May, 2006

DECLARANT:

VIA VERDE ESTATES, INC.

a California nonprofit mutual benefit corporation

By: Joyce C. Johnson
President

By: Sue McGee
Secretary

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

On 5/12/06, before me, Mike Guendling Notary Public, personally appeared Joyce C. Johnson
and Sue McGee.

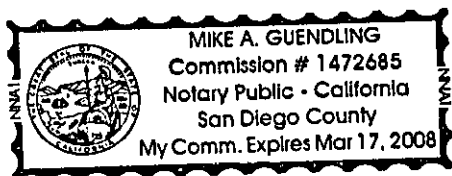
[] personally known to me

- 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.



Mike A. Guendling
Notary Public

AMENDED DECLARATION - VIA VERDE ESTATES
DRAFT DATE: April 17, 2006

6502

DOC # 2011-0680443



Recording Requested By:

VIA VERDE ESTATES, INC.

When Recorded, Return To:

VIA VERDE ESTATES, INC.
c/o VIRGINIA LATIMER
1021 YUMA GLEN
ESCONDIDO CA 92026

*TS
EP*

DEC 19, 2011 11:11 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
Ernest J. Dronenburg, Jr., COUNTY RECORDER
FEES: 27.00

PAGES: 5



For Recorder's Use

**AMENDMENT TO 2006 AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
VIA VERDE ESTATES
A Residential Planned Development Senior Housing Community
RE: ARTICLE 6, SECTION 6.3.4 (RENTAL RESTRICTIONS)**

**NOTICE
(Govt. Code §12956.1)**

If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

**AMENDMENT TO 2006 AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR VIA VERDE ESTATES
RE: ARTICLE 6, SECTION 6.3.4 (RENTAL RESTRICTIONS)**

THIS AMENDMENT is made on this 19th day of December, 2011, by Via Verde Estates, Inc., a ^{CALIFORNIA} nonprofit mutual benefit association ~~association~~ ("Association"), with reference to the following: _{CORPORATION}

RECITALS

A. The Association is a corporation that owns the Common Area lots and whose Members are the Owners of all the residential Lots within that certain real property described as Lots 1 through 113, inclusive, and Lot 115 of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248 filed June 5, 1985 in the Office of the San Diego County Recorder ("*Community*").

B. The Community was developed as a Planned Development, as defined in section 1351(k) of the California Civil Code, and consists of one hundred nine residential Lots and five Common Area Lots.

C. The Community is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the "2006 Amended and Restated Declaration of Covenants, Conditions and Restrictions" recorded on May 19, 2006 recorded in the Official Records of the County Recorder of San Diego County as Document No. 2006-354264 ("*Declaration*").

D. Association and its Members now desire to amend the Declaration as set forth below.

E. The Declaration, in Article 15, Section 15.1, provides that it may be amended by the vote or written consent of Owners representing a majority of the voting power of the Association. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of Association Members has been obtained.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Notwithstanding any other provisions in the Declaration, the provisions of this Amendment shall apply and shall prevail in any inconsistency between this Amendment and the Declaration.

2. Article 6, Section 6.3.4, in the Declaration is amended to read in its entirety as follows:

6.3.4 Lease a Dwelling in derogation of the following:

(a) Except as provided herein, no Dwelling may be leased, but instead must be owner-occupied:

- (i) The leasing of Dwellings to tenants for business, speculation, investment or other similar purposes is not permitted, except as provided herein.
- (ii) No more that a total of five (5) Dwellings within the Community may be leased at any given time, provided however that the Board of Directors may grant "hardship" exceptions from time to time as set forth in Section 6.3.4 (a)(5) below.
- (iii) Prior to leasing a Dwelling, an owner shall provide the Association with verification of the date the owner acquired title to the Dwelling, the name and contact information of the prospective tenant's or the tenant's representative. All leases must be in writing, in a form acceptable to the Board of Directors. All leases shall also include the Association's Lease Addendum. The lease term must be clearly stated in both lease agreements, including the start and termination dates. If an extension of time on an existing lease is required, Owner must notify the Office Manager thirty-days in advance of the scheduled termination date listed on the agreement. No extension may exceed the 5-year maximum as set forth in Section 6.3.4 (a)(5) below.
- (iv) All leases must be for the entire Dwelling, and not any part thereof. A carport, garage or parking space may not be leased separate and apart from the Dwelling to which it is appurtenant.
- (v) No lease shall be for a period of less than one year or for hotel, transient or time-share purposes, nor may any lease exceed five (5) years, unless the Board determines that the Owner's "hardship" justifies such an extension. A lease which is in existence at the time of the recording of this Amendment may continue for a period not to exceed five (5) years from the date of recording the amendment, or until the current tenancy is terminated for any reason, whichever is shorter. In the event the Owner of such a leased Dwelling sells the Dwelling the tenancy must be terminated and any holdover of

the tenant after such sale shall be a breach of these restrictions.

- (b) In the event of special circumstances and to avoid undue hardship of difficulties, the Board may, in its' sole discretion, waive the restrictions on leases set forth above and grant permission to an Owner to lease his or her Dwelling, to an approved lessee, for a period not to exceed the maximum lease period set forth above. Such special situations and "hardships" may include, but are not necessarily limited to, an inability to sell the Dwelling after relocation out of the area, or an extended period in which the Owner is hospitalized or similarly confined, thus causing the Dwelling to be vacant. No Owner during the period of his or her ownership of the Dwelling shall be granted a "hardship" exception more than once. The Board may stipulate such grant of a waiver upon additional conditions not described herein. The determination of "hardship" by the Board shall be final and binding.
- (c) New buyers who purchase a Dwelling after this Amendment has been recorded must reside in the Dwelling for no less than the initial twelve-month period of ownership. If new buyer's for whatever reason cannot reside in the Dwelling during the first twelve-months of ownership, the Dwelling must be left unoccupied for a minimum of the first year of ownership.
- (d) If a new Owner/s acquires the Dwelling by way of gift, inheritance, or as a successor trustee of a resident Owner's trust or upon distribution of such a trust, and such new Owner's cannot reside in the community by virtue of age, then such new Owner's may lease the property, notwithstanding the 5 unit limit set forth in 6.3.4(a)(2) above, provided such tenants satisfy the age restrictions for occupancy set forth in Section (g) below. Such permitted lease, however, is still subject to the 5-year maximum term set forth in 6.3.4(a)(5) above.
- (e) All leases shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease which may be cured by eviction of the tenant either by the Owner's or the Association. If the Association must evict the tenant, the Association may recover all the costs and expenses, including attorneys' fees, from the Owner's whether or not the matter actually goes to court.
- (f) Any Owner's leasing their Dwelling shall promptly notify the Association of the address and telephone number where such Owner's can be reached.

- (g) All tenants must comply with the age restriction requirements, (Senior Housing Community, Article 5), in the Declaration of Covenants, Conditions and Restrictions for Via Verde Estates. To ensure their compliance and determine their qualifications to reside in the community, prospective tenants must meet with a least two Board members prior to the effective date of any proposed lease and must provide any and all additional information needed to verify their qualification to reside in the community before entering into a lease.

IN WITNESS WHEREOF, the undersigned have executed this Amendment to the 2006 Amended and Restated Declaration of Covenants, Conditions and Restrictions on this 19th day of December, 2011.

VIA VERDE ESTATES, INC.
a California nonprofit mutual benefit corporation

By: *G. Eric Morse*
G. Eric Morse, President

By: *Katherine Pinkerton*
Katherine Pinkerton, Secretary

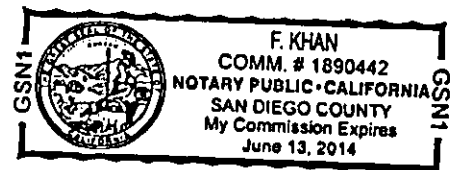
STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On December 19th 2011 before me, F. KHAN (Notary Public), Notary Public, personally appeared Eric Morse and Katherine Pinkerton, proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraphs is true and correct.

Witness my hand and official seal.

F. KHAN
Notary Public



RECORDING REQUESTED BY:
Orange Coast Title Company of LA - Santa Ana Divis

WHEN RECORDED MAIL DOCUMENT AND TAX
STATEMENT TO:

Jennie and Jimmy Lee Sides
1831 NOVE GLEN
Escondid, CA 92926

APN: 226-761-27-00
TITLE ORDER NO.:
ESCROW NO.: 1034-MV

DOC# 2016-0263173



May 31, 2016 08:00 AM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$392.00
PCOR: YES
PAGES: 2

THIS SPACE FOR RECORDER'S USE ONLY

GRANT DEED

\$374.00

The undersigned Grantor(s) declare(s) that the DOCUMENTARY TRANSFER TAX IS: County
☒ computed on the full value of the interest of property conveyed, or
☐ computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale.
☐ OR transfer is EXEMPT from tax for the following reason:

C. Reed Marina Vista Escrow
Signature of declarant or agent determining tax Firm Name

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Kovalam LLC

HEREBY GRANT(S) to Jennie Sides An Unmarried Woman and Jimmy Lee Sides, A
Single Man as Joint Tenants
All that real property situated in the City of Escondido, County of, State of California, described as:
Exhibit "A" Attached

Commonly Known As: 1831 Nova Glen, Escondido, CA 92026

April 25, 2016

Kovalam LLC

By: Henish Pulickal
Henish Pulickal

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document

STATE OF CALIFORNIA
COUNTY OF San Diego

On May 6, 2016 before me, John McNab, a Notary Public
personally appeared Henish Pulickal

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(SEAL)



MAIL TAX STATEMENTS AS DIRECTED ABOVE

Exhibit "A"

Parcel 1:

Lot 27 of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248, filed in the Office of the County Recorder of San Diego County on June 4, 1985.

Parcel 2:

A right and appurtenant easement of enjoyment in and to common area Lots 110 through 115, inclusive of said Map 11248 as set forth in the Declaration of Covenants, Conditions and Restrictions recorded November 15, 1985 as File No. 1985-430633, of Official Records.

HP

DOC# 2016-0458404



Recording Requested By:

VIA VERDE ESTATES, INC.

When Recorded, Return to:

VIA VERDE ESTATES, INC.

c/o Drucie Yerkes

1021 YUMA GLEN

ESCONDIDO, CA 92026

Sep 01, 2016 01:30 PM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$24.00

PAGES: 4

For Recorder's Use

**AMENDMENT TO 2006 AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
VIA VERDA ESTATES**

A Residential Planned Development Senior Housing Community

RE: ARTICLE 3-Board of Directors, Section 3.1 Number; Qualification

NOTICE

(Govt. Code §12956.1)

If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Amendment to 2006 Amended and Restated

Bylaws of

Via Verde Estates, Inc.

An Association for a Residential Planned Development Senior Housing Community

We the undersigned, do hereby certify:

That as of January, 2015, we are the duly elected President and Secretary, respectively, of Via Verde Estates, Inc., 1021 Yuma Glen, Escondido, CA 9206.


We state that the foregoing Article 3-Board of Directors, Section 3.1 Number; Qualification

"The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, consisting of five persons beginning with the 2006 annual meeting. Members of the Board must be Members of the Association."

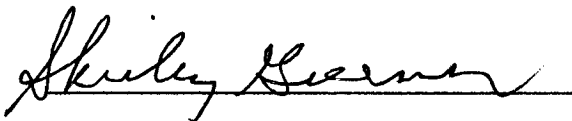
Change to article listed above was approved by a majority vote of the membership, 60 in favor, 2 opposed, and 1 void ballot, on Thursday, May 14, 2009, to read as follows: "Board of Directors, consisting of seven persons beginning with the July, 2009 annual meeting"

As of May 14, 2014, date the vote was put to the membership, there were no "Eligible Lenders" as that term is defined in the Declaration of Covenants, Conditions and Restrictions for Via Verde Estates, Inc. (Article 1, Section 1.11).

Date recorded on: May 19, 2006, as Document # 2006-354264 in the Official records of San Diego County, California.

 PRESIDENT

Jon Evans, President



Shirley Greener, Secretary

IN WITNESS WHEREOF, the undersigned has executed the Amendment to the 2006 Amended and Restated Declaration of Covenants, Conditions and Restrictions on this 11th day of August, ~~2015~~ 2016

DECLARANT:

VIA VERDE ESTATES, INC.,
a California nonprofit mutual benefit corporation.

By: Jon Evans, PRESIDENT
Jon Evans, President

By: Shirley Greener
Shirley Greener, Secretary

STATE OF CALIFORNIA

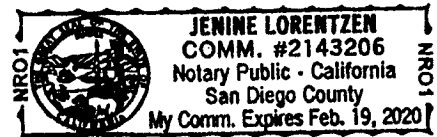
COUNTY OF SAN DIEGO

On August 11, 2016, before me, Jenine Lorentzen Notary Public, Jon Evans and Shirley Greener, appeared to me in person, and 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 this instrument.

I certify under PENALTY OF PERJURY under the laws of the state of California that the foregoing paragraphs is true and correct.

WITNESS my hand and official seal,

Jenine Lorentzen Notary Public
Notary Public



AMENDED DECLARATION - VIA VERDE ESTATES, INC.
DRAFT DATE April 2015

ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not to the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF San Diego }

On August 25, 2016 before me, Jenine Lorentzen Notary Public

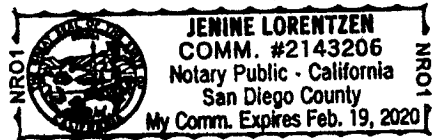
(Insert Name and Title of Officer)

personally appeared Jon Evans and Shirley Greener

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.



Signature

[Signature] Notary Public

(This area for official notarial seal)

38

DOC# 2016-0706832



RECORDING REQUESTED BY:

Dec 23, 2016 03:03 PM

OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER

MAIL TAX STATEMENTS AND
WHEN RECORDED MAIL TO:

Jennie Sides
1831 Nova Glen
Escondido, CA 92026

FEES: \$21.00
PCOR: YES

PAGES: 3

Order No.:
Escrow No.:

APN: 226-761-27-00

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

DOCUMENTARY TRANSFER TAX IS \$ 0.00 *family transfer, no consideration*

☐ Computed on full value of property conveyed, or

☐ Computed on full value less liens and encumbrances remaining at time of sale.

☐ Unincorporated area ☒ City of Escondido

For valuable consideration, receipt of which is hereby acknowledged,

Jim Lee Sides a single man who acquired title as Jimmy Lee Sides a single man

hereby GRANT(S) to Jennie Sides and unmarried woman

the real property situated in the City of Escondido, County of San Diego, State of California, more particularly described as follows:

Parcel 1: Lot 27 of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248, filed in the office of the County Recorder of San Diego County on June 4, 1985 and as more fully described in Exhibit "A" attached hereto and made a part hereof.

Commonly Known As: 1831 Nova Glen, Escondido, CA 92026

Dated: December 7, 2016

Jim Lee Sides

MAIL TAX STATEMENTS AS DIRECTED ABOVE

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF Santa Clara } ss.

On 10 December 2016 before me, Yuki Tera Wong, Notary Public, Personally appeared Jimmy Lee Sides, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Yuki Tera Wong



Exhibit "A"

Parcel 1:

Lot 27 of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248, filed in the Office of the County Recorder of San Diego County on June 4, 1985.

Parcel 2:

A right and appurtenant easement of enjoyment in and to common area Lots 110 through 115, inclusive of said Map 11248 as set forth in the Declaration of Covenants, Conditions and Restrictions recorded November 15, 1985 as File No. 1985-430633, of Official Records.

4p
DOC# 2017-0082100



Feb 21, 2017 10:54 AM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$24.00

PAGES: 4

Recording Requested By:

VIA VERDE ESTATES, INC.

When Recorded, Return to:

VIA VERDE ESTATES, INC.

c/o Drucie Yerkes

1021 YUMA GLEN

ESCONDIDO, CA 92026

For Recorder's Use

**AMENDMENT TO 2006 AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
VIA VERDE ESTATES**

A Residential Planned Development Senior Housing Community

RE: ARTICLE 6.2 Common Area, Section 6.3.12 (a) Pets

NOTICE

(Govt. Code §12956.1)

If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

**AMENDMENT TO 2006 AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR VIA VERDE ESTATES**
RE: Article 6.2 Common Area, Section 6.3.12 (a) Raise or keep pets or other animals

THIS AMENDMENT is made on this 21 day of Feb, 2017, by Via Verde Estates, Inc., a California nonprofit mutual benefit corporation ("Association"), with reference to the following:

RECITALS

- A. The Association is a corporation that owns the Common Area lots and whose Members are the Owners of all the residential Lots within that certain real property described as Lots 1 through 113, inclusive, and Lot 115 of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248 filed June 5, 1985 in the Office of the San Diego County Recorder ("Community").
- B. The Community was developed as a Planned Development, as defined in section 1351(k) of the California Civil Code, and consists of one hundred nine residential Lots and five Common Area Lots.
- C. The Community is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the "2006 Amended and Restated Declaration of Covenants, Conditions and Restrictions" recorded on May 19, 2006 recorded in the Official Records of the County Recorder of San Diego County as Document No. 2006-354264 ("Declaration").
- D. Association and its Members now desire to amend the Declaration as set forth below.
- E. The Declaration, in Article 15, Section 15.1, provides that it may be amended by the vote or written consent of Owners representing a majority of the voting power of the Association. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of Association Members has been obtained.

NOW THEREFORE, the Declaration is hereby amended as follows:

- 1. Notwithstanding any other provisions in the Declaration, the provisions of this Amendment shall apply and shall prevail in any inconsistency between this Amendment and the Declaration.

**AMENDMENT TO 2006 AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR VIA VERDE ESTATES**

A California Nonprofit Mutual Benefit Corporation

We, the undersigned, do hereby certify:

That as of January, 2017, we are the duly elected President and Secretary, respectively, of Via Verde Estates, Inc., 1021 Yuma Glen, Escondido, CA 92026.

We state that the foregoing Article 6.2 Common Area, Section 6.3.12 (a) Raise or keep pets or other animals in violation of the following:


"Owners or residents of the Community may keep and raise no more than one usual and ordinary domestic pet on the Lot subject to the provisions of the Rules and Regulations; provided, however, that no Owner or other occupant of a Lot may raise or keep pets which interfere with, or have a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Lot to the peaceful and quiet enjoyment of the Lot. In the event the Board determines that any pet or other animal creates an unreasonable annoyance or nuisance to any Owner or other occupant of a Lot, the raising or keeping there shall be discontinued within reasonable time after such determination".

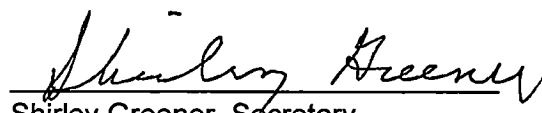
Change to article listed above was approved by a majority vote of the membership on November 13, 2014, to read as follows: "may keep and raise no more than two usual and ordinary domestic pets on the Lot".

As of November 13, 2014, date the vote was put to the membership, there were no "Eligible Lenders" as that term is defined in the Declaration (Article 1, Section 1.11).

Date recorded on: May 19, 2006, as Document # 2006-354264 in the Official Records of San Diego County, California.

Via Verde Estates, Inc.


Larry Hanson, President


Shirley Greener, Secretary

ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not to the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF San Diego }

On 02/16/2017 before me, Rahim Salehpour, a notary Public

(Insert Name and Title of Officer)

personally appeared Larry Hanson & Shirley Greener

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____



(This area for official notarial seal)

RECORDING REQUESTED BY:

Law Office of David W. Foley
c/o Jennie A. Sides c/o Thomas D. Sides
1360 North Fig Street
Escondido, California 92026

AND WHEN RECORDED

MAIL TO:

Jennie A. Sides
c/o Thomas D. Sides
1360 North Fig Street
Escondido, California 92026

DOC# 2018-0014552



Jan 12, 2018 01:46 PM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$20.00 (SB2 Atkins: \$0.00)

PCOR: YES

PAGES: 3

THIS SPACE FOR RECORDER'S USE

QUITLAIM DEED

(Please fill in document title(s) on this line)

- 1 ☐ Exempt from fee per GC27388.1 due to being recorded in connection with concurrent transfer that is subject to the imposition of documentary transfer tax, or,
- 2 ☐ Exempt from fee per GC27388.1 due to being recorded in connection with a transfer that was subject to documentary transfer tax which was paid on document recorded previously on _____ (date) as document number _____ of Official Records, or,
- 3 ☐ Exempt from fee per GC27388.1 due to the maximum fees being paid on documents in this transaction, or,
- 4 ☐ Exempt from fee per GC27388.1 due to the maximum fees having been paid on documents in the transaction(s) recorded previously on _____ (date) as document number(s) _____ of Official Records, or
- 5 ☐ Exempt from fee per GC27388.1; document transfers real property that is a residential dwelling to an owner-occupier, or,
- 6 ☒ Exempt from fee per GC27388.1 due to being recorded in connection with concurrent transfer that is a residential dwelling to an owner-occupier, or,
- 7 ☐ Exempt from fee per GC27388.1 due to it being recorded in connection with a transfer of real property that is a residential dwelling to an owner-occupier. The recorded document transferring the dwelling to the owner-occupier was recorded on _____ (date) as document number(s) _____, or,
- 8 ☐ Exempt from the fee per GC 27388.1 (a) (1); Not related to real property, or,
- 9 ☐ Exempt from fee under GC27388.1 for the following reasons: _____

THIS PAGE ADDED TO PROVIDE SENATE BILL 2 EXEMPTION INFORMATION
(Additional recording fee applies)

Recording requested by:
Jennie A. Sides c/o Thomas D. Sides
1360 North Fig Street
Escondido, California 92026
Mail deed and property
Tax statements to:
same as above

QUITCLAIM DEED

APN 226-761-27-00

The undersigned grantor declares there is no consideration for this transfer to a revocable trust created by grantor for the benefit of the grantor. R&T Code Sec. 11930.
Documentary transfer tax is \$ -0-

Exempt from fee per GC27388.1 due to being recorded in connection with concurrent transfer that is a residential dwelling to an owner-occupier.

For no consideration, Jennie A. Sides, an unmarried woman, who took title as Jennie Sides, QUITCLAIMS to Jennie A. Sides, as trustee of the Jennie A. Sides Trust Dated: January 8, 2018 the following described real property in the County of San Diego, State of California:

Legal Description is attached as Exhibit "A".

Property address: 1831 Nova Glen, Escondido, California 92026

Dated: January 8, 2018



Jennie A. Sides

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Diego)

On 1/8/18 before me, Diane Brooks, a Notary Public, personally appeared Jennie A. Sides, who 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. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. Witness my hand and official seal.

Signature 



Parcel 1: Lot 27 of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248, filed in the office of the County Recorder of San Diego County on June 4, 1985. Parcel 2: A right and appurtenant as set forth in the Declaration of Covenants, Conditions and Restrictions recorded November 15, 1985 as File No. easement of enjoyment in and to common area Lots 110 through 115, inclusive of said Map 11248 as set forth in the Declaration of Covenants, Conditions and Restrictions recorded November 15, 1985 as File No. 1985-430633, of Official Records.

Property address: 1831 Nova Glen, Escondido, California 92026

X
778
ENS

DOC# 2022-0017496



Jan 12, 2022 02:30 PM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER
FEES: \$317.00 (SB2 Atkins: \$75.00)

PAGES: 77

Recording Requested By:

Via Verde Estates, Inc.

When Recorded, Return To:

EPSTEN, APC
10200 Willow Creek Road,
Suite 100
San Diego, CA 92131

For Recorder's Use

2021 AMENDED AND RESTATED

DECLARATION OF RESTRICTIONS

FOR

VIA VERDE ESTATES, INC.

A Residential Planned Development Senior Housing Community

NOTICE

(Gov. Code § 12956.1)

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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AMENDED AND RESTATED DECLARATION – VIA VERDE ESTATES, INC.

(ii)

FINAL OCTOBER 26, 2021

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**2021 AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS**

FOR

VIA VERDE ESTATES, INC.

A Residential Planned Development Senior Housing Community

THIS 2021 AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made on the day and year hereinafter written, by Via Verde Estates, Inc., a California nonprofit mutual benefit corporation ("Association"), with reference to the following Recitals.

RECITALS

A. Association Declarant is a corporation that owns the Common Area lots and whose Members are the Owners of all the residential Lots within that certain real property described as Lots 1 through 113, inclusive, and Lot 115 of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11248 filed June 5, 1985 in the Office of the San Diego County Recorder ("Community"). *SEE EXHIBIT 'A' ATTACHED 19 65*

B. The Community was developed as a Planned Development, as defined in section 1351(k) of the California Civil Code, and consists of one hundred nine residential Lots and five Common Area Lots.

C. The Community is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the following documents:

1. The Declaration of Covenants, Conditions and Restrictions for Via Verde Estates recorded November 15, 1985 as File/Page No. 85-430633;
2. The First Amendment to Declaration of Covenants, Conditions and Restrictions for Via Verde Estates recorded January 24, 1989 as File/Page No. 89-038714;
3. The Second Amendment to and Restatement of Declaration of Covenants, Conditions and Restrictions for Via Verde Estates recorded April 22, 1991 as File/Page No. 1991-0181891;
4. The Second Amendment to and Restatement of Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded March 2, 1995 as File/Page No. 1995-0089822;

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5. The Amendment to Declaration of Covenants, Conditions and Restrictions for Via Verde Estates, Inc. recorded January 23, 2001 as File/Page No. 2001-0037955;
6. The Amendment to Declaration of Covenants, Conditions and Restrictions for Via Verde Estates, Inc. recorded April 17, 2001 as File/Page No. 2001-0235019; and
7. The Amendment to Declaration of Covenants, Conditions and Restrictions for Via Verde Estates, Inc. recorded July 25, 2003 as File/Page No. 2003-0889060;
8. The Amended and Restated Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded May 19, 2006 as File/Page No. 2006-0354264;
9. The Amendment to 2006 Amended and Restated Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded December 19, 2011 as File/Page No. 2011-0680443;
10. The Amendment to 2006 Amended and Restated Declaration of Covenants, Conditions and Restrictions for "Via Verde Estates" recorded February 21, 2017 as File/Page No. 2017-0082100;

all in the Official Records of the County Recorder of San Diego County, and are hereinafter referred to together as "Original Declaration," unless the context clearly indicates otherwise.

D. The Association now desires to amend and restate the Original Declaration in its entirety by recording this Restated Declaration. The Association further desires that, upon recordation of this Restated Declaration, the Community shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein, and that this Restated Declaration take the place of and relate back in time to the recording of the Original Declaration. The Original Declaration, in Article 16, Section 15.1, provides that it may be amended by the affirmative vote or written consent of a majority of the Voting Power of the Association. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of the Voting Power has been obtained.

E. The Original Declaration, in Section 15.2, provide that in addition to approval of the Voting Power, material amendments, as defined, require the approval of a majority of the Voting Power of the Association and fifty-one percent (51%) of the Eligible Holders. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, there are no Eligible Holders.

F. Under California Civil Code section 4270, an amendment is effective after (1) approval of the percentage of Owners required by the Governing Documents has been

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given, (2) that fact has been certified in a writing executed and acknowledged by the Association President if no Officer has been designated in the Original Declaration for such purpose, and (3) the writing has been recorded in the County in which the Community is located.

NOW, THEREFORE, Association hereby declares that all of the Community is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Restated Declaration, and as may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Community. All provisions of this Restated Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Community, and shall be binding on and for the benefit of all of the Community and all parties having or acquiring any right, title, or interest in all or any part of the Community, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of a Lot.

DECLARATION

ARTICLE 1 - DEFINITIONS

1.1 ***In General*** Unless otherwise defined herein, capitalized terms or words used in this Restated Declaration shall have the definitions in this Article, or in the Davis-Stirling Common Interest Development Act (California Civil Code section 4000 et seq., hereafter "Act") or in the California Nonprofit Corporation Law (California Corporations Code section 5002 et seq.). Words not defined in this Restated Declaration, the Act or in the Corporations Code shall be understood in their ordinary and popular sense, as determined by the context in which they are used, unless the context indicates that the term or word is a defined term which was inadvertently not capitalized.

1.2 ***"Annual Budget Report"*** [Civ. Code § 5300] means the report to be distributed annually which contains the operating budget and other financial information as more fully described in Applicable Law.

1.3 ***"Annual Policy Statement"*** [Civ. Code § 5310] means the information about Association policies to be distributed annually as more fully described in Applicable Law.

1.4 ***"Applicable Law"*** means statutes, public laws, ordinances, regulations and rulings of administrative agencies, court rulings having value as precedent and any other requirements having the force of law that are in effect at the time a provision of the Governing Documents is applied, and pertaining to the subject matter of the Governing Documents provision in question. Statutes and ordinances specifically referenced in the Governing Documents are "Applicable Law" on the date of the Governing Document, and are not intended to apply to the Community if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more statutes or ordinances.

1.5 **"Architectural Committee"** means the committee, if any, appointed by the Board to assist the Board in reviewing architectural submittals from the Owners.

1.6 **"Architectural Rules"** means the Rules regulating modifications and alterations to the Lots adopted by the Board.

1.7 **"Articles"** [Corp. Code § 5035] mean the Restated Articles of Incorporation of Via Verde Estates, Inc., filed in the Office of the Secretary of State of the State of California on February 11, 1991 as File No. 1237962, and any amendments thereto now existing or hereafter adopted.

1.8 **"Assessment" or "Assessments"** means one or all of the Regular, Special, Individual, and Monetary Penalty Assessments described herein.

1.9 **"Association"** [Civ. Code § 4080] means Via Verde Estates, Inc., a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development.

1.10 **"Association Maintenance Areas"** means those areas on the Lots which are the responsibility of the Association pursuant to the Article entitled "Repair and Maintenance" herein.

1.11 **"Board"** [Civ. Code § 4085] means the Board of Directors of the Association. One or more members of the Board of Directors may be referred to as a "Director" or "Directors."

1.12 **"Budgeted Gross Expenses"** means all expenses identified on the annual operating budget for the fiscal year, including all operating expenses and amounts to be deposited into the reserve accounts, but excluding any amounts budgeted to be expended from the reserve accounts for that fiscal year.

1.13 **"Bylaws"** [Corp. Code § 5037] means the Bylaws of the Association and any amendments thereto.

1.14 **"Capital Expenditure" or "Capital Improvement"** mean the use of Association funds to construct or build an addition to the Community, where such use of funds is optional under the Governing Documents, rather than mandatory, and is not otherwise required by Applicable Law. For purposes of the Governing Documents, the maintenance, repair or replacement of Improvements within the Community which the Association is obligated to maintain, using materials of similar kind, or using materials which are needed due to changes in building or fire codes or due to discontinued fabrication or unavailability, or using materials that have substantially similar cost over the useful life of the material shall not be considered a Capital Expenditure or Capital Improvement, notwithstanding that such expenditure or Improvement may be considered a Capital Expenditure or Capital Improvement for tax purposes.

1.15 **"Common Area"** [Civ. Code § 4095] means those portions of the Community and all Improvements thereon owned by the Association for the common use

and enjoyment of the Owners, consisting of Lot Nos. 110, 111, 112, 113 and 115 as more fully described in Recital "A" above.

1.16 **"Common Expenses"** means and includes the actual and estimated expenses of operating the Community, and any reasonable reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Governing Documents.

1.17 **"Community"** means the entire common interest development described in RECITAL "A" herein, including all Improvements thereon.

1.18 **"Director" or "Directors"** [Civ. Code § 4140] means one or more members of the Board of Directors.

1.19 **"Dwelling"** means a residential structure or structures, including any enclosed yard, balconies, patio areas and garages located on a Lot.

1.20 **"Electronic Transmission"** [Corp. Code §§ 20 & 21] means a communication delivered by facsimile, electronic mail or other means of electronic communication as more fully described in California Corporations Code sections 20 and 21.

1.21 **"Eligible Lender"** means a holder, insurer or guarantor of a First Mortgage that provides a written request to the Association stating the name and address of such holder, insurer or guarantor and the Lot number, and requesting notice to which such Eligible Lender is due under the Governing Documents.

1.22 **"Governing Documents"** [Civ. Code § 4150] means this Restated Declaration and any other documents such as the Articles, Bylaws, Rules, or Architectural Rules which govern the operation of the Association.

1.23 **"Improvement"** means any structure or appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, carports, swimming pools, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, stairs, decks, landscaping, hedges, windbreaks, exterior surfaces of any visible structure and the paint or finish on such surfaces, planted trees and shrubs, poles, signs and water softener fixtures or equipment.

1.24 **"Lender"** means a person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. "Institutional Lender" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA) that guarantees mortgage loans. "First Lender" means a mortgagee that has priority over all other mortgages or

holders of mortgages encumbering the same Lot or other portions of the Community. The term "Beneficiary" shall be synonymous with the term "Lender."

1.25 **"Lot"** [Civ. Code § 4185] means all the residential Lots within the Community, including all Improvements now or hereafter thereon. Lot does not mean the Common Area.

1.26 **"Member"** [Civ. Code § 4160] means every person or entity entitled to membership in the Association as provided in this Restated Declaration and the Bylaws.

1.27 **"Mortgage"** means a mortgage or deed of trust encumbering a Lot or any other portion of the Community. **"First Mortgage"** means a mortgage that has priority over all other mortgages encumbering the same Lot or other portions of the Community.

1.28 **"Notice and Hearing"** [Civ. Code § 5855; Corp. Code § 7341] means notice to an Owner and an opportunity for the Owner to be heard, prior to the imposition of any fine, penalty or other disciplinary measure, in the manner set forth in the Bylaws or other Governing Documents and in compliance with any Applicable Law.

1.29 **"Officers"** means the Officers of Association appointed by the Board of Directors pursuant to the Bylaws.

1.30 **"Owner"** means any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Lot, as shown on the most recent deed for the Lot recorded in the Office of the San Diego County Recorder, including the Association, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities that hold an interest in a Lot merely as security for performance of an obligation. For purposes of exercising membership rights, including the right to serve as a Director, and incurring membership obligations when an Owner is a corporation, firm, limited liability company or other legal entity, any Director, Officer, employee or agent designated in writing by the Owner may exercise the membership rights attributable to the Owner. For Lots held in trust, the trustee may exercise the membership rights attributable to the trust. A person or entity is not an Owner due to: (i) community property or other marital rights where the person asserting such rights is not shown on the recorded title as an Owner; (ii) rights of adverse possession not adjudicated and shown on the recorded title as an Owner; or (iii) other equitable rights where the person asserting such rights is not shown on the recorded title as an Owner.

1.31 **"Restated Declaration"** [Civ. Code § 4135] means this Amended and Restated Declaration of Restrictions and any amendments hereto.

1.32 **"Rules"** [Civ. Code §§ 4340 & 5105] means any Rules, including the Architectural Rules, for the Association regulating the use of the Lots, the Common Areas, the Community and any facilities located thereon and election rules adopted by the Board.

1.33 **"Voting Power"** [Corp. Code § 5078] means the total number of votes eligible to be cast in the Association based on one (1) vote per Lot.

ARTICLE 2 - THE COMMUNITY

2.1 **Community Subject to Restated Declaration.** The entire Community shall be subject to this Restated Declaration.

2.2 **Equitable Servitudes.** [Civ. Code § 5975] The covenants and restrictions set forth in this Restated Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both.

2.3 **Prohibition Against Deannexation.** There shall be no deannexation of any part of the Community without first obtaining the approval of sixty-seven percent (67%) of the Members.

2.4 **Prohibition Against Severance of Elements.** [Civ. Code § 4650] Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Lot shall include all interests and appurtenances as shown in the original deed of conveyance. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's membership interest in the Association. Any transfer that attempts to sever those component interests shall be void.

2.5 **Drainage Easements.** The Owner of a Lot shall permit free access by Owners of adjacent or adjoining Lots, or the Association and its agents, to slopes or drainageways located on his or her Lot, when such access is essential for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities for the protection and use of property other than the Lot on which the slopes or drainageways are located. The Owner of any Lot shall not in any way interfere with established slope ratios or create erosion or sliding problems. The Owner of any Lot shall not interfere with the established drainage pattern over his or her Lot from adjacent or adjoining Lots without prior Board approval and unless the Owner makes adequate provisions for continued drainage over his or her Lot from adjacent or adjoining Lots. For the purpose herein, "established drainage" is defined as the drainage which occurred at the time a Lot was first conveyed from the Community developer to an Owner.

2.6 **Association Easements Over Lots.** The Association has an easement over each Lot, as the servient tenement, for the purpose of allowing the Association's agents to enter the Lot to perform such duties and exercise such powers as may be set forth by the Governing Documents.

2.7 **Owner Easements Over Common Area.** Each Owner shall have a nonexclusive easement for use and enjoyment of the Common Area now or hereafter owned by the Association and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to each Lot and shall be subordinate to any exclusive easements granted elsewhere in this Restated Declaration, as well as to the right of the Association pursuant to the Governing Documents to perform its obligations under this Restated Declaration, or otherwise regulate the Common Area as provided in the Governing Documents. Each of the

easements reserved or granted herein shall be covenants running with the land for the use and benefit of the Owners and their Lots superior to all other encumbrances applied against or in favor of any portion of the Community. Individual grant deeds to Lots may, but shall not be required to, set forth the easements specified in this Article.

2.8 Association Grant of Easements. Association may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, or for any other purpose reasonably related to the operation and maintenance of the Community. No such easement may be granted, however, if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot without the approval of the affected Owner.

2.9 Encroachment Easements. None of the rights and obligations of the Owners created herein, or by the deed creating the Community, shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments over the Common Area or Lots upon which the encroachment exists so long as the encroachments shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners. In the event a structure on a Lot is partially or totally destroyed and then rebuilt or repaired, the Owners of any adjoining Lots agree that any minor encroachments over the adjoining Lots which are similar to any encroachments which existed prior to the partial or total destruction shall be permitted and there shall be easements for maintenance of such encroachment so long as they shall exist.

2.10 Utility Easements. In the case where utility facilities are located on a Lot or Lots owned by other than the Owner of a Lot served by the utility facilities, the Owners of any Lots served by the utility facilities shall have the right of reasonable access for themselves or their agents to repair, replace and generally maintain the utility facilities as and when the same may be necessary. A Lot Owner shall be entitled to reasonable access to the Common Area for the purpose of maintaining utility facilities servicing such Owner's Lot. The access shall be subject to the consent of the Association, whose approval shall not be unreasonably withheld, and which may include such conditions as the Board determines reasonable.

In the case of utility facilities which serve more than one (1) Lot, the Owner of each Lot served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility facilities as service his or her Lot.

2.11 Security. Owners and occupants of a Lot, and their respective guests and invitees, are responsible for their own personal safety and the security of their property within the Community.

2.11.1 Neither the Association nor its Board, Officers, agents or representatives shall in any way be considered an insurer or guarantor of safety or security within the Community, nor shall such parties be held liable for any injury, loss or damage by

reason of failure to provide any type or form of security or, if applicable, then the ineffectiveness of any security measures undertaken.

- 2.11.2 No representation or warranty is made that any systems or measures, including any camera or surveillance system, mechanism, gate (including attendants), or other system or measures for limiting access to the Community, will not be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent injury, loss or damage, or otherwise provide the detection or protection for which such system or measure is designed or intended.
- 2.11.3 Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants and guests of its Lot that the Association, its Board, Officers, agents or representatives, are not insurers or guarantors of safety or security and that each person within the Community assumes all risks of personal injury and loss of or damage to property, wherever located, including Lots, storage areas, and the contents of Lots and Dwellings resulting from the acts of third parties.

ARTICLE 3 - THE ASSOCIATION

3.1 **Organization of the Association.** The Association is incorporated as a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. The Association is created for the purpose of managing the Community and is charged with the duties and invested with the powers prescribed by Applicable Law and set forth in the Governing Documents.

3.2 **Board of Directors.** The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in the Bylaws.

3.3 Membership.

- 3.3.1 Every Owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Lot is the sole qualification for membership. All memberships shall be appurtenant to the Lot conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Lot shall automatically transfer the appurtenant membership to the transferee.
- 3.3.2 Each Member shall have the rights, duties, privileges, and obligations as set forth in the Governing Documents.

- 3.3.3 Membership shall automatically cease when the Owner no longer holds an ownership interest in a Lot.

3.4 **Membership Class; Voting Rights.** The Association shall have one (1) class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents. On matters presented to the membership for a vote, each Lot shall be assigned one (1) vote, subject to the provisions of the Bylaws.

3.5 **General Powers and Authority.** [Civ. Code § 4805] The Association shall have all the powers of a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in the Governing Documents. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it. Its powers shall include, but are not limited to:

- 3.5.1 The power to establish, fix, levy, collect, and enforce the payment of Assessments against the Owners in accordance with the procedures set forth herein.

- 3.5.2 [Civ. Code § 4360] The power to adopt reasonable Rules governing the use of the Lots, Dwellings, Common Area, any common facilities and Association-owned property, and the conduct at Board and Members' meetings, in accordance with the following:

- (a) The Rules may include, but are not limited to:

- (i) Reasonable restrictions on use of the Common Area, Lots and Dwellings by the Owners and their families, guests, employees, tenants and invitees.
- (ii) Reasonable restrictions on the conduct of Owners and their families, guests, employees, tenants and invitees as to activities on the Common Area, Lots and Dwellings.
- (iii) The establishment of Notice and Hearing procedures and a schedule of Monetary Penalty Assessments and other disciplinary measures which may be imposed for violations of any provisions of the Governing Documents.
- (iv) Campaign, election and voting information.

- (b) [Civ. Code § 4340 et seq.] The Board must comply with any Applicable Law when adopting any Rules.

- (c) A copy of any modifications of the Rules shall be given to each Owner within fifteen (15) days of adoption by the Board.
- (d) If any provision of the Rules conflicts with any provision of this Restated Declaration, the Articles, or the Bylaws, the Restated Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.
- (e) The Rules shall have the same force and effect as if they were set forth in and were part of this Restated Declaration and shall be binding on the Owners and their successors in interest whether or not actually received by them.

3.5.3 [Civ. Code § 5980] The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, as provided in any Applicable Law.

3.5.4 [Civ. Code §§ 5850 & 5855; Corp. Code § 7341] Subject to Notice and Hearing requirements, the right to discipline a Member for violation of any of the provisions of the Governing Documents by (1) suspending the Member's membership rights, (excluding any suspension of the Member's voting rights), the right to run as a candidate for election to the Board of Directors, as allowed by Applicable Law, and the rights and privileges to use the Common Area recreational facilities, (2) imposing monetary fines, and (3) recording a notice of noncompliance in the Office of the County Recorder of San Diego County encumbering the Lot of the Owner, if allowed by Applicable Law.

3.5.5 The right for its agents and employees to enter any Lot when necessary in connection with any maintenance, landscaping, or construction work for which the Association is or may be responsible or to reduce the likelihood of or prevent damage to the Common Areas or another Lot. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any entry by the Association to investigate a reported or suspected water intrusion shall be deemed an emergency. Such person shall not be deemed guilty of trespass by reason of such entry.

3.6 Duties of Association. In addition to the duties of the Association, its agents and employees set forth elsewhere in the Governing Documents, the Association shall be responsible for the following:

- 3.6.1 The Association, acting through the Board, shall operate, maintain, repair, and replace those components assigned to the Association by the Section entitled "Division of Responsibility" or contract for the performance of that work, subject to the provisions of the Governing Documents.
- 3.6.2 The Association shall use the general operating fund described in the Article entitled "Assessments and Collection Procedures" herein to, among other things, acquire and pay for goods and services for the Community.

3.7 Volunteer Protection. No cause of action against a person serving without compensation as a Director or Officer of the Association, on account of any negligent act or omission by that person within the scope of that person's duties as a Director acting in the capacity of a Board member, or as an Officer acting in the capacity of, and within the scope of the duties of, an Officer, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes that claim to be filed after the court determines that the party seeking to file the pleading has established evidence that substantiates the claim. The court may allow the filing of a pleading that includes that claim following the filing of a verified petition therefor accompanied by the proposed pleading and supporting affidavits stating the facts upon which the liability is based. The court shall order service of the petition upon the party against whom the action is proposed to be filed and permit that party to submit opposing affidavits prior to making its determination. The filing of the petition, proposed pleading and accompanying affidavits shall toll the running of any applicable statute of limitations until the final determination of the matter, which ruling, if favorable to the petitioning party, shall permit the proposed pleading to be filed. Any party may request a hearing before the court prior to the court making a final determination on the petition.

3.8 Limitation of Liability for Damages for Board Members

- 3.8.1 Association Owners have expressed concern about serving on the Board while being subject to possible unlimited financial exposure. The Association wishes to encourage volunteer Directors to serve on the Association Board. This limitation of liability provision is intended to supplement other statutes in the law that protect and immunize Directors from liability for certain acts. In the event of a conflict between the law and the provisions stated herein, the law shall govern.
- 3.8.2 No member of the Board (current or former) shall be personally liable, for an amount exceeding \$50,000 per Director in any given lawsuit (or related series of lawsuits arising from the same or similar set of facts), where the Director is a named defendant, no matter the number of claimants, to any current or former Owner, or to any other party, for gross negligence or intentional or willful misconduct, and any damages arising therefrom for emotional

distress, pain and suffering, or other non-economic losses, including punitive damages, allegedly caused by the Director, the Association, the Board, the manager or any other representative or employee of the Association, or any committee or committee member, or any Officer of the Association, provided that such Director has, upon the basis of such information as may be possessed by him or her, acted reasonably and in good faith. The limitation of liability stated herein, is not applicable to any claims against Board members where Association insurance is defending and indemnifying the Board member without reservation.

3.9 Notice of Claim as Prerequisite for Pursuing Claims for Damages and/or Other Relief.

- 3.9.1 At least sixty (60) days prior to instituting any lawsuit against the Association and/or its Directors, Officers, agents or volunteers, for alleged breaches of duty and/or failure to adhere to the Governing Documents of the Association, or for any alleged wrongdoing, including claims for damages as well as equitable relief, arising from the operations of the Association, Owner shall provide prior written notice of his or her complaints, with sufficient specificity to allow Association and its agents to investigate and evaluate potential liability. Such notice shall be served by Owner on Association's agent for service of process, and the meeting herein shall be deemed to satisfy the Board's duty to meet and confer with Owners pursuant to Civil Code section 5905 as to the complaints outlined in the notice of claim.
- 3.9.2 The Board shall have a period of forty-five (45) days to review the Owner's complaint(s), and to convene a meeting with the complaining Owner to attempt to resolve Owner's complaint(s). Unless otherwise agreed by the parties, the Board shall establish a date, time and place for such meeting with the complaining Owner(s), which meeting shall be within the forty-five (45) days of service of the notice on Association. The notice to Owner of the meeting set by the Board shall include the date, time and place of such meeting, and the notice shall be delivered to Owner no less than ten (10) calendar days before the date of such meeting. No later than fifteen (15) days following the hearing, the Board shall notify the Owner of its proposed resolution, if any, which may provide for a reasonable time period for the Board to cure the issue. Owner's failure to provide the written notice of complaints described above shall be a basis for the immediate dismissal, without prejudice, of any lawsuit, instituted by Owner against Association and/or its Directors, Officers, committee members, or other agents.

3.10 **Duty to Mitigate Damages** . It is the duty of all Owners, their families, and invitees, to mitigate any damages claimed to arise from negligence or other wrongdoing by Association and/or its Directors, Officers, agents or volunteers, by all reasonable means. If Owners, their families, and invitees fail to mitigate their damages, such failure to mitigate, including complying with Section 3.9 shall be the basis for a court to offset any damage award, including attorneys' fees.

ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 Covenant to Pay. [Civ. Code § 5650]

- 4.1.1 Each Owner by acceptance of the deed to the Owner's Lot is deemed to covenant and agrees to pay to the Association all Assessments described in this Article and all other charges duly levied by the Association pursuant to the provisions of this Restated Declaration.
- 4.1.2 An Assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall also be a personal debt of each Owner of the Lot at the time the Assessment or other sums are levied.
- 4.1.3 Co-Owners of a Lot shall be jointly and severally liable for all charges levied by the Association on that Lot.
- 4.1.4 No Owner may waive or otherwise escape liability for these Assessments by non-use of the Common Area or abandonment of the Owner's Lot.

4.2 **Purpose of Assessments.** [Civ. Code § 5600] Except as provided herein, the Association shall levy Assessments sufficient to perform its obligations. The Assessments levied by the Association shall be used exclusively to promote the recreation and welfare of the Owners, for the operation, replacement, improvement, and maintenance of the Community, and to discharge any other obligations of the Association under this Restated Declaration. All Assessment payments shall be put into general operating and reserve funds to be used for the foregoing purposes.

4.3 Regular Assessments. [Civ. Code § 5600 et seq.]

- 4.3.1 Concurrently with preparation of the financial documents and budget for each fiscal year, the Board shall estimate the net charges to be paid during that next fiscal year, including a reasonable provision for contingencies, replacements and reserves, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the Regular Assessments for the budgeted year.

- 4.3.2 In the event the Board shall determine that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments against each Member, and the date or dates when due.
- 4.3.3 Failure of the Board to estimate the net charges within the time period stated herein shall not void any Assessment imposed by the Board.
- 4.3.4 Regular Assessments for fractions of any month shall be prorated.
- 4.3.5 Each Owner is obligated to pay Assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

4.4 ***Special Assessments.***

- 4.4.1 If the Board determines that the amount to be collected from Regular Assessments will be inadequate to defray the Common Expenses for the year due to the cost of any construction, unexpected repairs or replacements of Capital Improvements upon the Common Area, or any other reason, it shall make a Special Assessment for the additional amount needed, subject to any limitations imposed by Applicable Law or the Governing Documents.
- 4.4.2 Special Assessments shall be levied equally against each Lot and collected in the same manner as Regular Assessments.
- 4.4.3 The Board may levy a Special Assessment in one lump sum or in installments over a period of time the Board determines appropriate.

4.5 ***Allocation of Regular and Special Assessments.*** Regular and Special Assessments shall be divided equally among the Lots.

4.6 ***Limitations on Regular and Special Assessments.*** [Civ. Code § 5605]

- 4.6.1 Except in emergency situations, the Board may not, without the approval of Members constituting a majority of the votes cast when a quorum of the Owners is established, impose a Regular Assessment per Lot that is more than twenty percent (20%)

greater than the Regular Assessment for the preceding fiscal year, or levy Special Assessments that in the aggregate exceed five percent (5%) of the Budgeted Gross Expenses of the Association for that fiscal year.

4.6.2 For purposes of this Section, a "quorum" means more than fifty percent (50%) of the Owners of the Association.

4.6.3 These limitations shall not apply to Assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense defined by Applicable Law.

4.7 Owner Notice of Regular and Special Assessments. [Civ. Code § 5615]
The Association shall provide notice by any means allowed by Applicable Law to the Owners of any increase in the Regular Assessments or the imposition of a Special Assessment not less than thirty (30) nor more than sixty (60) days prior to the increase in the Regular Assessment or Special Assessment becoming due.

4.8 Individual Assessments.

4.8.1 Subject to the limitations of the Governing Documents and in addition to Regular and Special Assessments, the Board may levy Individual Assessments against Owners and Lots whenever the Association (1) performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, (2) incurs any costs to remedy the effects of the Owner's noncompliance with the Governing Documents, or (3) incurs any costs which by Applicable Law or as required by the Governing Documents must be reimbursed by an Owner.

4.8.2 Such Individual Assessment shall include the cost thereof, together with any financing costs and administrative costs incurred by the Association.

4.8.3 Prior to levying an Individual Assessment, the Board shall provide the Owner with a Notice and Hearing. The Notice and Hearing regarding the levy of an Individual Assessment may be combined with the Notice and Hearing regarding any underlying violation.

4.8.4 Duly levied Individual Assessments shall be subject to the provisions in the Governing Documents regarding costs, late charges and interest for delinquent payment, and may become a lien on the Lot, in the same manner as Regular and Special Assessments.

4.9 Monetary Penalty Assessments. [Civ. Code §§ 5650 & 5725]

4.9.1 The Board of Directors may levy, subject to the limitations of the Governing Documents, Monetary Penalty Assessments (fines) against an Owner and his or her Lot.

4.9.2 In the event the Board of Directors imposes a Monetary Penalty Assessment, that Monetary Penalty Assessment shall be subject to costs, late charges and interest as described in this Article for delinquent payment, and may become a lien on the Lot, collectible by the Association through judicial foreclosure as allowed in this Article. In no event may the Association collect a Monetary Penalty Assessment through nonjudicial foreclosure.

4.10 **Costs, Late Charges and Interest.** [Civ. Code § 5650] Late charges may be levied by the Association against an Owner for the delinquent payment of Assessments, including Monetary Penalty Assessments. An Assessment, including any installment payment, is delinquent fifteen (15) days after its due date. If an Assessment is delinquent, the Association may recover all of the following from the Owner:

4.10.1 Reasonable costs incurred in collecting the delinquent Assessment, including actual attorneys' fees.

4.10.2 A late charge not exceeding ten percent (10%) of the delinquent Assessment or ten dollars (\$10.00), whichever is greater, or the maximum amount allowed by Applicable Law.

4.10.3 Interest on the foregoing sums, at an annual percentage rate of twelve percent (12%) commencing thirty (30) days after the Assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. The amounts delinquent, including the entire unpaid balance and any related costs described herein, may be collected by the Association as provided in this Article.

4.11 **Priority of Payments.** The Board, in its sole discretion, may enact policies, in compliance with Applicable Law, including Civil Code section 5655, regarding how payments received from Owners will be applied to any outstanding balances due the Association from that Owner.

4.12 **No Offsets.** All Assessments shall be payable in the amounts specified by the Association, and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

4.13 **Enforcement of Assessments and Late Charges.** [Civ. Code §§ 5650 et seq., 5700 et seq. & 2924b] A delinquent Assessment, and any related late charges, reasonable costs of collection (including actual attorneys' fees), and interest assessed in

accordance with this Article, shall become a lien upon the Lot when a Notice of Assessment Lien is duly recorded as provided in Applicable Law.

- 4.13.1 Unless otherwise provided by statute, the Notice of Assessment Lien shall describe the amount of the delinquent Assessment or installment, the related charges authorized by this Restated Declaration, the legal description of the Lot, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice may be signed by any Officer or Director of the Association, or any employee or agent of the Association authorized to do so by the Board. The Notice shall be mailed by certified mail to every person whose name is shown as an Owner of the Lot in the Association's records, and the notice shall be mailed no later than ten (10) calendar days after recordation.
- 4.13.2 Unless otherwise allowed by Applicable Law, the Notice of Assessment Lien may not be recorded until after the Association has mailed, via certified mail, a written demand for payment to the delinquent Owner. The written demand shall comply with the requirements of Applicable Law.
- 4.13.3 If not paid in full within thirty (30) days after recordation of the Notice of Assessment Lien, any lien described herein may be enforced in any manner permitted by Applicable Law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice or by a trustee substituted pursuant to Applicable Law.
- 4.13.4 If all sums specified in the Notice of Assessment Lien are paid before the completion of any judicial or nonjudicial foreclosure, the Association shall (1) record a notice of satisfaction and release of lien, and (2) upon receipt of a written request by the Owner, shall also record a notice of rescission of any recorded notice of default and demand for sale.
- 4.13.5 The Notice of Assessment Lien is not required to be amended by the Association or Trustee to reflect any partial payments made on the account of the delinquent Owner after its recordation. The Notice of Assessment Lien may be foreclosed upon as set forth herein and in compliance with state and federal law even though the delinquent Owner has made one or more partial payments.
- 4.13.6 Notwithstanding any other provision herein, a Monetary Penalty Assessment may not become a lien on a Lot enforceable by the

sale of the Lot through nonjudicial foreclosure. Any Notice of Assessment Lien recorded to enforce a Monetary Penalty Assessment must specifically state that such lien may not be enforceable by sale of the Lot through nonjudicial foreclosure.

4.14 *Suspending Telecommunication Services.*

- 4.14.1 In addition to any other remedies herein, if the Association provides any telecommunication services, such as cable television, through a bulk cable agreement, the Association may suspend these services to a Lot as provided herein.
- 4.14.2 When the Owner is more than thirty (30) days delinquent in the payment of any Assessment due to the Association, the Association may, after Notice and Hearing, suspend telecommunication services to the Owner's Lot. The Association shall allow reconnection of the services at such time as the Owner becomes current in the payment of Assessments. The Owner shall be solely responsible for the payment of any fee to connect, disconnect or reconnect the telecommunication services.

4.15 *Assignment of Rent.* [Civ. Code § 2938]

- 4.15.1 This assignment is for the purpose of collecting all Assessments, late charges, interest, fines, monetary penalties, and costs of collection, including attorneys' fees due to the Association pursuant to this Restated Declaration which are in default. This assignment applies to any lease or rental agreement now existing or hereinafter made.
- 4.15.2 Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or rental agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or rental agreement as they become due and payable, provided that the Association, at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessments due. Upon revocation of such authority, the Association may collect and retain such rental monies, whether past due and unpaid or current.
- 4.15.3 The Association's rights under this Section are in addition to and not in place of, the rights described above to file a lien and

foreclose upon a lien. The Association's rights shall be subordinate to the rights of any First Lender.

4.15.4 The Association shall only exercise its rights to collect rental monies in compliance with California Civil Code section 2938, as amended from time to time, or any successor statute. Further, the Association shall only exercise this right after filing the lien described above and after providing the Owner with Notice and a Hearing pursuant to any Applicable Laws and the Bylaws.

4.15.5 By recordation of this Restated Declaration, each Owner expressly consents to and is bound by this assignment of rents to the Association.

4.16 Priority of Assessment Lien. [Civ. Code § 5680] As set forth hereinbelow, the Assessment lien referred to in this Article shall be superior to all other subsequent liens, except (1) all taxes, bonds and governmental Assessments which, by Applicable Law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record. Notwithstanding any other provision to the contrary, the following provisions shall govern the priority and obligation for payment of the Assessment lien:

4.16.1 Only the judicial or nonjudicial foreclosure of the First Mortgage shall operate to transfer title free of the Assessment lien or obligation for any Assessment lien, and then only as to payments which became due prior to the date of sale, and excluding those Assessment liens recorded prior to the recording of the First Mortgage.

4.16.2 Neither the transfer of a Lot pursuant to a foreclosure of any Mortgage, nor an election by the Association to proceed against any new Owner for payment, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent Assessments and charges which accrued during such Owner's period of ownership.

4.16.3 No sale or transfer of any Lot shall relieve such Lot or its new Owner from liability for any future Assessments which accrue during such Owner's period of ownership.

4.16.4 The personal obligation of any Owner for payment of delinquent Assessments and charges may be satisfied, and therefore discharged, only by payment of the entire amount of the delinquent Assessments and charges, whether or not such Owner remains in possession of his or her Lot.

4.16.5 To the extent permitted by Applicable Law, each Owner hereby waives the benefit of any homestead or exemption laws of the State of California now in effect, or in effect from time to time

hereafter, to the extent of any liens created pursuant to the Governing Documents, whether such liens are now in existence or are created at any time in the future.

4.17 **Statement of Delinquent Assessment.** [Civ. Code § 4525] The Association shall provide any Owner, upon written request, with a statement specifying the amounts of any delinquent Assessments and related late charges, interest, and costs levied against the Owner's Lot.

ARTICLE 5 - SENIOR HOUSING COMMUNITY

5.1 **Statement of Intent to Provide Housing for Seniors.** The Community is a senior citizens housing development, also referred to as "housing for older persons." To the fullest extent permitted by federal, state and local Law, it is the intent of the Community to operate as housing for persons 55 years of age or older ("Senior Citizens"), and to that end, occupancy of Dwellings in this Community shall be restricted to Senior Citizens, except as otherwise provided hereinbelow.

5.2 **Definition of Law.** For purposes of this Article, "Law" shall mean, without limitation, all statutes, ordinances and other forms of legislative enactments, administrative regulations administrative rulings and guidelines, as each may be amended from time to time, and decisions and interpretations from or arising out of administrative enforcement proceedings and court decisions.

5.3 **Definition of Senior Citizen.** For purposes of this Article, "Senior Citizen" shall mean persons 55 years of age or older.

5.4 **Minimum Age Requirements.** Dwellings shall be occupied only by Senior Citizens, except as stated below.

5.5 **Residency Restrictions.**

5.5.1 **Permissible Occupants and Requirement that Eighty Percent of the Dwellings Shall be Occupied by a Senior Citizen.** Any person commencing any occupancy of a Dwelling in this Community shall be a Senior Citizen who intends to occupy the Dwelling in the Community as his or her primary residence on a permanent basis. All other persons occupying the Dwelling at any time shall reside with the Senior Citizen pursuant to Section 5.6 or 5.7 below. These persons shall be collectively referred to as "Qualified Occupants."

5.5.2 **Age Verification.** All occupants of the Community must provide verification of age, in a form and at the time or times directed by the Board. The Board is specifically empowered to enact Rules and Regulations to assure compliance with Laws regarding housing for older persons, including age verification; furthermore,

said rules and regulations shall include pre-screening requirements for all new residents in the Community.

5.5.3 Guests. A person not otherwise qualified for residency may remain in the Dwelling as a guest of the Senior Citizen for a period not to exceed sixty days in any calendar year. Any person who resides in the Dwelling for more than sixty days in any calendar year shall be deemed a resident; said person must submit an age verification in the form specified by the Community, and must be qualified for residence (that is, must be a Senior Citizen or reside with the Senior Citizen pursuant to Section 5.6 or 5.7 below) in order to remain. For the purpose of calculating the sixty-day (60) period described in this Section, presence in the Dwelling for more than twelve hours of a day, or overnight, shall constitute a day's stay. Notwithstanding the foregoing, if a person is determined to occupy the Dwelling on a permanent basis, that person shall become a resident, and not a guest, regardless of the length of the stay, and must qualify for residency pursuant to this Article.

5.6 Right to Share Dwelling with Relative Who Requires Care. A resident Senior Citizen may share his or her Dwelling with any person 18 years of age or older if that person is a parent, sibling, child, or grandchild of the resident Senior Citizen and requires live-in health care, live-in supportive care, or supervision pursuant to a written treatment plan prepared by a physician or surgeon. Any person who is permitted to reside in the Dwelling as set forth in this Section, shall have no rights of tenancy in the Dwelling after the Senior Citizen no longer resides in the Dwelling, and shall comply with the Rules and Regulations of the Association, including any requirements to provide verification of the written treatment plan before residing in the Dwelling.

5.7 Right to Share Dwelling with Care Giver. A resident Senior Citizen may share his or her Dwelling with any person 18 years of age or older if that person is providing live-in health care, live-in supportive care, or supervision to the Senior Citizen pursuant to a written treatment plan prepared by a physician or surgeon. Any person who is permitted to reside in the Dwelling as set forth in this Section shall have no rights of tenancy in the Dwelling after the Senior Citizen no longer resides in the Dwelling, and shall comply with the Rules and Regulations of the Association, including any requirements to provide verification of the written treatment plan before residing in the Dwelling.

5.8 Conflicts of Law and Interpretation of Article. If there is any inconsistency or conflict between the provisions of this Article and any other provision of the Restated Declaration, the terms of this Article shall control. In the event of an inconsistency among the provisions of federal Law, state Law, and local Law, this Restated Declaration, and the Association's Rules and Regulations, the Association's Rules and Regulations and the Restated Declaration shall be controlled by the provision of federal Law, state Law and local Law, in that order. Provisions of the Governing

Documents which exceed minimum requirements for qualification as a provider of housing for older persons set by Law, shall not be interpreted as an inconsistency or conflict.

5.9 Board Power to Amend Senior Housing Rules and Restrictions Necessary to Preserve Status as Housing for Older Persons. To avoid the need for costly and time-consuming amendments to this Restated Declaration which may be needed in the future due to amendments to the law pertaining to housing for older persons, the Association's Board of Directors shall be empowered to promulgate and amend Rules and Regulations to achieve compliance with any changes in the laws pertaining to age restrictions. If any Law, now or hereafter in force, should require or be interpreted to require that specific restrictions applicable to housing for older persons must be recorded as part of this Restated Declaration, then the Board shall be empowered to record an appropriate amendment to the Restated Declaration to ensure that this Community continues to qualify as housing for older persons or senior citizens under all applicable Laws. The Board may record such an amendment without the need for any approval by the voting power of the Owners, notwithstanding the amendment provisions located elsewhere in this Restated Declaration. The powers given to the Board under this paragraph to enact and to amend rules and to amend this Restated Declaration shall be limited solely to the powers necessary to preserve and enforce the Community's status as housing for older persons.

ARTICLE 6 - USE RESTRICTIONS AND COVENANTS

6.1 General. [Civ. Code § 5975] The use and enjoyment of the Community by Owners and their tenants, guests, invitees or any other person deriving rights from such Owner, shall be subject to the covenants and restrictions contained in the Governing Documents. Each such person shall comply with the provisions in the Governing Documents and be subject to any enforcement actions in the event of violations. As more fully set forth in this Restated Declaration, both the Association, through the Board of Directors, and each Owner shall be entitled to enforce the Governing Documents.

6.2 Affecting Association Insurance. No one may perform any act or keep anything on or in any Lot or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept on his or her Lot or in the Common Area that would result in the cancellation of insurance on any Lot or on any part of the Common Area or that would violate any law.

6.3 Accessory Dwelling Units The prior written approval of the Board is required before any accessory dwelling unit or junior accessory dwelling may be constructed, erected, installed, placed, altered or maintained on a Lot. Any accessory dwelling unit or junior accessory dwelling must be entirely located on the same legal Lot as the Owner's existing residential Dwelling. An Owner must obtain, at their own expense, all permits required by Applicable Law. The construction, maintenance, repair, replacement and use of accessory dwelling units and junior accessory dwelling units shall

be in accordance with this Restated Declaration and the Rules, including Article 8 herein, Architectural Design and Control.

6.4 ***Alter Common Area.*** No one may alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.

6.5 ***Antennas and Satellite Dishes.*** [Federal Telecommunications Act] Exterior antennas and satellite dishes, not exceeding one (1) meter (39.37") in diameter, are permitted, but only in strict compliance with Applicable Laws and not on any portion of the Common Area. Except as permitted by Applicable Law, there shall be no outside television or radio antennae, satellite dishes, masts, poles or flag poles constructed, installed or maintained in the Community for any purpose whatsoever without the prior written consent of the Board. The Board may adopt Rules restricting the construction, installation, maintenance or replacement of any such equipment as long as such restrictions do not conflict with Applicable Law.

6.6 ***Brush and Weeds.*** No one may allow brush, weeds, or undergrowth to accumulate upon any Lot so as to render the Lot or any portion of it a fire hazard, unsightly, or detrimental to other Lots or the Common Area.

6.7 ***Cable TV Systems.*** No one may alter or modify the cable television system except upon the written consent of the Board.

6.8 ***Common Area Use.*** The following provisions govern the use and enjoyment of the Common Area:

- 6.8.1 Owners may use the Common Area subject to the provisions of this Restated Declaration.
- 6.8.2 An Owner who has sold his or her Lot to a contract purchaser or who has leased or rented the Lot shall be deemed to have delegated his or her rights to use and enjoy the Common Area to such contract purchaser or tenant, subject to reasonable regulation by the Board. If the Owner is deemed to have delegated such rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective. The rights of a contract purchaser or tenant shall be subject to the same restrictions and regulations in the Governing Documents as are applicable to Owners.
- 6.8.3 The Board may:
 - (a) Adopt and enforce reasonable Rules for the use of the Common Area. Such Rules may include reasonable restrictions on any use subject to Civil Code section 4515.

- (b) Reasonably limit the number of guests and tenants using all or any portion of the Common Area.
- (c) Charge a fee or deposit for any private parties, special or extraordinary use of any Common Area recreational facilities and Improvements, unless Civil Code section 4515 or 5105 applies to the use.
- (d) Set fees and deposits for supplying and replacing access devices to Common Areas, including charges calculated to limit distribution and deter loss of access devices.
- (e) Establish speed limits and other traffic regulations within the Community.
- (f) Establish fire lanes within the Common Area.
- (g) Assign, rent, lease or otherwise control the use of any unassigned parking spaces within the Common Area.
- (h) Require the use of parking passes or decals.
- (i) Remove any vehicle within the Community parked in violation of this Restated Declaration or the Rules of the Board in accordance with the provisions of any Applicable Law.
- (j) Suspend the right of any Owner, and the persons deriving rights from any Owner, to use and enjoy the Common Area recreational facilities for any period during which the Owner is delinquent in the payment of any Assessment, fees, charges or monetary penalties due the Association, is in violation of the Governing Documents, or as otherwise provided in the Governing Documents.
- (k) Cause the construction of additional Improvements in the Common Area, or cause the alteration or removal of existing Improvements on the Common Area, subject to any applicable limitations on the Board's powers.
- (l) Dedicate, grant, or join in the grant or conveyance of permits, easements, licenses or rights-of-way in, on and over the Common Area as may be determined by the Board to be in the best interests of the Association; provided that no such permit, easement, license or right-of-way may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use,

occupancy, or enjoyment of the Owner's Lot without the approval of the affected Owner.

- (m) Approve any proposed alteration of or modification to the Common Area, subject to any applicable limitations of the Board's powers.

- 6.8.4 [Civ. Code § 4600] Notwithstanding any nonexclusive easement rights to the Common Area granted herein or by any deed or other conveyance, the right to allow one or more Owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Lot, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Community unless that Owner consents to the use.

6.9 **Damage Liability.** Each Owner shall be liable to the Association for any damage to the Common Area or to Association-owned property, including any access control systems, if the damage is sustained because of the negligence, misconduct, or unauthorized or improper installation, repair, or maintenance of any Improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. The Association may repair the damage and assess the cost of the work to the Owner as an Individual Assessment. In the case of joint ownership of a Lot, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

6.10 **Discharge into Streets or Gutters.** No one may discharge anything other than water and residue allowed by applicable water quality ordinances into the streets, gutters and drains of the Association or into the Common Area.

6.11 **Drones**

- 6.11.1 A "drone" is defined as an unmanned aircraft without a human pilot on board, including model airplanes, helicopters and similar aircraft. The Board may adopt Rules to revise or expand this definition to address any type of aircraft.
- 6.11.2 The Board may establish Rules to prohibit or regulate the operation of any drones in the Community.
- 6.11.3 No resident, guest or invitee may enter into the airspace above another resident's Lot with a drone.
- 6.11.4 No resident, guest or invitee may operate or authorize the operation of a drone in the airspace above any portion of the Community in such a way as to invade the privacy of Association members, guests, residents or vendors, whether equipped with a camera or otherwise.

- 6.11.5 No resident, guest or invitee may operate or authorize the operation of a drone in the airspace above any portion of the Common Area.

6.12 *Electric Vehicle Charging Stations.* [Civ. Code § 4745]

- 6.12.1 No electric vehicle charging station shall be installed by any person in any part of the Community without the prior written approval of the Board.
- 6.12.2 All electric vehicle charging stations shall be installed, maintained, repaired, replaced and removed in strict accordance with all Association Rules and Applicable Law.
- 6.12.3 Owners who install an electric vehicle charging station shall be solely responsible for all costs associated with the installation, existence, use, maintenance, repair, replacement and removal of the station, as well as any damage caused to any other property as a result of the installation, use, existence, maintenance, repair, replacement or removal of that station.
- 6.12.4 The applicable Owners shall maintain an umbrella liability coverage policy in the amount of \$1 million covering the obligations of the Owner for the station unless the station is an existing National Electrical Manufacturers Association standard alternating current power plug. The Association shall be named as an additional insured under this policy with a right to notice of cancellation.
- 6.12.5 Owner shall be responsible for disclosing to prospective buyers of the Owner's Lot of the existence of any Electric Vehicle Charging Station and the related responsibilities of the prospective purchaser of the Owner's Lot under Civil Code section 4745, and the obtaining of written acknowledgment of the acceptance of responsibility for compliance with these requirements from the subsequent purchasers of the selling Owner's Lot.
- 6.12.6 If a new Owner fails to accept responsibility for the Electric Vehicle Charging Station prior to the close of escrow on the sale of a Lot, the Board may obtain a bid or bids for the cost to remove the Electric Vehicle Charging Station and restore the Common Area or Exclusive Use Common Area and shall require that the cost be paid out of escrow.

6.13 *Emissions into the Air.* No one may discharge or cause the emission of any dust, sweepings, dirt, cinders, odors, gases, mold spores, or other substances into the atmosphere other than those caused by normal residential use.

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AMENDED AND RESTATED DECLARATION – VIA VERDE ESTATES, INC.

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6.14 **Harassment.** No one may engage in any type of harassment, illegal, noxious or offensive activity toward any Owners, residents, Association representatives, management representatives, Board members and/or vendors working in the Community. No person shall attempt to engage Association or management representatives or vendors on any private business of such person, or to otherwise direct, supervise or in any manner attempt to assert control over such Association or management representative or vendor during the hours that such Association or management representative or vendor is working on behalf of the Association.

6.15 **Hazardous Materials.** No one may store any of the following upon a Lot or in the Common Area: any substance, material or waste which is or becomes: (1) regulated by any local or regional governmental authority of the State of California or the United States Government as a hazardous waste; (2) is defined as a "solid waste," "sludge," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "non-RCRA hazardous waste," "RCRA hazardous waste," or "recyclable material," under any federal, state or local statute, regulation, or ordinance, including, without limitation, sections 25115, 25117, 25117.9, 25120.2, 25120.5 or 25122.7, 25140, 25141 of the California Health and Safety Code; (3) defined as a "Hazardous Substance" under section 25316 of the California Health and Safety Code; (4) defined as a "Hazardous Material," "Hazardous Substance" or "Hazardous Waste" under section 25501 of the California Health and Safety Code; (5) defined as a "Hazardous Substance" under section 25281 of the California Health and Safety Code; (6) asbestos; (7) petroleum products, including, without limitation, petroleum, gasoline, used oil, crude oil, waste oil, and any fraction thereof, natural gas, natural gas liquefied, methane gas, or synthetic fuels; (8) materials defined as hazardous or extremely hazardous pursuant to the California Code of Regulations; (9) pesticides, herbicides and fungicides; (10) polychlorinated biphenyls; (11) defined as a "Hazardous Substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); (12) defined as a "Hazardous Waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; (13) defined as a "Hazardous Substance" or "Mixed Waste" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., and regulations promulgated thereunder; (14) defined as a "Hazardous Substance" pursuant to Section 401.15 of the Clean Water Act, 40 C.F.R. 116; (15) defined as an "Extremely Hazardous Substance" pursuant to Section 302 of the Superfund Amendments and Reauthorizations Act of 1986, 42 U.S.C. Section 11002 et seq.; or (16) defined as "medical waste" pursuant to Section 25023.2 of the California Health and Safety Code, Chapter 6.1 (Medical Waste Management Act).

6.16 **Leasing or Renting Lot.** No one may lease or rent a Lot in violation of the following:

- 6.16.1 All leases and rental agreements must be in writing.
- 6.16.2 To the extent not inconsistent with Civil Code section 4741, all leases and rental agreements must be for the entire Dwelling, and not merely parts thereof, unless the Owner remains in occupancy.

- 6.16.3 No lease or rental shall be for a period of less than thirty (30) days or for hotel, transient, fractionalized ownership interest or time-share purposes.
- 6.16.4 Any Owners leasing or renting their Lot shall promptly notify the Association in writing of the names of all tenants and members of a tenant's family occupying such Lot, provide the make, model and license number of all residents' vehicles, a telephone number for the tenant, the number and type of pets kept by the tenants, keep all information current, and provide the Association with a complete copy of the lease or rental agreement and any other information reasonably needed and requested by the Association.
- 6.16.5 Any Owners leasing or renting their Lot shall promptly notify the Association of the address and telephone number where such Owner can be reached.
- 6.16.6 Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and shall be responsible for compliance by the tenant or lessee with all of the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the Lot.
- 6.16.7 All leases and rental agreements shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease which may be cured by eviction of the tenant either by the Owner or the Association.
- 6.16.8 All leases and rental agreements shall provide that any failure of a lessee or tenant to comply with the terms of any Governing Document relating to residential leases, property use restrictions, or the use and enjoyment of any portion of the Common Area shall constitute a default under the lease or rental agreement and shall entitle the Owner to terminate the tenancy on thirty (30) days' written notice.
- 6.16.9 If any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances to preserve the quiet enjoyment of other Owners and residents of the Community. Without limitation, the Association's actions in response to a tenant's violation of the Governing Documents may include the imposition of fines and penalties against the Owner-lessor of the Lot.

6.16.10 In the event a tenant or lessee of a Lot fails to comply with the provisions of the Governing Documents then, in addition to all other remedies which it may have, the Association may notify the Owner of such violation(s) and demand that it be remedied through the Owner's efforts within thirty (30) days of such notice. If such violation(s) is not remedied within that thirty (30) day period, then the Owner shall immediately, at his or her own cost and expense, institute and diligently prosecute an eviction action (unlawful detainer) against his tenant or lessee on account of such violation(s). Such eviction action shall not be compromised or settled without the prior written consent of the Association. In the event the Owner fails to commence the foregoing obligation within fifteen (15) days of being required to do so, or commences the action but fails to diligently prosecute the action, then the Board shall have the right, but not the duty, to notify the Owner that the Association will prosecute such action as attorney-in-fact for the Owner and at the Owner's sole cost and expense, including all legal fees incurred. Upon notification to Owner of the Association's intent to prosecute the action, the right to possession of Owner's Lot shall pass to the Association until such time as the tenant or lessee has vacated the Lot. The Owner shall cooperate with the Association in the prosecution of the eviction action. All costs and attorneys' fees not collected from the tenant or lessee shall be paid by the Owner and failure to pay may be the basis for imposing an Individual Assessment for the fees and costs.

6.17 **Mechanic's Lien.** [Civ. Code § 4615] No labor performed or services or materials furnished with the consent of, or at the request of, an Owner, the Owner's agents or contractors shall be the basis for the filing of a lien against any other Lot or Common Area or any other Owner in the Community unless that other Owner has expressly consented to or requested the performance of the labor or furnishings of the materials or services. However, express consent shall be deemed to have been given by the Owner of any Lot in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Common Areas, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner of any Lot may remove his or her Lot from a lien against two (2) or more Lots or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien which is attributable to the Owner's Lot.

6.18 **Modification to Lot or Dwelling.** No one may modify, construct, build or otherwise alter any portion of a Lot or Dwelling other than as provided in ARTICLE 9 below.

6.19 **Number of Persons .** Due to the limited nature of the Common Area facilities, including parking, each Dwelling shall be occupied solely for single family residential purposes. This Section shall not prevent temporary guests of an Owner to

stay in such Dwelling, however, any person occupying a Dwelling for longer than sixty (60) days each year shall conclusively be deemed to reside in such Dwelling. **Offensive Activity.** [Civ. Code § 3479] No one may engage in any illegal, noxious or offensive activity in any part of the Community, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Community.

6.21 **Outside Drying and Laundering.** No exterior clothesline shall be erected or maintained and there shall be no exterior drying or laundering of clothes. No exterior clotheslines or drying racks shall be erected or maintained and there shall be no exterior drying or laundering of clothes except in areas specified in the Rules.

6.22 **Owner Responsibility.** Owners shall be responsible for their family members, guests, tenants, contract purchasers, and invitees while in the Community and may be held responsible for any violations of the Governing Documents committed by such persons.

6.23 **Pets.** [Civ. Code § 4715] No one may keep pets or other animals in violation of the following:

- 6.23.1 Owners or residents of the Community may keep up to two (2) usual and ordinary domestic pets on the Lot subject to the provisions of the Rules; provided, however, that no Owner or other occupant of a Lot may keep any pet which interferes with, or has a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Lot to the peaceful and quiet enjoyment of the Lot. In the event the Board determines that any pet or other animal creates an unreasonable annoyance or nuisance to any Owner or other occupant of a Lot, the keeping thereof shall be discontinued within a reasonable time after such determination.
- 6.23.2 No pets or other animals shall be permitted in the Common Area except as specifically permitted by the Rules, and then only when on a leash held by a person capable of controlling the animal.
- 6.23.3 No Owners may keep animals for commercial purposes.
- 6.23.4 No Akita, Bull Mastiff, Bull Terrier, Chow (Chow Chow), Doberman Pinscher, Pit Bull (American Pit Bull Terrier), Rottweiler, Staffordshire Terrier (Staffordshire Bull Terrier, American Staffordshire Terrier), Wolf or Wolf breed, or dog being predominantly one or more of these breeds shall be allowed in the Community.
- 6.23.5 Association, its Board, Officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person in the Community, for any damage or injury to persons or property

caused by any pet, absent any gross negligence on the part of Association, or its Board, Officers, employees and agents.

6.24 **Power Equipment.** No one may set up a hobby shop for commercial purposes, except upon the written consent of the Board. Use of power equipment may be subject to reasonable Rules as to the time and duration of use and the level of noise.

6.25 **Residential Use.** To the extent not inconsistent with Civil Code section 4741, each Lot must be occupied either by one individual or a family. A family is defined for purposes of this restriction as related or unrelated persons who jointly occupy and have equal access to all areas of a Dwelling and who function together as an integrated economic unit.

6.26 **Residential Use of Unit.** Lots shall be used for residential purposes only. No Lot may be used for time share purposes, or any other similar transitory use through fractionalized ownership or any other similar arrangement. Lots are intended to be used as a primary residence. A Lot may be used for in-home professional or administrative occupations or similar home office use so long as only minimal external evidence is observable, and if: (1) such occupations are merely incidental to the use of the Lot as a residence, (2) employees or business invitees do not regularly visit or conduct business in the Community, and (3) the occupation is conducted in conformity with any Applicable Law and the Rules.

6.27 **Signs.** [Civ. Code §§ 712, 713 & 4710] No one may erect or display any sign on or from any Lot except as allowed by Applicable Law and the Rules. No signs may be erected or displayed on the Common Area without the prior written approval of the Board.

6.28 **Smoking.** Due to the scientific evidence of the dangers of secondhand smoke, the increased risk of fire, and increased maintenance and cleaning costs, the smoking of any substance is prohibited in the Common Area, the Exclusive Use Common Area and the Lot. "Smoking" shall include the inhaling, exhaling, burning, vaping or carrying of any lighted or burning substance in any form, including, but not limited to, tobacco and marijuana products.

6.29 **Solar Installation.** Owners may install solar energy systems on their Lots subject to receiving approval from the Association and provided they do so in strict compliance with any reasonable Rules adopted by the Board and Applicable Law.

6.30 **Storage in Common Area.** No one may permit anything to obstruct the Common Area or store anything on the Common Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents.

6.31 **Storage of Flammable or Hazardous Materials.** No one may store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Area or in any Lot; provided, however, that amounts of these liquids, substances or materials which are reasonable for household use may be placed in appropriate containers and properly stored.

6.32 **Subdividing Lot.** No one may attempt to further subdivide a Lot.

6.33 **Trash.** No one may allow rubbish, trash, recycling and garbage to accumulate within the Lot or Common Area. Trash and recyclables must be placed in the appropriate receptacles.

6.34 **Vacating Dwelling; Costs.** [Civ. Code § 4785] The Association shall have the power to temporarily remove any Dwelling resident for such periods and at such times as may be necessary in connection with any maintenance or repair work performed by the Association. The Owner shall provide the Association access as needed for maintenance or repair work by the Association. The costs of any temporary relocation, including loss of rental income, during such maintenance or repair work shall be paid by the Dwelling Owner affected unless another Owner is responsible for the damages pursuant to the Governing Documents. If another Owner is responsible for the damages, the responsible Owner shall pay the relocation costs. Except in case of emergency, the Association shall give notice of the need to temporarily vacate a Dwelling to the Owners and occupants not less than fifteen (15) days or more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of work, the anticipated date and time of termination of work and that the occupants will be responsible for all necessary accommodations during the relocation.

6.35 **Vehicle Maintenance.** Except for minor maintenance and repair, no one may perform any vehicle overhaul, repair, or non-emergency maintenance within the Community.

6.36 **Vehicle Use and Parking.** Parking in the Community is limited and all Owners and residents are encouraged to park vehicles within their garage and parking in the Community is subject to the following:

- 6.36.1 The following vehicles are Authorized Vehicles: standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules to adapt this restriction to all types of vehicles produced by manufacturers.
- 6.36.2 Authorized Vehicles may be parked in any portion of the Community intended for parking of motorized vehicles, subject to the Rules.
- 6.36.3 No Owner may park any vehicle in a manner so that the Association determines that the vehicle unreasonably extends beyond the boundaries of a parking space or into streets or sidewalks within the Community.

6.36.4 The following vehicles are Restricted Vehicles:

- (a) Recreational vehicles (e.g., motorhomes, travel trailers, camper vans, jet skis and boats),
- (b) Commercial-type vehicles (e.g., stake bed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines). Commercial vehicles shall not include sedans or standard size pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board of Directors,
- (c) Buses or vans designed to accommodate more than ten (10) people,
- (d) Vehicles having more than two (2) axles,
- (e) Trailers,
- (f) Inoperable vehicles or parts of vehicles,
- (g) Unregistered vehicles,
- (h) Aircraft,
- (i) Noisy or smoky vehicles, or
- (j) Any vehicle or vehicular equipment deemed a nuisance by the Board.

6.36.5 Restricted Vehicles may not be parked, stored or kept on any private street within the Community unless they are parked for brief periods defined in the Rules or they are parked within an Owner's fully enclosed garage with the door closed.

6.36.6 If a vehicle qualifies as both an Authorized Vehicle and a Restricted Vehicle, then the vehicle is presumed to be a Restricted Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board. The Association has the power to identify additional vehicles as Restricted Vehicles in the Rules to adapt this restriction to all types of vehicles produced by manufacturers.

6.36.7 The Board, in its discretion, may adopt reasonable Rules in compliance with this Section governing the operation, maintenance, storage and parking of any vehicle, including

trucks, campers, trailers, boats or commercial vehicles in the Community, including the streets, garages, driveways, and Common Area.

6.37 **Water Discharge.** No one may discharge anything other than water and residue allowed by applicable water quality ordinances into the streets, gutters and drains of the Association or into the Common Area.

ARTICLE 7 - REPAIR AND MAINTENANCE

7.1 **General; Standards of Maintenance.** [Civ. Code § 4775] The Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article, "maintenance" shall include, without limitation, painting, weatherproofing and cleaning to keep Improvements in a clean, safe, properly ventilated, watertight, dry and sanitary condition necessary to preserve the attractive appearance of the Lots, Dwellings, and the Community, and protect the values thereof. The Dwellings and Improvements on the Lots shall be kept in good condition and repair and landscaping shall be neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. The Board shall have the power to determine the standards of such maintenance.

7.2 **Division of Responsibility.** Attached hereto as Exhibit "B," and incorporated herein by reference, is a listing of the allocation of responsibility for various components in the Community.

- 7.2.1 Each Owner shall be responsible for the maintenance, repair and replacement of his or her Lot unless a responsibility has been specifically assigned to the Association on Exhibit "B." The Association shall be responsible for the maintenance, repair and replacement of the Common Area and any portion of the Lot specifically assigned to the Association on Exhibit "B."
- 7.2.2 In the event of any inconsistency between the above general provisions and the specific provisions of Exhibit "B," the provisions of Exhibit "B" shall prevail. In the event of any inconsistency among the provisions of Exhibit "B," the most specific provision shall prevail. Provided any item is not listed in Exhibit "B," the responsibility for its maintenance shall be determined in accordance with the above general provisions or as otherwise provided by Applicable Law.
- 7.2.3 Except as otherwise provided in the Governing Documents, the costs of maintenance, repair and replacement shall be borne by the party responsible for the maintenance, repair and replacement.
- 7.2.4 No Owner shall have a claim against the Association if the Owner performs or pays for any work ordinarily the responsibility of the

Association unless the Board agrees in advance that the Owner may perform the work and receive reimbursement from the Association.

7.3 Owner Improvements. Each Owner shall be responsible for the maintenance, repair, and replacement of any Improvements installed or planted anywhere within the Community by the Owner, any resident in the Owner's Dwelling, or the Owner's predecessor in interest. The Owner is also responsible for any damages to the Common Area caused by such installation, maintenance, use, or repair. Installation of any Improvement within the Community is subject to the architectural review provisions herein. Any unauthorized Improvement in the Common Area shall be considered a trespass on the Common Area and shall give the Board the right to remove the unauthorized Improvement summarily and without compensation to the party who installed it. See also Section 9.2 herein.

7.4 Access over Common Area. The Owner of the Lot shall be entitled to reasonable access over and through the Common Area, subject to the consent of the Association and to any other conditions reasonably imposed by the Association, for the purposes of performing any maintenance, repairs or replacement as required by the Governing Documents. The Association's consent shall not be unreasonably withheld.

7.5 Failure to Maintain. If an Owner fails to maintain, repair or replace the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within a reasonable time from the giving of such notice. If the Owner fails to complete such maintenance within said time period, the Board may, following a Notice and Hearing, cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by Applicable Law). The Association shall have an easement over the Lots pursuant to the Article entitled "The Community" herein for the purpose of performing the work described herein.

7.6 Termite Control. [Civ. Code § 4780] The responsibility for control of wood destroying pests or organisms shall be as follows:

- 7.6.1 Each Owner shall be responsible for the maintenance and repair of their personal property, their Dwelling and any other Lot Improvements as required to control the presence of or damage caused by wood-destroying pests or organisms.
- 7.6.2 The Association shall be responsible for the maintenance and repair of the Common Area, as required to control the presence of or damage caused by wood destroying pests or organisms in accordance with the provisions of Civil Code section 4780. The Board shall determine the method and timing of any treatment in its sole discretion.

- 7.6.3 Neither the Association, the Board, Officers, agents nor employees shall have any liability, absent gross negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment.

7.7 *Damage Caused by Owner.* [Civ. Code § 5725]

- 7.7.1 Should any damage to the Common Area, any Lot or Dwelling result from the willful or negligent act or neglect of any Owner, or such Owner's tenants, guests, invitees, pets or other person or entity deriving any interest through such Owner, the cost of all repairs shall be borne solely by the responsible Owner. This Section applies if the owner causes damage to any Common Area in the performance of the Owner's maintenance, repairs or replacement responsibilities.
- 7.7.2 The Association shall be responsible for performing the repair of any damage to the Common Area or Improvements over which the Association has control at the responsible Owner's expense. The responsible Owner shall perform the repair of any damage to his or her own property. The Owner of any other property which sustained damage shall perform the repair of any such damage, and may charge the cost of repairs and any relocation costs to the responsible Owner.
- 7.7.3 If the responsible Owner disputes or refuses to pay any repair costs incurred by the Association or the Owner of any other property which sustained damage, the Association, after Notice and Hearing, may charge the cost of those repairs to such Owner as an Individual Assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the Association, the Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the responsible Owner shall pay the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, or the Board elects not to submit the claim, the responsible Owner shall be responsible for the total cost of repair.
- 7.7.4 All repairs performed to correct any damage shall be sufficient to return the damaged property only to its condition prior to the damage, with upgrades as may be required to conform to any applicable building codes in effect at the time the damage is repaired.

7.8 Limitation of Liability. The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or loss of any property, or the cost of repair or replacement of any damaged property or portions of such Owner's Lot unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

7.9 Damages to Lot; Water Intrusion Damage.

- 7.9.1 Each Owner shall be solely responsible for the repair of any damage to any and all interior items of his or her Dwelling and Lot, and the cost thereof, including, but not limited to, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, fixtures or other items therein, or any exterior items such as landscaping, caused by any Common Area component or Improvement or any other component or Improvement maintained by Association, including water intrusion from any Common Area source. An Owner may obtain and maintain such insurance, at his or her sole expense, to protect against any damage or loss of property, or the cost of repair or replacement of damaged Improvements for which such Owner is responsible.
- 7.9.2 The Association shall not be liable for damage to property in the Lot or Dwelling resulting from water which may leak or flow from outside of any Lot, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, unless caused by the gross negligence of the Association, its Board, Officers, agents or employees.
- 7.9.3 Owners shall cause notice to be given to the Association of any water within, or water intrusion into, their Lot immediately upon discovery of such leak or water intrusion. Within twenty-four (24) hours or sooner of the discovery of a leak or water intrusion, Owner shall cause all water to be extracted, and the Dwelling and Lot cleaned. If Owner has not had water extraction and cleaning performed within forty-eight (48) hours of discovery of the leak or water intrusion, the Association may cause such work to be done and assess the cost of the work to the Owner as an Individual Assessment.
- 7.9.4 The Association is authorized by the Section entitled "General Powers and Authority" to enter the Lot to perform water extraction and related repairs on an emergency basis.
- 7.9.5 If repairs are required to a Dwelling or Lot following a leak or water intrusion, Owner shall cause all work to be performed by a licensed contractor experienced in water extraction and mold

remediation. Containment procedures designed to prevent contamination of the affected Lots, other Lots and the Common Areas shall be utilized.

- 7.9.6 If the Owner or occupants are required to vacate the Dwelling during the water extraction or repairs, the Section entitled "Vacating Dwelling; Costs" shall apply. Owner and his or her tenants, guests, invitees, agents and employees shall hold the Association harmless for any claim for property damage or personal injury alleged to arise from the presence of mold or fungi in his or her Lot unless the damages or injuries were caused by the gross negligence of the Association, its Board, Officers, agents or employees.

7.10 **Owner Notification to the Association.** If, at any time, an Owner discovers or otherwise becomes aware of any condition within the Common Area or on any Lot, including, but not limited to, water entry, water damage or mold, that may constitute a risk to the health, safety or welfare of the Owners, their family members, tenants, and any other persons entering the Community, the Owner shall notify Association representatives of the condition as soon as possible.

ARTICLE 8 - COMMON WALLS AND FENCES

8.1 **Party Walls.** Each wall and fence which is built as a part of the original construction of the Dwellings and placed on the dividing line between the Lots shall constitute a Party Wall (thus the term "Party Walls" refers to both shared walls and fences). To the extent not inconsistent with the provisions of this Article, the general rules of Applicable Law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

8.2 **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the Party Wall in equal proportion to such use.

8.3 **Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the Party Wall may restore it, and if the other Owner thereafter makes use of the Party Wall, they shall contribute to the cost of restoration thereof in equal proportion without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

8.4 **Weatherproofing.** Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his or her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

8.5 **Party Wall Easements.** In all cases where a structural Party Wall constituting a portion of a single Dwelling, or a structural Party Wall constituting a common wall or fence for two (2) Dwellings, is located upon the dividing line between adjacent Lots; the Owners of said adjoining Lots shall have reciprocal mutual nonexclusive easements for the maintenance of the Party Wall, the reconstruction of the Party Wall in the event of the partial or total destruction of the same, drainage associated with the Party Wall or the Dwelling of which the Party Wall is a part, and an easement to accommodate the foundation and/or roof or eaves encroachment as depicted in the original design, plans and specifications which were the basis for the original construction of the Dwelling or Dwellings on said Lot or Lots. The Owner of a Lot having a structural Party Wall situated on the boundary line between his or her Lot and the adjoining Lot shall not attach anything to the outside of the Party Wall which shall protrude across the boundary line into the adjoining Lot, and the Owner of the adjoining Lot upon which such Party Wall is situated shall not attach anything to the outside of the Party Wall without the consent and permission of the Owner of the adjoining Lot upon which the Dwelling of which the Party Wall is a part is situated.

8.6 **Rights of Contribution Are Appurtenant.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

8.7 **Dispute Resolution.** In the event of any dispute between Owners concerning a Party Wall, or sharing the cost of repair or replacement of any Party Wall, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Association's Board of Directors who shall be empowered to decide the dispute. The Board's decision on the matter shall be conclusive and binding on the parties.

ARTICLE 9 - ARCHITECTURAL AND DESIGN CONTROL

9.1 **General.** [Civ. Code § 4760] Any change or Improvement to the exterior of a Dwelling or a Lot shall be governed by this Article. Changes or Improvements to the Common Area by the Association do not need to comply with the requirements of this Article. The powers and duties set forth in this Article shall be vested in, and exercised by, the Board. The Board may establish an Architectural Committee as provided herein to assist the Board in reviewing architectural submittals; and to provide recommendations to the Board with regard to approval or disapproval of any submittal. The foregoing notwithstanding, the Board shall be solely responsible for approving or rejecting any architectural submittal.

9.2 **General Modifications Requiring Prior Approval.** Nothing may be erected, placed or planted on the exterior of any Dwelling or Lot, or on the Common Area by any Owner, nor may any excavation or demolition commence without the prior written approval of the Board in accordance with this Article. Additionally, and except as provided in Section 9.4 below, prior written Board approval shall be required for any alteration, modification, painting or other change, addition or deletion to any existing Improvement or landscaping.

9.3 ***Specific Modifications.*** The following provisions govern the specific changes and modifications outlined below:

- 9.3.1 Modifications or alterations of the exterior of any Dwelling or other portion of the Lot or Common Area to facilitate handicapped access as provided by Applicable Law must have the prior written consent of the Board. Any approval of such handicapped access modification to the Common Area may be conditioned on such modification's removal by the Owner at his or her sole expense once the handicapped access is no longer necessary for the Lot.
- 9.3.2 Installation of any landscaping, either "hard-scape" or "soft-scape," must have prior written approval of the Board. Replacement of such landscaping will require approval only if it differs from the landscaping being replaced (e.g., replacing stone walkway with concrete, or annual flowers with shrubs).
- 9.3.3 No Owner may enclose any patio, balcony, or deck without the prior written consent of the Board.
- 9.3.4 Maintenance of the landscaping, Lot and Dwelling (e.g., pruning trees, trimming shrubs, replacing annual flowers, etc.) shall not be considered a modification for purposes of this Article.
- 9.3.5 Interior shutters, blinds, curtains, drapes or other appurtenances in or on any window or door do not need prior approval but must be in conformance with any standards established by the Board. Owners shall be responsible for correcting any nonconforming appurtenances.
- 9.3.6 Except as provided by the Governing Documents, Owners shall not have the right to paint, decorate, remodel or alter the Common Area without the prior written consent of the Board.
- 9.3.7 Any new construction or modification of existing Improvements to create an accessory dwelling unit or junior accessory dwelling unit requires prior written approval pursuant to procedures in this Article and any Architectural Rules.

9.4 ***Architectural Changes Not Requiring Prior Approval.*** Notwithstanding Sections 9.2 and 9.3 above, no permission or approval shall be required to repaint in accordance with the original color scheme or as previously approved by the Board, or to rebuild or replace in accordance with plans and specifications previously approved by the Board. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his or her Dwelling any color desired, or to improve or alter any Improvements within the interior of the Dwelling; provided such Improvement or alteration does not impair or alter the Common Area, any utilities, or other systems servicing the Common Area or other Lots.

9.5 Procedure for Obtaining Approval of Architectural Changes. The procedure for obtaining approval of any architectural change shall be as follows:

- 9.5.1 Complete plans and specifications showing the nature, kind, shape, color, size, height, materials to be used and location of any proposed Improvements, alterations or landscaping, as well as the proposed contractor and any other information as required by the Board, shall be prepared by the requesting Owner and submitted to the Architectural Committee along with any fee or deposit established in the Architectural Rules. A duplicate request shall be submitted to the Board at the same time as the submittal to the Architectural Committee. The Board may establish a construction deposit and require that it be paid with the plans and specifications.
- 9.5.2 The Architectural Committee shall review the submission and provide a written recommendation as to approval or disapproval of any such submission, including the reasons for any decision, to the Board and the requesting Owner.
- 9.5.3 The Board shall review such recommendation within thirty (30) days after receipt of the Architectural Committee's written recommendation, or within sixty (60) days after receipt of the submission, whichever is earlier, and provide a written response to the requesting Owner, including an explanation of the reasons for any disapproval.
- 9.5.4 In the event the Board fails to provide a written response to the requesting Owner within sixty (60) days after receipt of the request from the Owner, the Owner may notify the Board in writing that a response has not been received. If the Board fails to respond within thirty (30) days of the receipt of the notice, approval will not be required and the related covenants shall be deemed to have been fully satisfied, so long as the proposed Improvement does not violate any requirements of the Governing Documents or Applicable Law.
- 9.5.5 Once an Owner has obtained approval for an architectural submittal, work on such approved submittal shall promptly commence and shall be completed within a reasonable time.

9.6 Architectural Rules. [Civ. Code § 4360] The Board may, in its sole discretion, adopt, amend and repeal, as it deems necessary, Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards for review by the Board and Architectural Committee and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the

Community; provided, however, that said Architectural Rules shall not be in violation of the standards required by this Restated Declaration. The Architectural Rules may also address the information which is required to be presented in connection with an architectural submittal. Unless any such Architectural Rules are complied with, an Owner's plans and specifications shall be deemed incomplete and not submitted.

9.7 Standard of Architectural Review. An architectural submittal made by an Owner shall be reviewed for conformity with the Architectural Rules. Additional factors to be considered include, but are not limited to, the quality of proposed workmanship, the design and harmony of the Improvement with existing structures, the location of the Improvement in relation to surrounding structures, topography, and finish grade elevation, Owner and contractor insurance coverage, compliance with governmental permit requirements and contractor license status.

9.8 Architectural Committee. The Architectural Committee shall consist of at least three (3) members, formed as follows:

- 9.8.1 The Board shall have the right to appoint all of the members of the committee.
- 9.8.2 Members appointed to the committee by the Board must be Members of the Association.
- 9.8.3 Members shall be appointed for terms as prescribed by the Board. All members of the committee may be removed by the Board at any time with or without cause.
- 9.8.4 The committee shall meet as often as it deems necessary to properly carry out the obligations imposed upon it, unless otherwise directed by the Board.
- 9.8.5 The vote or written consent of the majority of the committee shall be required for any recommendation.

9.9 Fee for Review. The Board shall have the right to establish a fee for the review and approval of plans and specifications which must be submitted to it pursuant to the provisions of this Article, which shall be reasonably related to the duties performed. Owners shall be responsible for the Association's costs incurred for review of their plan

9.10 Compensation. The members of the Board and Architectural Committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder. However, the Board may hire an architect or other professional to consult with the committee and Board, and the Association may compensate the architect or professional for services rendered to the Association.

9.11 Liability. Neither the Board, the Architectural Committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice

suffered or claimed on account of: (1) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (2) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (3) the development of any property within the neighborhood; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

9.12 Effect of Owner-Installed Improvements. This Section shall apply to all Improvements installed on any Lot or elsewhere in the Community, either by a current or former Owner or by that Owner's family members, agents, tenants, or anyone exercising the Owner's powers, and without regard to whether the Owner first complied with the requirements of this Article, including without limitation, the requirement for seeking and obtaining prior written approval before installing any such Improvements.

- 9.12.1 Owner shall pay all costs and expenses incurred in the construction and installation of any such Improvements, and shall be fully responsible for the maintenance, repair and replacement of such Improvements.
- 9.12.2 Owner shall be responsible for any damages to persons, property or otherwise which result from the construction, maintenance, use or continued existence of such Improvements and shall hold the Association free and harmless from any and all costs and expenses attributable to the construction, installation, maintenance, repair, or replacement of such Improvements or to their continued existence or use. The Association shall have no responsibility either for securing or maintaining insurance for any such Improvements.
- 9.12.3 Owner covenants and agrees that any such Improvements shall be constructed in strict compliance with the plans and specifications and in the exact location approved by the Association, if so approved, and shall be maintained in good condition and repair in accordance with generally accepted construction, maintenance and repair practices, and shall comply with all Applicable Laws.
- 9.12.4 15.6 Owner shall be obligated to obtain any necessary building permits and inspections and to verify compliance with all requirements imposed by law. The Association's approval of any such Improvements, if given, is limited to an approval based solely on the criteria contained in the Governing Documents and does not include a review for compliance with Applicable Laws.
- 9.12.5 All such Improvements shall be subject to the jurisdiction of the Association, acting through the Board, and to the Governing Documents; and shall be subject to an easement in favor of the

Association to perform its duties under the Governing Documents. As such, each Owner shall pay all costs and expenses incurred in removing and replacing the Improvements, if such removal is required by the Association, in its sole discretion, to perform its maintenance and repair responsibilities under the Governing Documents. The Association shall exercise such discretion reasonably and not arbitrarily.

- 9.12.6 Owner shall defend, indemnify and hold harmless the Association, its Members, Board, Officers, agents and employees from and against any and all injuries, damages, causes of action or claims which may exist or be instituted against any or all of said parties because of, or in any manner arising from or connected with, the granting of written confirmation of approval for any Improvements, the power to grant and confirm such approval in writing, or the construction, maintenance, repair, replacement, existence or use of any such Improvements.
- 9.12.7 Each Owner releases Association, its Members, Board, Officers, agents and employees from any duty or obligation to pay, or otherwise be responsible, for the cost of construction, maintenance, repair or replacement of any such Improvements, and releases said parties from any and all claims, injuries, damages and causes of action which may arise as a result of the construction, maintenance, repair or replacement of the Improvements or the continued existence or use of the Improvements.
- 9.12.8 If any Owner fails to construct, maintain or use such Improvements in accordance with any architectural approval granted by the Association and according to the terms of this Article, the Association shall have the power, at Owner's expense, either to maintain, repair or replace the Improvements or to remove the Improvements, in the Association's sole discretion.
- 9.12.9 The Association shall have the power, but not the obligation, unilaterally to record a document against the title to Owner's Lot identifying the nature, description and location of any Improvements installed by Owner, whether installed with or without the Association's approval, to put subsequent Owners on notice of their duties and obligations with respect to such Improvements under this Article.

9.13 **Enforcement.** In addition to other enforcement remedies set forth in this Restated Declaration, the Board shall have enforcement rights with respect to any matters

required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or in equity in accordance with this Section.

- 9.13.1 No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation or commencement of a suit to enjoin such work.
- 9.13.2 The Board shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Board, or if it does not conform to the plans and specifications submitted to the Board.
- 9.13.3 The Board or committee may periodically enter any Lot to ensure that construction is proceeding according to any approved plans.
- 9.13.4 If the Owner fails to remedy any noticed noncompliance within the time specified by the Board, the Board shall provide Notice and Hearing regarding the alleged noncompliance.
- 9.13.5 At the hearing, the Owner, any representative(s) of the Architectural Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance.
- 9.13.6 If a noncompliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Board, at its discretion, may grant.
- 9.13.7 If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board at its option, may pursue all legal and equitable remedies available to remedy or remove the non-complying Improvement, and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the Association, the Board may recover such expenses through the levy of an Individual Assessment against such Owner.
- 9.13.8 The approval by the Board of any plans, drawings or specifications for any work or Improvement done or proposed, or for any other matter requiring the approval of the Board under this Restated Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any

similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different location for Improvements, the size of the structure, proximity to other Dwellings or the Common Area and other factors may be taken into consideration by the Board and Architectural Committee in reviewing a particular submittal.

- 9.13.9 Notwithstanding any other provisions herein, the Board of Directors shall have the authority to obtain a restraining order or injunction at any time after discovery that work is proceeding without approval of the Board or in a manner that is different than that approved by the Board, if the Board deems such action necessary to protect the Association's interests.

9.14 ***Noncompliance with Applicable Laws.*** Neither the Association, the Board, nor the Architectural Committee shall be responsible for any noncompliance with any Applicable Law of any Improvement erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or any defect in any conditions or requirements they may have imposed with respect thereto.

9.15 ***Governmental Approval.*** Prior to commencing any alteration or Improvements approved by the Board, the Owner shall comply with all Applicable Laws. The Association shall not be obligated to enforce the provisions of this Section. Approval by the Board shall not be considered to satisfy any Applicable Law, nor shall the approval of any governmental entity be considered to satisfy the requirement of Board approval. An Owner's failure to comply with any Applicable Law may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Board, which penalties shall be the responsibility of such Owner. Each Owner, by accepting a deed to his or her Lot, agrees to reimburse the Association for any loss resulting from the violation of any Applicable Laws.

9.16 ***Conflicts Between Applicable Law and Association.*** In the event of any conflict between any Applicable Law and the Association's Governing Documents or other requirements, the more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Association from imposing conditions of approval of any proposed Improvements which are more restrictive than any Applicable Law.

ARTICLE 10 - INSURANCE

10.1 ***Fire and Casualty Insurance.*** At a minimum, the Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement cost of the Improvements in the Common Area and for which the Association is responsible pursuant to the Governing Documents. The Association may obtain, but is not required to obtain, insurance that will insure components that this Section does not require. The Association shall have no obligation to insure the Lot, Dwelling or any Improvements or fixtures such as cabinets, built-in

appliances or floor or wall coverings, fences, walls or landscaping within the Lot. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Lenders, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Restated Declaration. If required by any First Lender who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an inflation guard endorsement and an ordinance and law endorsement.

10.2 General Liability Insurance. [Civ. Code § 5805] The Association shall obtain and maintain a policy or policies insuring the Association, its Officers, Directors, agents and employees, and the Owners against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any Lots owned by the Association. Limits of liability under the insurance shall not be less than \$3 Million covering claims for wrongful death, bodily injury, and property damage arising out of a single occurrence. If the minimum amount necessary to comply with Civil Code section 5805 or any successor statute is a larger amount, the statute shall control.

10.3 Directors and Officers Liability Insurance. [Civ. Code § 5800] The Association shall obtain and maintain one or more policies of insurance which include coverage for individual liability of Officers and Directors of the Association for negligent acts or omissions of those persons acting in their capacity as Officers and Directors or at the direction of Officers and Directors. Limits of liability under this insurance shall be determined by the Board at its sole discretion. If the minimum amount necessary to comply with Civil Code section 5800 or any successor statute is a larger amount, the statute shall control.

10.4 Fidelity Coverage. The Association shall purchase and maintain fidelity coverage for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If an agent handles Association funds, such agent shall be covered by the Association's coverage. The Association's coverage may be in the form of a separate bond, a separate policy (e.g., crime policy), or may be added by endorsement to the general policies carried by the Association. The amount of coverage shall be equal to or more than the combined amount of the reserves plus total assessments for three months. The coverage must include computer fraud and funds transfer fraud. The fidelity coverage must contain a provision that it may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

10.5 Other Association Insurance. The Association shall purchase and maintain worker's compensation insurance to the extent necessary to comply with any Applicable Laws. The Association may purchase such other insurance that the Board considers necessary or advisable, including earthquake insurance coverage.

10.6 **Separation of Insureds.** Any liability policy obtained by the Association shall provide for a separation of insureds such that the insurance will apply as if each insured were the only insured.

10.7 **Waiver of Subrogation.** The Association and the Owners covenant and agree that all casualty insurance carried by the Association or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Association, Directors, Officers and Owners and their respective family members.

10.8 **Review of Insurance; Notice of Cancellation or Modification.** The limits and coverage of insurance carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion. Such policies shall include a provision for at least ten (10) days' prior written notice to the Association, and, if available, to each First Lender which is listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation or substantial modification by any party.

10.9 **Qualifications of Insurance Carriers.** The Association shall use generally acceptable insurance carriers from which to purchase and maintain the coverage required herein, preferably from carriers that are admitted to sell insurance in the State of California to the extent such insurance is available at a reasonable premium cost.

10.10 **Failure to Acquire Insurance.** The Association, and its Directors and Officers, shall have no liability to any Owner or Lender if, after a good faith effort, it is unable to obtain any insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or Association Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any Lender entitled to notice that the specific insurance will not be obtained or renewed.

The Association, and its Directors and Officers, shall also have no liability to any Owner or Lender if it does not obtain any of the insurance referenced hereunder which is not required but may be obtained at the discretion of the Association. The Board may, in good faith in its sole discretion, determine that obtaining any of the discretionary insurance is unreasonable or unnecessary under the circumstances. In making a determination as to whether to acquire any such discretionary insurance, the Board may, but is not required to, base its decision upon, among other things, a vote of the Owners.

10.11 **Trustee for Policies.** The Association, acting through its Board, is appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and, to execute loss claim forms and release forms in connection with such settlements.

10.12 Insurance Premiums. Insurance premiums for any insurance coverage obtained by the Association shall be a Common Expense.

10.13 Insurance Policy Deductibles. [Civ. Code § 5300] The Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a covered claim under the Association's property policy, the responsibility for payment of any deductible shall be as follows:

- 10.13.1 Owners shall be responsible for the deductible, if the covered loss occurs only to the Owners' real or personal property, or other property the Owner is responsible for repairing or replacing ("Owner Property").
- 10.13.2 The Association shall be responsible for the deductible if the covered loss occurs only to any real or personal property owned by Association, or other property the Association is responsible for repairing or replacing ("Association Property").
- 10.13.3 If the covered loss occurs to any Owner Property and any Association Property, or to more than one Owner's Property, the responsibility for the payment of any deductible shall be apportioned among the affected parties on the basis of the ratio of each party's insured loss to the total insured loss under that policy.
- 10.13.4 The foregoing notwithstanding, if the Board determines the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner or is the Owner's responsibility pursuant to Section 7.7 herein, such Owner shall be liable for the full amount of the deductible.

10.14 Owner Notification of Insurance. [Civ. Code §§ 5300 & 5810] The Association shall disclose such information regarding insurance coverage as and when required by any Applicable Law. Failure to disclose such information shall not impose any liability upon the Association or Board other than that provided for in such Applicable Law.

10.15 Individual Property Insurance. All Owners shall obtain and maintain insurance, at their sole expense, to protect against any damage to, or loss of the Owner's real or personal property, and the cost of repair or replacement of damaged items, including, but not limited to, any Improvements made by an Owner, any personal property, decorations, floor and wall coverings, appliances, cabinets, fixtures or other items therein, or any exterior items for which the Owner is responsible for maintenance, repair and replacement by the terms of this Restated Declaration, such as landscaping. Owner and his or her tenants, guests, invitees, agents and employees shall hold the Association, its Officers, Directors, agents and employees harmless for any claim for property damage or

personal injury alleged to arise from the failure of the Association, its Officers, Directors, agents or employees to verify and ensure that every Owner has complied with this requirement to obtain and maintain insurance.

10.16 **Individual Liability Insurance.** An Owner may carry any personal liability and property damage liability insurance with respect to his or her ownership of a Lot that he or she desires.

ARTICLE 11 - DAMAGE OR DESTRUCTION

11.1 **Duty to Restore Lot.** [Civ. Code § 4775] If all or any portion of any Lot or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Lot to rebuild, repair or reconstruct the Dwelling and the Lot in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the Board. The Owner of any damaged Lot or Dwelling and the Board shall be obligated to proceed with all due diligence hereunder, and such Owner shall mitigate any danger presented by such damage or destruction and thereafter cause reconstruction to commence within three (3) months after the damage occurs and be completed within one (1) year after damage occurs, unless prevented by causes beyond his or her reasonable control.

11.2 **Duty to Restore Common Area.** If all or any portion of the Common Area is damaged or destroyed, it must be repaired or replaced promptly by the Association unless:

- 11.2.1 The Community is terminated.
- 11.2.2 Repair or replacement would be illegal under an Applicable Law.
- 11.2.3 The damaged or destroyed portion of the Community is deannexed in accordance with Section 2.3, above.

11.3 **Cost of Repair.** Any cost of repair or replacement of the Common Area in excess of insurance proceeds and reserves shall be a Common Expense, levied against Lots as a Special Assessment. If Owner approval is required by the Governing Documents or Applicable Law for the Special Assessment and the Owners do not approve the Special Assessment, the Association shall not be obligated to repair or replace the Common Area to its original condition and may instead make whatever repairs are possible with the funds available.

11.4 **Repair Plans.** Subject to Section 10.3 above, the Common Area must be repaired and restored substantially in accordance with either the original plans and specifications or other plans and specifications which have been approved in writing by the Board and a majority of Owners. Updates to conform to currently applicable building codes and current industry standards shall be deemed to be repairs and restoration in accordance with the original plans.

11.5 Insurance Proceeds. An insurance trustee appointed by the Board or insurance company, or if there is no trustee, then the Board, acting as provided in Section 10.11, shall hold any insurance proceeds in trust for the Association, Owners and Lenders. Subject to the provisions of this Restated Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property. The Association shall receive any excess proceeds left after restoration or repair of the damaged property. The Owners and Lenders are not entitled to receive payment of any portion of the excess proceeds unless the Community is terminated.

11.6 Disbursements to Owners and Lenders for Damages to Lots. In the event of damage to or destruction of the Improvements on more than one Lot, any insurance proceeds from an Association insurance policy shall be distributed to Owners and Lenders proportionately according to the ratio of the insured loss on each Lot to the total insured loss to all Lots at the time of the destruction as determined by the insurance carrier adjusting the loss. Any insurance proceeds shall be used for repair and restoration of the damaged Lots and Dwellings.

11.7 Disbursements to Owners and Lenders if Community is Terminated. If the Community is terminated, any insurance proceeds distributed to Owners and Lenders shall be distributed in proportion to the amount of the insured loss on each Owner's Lot as determined by an independent insurance adjuster. That determination shall be performed by an independent insurance adjuster who shall be selected by the Board and who shall either be a member of, and apply the standards of, a nationally recognized insurance adjusting organization or shall have at least fifteen (15) years of experience in adjusting residential insurance claims.

11.8 Certificates By Board. The trustee, if any, may rely on the following certifications in writing made by the Board:

- 11.8.1 Whether or not damaged or destroyed property is to be repaired or restored; and
- 11.8.2 The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

11.9 Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Owners or Lenders, then the Board and the trustee, if any, shall obtain and may rely on a title insurance company's or attorney's title certificate or a title insurance policy based on a search of the Official Records of the County Recorder, stating the names of the Owners and the Lenders.

ARTICLE 12 - EMINENT DOMAIN

12.1 Association as Trustee for Owners. If all or part of the Common Area is threatened to be, or 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, shall be payable to the Association as trustee for all Owners and Lenders according to the loss or damages to their respective interests in the Common Area. Association, acting through the Board, shall have the right to act on behalf of the Owners with respect to the negotiation, settlement and litigation of the issues with respect to the taking and compensation affecting the Common Area. Each Owner hereby designates and appoints the Association as his or her attorney in fact for such purposes.

12.2 **Condemnation of a Lot.** If all or any part of a Lot is taken by eminent domain, the award shall be disbursed to the Owner of the Lot subject to the rights of the Owner's Lenders. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Community, including membership in the Association, and the interest of the remaining Owners shall be adjusted accordingly.

ARTICLE 13 - RIGHTS OF LENDERS

13.1 **General.** No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Lender on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

13.2 **No Right of First Refusal.** This Restated Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Lot can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any First Lender to: (1) foreclose or take title to a Lot pursuant to the remedies provided in the mortgage, (2) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a Borrower, or (3) sell or lease a Lot acquired by the Lender.

13.3 **Unpaid Dues or Charges.** Where the Lender of a First Mortgage of record or other purchaser of a Lot obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his or her successors and assigns, shall not be liable for the share of the Common Expenses or Assessments made by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Lots, including such acquirer, his or her successors and assigns.

13.4 **Action Requiring Lender Approval.** Except as provided by statute in case of condemnation or substantial loss to the Lots and Common Area, approval by at least fifty-one percent (51%) of the Eligible Lenders (based upon one (1) vote for each Mortgage owned), is needed to:

13.4.1 Abandon or terminate the Community (except for abandonment or termination provided by Applicable Law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain).

- 13.4.2 Change the pro rata interest or obligations of any individual Lot for the purpose of (1) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (2) determining the pro rata share of ownership of each Lot in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner.
- 13.4.3 Partition or subdivide any Lot.
- 13.4.4 Abandon, partition, subdivide, encumber, sell or transfer the Common Area, or any property owned, directly or indirectly, by Association. (The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association is not a transfer in the meaning of this clause.)
- 13.4.5 Use hazard insurance proceeds for losses to any of the Community (whether to Lots or to Common Area) for other than the repair, replacement or reconstruction of such property.

13.5 *Payment of Taxes and Insurance.* First Lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area property. First Lenders making such payments shall be owed immediate reimbursement from the Association.

13.6 *Priority of Distribution of Proceeds or Awards.* Any other provision herein contained to the contrary notwithstanding, no provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the First Lender pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

13.7 *Notification of Lender.* Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any Eligible Lender will be entitled to timely written notice of:

- 13.7.1 Any condemnation loss or any casualty loss which affects a material portion of the Community or the Lot insured or guaranteed by such Eligible Lender;
- 13.7.2 Any default in the performance by an Owner of any obligation under the Governing Documents not cured within sixty (60) days;
- 13.7.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

13.7.4 Any proposed action which would require the consent of a specified percentage of Eligible Lenders as required by the Governing Documents.

13.8 **Termination of Professional Management.** Provided professional management has previously been required by any Eligible Lender, any decision to establish self-management by the Association shall require the consent of at least sixty-seven percent (67%) of the Voting Power of the Association and at least fifty-one percent (51%) of Eligible Lenders; provided that so long as any Mortgage which is a lien on a Lot is insured or guaranteed by the Federal Housing Administration, any termination and failure to replace professional management shall require the prior written approval of the Federal Housing Administration.

13.9 **Inspection of Documents, Books and Records.** The Association shall make available to Eligible Lenders, current copies of the Governing Documents and the accounting books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

13.10 **Non-Curable Breach.** Any Lender who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Restated Declaration that is non-curable or of a type that is not practical or feasible to cure.

13.11 **Loan to Facilitate.** Any First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by a 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 protections of this Article.

13.12 **Lenders Furnishing Information.** Any Lender shall be entitled and authorized to furnish information to the Board concerning the status of any Mortgage.

13.13 **Financial Statement.** Any First Lender shall be entitled, on written request therefor, to have the Association provide a review of the financial statement for the immediately preceding fiscal year, which statement shall be furnished within a reasonable time following such request.

13.14 **Termination without Substantial Destruction.** Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Community, the consent of at least sixty-seven percent (67%) of the Voting Power and the approval of fifty-one percent (51%) of Eligible Lenders shall be required to terminate the Community; provided that if termination is for reasons other than substantial destruction or condemnation, the agreement of sixty-seven percent (67%) of Eligible Lenders is required.

ARTICLE 14 - ENFORCEMENT

14.1 **Right to Enforce; Remedies.** [Civ. Code §§ 5850 et seq., 5900 et seq., 5925 et seq.; Corp. Code § 7231] The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the Governing Documents. Each remedy provided in this Article, this Restated Declaration and under Applicable Law shall be considered cumulative and not exclusive.

14.2 **Board Discretion Whether to Enforce.** [Corp. Code § 7231] In deciding whether to take any action to enforce the restrictions, conditions, covenants, reservations, liens and changes in the Governing Documents, the Board may exercise its discretion using the business judgment rule of Corporations Code section 7231.

14.3 **Nuisance.** [Civ. Code § 3479] The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in the Governing Documents is violated in whole or in part, is declared to be and constitute a nuisance, and every remedy allowed by Applicable Law or equity against a nuisance, either public or private, shall be applicable against every act or omission or incident resulting in a nuisance and may be exercised by any Owner and the Association.

14.4 **Failure to Enforce.** Failure by the Association or any Owner to enforce any provisions of the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

14.5 **Nonwaiver of Remedies.** Each remedy provided for in this Restated Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

14.6 **Violation of Applicable Law.** Any violation of any Applicable Law pertaining to the ownership, occupancy or use of any Lot within the Community is declared to be a violation of this Restated Declaration and subject to any or all of the enforcement procedures herein set forth.

14.7 **Compliance with Applicable Law.** [Civ. Code §§ 5850 et seq., 5900 et seq., 5925 et seq. & 5975; Corp. Code § 7231] All activities to enforce the provisions of the Governing Documents shall be conducted in accordance with all Applicable Laws. This Section shall apply to both the Association and to all Owners.

14.8 **Attorneys' Fees.** [Civ. Code § 5975] In the event an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its attorneys' fees and costs so incurred, whether or not such controversy proceeds to litigation. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Said costs and attorneys' fees shall constitute a lien on the Lot which is enforceable as an Assessment pursuant to the Governing Documents. This Section shall also apply to attorneys' fees incurred to collect any post-judgment costs.

ARTICLE 15 - AMENDMENTS

15.1 **Owner Approval of Amendments.** [Civ. Code §§ 4260, 4270, 4275 & 5100 et seq.]

- 15.1.1 Subject to this Article, this Restated Declaration may be amended by the following procedure or as otherwise specified in Section 15.4 herein.
- 15.1.2 First, the vote will be conducted by a secret ballot in accordance with the requirements of Applicable Law. Second, the total number of ballots returned must come from at least a quorum of the Voting Power. For purposes of this Article, a quorum shall be more than fifty percent (50%) of the Voting Power. Third, the vote must remain open for at least thirty (30) days after the date the ballots are mailed, but the initial deadline may be extended periodically after that date, if a quorum of ballots has not been received by the initial deadline, and may be extended automatically for additional periods of time until a quorum of ballots has been returned. Fourth, the amendment must be approved by the affirmative vote of at least seventy five percent (75%) of the ballots cast. A blank ballot or other action indicating an intention to abstain will be deemed to have a neutral effect, so it will be counted toward the quorum only, but it will not be counted as a ballot cast for purposes of computing the seventy-five percent (75%) approval.
- 15.1.3 An amendment becomes effective after (1) the approval of the required percentage of Owners has been given, (2) that fact has been certified in the form of a written document executed and acknowledged by an Officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association and (3) the document has been recorded in San Diego County.
- 15.1.4 An amendment may change this Restated Declaration in any manner, including adding or deleting restrictions or increasing or decreasing the burdens on the Lots as long as the amendment is approved as specified in this Article or pursuant to the Civil Code.

15.2 **Eligible Lender Approval of Amendments.** In addition to the approval required by Section 15.1 above, the approval of fifty-one percent (51%) of Eligible Lenders shall be required to add or amend (1) any provision which is for the express benefit of holders or insurers of First Mortgages, or (2) any material provisions of this Restated Declaration which establish, provide for, govern or regulate:

- 15.2.1 Voting rights;

- 15.2.2 Increases in Assessments greater than twenty-five percent (25%), Assessment liens or the priority of such liens;
- 15.2.3 Reductions in reserves for maintenance, repair and replacement of the Common Area;
- 15.2.4 Insurance or fidelity bonds;
- 15.2.5 Rights to use the Common Area;
- 15.2.6 Responsibility for maintenance and repair;
- 15.2.7 Expansion or contraction of the Community, or the addition to, annexation to, or withdrawal of property from the Community;
- 15.2.8 Restoration or repair of the Community after damage or partial condemnation, in a manner other than that specified in the Governing Documents;
- 15.2.9 Convertibility of Lots into Common Area, or Common Area into Lots;
- 15.2.10 Restrictions on leasing of Lots;
- 15.2.11 Imposition of any restriction on the right of an Owner to sell, transfer or otherwise convey his or her Lot; or
- 15.2.12 Any provisions that expressly benefit mortgage holders, insurers or guarantors.

15.3 *Eligible Lender Approval Response.*

- 15.3.1 An Eligible Lender who receives a written request to approve additions or amendments by certified or registered mail, return receipt requested, addressed to the address provided by such Eligible Lender, who does not deliver or post to the requesting party a negative response within sixty (60) days after the notice of the proposed addition or amendment, shall be deemed to have approved such request.
- 15.3.2 No Lender may charge a fee in connection with reviewing a request for a response. Any response from a Lender which only requests a fee for review shall not be deemed a "negative response" for the purposes of determining Lender consent within the meaning of this Section.

15.4 *Amendment of Restated Declaration or Bylaws by Board Vote.*

- 15.4.1 The Board of Directors shall have the power to amend this Restated Declaration or the Bylaws, as the case may be, but only as this Section permits. By a majority vote of the full Board, the Board shall have the power to prepare and adopt or, in the case of the Restated Declaration, to record an amendment for the following purposes:
- (a) To correct any printing or grammatical error or omission in this Restated Declaration or the Bylaws.
 - (b) To make any change in the Restated Declaration or Bylaws required by a change in any Applicable Law, including court decisions, which obligate Association, the Board or the Owners to conform their conduct to the terms of the Applicable Law.
 - (c) To make any change in the Restated Declaration or Bylaws needed to comply with any requirements of an Institutional Lender.
- 15.4.2 If the Board approves an amendment using the procedure in this Section, the amendment shall not be recorded or filed until the following procedure is implemented. The Board shall first send notice of such action to the Owners, which notice shall include the text of the proposed amendment and an opinion from legal counsel that the proposed change in the Governing Documents falls within one of the purposes listed above.
- 15.4.3 An amendment shall be considered ratified, unless within thirty (30) days after the date such notice is sent to the Owners, the Owners entitled to cast twenty percent (20%) of the votes in the Association sign a written petition to reconsider the Board's action and file it with the Board. If such a petition is filed, the Board shall call a special meeting of the Members to reconsider the Board's action. At the meeting, unless a majority of the Voting Power of the Association rejects the proposed amendment, the amendment shall be considered ratified, whether or not a quorum is present at the special meeting.
- 15.4.4 This Section shall not restrict the powers of the Owners to amend this Restated Declaration or the Bylaws by any other method, but is intended to authorize a simple process for amendment where the property rights of Owners are not materially or adversely affected.
- 15.4.5 All Lenders who record Mortgages after the recordation of this Declaration shall automatically be deemed, with each such

recording, to have subordinated their respective interests to any subsequently recorded amendment or restatement to this Declaration provided that any approvals required by this Article 14 or Civil Code section 4275 has been obtained in accordance with the provisions set forth herein or the court.

15.5 Restatement of Declaration. Upon obtaining any approvals required by this Article 14 or Civil Code section 4275, the Board has the right, by resolution without the necessity of consent by the Owners, to restate this Declaration rather than recording only an amendment. Such restatement shall be effective upon execution of the restatement by any two (2) officers of the Association and its recordation. The restatement shall replace the prior Declaration and its amendments in their entirety, without affecting the priority of the Declaration in the chain of title to all properties that are subject to the Declaration as established by the Declaration on its initial date of recordation.

15.6 Statute of Limitations to Challenge Amendments. No action to challenge the terms or validity of any amendment to this Restated Declaration or to the Bylaws may be made more than one (1) year after the recording date in the case of an amendment to the Restated Declaration, or more than one (1) year after the official tally of the vote in the case of an amendment to the Bylaws.

ARTICLE 16 - GENERAL PROVISIONS

16.1 Term. The provisions of this Restated Declaration shall continue in effect for a term of fifty (50) years from the date of recordation. Thereafter, it shall be automatically extended for successive periods of ten (10) years, until the membership of the Association decides to terminate it. This Section shall not preclude amending this Restated Declaration during the term of its existence.

16.2 Severability. The provisions of this Restated Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision. If for any reason this Restated Declaration is declared completely invalid in its entirety, the Original Declaration shall be deemed to have survived and thereafter become effective without any further action.

16.3 Binding. This Restated Declaration, as well as any amendment thereto and any valid action or directive made pursuant to it, shall be binding on the Owners and their heirs, grantees, tenants, successors, and assigns.

16.4 Interpretation. [Civ. Code § 4215] The provisions of this Restated Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a common interest development. All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board, and its decision shall be final, binding and conclusive on all of the parties affected.

16.5 **Limitation of Liability.** The liability of any Owner for performance of any of the provisions of this Restated Declaration shall terminate upon sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Lot but only with respect to obligations arising from and after the date of the divestment.

16.6 **Fair Housing.** [Gov. Code § 12956.1] Neither the Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Lot to any person on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of section 12955, or ancestry or any other classification prohibited by Applicable Law.

16.7 **Number and Headings.** As used in this Restated Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Restated Declaration, and shall not affect the interpretation of any provision.

16.8 **Variances.** The Board may authorize variances from compliance with any of the architectural or use provisions of this Restated Declaration as follows:

- 16.8.1 Variances may be granted, without limitation, to restrictions upon use, restrictions on repair and maintenance, and architectural restrictions, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant.
- 16.8.2 Variances shall be in writing and shall become effective upon final approval by the Board.
- 16.8.3 When a variance is granted, no violation of the Restated Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Restated Declaration for any purpose except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all Applicable Laws affecting the use of the premises, including, but not limited to, zoning ordinances and Lot set back lines or requirements imposed by the County of San Diego or any other governmental authority.
- 16.8.4 Association may charge a reasonable fee to cover any costs associated with the variance approval process, or for issuance of a variance.
- 16.8.5 The Board may enact additional Rules regarding the variance approval process, the circumstances under which a variance may be granted, and may require the execution of indemnity or other

agreements by the Owner as a condition to issuance of a variance.

16.9 Governing Document Priorities. In the event of a conflict among the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) this Restated Declaration, (2) the Articles, (3) the Bylaws, and (4) the Rules.

16.10 Conflict with Applicable Laws. Provided any Applicable Law is inconsistent with any provision or provisions of the Governing Documents, and compliance with that Applicable Law is mandatory, neither the Association, the Board, nor any member thereof shall have any liability for complying with the Applicable Law and not with the inconsistent provision or provisions of the Governing Documents.

16.11 References to Code Sections. Statutes or administrative regulations that are shown in brackets at the beginning of a section or paragraph in this Restated Declaration are intended to show that the respective section or paragraph is based on the particular statute or administrative regulation referred to in the brackets. Unless otherwise noted, all references are to statutes and administrative regulations of the State of California. Any issues not addressed expressly by the Governing Documents shall be controlled by relevant provisions of the Davis-Stirling Common Interest Development Act (Civil Code section 4000 et seq.) and the California Corporations Code and by judicial interpretations of these statutes, whether the Association is incorporated or not. In the event any of the Applicable Laws referenced herein are amended, modified, or otherwise changed, the references herein shall be deemed to refer to the Applicable Laws as amended, modified or otherwise changed. If an Applicable Law is deleted, any reference herein shall be deemed to refer to any successor Applicable Law.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of Restrictions this 11th day of January, 2022.

ASSOCIATION:

VIA VERDE ESTATES, INC.

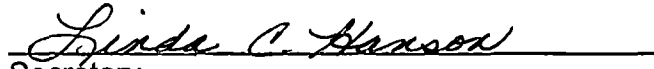
a California nonprofit mutual benefit corporation

By:


President

Kevin A Hall
(Print Name)

By:


Secretary

Linda C. Hanson
(Print Name)

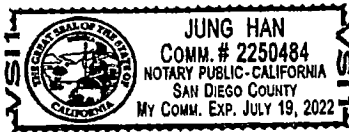
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SAN DIEGO On this 11th Day of JANUARY 20 22
On 1/11/2022 Before me, JUNG HAN, Notary Public
Date Here Insert Name and Title of Officer
Personally appeared KEVIN ANTHONY HALL
LINDA CAROL HANSON
Name(s) of Signer(s)

Who 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) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.
Signature Jung Han
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document of fraudulent reattachment of this form to an unintended 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)

<p>Signer's Name: _____</p> <p><input type="checkbox"/> Corporate Officer- Title(s): _____</p> <p><input type="checkbox"/> Partner <input type="checkbox"/> Limited <input type="checkbox"/> General</p> <p><input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact</p> <p><input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator</p> <p><input type="checkbox"/> Other: _____</p> <p>Signer is Representing: _____</p>	<p>Signer's Name: _____</p> <p><input type="checkbox"/> Corporate Officer- Title(s): _____</p> <p><input type="checkbox"/> Partner <input type="checkbox"/> Limited <input type="checkbox"/> General</p> <p><input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact</p> <p><input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator</p> <p><input type="checkbox"/> Other: _____</p> <p>Signer is Representing: _____</p>
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AMENDED AND RESTATED DECLARATION – VIA VERDE ESTATES, INC.

(64)

FINAL OCTOBER 26, 2021

EXHIBIT "A" - COMMUNITY LEGAL DESCRIPTION

Lots 1 through 113, inclusive, and Lot 115 of Escondido Tract No. 596, in the City of Escondido, County of San Diego, State of California, according to the Map thereof No. 11248, filed in the Office of the County Recorder of San Diego County on June 5, 1985.

EXHIBIT "B" - MAINTENANCE LIST

MAINTENANCE MATRIX ASSOCIATION/OWNER DIVISION OF MAINTENANCE AND REPAIR RESPONSIBILITY

The following is a listing of the items within the Community the maintenance, repair and replacement duty for which Owners and the Association are responsible in accordance with Section 7.2 of the Restated Declaration. This does not eliminate the Owner's responsibility to request and receive architectural approval pursuant to the Governing Documents or supersede the Owner's obligations under Section 7.7 of the Restated Declaration or any other similar provision in the Governing Documents.

COMPONENT(S)	OWNER	ASSOC.
Air Conditioning System - Each Dwelling	X	
Appliances - Built-in	X	
Appliances - Free Standing	X	
Balcony – See "Patio"		
Bathtub Waste and Overflow	X	
Cabinets - in Dwellings	X	
Carpeting - in Dwellings	X	
Carport/Driveway/Parking Space - Concrete and Asphalt Surfaces	X	
Caulking - Exterior	X	
Caulking - Interior	X	
Ceilings	X	
Common Area Improvements		X
Crawl Spaces in Attic (including personal contents)	X	
Doorbell - Exterior Components/Button Switch	X	
Doorbell - Interior Components; Wiring	X	
Doors - Entry - Frame & Door	X	
Doors - Entry - Locks and Hardware	X	
Doors - Entry - Painting - Exterior Surface	X	
Doors - Entry - Painting - Interior Surface	X	

COMPONENT(S)	OWNER	ASSOC.
Doors - Entry - Weather Stripping/Waterproofing	X	
Doors - Interior	X	
Doors, Screen/Storm/Security	X	
Doors, Sliding Glass	X	
Doors, Sliding Glass - Frame and Tracks	X	
Doors, Sliding Glass - Screen	X	
Drainage Systems (e.g., ditches, catch basins)		X
Drains - Bathtubs, Showers, Sinks	X	
Drains - Curb	X	
Drains - Yards	X	
Dryer Vents - Cleaning	X	
Dryer Vents - Repair	X	
Drywall - Damage Repairs (e.g., cracks, inside minor localized water damage, dents, holes, etc.)	X	
Drywall - Interior - Replace	X	
Electrical Panel/Circuit Breakers/Interior	X	
Electrical Switches, Sockets, Wall Plates – Interior	X	
Electrical Wiring - Interior	X	
Exhaust Fans	X	
Exterior Building Surfaces	X	
Exterior Faucets, Handles, Washers	X	
Exterior Lighting Fixtures (Common Area)	X	
Fences - Common Area		X
Fences - Individual	X	
Fireplace - Chimney - Exterior and Spark Arrestor	X	
Fireplace - Chimney Flue	X	
Fireplace - Chimney - Interior - Cleaning	X	

COMPONENT(S)	OWNER	ASSOC.
Fireplace - Fire Brick (fire box) ^{1/}	X	
Fireplace - Mantelpiece, Trim and Facing	X	
Floor - Structural	X	
Floor Coverings - Carpet, Vinyl, Tile and Wood	X	
Front Entry Landings	X	
Furnace - Dwelling Systems	X	
Garage Door Openers	X	
Garage Doors - Replacement	X	
Garbage Disposal	X	
Gas Lines - Below Ground	X	
Glass - Recreation Area	X	
Glass - Dwelling Windows/Doors	X	
Gutters & Downspouts	X	
Hose Bibs	X	
Insulation	X	
Landscaping – Balconies	X	
Landscaping - Common Area; Greenbelt		X
Landscaping - Patios/Backyards	X	
Lighting Fixtures - Common Areas		X
Lighting Fixtures - Inside Dwellings	X	
Lighting Fixtures - Outside – Front	X	
Lighting Fixtures - Outside – Patio	X	
Linoleum & Vinyl Flooring - Inside Dwellings	X	
Mailboxes	X	
Painting – Interior	X	
Patio/Balcony Deck Membranes/Waterproofing	X	

^{1/} Ceramic brick walls of fireplace.

COMPONENT(S)	OWNER	ASSOC.
Patio/Balcony Deck Railings - Painting (Inside/Outside Surfaces)	X	
Patio/Balcony Deck Railings - Replacement	X	
Patio/Balcony Painting	X	
Plumbing Fixtures - Interior (Toilets/Tubs/Sinks/Faucets, etc.)	X	
Plumbing Lines - Inside Dwelling, if not located behind or within walls, floors or ceilings	X	
Plumbing Lines - Located within floors, behind or within walls or ceilings, and in Common Area	X	
Pool, Pool Building, Jacuzzi, Equipment		X
Pressure Regulators	X	
Railings and Planter Boxes - Dwellings	X	
Roof Decking	X	
Roof Flashing & Other Roofing Components	X	
Roof Shingles/Tiles	X	
Roof Underlayment	X	
Roof Vents	X	
Sewer Lines and Back- Ups - Common Use Portion of Line		X
Sewer Lines and Back-Ups - Single Use	X	
Sidewalks - Common Areas	X	
Slab	X	
Sliding Patio Door Flashing/Waterproofing	X	
Sliding Patio Door Frames & Tracks	X	
Sliding Patio Door Hardware	X	
Sliding Patio Doors	X	
Smoke Alarm	X	
Spraying for Household Pests (Ants, Fleas, etc.)	X	
Spraying for Landscaping Pests on Common Area		X
Spraying for Landscaping Pests on Lots	X	

COMPONENT(S)	OWNER	ASSOC.
Streets		X
Stucco Painting/Coloring	X	
Stucco Repair & Replacement	X	
Termite Treatment - Common Area		X
Termite Inspection	X	
Toilet - Wax Ring	X	
Trim - Wood - Exterior - Maintenance & Replacement	X	
Trim - Wood - Exterior - Painting	X	
Walls - Bearing, Studs, Frames, Tiedowns, Other Structural Items	X	
Walls - Non-bearing	X	
Wallpaper/Paneling	X	
Water Heater - Common Area		X
Water Heater - Individual	X	
Water Softeners	X	
Window and Slider Screens	X	
Window Flashing/Waterproofing	X	
Window Frames	X	
Window Hardware	X	
Wiring - Cable TV	X	
Wiring - Electrical - From Breaker to Interior	X	
Wiring - Electrical - From Outside to Breaker in Dwelling	X	
Wiring - Telephone	X	