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VILLAGE PARK RECREATION CLUB NO.  
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## AMENDED AND RESTATED

## DECLARATION

## OF

## COVENANTS, CONDITIONS AND RESTRICTIONS

## VILLAGE PARK RECREATION CLUB NO. FOUR

GOVERNMENT CODE SECTION 12956.1 REQUIRES THAT A COVER PAGE CONTAINING THE FOLLOWING STATEMENT BE DISTRIBUTED WITH ANY DECLARATION OF RESTRICTIONS

**"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."**

AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
  
VILLAGE PARK RECREATION CLUB NO. FOUR

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**AMENDED AND RESTATED**  
**DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
  
**VILLAGE PARK RECREATION CLUB NO. FOUR**

The Amendment of Declaration of Covenants, Conditions and Restrictions and Restatement Thereof, executed in February 1975, by AVCO COMMUNITY DEVELOPERS, INC., a California corporation ("Declarant"), recorded on September 26, 1975 as File/Page 75-264127 in the office of the County Recorder of San Diego County, California, which affects all of the real property located in the City of Encinitas, San Diego County, California, described as ("Properties"):

Lots 457 through 559, inclusive of Village Park Unit No: 12 according to Map thereof No. 7788 filed in the Office of the County Recorder of San Diego County, California on November 7, 1973; and

Lots 560 through 639, inclusive of Village Park Unit No. 13 according to Map thereof No. 7833 filed in the Office of the County Recorder of San Diego County, California on December 27, 1973; and

Lots 640 through 687, inclusive, of Village Park Unit No. 14 according to Map thereof No. 8011 filed in the Office of the County Recorder of San Diego County, California on August 29, 1974.

Lots 688 through 738, inclusive, of Village Park Unit No. 15 according to Map thereof No. 8032 filed in the Office of the County Recorder of San Diego County, California on October 9, 1974.

IS HEREBY AMENDED AND RESTATED in its entirety to read as follows:

**RECITALS**

A. On October 30, 1974 Declarant executed a Declaration of Covenants, Conditions and Restrictions which was thereafter recorded in the Office of the San Diego County, California, Recorder on November 4, 1974 as File No. 74-292660 covering the lots contained within Village Park Unit No. 12 as described above.

B. On February 26, 1975 Declarant executed a Declaration of Covenants, Conditions and Restrictions which was thereafter recorded in the Office of the San Diego County, California Recorder on March 3, 1975, as File No. 75-048512 covering the lots contained within Village Park Unit No. 13 as described above; and

C. On July 17, 1975 Declarant, recorded an Amendment of Declaration of Covenants, Conditions and Restrictions and Restatement Thereof ("Original Declaration"), which document combined and amended the Declarations referred to in recitals A and B and which added to the properties subject to such Declaration Lot 738 of Village Park Unit No. 15.

D. Thereafter, pursuant to Article VII, Section 5, of said Amendment of Declaration of Covenants, Conditions and Restrictions and Restatement Thereof the lots contained within Village Park Unit No. 14 and the remaining Lots contained within Village Park Unit No. 15 were annexed to the properties and became subject to the Original Declaration.

E. Pursuant to Section 1356 of the California Civil Code, and as reflected by the certificate attached hereto, the Owners in excess of fifty-percent (50%) of the Lots comprising the Properties have voted to amend and restate the Original Declaration. It is the intention of said Owners to replace the Original Declaration, in its entirety, with the recordation of this Declaration. As so amended and restated, the covenants, restrictions and conditions set forth herein constitute a general plan for the protection and benefit of all of the Properties and shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property, or any portion thereof, and shall inure to the benefit of each Owner thereof.

#### **ARTICLE I. DEFINITIONS**

Section 1. "Articles" shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended.

Section 2. "Association" shall mean and refer to VILLAGE PARK RECREATION CLUB NO. FOUR, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

Section 3. "Board" shall mean and refer to the Board of Directors of the Association.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

Section 5. "Common Area" shall mean all real property (including improvements thereon) owned by the Association for the common use and enjoyment of the Owners, including, but not limited to, the property described as:

Lots 557, 558 and 559 of Village Park Unit No. 12 according to Map thereof No. 7788, filed in the Office of the County Recorder, San Diego County, California, on November 7, 1973, and Lot 738 of Village Park Unit No. 15 according to Map thereof No. 8032, filed in the Office of the County Recorder, San Diego County, California, on October 9, 1974.

Section 6. "Declaration" shall mean and refer to this document as it may from time to time be amended.

Section 7. "Governing Documents" is a collective term that means and refers to this Declaration, the Articles, the Bylaws and the Association Rules.

Section 8. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area.

Section 9. "Member" shall mean and refer to an Owner as defined in Section 14 of this article I, who is entitled to membership in the Association as provided in article III.

Section 10. "Mortgage" shall mean and refer to a Deed of Trust as well as a mortgage.

Section 11. "Mortgagee" shall mean and refer to the beneficiary of a Deed of Trust as well as the mortgagee of a mortgage encumbering a Lot.

Section 12. "Notice and Hearing Rights" shall mean the due process rights to which an Owner is entitled before certain disciplinary action may be taken, as more fully set forth in article XII, section 6(e) hereof.

Section 13. "Owner" shall mean and refer to the record owners, whether one (1) or more persons or entities, of fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

## **ARTICLE II PROPERTY RIGHTS IN COMMON AREA**

Section 1. Owners' Easements of Enjoyment. Every Owner of a Lot has a right and easement of ingress, egress and of enjoyment in and to the Common Area which right is appurtenant to and passes with the title to every such Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated on the Common Area.

(b) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations. No such suspension shall be effective until the Owner has been afforded his or her Notice and Hearing Rights.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No dedication or transfer of all or substantially all of the assets of the Association shall be effective unless approved by two-thirds (2/3rds) of all Members.



(d) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof, and with the assent of two-thirds (2/3) of each of all Members, to hypothecate any or all real or personal property owned by the Association.

**Section 2. Delegation of Use.** Subject to the limitations of this article II, Section 2 and of article VI, section 20, any Owner may delegate, in accordance with the Bylaws, his or her rights of enjoyment to the Common Area to the members of his or her family, tenants or contract purchasers who reside on such Owner's Lot. Any rental or lease of a Unit shall be subject to the provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with current, copies of the Governing Documents and shall be responsible for compliance by the Owner's tenant or lessee with all of the provisions thereof tenant's occupancy and use of the Residence. During any period when a Residence has been rented or leased, the Owner-lessor, his or her family, guests and invitees shall not be entitled to use and enjoy the Common Areas of the Properties (other than roads), except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Residence, provided that this restriction shall not apply to an Owner-lessor who is contemporaneously residing in another Residence within the Properties.

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

**Section 1. Membership.** Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**Section 2. Voting Rights.** The Association shall have one (1) class of voting membership. Each Owner shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such 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 Lot.

### **ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION**

**Section 1. Covenant to Pay Assessments.** Each Owner of one or more Lots, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided.

**Section 2. Purpose of Assessments.** Each assessment made in accordance with the provisions of this Declaration shall be used exclusively (a) to promote the recreation, health, safety and welfare of individuals residing within the Properties; (b) to promote the enjoyment and use of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and (d) for the operation of the Association. Each and every assessment levied hereunder constitutes a separate, distinct and personal obligation of the Owner of the Lot against which the assessment is

imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 3. Extent of Owner's Personal Obligation for Assessments. Each and every assessment levied, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall also be a debt and a personal obligation of the person who was the Owner of the Lot at the time the assessment was levied. Each Owner who acquires title to a Lot (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for assessments attributable to the Lot so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

Section 4. Creation of Assessment Lien. All assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Any lien for unpaid assessments created pursuant to the provisions of this article may be subject to foreclosure as provided in article IV, section 13(b) hereof.

Section 5. No Avoidance of Assessment Obligations. No Owner may exempt himself or herself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any improvements thereon or by abandonment or non-use of his or her Lot or any other portion of the Properties.

Section 6. Regular Assessments.

(a) Preparation of Annual Budget: Establishment of Regular Assessments. Not less than 45 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to a reserve fund established to defray the costs of future repairs, replacement or additions to the Common Area) by preparing a budget satisfying the requirements of the Bylaws and California Civil Code section 1365. Said budget shall be distributed to all Members not less than 45 days nor more than 60 days prior to the beginning of the Association's fiscal year. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains 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 the Bylaws.

(b) Establishment of Regular Assessment. The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in subparagraph (c) below, the Board of Directors may not impose a Regular Assessment

that is more than 20 percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association.

(c) Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. For purposes of this subparagraph (c), an emergency situation is any of the following:

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

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

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

(d) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), above, shall be allocated among, assessed against, and charged to each Owner so that each Lot bears an equal share of the total Regular Assessment.

(e) Mailing Notice of Assessment. The Board of Directors shall mail to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than 45 days prior to the effective date.

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

(g) Installment Payment of Assessments. The Regular Assessment levied against each Owner and his or her Lot shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Association's Board of Directors. Installments of Regular Assessments shall be delinquent if not paid by the 25th day after the Assessment is due.

Section 7. Special Assessments.

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

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by article IV, section 6(a), the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such fiscal year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder. The Board's assessment authority pursuant to this section 7 subparagraph (a)(i) shall be subject to membership approval requirements under the circumstances described in article IV, section 6(a).

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

(iii) Other Purposes. The Board may also levy Special Assessments for such other purposes as are consistent with its purposes and the interests of the members as the Board in its discretion deems advisable.

(b) Special Assessments Requiring Membership Approval. No Special Assessments which, in the aggregate, exceed 5 percent of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied shall be made without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in this article IV, section 6(c).

(c) Allocation and Payment of Special Assessments. A Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner not less than thirty (30) days prior to the due date of the Special Assessment or first installment thereof.

Special Assessments for purposes described in section 7(a)(i) shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in section 7(a)(ii) or (iii) shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable in full, or in installments as determined by the Board, to the Association within 30 days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

#### Section 8. Special Individual Assessments.

(a) **Circumstances Giving Rise to Special Individual Assessments.** In addition to the Special Assessments levied against all Owners in accordance with section 7(a), above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below, provided that no Special Individual Assessments may be imposed against an Owner unless the Owner has been afforded his or her Notice and Hearing Rights. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

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

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

(iii) **Required Maintenance on Lots.** If any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk automobiles, or improper weed or vegetation control, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

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

Special Individual Assessments imposed to recover monetary penalties for failure of a Member to comply with the Governing Documents may only become a lien against the Member's Lot that is subject to foreclosure if such lien and foreclosure remedies are subsequently permitted by law. Currently Civil Code section 1367.1 prohibits such liens. However, except as specifically prohibited by law, it is the intent of this Declaration that Special Individual Assessments (including without limitation those imposed to recover late payment penalties or to reimburse the association for the cost of repairing damage to the Common Areas for which the assessed Member is responsible), if not paid prior to delinquency, may be collected either in an action at law or by resort to the lien and foreclosure remedies set forth in section 13(b), below.

Section 9. Exemption of Certain of the Properties From Assessments. The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the assessments and the lien thereof provided herein:

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

Section 10. Notice and Procedure for Member Approval. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to sections 6 and 7 of this article IV, approval of the necessary percentage of the Members may be requested either by written ballot conducted in accordance with Corporations Code section 7513 or at a duly noticed meeting of the Members called for that purpose. The quorum required for such membership action shall be a majority of the Members.

Section 11. Maintenance of Assessment Funds.

(a) Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board, and such officers or agents of the Association as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all

times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code section 1365.5. To preclude a multiplicity of bank accounts, all funds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association.

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

(i) For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to this article IV, section 7(a)(i) shall be accounted for together with the receipts and disbursements of Regular Assessments; and separate liability accounts shall be maintained for each capital improvement for which reserve funds for replacement are allocated.

(ii) Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

#### Section 12. Collection of Assessments; Enforcement of Liens.

(a) **Delinquent Assessments.** If any installment payment of a Regular Assessment or any lump sum or installment payment of any Special Assessment or Special Individual Assessment is not paid within 15 days after the same becomes due, such payment shall be delinquent and the amount thereof shall bear interest from the due date, beginning 30 days after the due date, until the same is paid, at the rate of twelve percent (12%) per annum or the maximum rate allowed by law, whichever is less. In addition to the accrual of interest, there shall be due as to any delinquent lump sum or installment payment of a Regular or Special Assessment a late charges in the amount of ten dollars (\$10.00) or ten percent (10%) of the delinquent sum, whichever is greater to compensate the association for the administrative costs of dealing with the delinquent account.

(b) Effect of Nonpayment of Assessments.

(i) Creation and Imposition of a Lien for Delinquent Assessments. As more particularly provided in California Civil Code section 1367.1 or comparable superseding statute, the amount of any delinquent Regular, Special, or Special Individual Assessment, together with any late charges, interest and costs (including attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed when the Association causes to be recorded in the Office of the County Recorder of San Diego County, a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth: (A) the amount of the delinquent assessment(s) and other sums duly imposed pursuant to this article IV and California Civil Code section 1366, (B) the legal description of the Owner's Lot against which the assessment and other sums are levied, (C) the name of the Owner(s) of Record of such Lot, (D) the name and address of the Association, and (E) the name and address of the trustee authorized by the Association to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof. Before the Association may record such a lien, the Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the association, provide an itemized statement of the charges owned by the Owner, including items on the statement which indicate the principal owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the Association. The recorded lien shall be mailed to the Owner as provided by California Civil Code section 2924b no later than ten (10) days after recordation.

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

(iii) Nonjudicial Foreclosure. Nonjudicial foreclosure shall be commenced by the Association not sooner than thirty (30) days following the recording of the lien, by recording in the Office of the County Recorder a Notice of Default, which notice shall state all amounts which have become delinquent with respect to the Owner's Lot and the costs (including attorneys' fees), penalties and interest that have accrued thereon, the amount of any assessment which is due and payable although not delinquent, a legal description of the property with respect to which the delinquent Assessment is owed, and the name of the Owner of Record or reputed Owner thereof. The Notice of Default shall state the election of the Association to sell the Lot or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under California Civil Code section 2924c, or comparable superseding statute. The Association shall have the rights conferred by California Civil Code section 2934a to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of said section 2934a, the Association shall be deemed to be the sole beneficiary of the delinquent Assessment obligation.



Section 13. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Declaration, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Lot.

Section 14. Subordination of the Lien to First Mortgages. The lien of assessment herein shall be subordinate to the lien of any bona fide first Mortgage upon any Lot given for value, and the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Sale or transfer of any Lot other than by foreclosure of a senior lien shall not affect the assessment lien. Where the Mortgagee of a first Mortgage or other purchaser of a 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 Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer, except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Lots.

Section 15. Estoppel Certificate. The Association shall furnish upon demand by any Owner or mortgagee, a certificate signed by an officer or designated agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

## **ARTICLE V ARCHITECTURAL CONTROL**

Section 1. Membership of Architectural Committee. The Board may appoint an Architectural Committee (herein "Committee"), composed of not less than three persons, all of whom shall be Members of the Association. Members of the Committee shall serve at the pleasure of the Board and may be removed at any time by a majority vote of the Board. Members of the Committee shall serve for a term of one year. In the event of the death or resignation of any member of the Committee, a successor shall be appointed by the Board. Neither the members of the Committee nor any designated representative of the Committee shall be entitled to any compensation for services performed pursuant hereto. The Board shall specify the respective jurisdiction and duties of the Committee. If the Board does not appoint such Committees, then the Board shall act as such Committee and all references herein to the Committee shall be deemed to refer to the Board.

Section 2. Requirement for Architectural and Landscape Approval. No construction, installation, alteration, or remodeling of any building, wall, deck, fence, swimming pool, landscaping, landscape structure, skylight, solar heating equipment, spa, antenna, utility lines, or any exterior permanent or temporary structure of any kind be commenced or erected, nor shall any exterior painting, exterior addition or alteration to or change of any nature be made in or to the exterior of any Residence or structure ("Improvements") until the plans and specifications showing

the nature, color, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Committee, as to quality of workmanship and materials, harmony of external design and color, and location in relation to surrounding structures, setback lines, topography and finish grade elevation. The term "Improvement" shall be deemed to include the destruction, material alteration or removal of any existing Improvement. The grade, level or drainage characteristics of the Lot or any portion thereof shall not be altered without the prior written consent of the Committee.

Section 3. Submission of Plans; Requirement to Show Plans to All Affected Owners. Plans and specifications for proposed Improvements shall be submitted to the Committee on a Request for Architectural Review Board-approved form by personal delivery or certified mail. Plans shall not be deemed submitted unless accompanied by a written certification from the owner submitting the plans that said plans and specifications have signatures of adjacent Lot Owners and all Owners of Residences within 100 feet of the property for which the Improvement is sought ("Affected Owners"). The requirement of showing the plans to the Affected Owners is to give such Owners the opportunity to present to the Committee their comments or objections to the proposed Improvements. Affected Owner comments or objections to the proposed Improvements shall be considered by the Committee, but the decision to approve or deny the application shall be in the sole discretion of the Committee.

Section 4. Failure to Timely Act. If the Committee (a) fails to approve, or (b) approve subject to specified conditions, or (c) disapprove the plans within 65 days of submission of all documents required by the Committee, the request shall be deemed to have been approved. Any approval may contain conditions or requirements for modification of particular aspects of the Owner's plans and specifications. All approvals and disapprovals shall be in writing. Denials shall set forth the reasons for such denial.

Section 5. Appeal of Committee Decision. If the Board has appointed an Architectural Committee, approvals or denials by such Committee shall be final eleven (11) calendar days after notice of the decision is delivered to the requesting owner, unless an appeal is made to the Board. Any owner who has submitted a written comment concerning the proposed Improvement shall be given notice of the decision by the Committee. If an appeal to the Board is made, the approval by the Committee shall be suspended pending the Board's decision, which shall be made within 35 days of receipt of the appeal. Within ten (10) days of a decision by the Committee approving or disapproving plans, any member may appeal such decision to the Board, whose decision shall be final. Appeals shall be in writing. The decision by the Board shall be made within thirty days of receipt of the appeal. If the Board fails to rule on the appeal within 30 days' of receipt of the appeal, the appeal shall be deemed denied and the decision of the Designated Representative upheld.

Section 6. Architectural Guidelines. The Board may (or Architectural Committee may, subject to review and approval by the Board of Directors), from time to time adopt, amend and repeal rules and regulations to be known as "Architectural Guidelines". Said guidelines shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for the review and approval of proposed Improvements and guidelines for design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are

recommended for use within the Properties. In the event of any conflict between the Architectural Rules and this Declaration, the Declaration shall prevail. Compliance with provisions of the Guidelines does not excuse submission and approval of plans and specifications hereunder unless specifically so provided in the Guidelines.

**Section 7. Estoppel Certificate.** Within 30 days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee as fixed by the Board, the Board shall execute a document (estoppel certificate), signed by any two officers or one officer and a designated agent of the Association, certifying (with respect to any Residence owned by the applicant Owner) that as of the date thereof, either (i) all Improvements made and other work completed by said Owner with respect to the Residence comply with this Declaration; or (ii) that such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the bases of such noncompliance. Said request shall identify all Improvements made or work performed of which the requesting owner is aware. Any purchaser from the Owner, or anyone deriving any interest in said Residence through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth.

**Section 8. Limitation on Liability.** Neither the Association nor the Architectural Committee, nor any member or designated representative thereof, shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work of Improvement, whether or not pursuant to approved plans, drawings or specifications.

**Section 9. Compliance With Governmental Regulations.** Review and approval the Board or any designated representative of the Board of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Owner who desires to construct, install, or modify the Improvement. No building additions shall be permitted without the prior approval of the Planning Director of the City of Encinitas. Likewise, the obtaining of governmental approvals or permits does not relieve an Owner from obtaining Association approval.

## **ARTICLE VI USE RESTRICTIONS**

**Section 1. Residential Purposes Only.** No Lot shall be used, except for residential purposes. No building or buildings shall be erected, constructed, altered or maintained on any Lot other than one (1) detached single-family dwelling not to exceed two (2) stories in height and a private garage for at least two cars. In no event shall a Residence be occupied by more than one family or by more individuals than permitted by applicable law, zoning or other local governmental regulation.

**Section 2. New Building Only.** No building of any kind shall be moved from any other place onto any Lot, nor from one Lot to another Lot, without the prior written permission of the Board or the Architectural Committee.

**Section 3. Minimum Floor Area and Height of Dwellings.** Any revisions to the main structure located on any Lot, exclusive of open porches, patios and exterior stairways, shall not render the total of the first story less than 1,400 square feet, and any second story area shall not be less than 1,000 square feet.

**Section 4. Balconies and Decks.** No balcony or deck on any Lot shall be higher above the ground than the highest dwelling floor level and no roof structure may be used as a balcony, deck or patio, except with the written approval of the Board or the Architectural Committee.

**Section 5. No Second-Hand Materials, Painting Required.** No second-hand materials shall be used in the construction of any building or other structure on any Lot without the prior written approval of the Board or the Architectural Committee. All buildings and fences on any Lot which are of frame construction shall be painted or stained upon completion with the paint or stain coverage (including the number of coats) as provided in the approval of the plans therefor by the Board or the Architectural Committee.

**Section 6. Diligence in Construction Required.** The work of constructing and erecting any Improvement shall be prosecuted diligently from the commencement thereof, and the same shall be completed within a reasonable time and by the time as provided in the approval of the plans in accordance with the requirements herein contained. If portable bathrooms are used during the construction of any Improvement, the portable bathroom must be stored in either the back or side yard so that it is not visible from the front of the home, and it must be removed from the property immediately upon completion of said Improvement.

**Section 7. Trees.** All trees, hedges and other plant materials upon a Lot shall be trimmed by the Owner of the Lot upon which the same are located so that the same shall not exceed the height of the house on the Lot; provided, however, that where trees do not obstruct the primary view from any other of the Lots in the Properties, which determination shall be within the sole judgment of the Architectural Committee, they shall not be required to be so trimmed. Before planting any trees, the proposed location of such trees shall be approved in writing by the Architectural Committee. No trees, hedges or other plant materials shall be so located or allowed to reach a size or height which will interfere with the primary view from any Lot. The Board shall have sole discretion and control with respect to trees and vegetation upon the Common Area.

**Section 8. Fences, and Hedges.** No fence, rail or hedge over 36 inches in height shall be placed in front of the front yard set-back line on a Lot as shown on the recorded map(s) covering the Properties, and no fence, wall (except a retaining wall), rail or hedge shall be over 72 inches in height elsewhere on the Lot except with the prior written approval of the Architectural Committee. In all cases where trellises, fences or hedges are allowed, approval by the Architectural Committee is required.

**Section 9. Exterior Installations.** No Owner or resident shall place or maintain any temporary or permanent objects, including, but not limited to, basketball standards, masts, towers, poles, flagpoles, television or radio antennas, television satellite reception dishes or other similar external fixtures or objects on or about the exterior of any building or upon any Lot or adjacent street within the Properties unless Architectural approval is first obtained. Notwithstanding the foregoing:

(a) Portable or permanent basketball standards, volleyball nets, tetherball poles and like fixed sports apparatus shall be permitted in the back yard of a residence subject to such rules as the Board may adopt to reduce the visual and noise impacts attendant to such installations. The Board, in its discretion, may adopt rules permitting the temporary installation of portable sports apparatus, for periods not exceeding 48 hours in any seven day period, on other portions of the Lot or the Common Area.

(b) Small (less than one meter in diameter) satellite reception dishes and other over-the-air communications devices, will be allowed in accordance with Federal Communications Commissions (FCC) rules, but such installations require prior submission to and approval by the Architectural Committee.

(c) Removable flagpoles, less than six feet (6') in length may be attached to a bracket installed on the exterior of the residence for the display of flags authorized under article VI, section 12(f), below.

**Section 10. Drying Yards.** No drying yards (exterior drying of clothes) shall be permitted unless screened from all views exterior to the Lot on which the drying yard is located by fence, hedge or shrubbery, which screening and the adequacy thereof shall be subject to the approval of the Architectural Committee.

**Section 11. No Tents or Shacks.** No tent, shack, trailer, recreational vehicle (RV) or outbuilding shall at any time be used on any Lot as a residence, either temporarily or permanently, nor shall any residence of a temporary character be constructed, placed or erected on any Lot.

**Section 12. Signs, Flags and Displays.** As more particularly provided in California Civil Code section 1353.6 or comparable superseding statute, noncommercial signs, posters, flags or banners may be prohibited on a Lot or any portion of the Common Area as required for the protection of public health or safety or if the posting or display would violate a local, state or federal law and may not exceed size limits as provided by law. A noncommercial sign may not be made of lights, roofing, siding, paving materials, flora, balloons, or any other similar building, landscaping, or decorative component, or include the painting of architectural surfaces. No commercial signs, posters, billboards, banners or flags or displays of any kind shall be displayed on any Lot or on any building or structure upon a Lot or posted within or upon any portion of the Common area, except as noted below:

(a) Signs required by legal proceedings. Signs required by legal proceedings (e.g. foreclosure notices, notices to pay rent or quit, official polling place signs, et cetera) shall be permitted only for the period required by law.

(b) **For Sale Signs.** A single "For Rent," "For Lease" or "For Sale" sign of reasonable dimensions. The Board shall be entitled to regulate the temporary erection and maintenance of Owner's, agent's or broker's directional signs along roadways or on any Common Areas within the Properties.

(c) **Warning Signs.** A small sign identifying that the house is protected by an alarm system and a sign warning of dogs kept in the yard or other dangers upon a Lot, of a permitted size, wording, style, and material may be posted upon the Lot as specified by Rules and Regulations adopted by the Board.

(d) **Holiday Displays, Temporary Signs and Lights.** The Board may adopt reasonable non-discriminatory regulations regarding the erection and removal of holiday lighting, and for special events, such as garage sales. In no event shall any holiday display, temporary signs and lights be erected for more than 45 days.

**Section 13. No Wells.** No well for the production of, or from which there is produced, water, oil or gas shall be operated upon any Lot, nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business. No slant drilling shall be permitted on any Lot above a plane 500 feet below the surface of the land.

**Section 14. Animal Restrictions.** No animals of any kind shall be allowed within any Residence, upon any Lot or within the Properties, except as follows:

(a) **Caged birds (other than fowl),** in reasonable numbers as determined by the Board, on a case-by-case basis, kept at all times within a Residence;

(b) **Fish in aquariums within a Residence, or in external ponds** as approved by the Architectural Committee;

(c) **Small caged animals (guinea pigs, hamsters, rabbits, et cetera),** in reasonable numbers as determined by the Board, on a case-by-case basis, kept at all times within a Residence;

(d) **Dogs and Cats:** not more than two (2) dogs or a total of not more than three (3) such pets shall be permitted (with the exception of kittens and puppies under 12 weeks old). Upon written application to the Board by an Owner, the Board may allow greater numbers of such animals upon notice to and consideration of comments from Affected Owners.

No exotic animals or farm animals (e.g. turkeys, geese, chickens, ducks, pigeons or fowl of any kind, goats, horses or like animals) are permitted. No animal shall be kept, bred or maintained upon the Properties for commercial or breeding purposes. No cages or pens shall be permitted outside of the Residence without the written approval of the Architectural Committee. The Board of Directors shall have the right to establish and enforce additional rules and regulations for the reasonable control and keeping of household pets in, upon and around the Properties to ensure that

the same do not interfere with the quiet and peaceful enjoyment of the Property by other Owners and residents. The Board shall, after Notice and Hearing, have the ability to determine that a pet is a nuisance and order its removal from the Properties. Animals within the Properties must be either kept within a Residence, an enclosed yard, or on a leash being held by a person capable of controlling the animal. No animal shall at any time be staked or left unattended in the front yard of a Lot or in the Common Area. To the extent permitted by law, each Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invites, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals.

**Section 15. No Commercial Activity.** No business or commercial activities of any kind whatsoever shall be conducted on any Lot. Provided, however, that the foregoing restriction shall not apply to the activities of the Association in the discharge of its responsibilities. Furthermore, no restrictions contained in this section 15 shall be construed in such a manner so as to prohibit any Owner from: (a) maintaining his or her personal library in his or her residence, (b) keeping his or her personal business records or accounts therein, (c) handling his or her personal or professional telephone calls or correspondence therefrom, (d) leasing or renting his or her Residence in accordance with provisions of this Declaration, or (e) conducting other activities within the Owner's Residence which have no external indication of the commercial nature of the activity and which otherwise is compatible with residential use and the provisions of this Declaration and which use is permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization and which use is merely incidental to the use of the residence as a personal abode.

**Section 16. Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within any Lot, and no odor shall be permitted to arise from any Lot so as to render the Properties, or any portion thereof, unsanitary, unsightly, offensive or detrimental from any street or to any other Lot in the Properties or vicinity thereof or to their occupants. No noise or other nuisance shall be permitted to exist upon any portion of a Lot in the Properties so as to be offensive or detrimental to any other Lot in the Properties or to their occupants. Without limiting the generality of any of the foregoing provisions, no items which may unreasonably disturb other Owners or their tenants shall be located, used or placed on any portion of the Properties.

**Section 17. Drainage.** No Owner of a Lot shall in any way interfere with or change the established drainage pattern over his Lot from adjoining or other Lots; provided, however, each Owner will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his Lot. For the purpose hereof, "established drainage" is defined as the drainage which existed at the time the overall final grading of a Lot was completed or later grading changes which are shown on plans approved by the Architectural Committee. Any change in grading or drainage on any Lot shall first be approved by the Board or architectural committee appointed thereby. Each Lot Owner shall permit scheduled access by Owners of adjacent or adjoining Lots to slopes or drainageways located on his Lot when such access is necessary for the maintenance of permanent stabilization on said slopes or of the drainage facilities to protect property other than the Lot on which the slope or drainageway is located.

Section 18. Slope Control, Use and Maintenance. Each Lot Owner will keep, maintain, water, plant and replant all slope banks located on such Owner's Lot so as to prevent erosion and to create an attractive appearance. No structure, improvement, planting or other material shall be placed or permitted to remain or other activities undertaken on any of said slope banks which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels.

Section 19. No Subdivision of Lots. No Lot shall be resubdivided into building sites having a frontage of less than shown on the recorded Final Subdivision Map of which the Lot is a part.

Section 20. Leasing of Lots. Each Owner shall have the right to lease his Lot, provided that all such leases must be in writing and shall provide that the lease is subject in all respects to the provisions of the Governing Documents, and that any failure of the lessee to comply with the provisions of each such document shall constitute a default under the lease. A lessee shall have no obligation to the Association to pay assessments imposed by the Association nor shall any lessee have any voting rights in the Association. No Owner may lease his Lot or improvements thereon for hotel, motel, bed and breakfast, apartment or transient purposes. Any lease which is either for a period of fewer 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.

Section 21. Equipment and Structure Repair. No structure on any Lot shall be permitted to fall into disrepair and all structures shall at all times be kept in good condition and repair, and adequately painted or otherwise finished. No automobile or other equipment may be dismantled, repaired or serviced on any Lot or on the Common Area.

Section 22. No Hazardous Activities. No activities shall be conducted, nor shall any structures or improvements be constructed upon the Properties which are or might be unsafe or hazardous to any person or Lot. No illegal activity shall be conducted upon any Lot.

Section 23. Trash Disposal. Refuse, garbage and trash shall be kept at all times in such covered, sanitary containers inside the residence or in other areas upon the Lot such that the containers are not exposed to view from any street or neighboring Lot and such that no odor may be detected at any location off the Lot.



Section 24. Parking, Garage and Vehicle Restrictions. The following parking, garage and vehicle restrictions shall apply within the Properties:

(a) Only the following vehicles ("authorized vehicles") shall be permitted to be parked by any Owner or resident within the Properties: standard non-commercial, currently registered and licensed passenger vehicles, including sport utility vehicles, vans, motorcycles, scooters and like two wheeled motor vehicles. Boats, trailers, campers, recreational vehicles and commercial vehicles are not "authorized vehicles" and shall only be permitted within the Properties as provided below.

(b) No garage shall be used in any manner which would prevent the parking of one (1) standard automobile therein. The garages are to be used for the parking of authorized vehicles, and shall not be converted to living quarters, storage, work shops or used for the storage of boats, trailers, campers or recreation vehicles if such use will preclude the parking of an Owner's or occupant's authorized vehicle within the garage. All driveways and garages shall be maintained by the owner thereof in a neat and orderly condition.

(c) Except for temporary loading and unloading, authorized vehicles shall be parked in the garage of the residence to the extent space is available therein. If the garage is being utilized for the parking of one authorized vehicle, then parking of authorized vehicles in the driveway of the residence shall be permitted. Only if the garage and driveway are being utilized for the parking of authorized vehicles shall vehicles of residents be parked upon the streets within the Properties.

(d) No vehicle of any type may be stored on the exterior portion of any Lot. A vehicle shall be considered stored if covered by tarp, cloth or like covering and is left in the driveway of a residence for more than 48 hours. The Board may adopt additional guidelines and rules for the determination as to what constitutes "storage" of a vehicle and regarding the length of time that vehicles may be continuously parked in the driveway. No boat, personal water craft, camper, recreational vehicle, trailer, commercial vehicle or other motor vehicle which is not an "authorized vehicle" shall be stored or parked in the driveway or front yard of a residence or on the street adjacent to the Lot. No boat, personal water craft, camper, recreational vehicle, trailer, commercial vehicle or other motor vehicle which is not an "authorized vehicle" shall be stored or parked in the garage of the residence if such storage would prevent the parking within the garage of authorized vehicles utilized by the residents of the Lot. No boat, personal water craft, camper, recreational vehicle, trailer, commercial vehicle or other motor vehicle which is not an "authorized vehicle" shall be stored or parked elsewhere on the lot without the prior written permission of the Board.

(e) No motor vehicle shall be constructed, reconstructed or repaired within the Properties and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Properties, except in the garage and then only if such storage would not prevent the parking within the garage of authorized vehicles utilized by the residents of the Lot; provided however, that the provisions of this section shall not apply to emergency vehicle repairs.

(f) Non-authorized vehicles are not to be parked within the Properties, except for periods not to exceed 12 hours for the purpose of loading and unloading. Campers, trailers and recreational vehicles may be parked for periods not to exceed 24 hours for the purpose of loading and unloading.

(g) The Board shall have the authority to adopt further reasonable rules and restrictions of uniform application regarding parking and vehicles, including, without limitation bicycles, skateboards, scooters, skates and other non-motorized wheeled devices, within the Properties as may be deemed prudent. The Board shall also have the authority, upon written petition from an Owner and for good cause, to grant exemptions from any provision of this article VI, section 24. The decision to grant such exemptions shall be made in the sole discretion of the Board.

(h) The Association and its authorized agents shall have the right to enforce all parking and vehicle restrictions set forth in this section, and to remove or cause the removal of vehicles, trailers, or other equipment parked in violation of this Declaration or Association Rules in accordance with the provisions of Vehicle Code §22658, or other applicable laws, codes, and statutes. To the extent required by law, the Association shall be authorized to post within the Common Areas all signage required by law to authorize the towing of vehicles parked in violation of these restrictions. Any vehicle of any Owner or resident not parked in conformance with this Declaration and/or the Rules is not authorized to park in the project.

## **ARTICLE VII INSURANCE AND CONDEMNATION**

Section 1. Insurance. The Association shall obtain and maintain the following insurance:

(a) Fire and Casualty Insurance. The Association shall keep (i) any improvements on the Common Area insured against loss by fire and the risks covered by a Standard All Risk of Loss perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof, and (ii) all personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the Common Area and personalty owned by the Association shall be payable to the Association. In the event of any loss, damage or destruction, the Association shall cause the same to be replaced, repaired or rebuilt if it occurred in the Common Area. In the event the cost of such replacement, repair or rebuilding of Common Area (1) exceeds the insurance proceeds available

therefor, or (2) no insurance proceeds are available therefor, the deficiency or full cost thereof shall be assessed to the Owners as a special assessment pursuant to Section 7 of Article IV above, provided no vote of the Members shall be required. In the event of any loss, damage or destruction to improvements on a Lot, the Owner of the Lot shall cause the same to be replaced, repaired or rebuilt.

(b) General Liability Insurance. A comprehensive general liability policy insuring the Association, its agents, the owners and their respective family members against any liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property. The amount of general liability insurance which the Association shall carry at all times shall be not less than \$3,000,000 in indemnity against the claims of one (1) or more persons in one (1) accident or event, and not less than \$200,000.00 for damage to property, or as required by California Civil Code sections 1365.7 and 1365.9, whichever is greater;

(c) Workers' compensation insurance to the extent required by law;

(d) Fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds in an amount not less than 100 percent of each year's estimated annual operating expenses and reserves and shall contain an endorsement of any person who may serve without compensation;

(e) Officers and directors liability insurance; and

(f) Other Insurance. Such other insurance as the Board in its discretion considers necessary or advisable.

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

(h) Copies of Policies To Be Available to Owners. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time. All such insurance policies shall (i) provide that they shall not be cancellable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association, Board and Owners.

(i) FNMA Required Insurance. Anything contained herein to the contrary notwithstanding, the Association shall maintain such insurance coverage as may be required by the Federal National Mortgage Association ("FNMA") so long as FNMA holds a mortgage on or owns any Lot.

(j) Annual Distribution of Insurance Information. A summary of the Association's property, general liability, earthquake (if any) and flood insurance (if any) policies shall be distributed annually to all Members within 60 days preceding the beginning of the Association's fiscal year. The notice shall contain the following information and such other information as may be required by California Civil Code section 1365(e): (A) the name of the insurer; (B) the type of insurance; (C) the policy limits and (D) the amount of deductibles, if any.

Section 2. Condemnation. In the event the Common Area or any portion thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Association.

## **ARTICLE VIII      MAINTENANCE RESPONSIBILITIES**

Section 1. Association Maintenance. The Association shall maintain and provide for the maintenance of all the Common Area and all improvements thereon in good repair and appearance. The Association shall provide landscaping and gardening services to properly maintain and to periodically replace when necessary the trees, plants, grass and other vegetation located upon the Common Area. The Association shall have the right to enter onto any Lot (but not within the dwelling thereon) as may be necessary for the construction, maintenance or emergency repair of the Common Area or, if necessary, for the benefit of the Owners in common. Any damage caused to a Lot by entry of the Association shall be repaired by the Association at its expense.

Section 2. Owner Maintenance. Each Owner shall keep and maintain in good repair and appearance all portions of his Lot and improvements thereon, including, but not limited to, any fence or wall which is located thereon. The Owner of each Lot shall water, weed, maintain and care for the landscaping located on his Lot so that the same presents a neat and attractive appearance.

Section 3. Association Right to Repair Neglected Lots. In addition to maintenance of the Common Area, in the event an Owner of any Lot should fail to maintain his or her Lot and improvements situated thereon in a manner satisfactory to the Board, the Association, after approval by a 2/3 vote of the Board of Directors, and after the Owner has been afforded his or her Notice and Hearing Rights, shall have the right through its agents and employees, to enter on said Lot and to repair, maintain and restore the Lot and exterior of the building and any other improvements erected thereon. However, no entry into a residence may be made without the consent of the Owner, and such entry shall be made only after not less than three (3) days notice has been given to the Owner. Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused thereby shall be repaired by the Association. The cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject.

## **ARTICLE IX ANNEXATION**

Additional residential property, Common Area may be annexed to the Properties or to the Declaration upon the vote or written assent of two-thirds (2/3) of the voting power of Members of the Association, excluding the vote of Declarant. Upon such approval, the owner of the property wishing it to be annexed may file of record a Declaration of Annexation which shall extend the scheme of this Declaration to such property.

## **ARTICLE X PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Each wall which is built or placed on the dividing line between the Lots shall constitute a party wall, and, 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.

**Section 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 wall in proportion to such use.

**Section 3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use 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.

**Section 4. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, the Board of Directors shall act as an arbitrator and its decision shall be final.

## **ARTICLE XI RIGHTS OF LENDERS**

**Section 1. Payment of Taxes or Premiums by First Mortgagees.** First Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Owners, in which case, the rights of first Mortgagees shall be governed by the provisions of their deeds of trust. First Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure a new casualty insurance coverage on the lapse of a policy for the Common Area, and first Mortgagees making such payments shall be owed immediate reimbursement thereof from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any first Mortgagee who requests the same to be executed by the Association.

**Section 2. Priority of First Mortgage.** No breach of the covenants, conditions or restrictions herein contained shall affect, impair, defeat or render invalid the lien or charge of any first Mortgage made in good faith and for value encumbering any Lot, 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, with respect to a Lot.

Section 3. Curing Defaults. A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.

Section 4. Approval of First Mortgagees. Unless the Mortgagees of first Mortgages encumbering sixty-seven percent (67%) or more of the Lots which are subject to a Mortgage have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this Subsection.

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

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of residences, the exterior maintenance of residences, the maintenance of Common Area walks or common fences and driveways, or the upkeep of lawns and plantings in the project.

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

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

Section 5. Restoration of Common Area. Any restoration or repair of the Common Area after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with this Declaration and original plans and specifications unless other action is approved by eligible holders of Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to eligible Mortgage holders. "Eligible Mortgage holder" as used in this Article, means a holder of a first Mortgage on a Lot who has requested notice from the Association of those matters described in Section 7 below.

Section 6. Notice to Eligible Mortgagees. Upon written request to the Association identifying the name and address of the holder and the Lot number or address, any eligible Mortgage holder 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 Lot on which there is a first Mortgage held by such eligible Mortgage holder.

(b) Any delinquency in the payment of assessments or charges owed by an Owner subject to a first Mortgage held by such eligible holder 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 Association.

(d) Any proposed action which would require the consent of a specified percentage of eligible Mortgage holders as specified above.

Section 7. Documents to be Available. The Association shall make available to Owners and Mortgagees, and holders, insurers or guarantors of any first Mortgage, current copies of the Declaration, the Bylaws, other rules concerning the project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The holders of first Mortgages encumbering fifty-one percent (51%) or more of the Lots subject to a Mortgage shall be entitled to have an audited statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Any such financial statement so requested shall be furnished within a reasonable time following such request.

Section 8. Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration; the provisions of this Article shall control.

## **ARTICLE XII BREACH AND DEFAULT**

Section 1. Remedy at Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Lot or any portion of the Properties to comply with any provision of this Declaration, the Bylaws or the Rules and Regulations of the Association may be enjoined by appropriate legal proceedings instituted by any Owner or the Association.

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

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

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

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

Section 6. Rights and Remedies of the Association.

(a) **Rights Generally.** In the event of a breach or violation of this Declaration, the Bylaws or the Rules by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's voting rights as a Member of the Association; provided that the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this section 6. Monetary penalties may be imposed by the Association: (i) for failure of a Member to comply with provisions of this Declaration, the Bylaws and the Rules, (ii) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area allegedly caused by a Member, or (iii) in bringing the Member and his or her Lot into compliance with this Declaration, the Bylaws and the Rules, may be characterized and treated as a Special Individual Assessment. The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Board. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of the California Civil Code section 1354 or otherwise by law.

(b) **Schedule of Fines.** The Board shall implement and distribute annually to the Owners, a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment, but no lien may be filed against the Owner's Lot by reason thereof, unless permitted by law.

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

(d) **Limitations of Disciplinary Rights. Loss of Rights: Forfeitures.** The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of this Declaration, the Bylaws or Rules



except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph below.

(e) Notice and Hearing Rights. No fine, monetary penalty, Special Individual Assessment (other than in connection with the collection of regular or special assessments) or temporary suspension of rights shall be imposed unless the Owner alleged to be in violation is given at least 15 days prior notice of the proposed penalty or temporary suspension and is afforded a hearing before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s). The notice required by this Article XII shall, at a minimum, set forth the date, time and place for the hearing, a brief description of the action or inaction constituting the alleged violation of this Declaration, the Bylaws or Rules and a reference to the specific provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association and by first class mail to such other address or addresses known to the Association as may be calculated to give the Owner actual notice.

(f) Immediate Disciplinary Action. Notwithstanding the foregoing, under circumstances involving conduct that constitutes (i) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (ii) a traffic or fire hazard; (iii) a threat of material damage to, or destruction of, the Common Area; or (iv) a violation of the this Declaration, the Bylaws or Rules that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors or its duly authorized agents may undertake immediate corrective or disciplinary action and conduct a hearing as soon thereafter as reasonably possible.

(g) Hearing. Notice of the date, time and location of the hearing shall be given at least 15 days prior to the hearing date. At the request of the alleged offender, the hearing shall be held in executive session. At the hearing the alleged offender shall have the opportunity to address the Board, or appropriate committee established by the Board, in person or through an attorney or other representative. In lieu of or in addition to a personal appearance, the alleged violator may submit written materials which shall be considered by the Board. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing. Within fifteen (15) days following the hearing the alleged violator shall be notified in writing of the decision of the Board. No fine, monetary penalty, Special Individual Assessment (other than in connection with the collection of regular or special assessments) or temporary suspension of rights shall be effective until five (5) days after such written notice of the decision after hearing has been given. The provisions of this article XII, subsection (g) are intended to satisfy the requirements of Civil Code section 1363(h). To the extent such code section may be amended from time to time, and notwithstanding other provisions of this Declaration,

the Board shall be entitled to amend this subsection without a vote of the Members, to comply with the requirements of that Code section or other provisions of law dealing with discipline within common interest developments.

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

(i) **Alternative Dispute Resolution.** The Association and Owners shall comply with the provisions of section 1354 of the California Civil Code regarding alternative dispute resolution ("ADR"), to the extent compliance is required by that section, before resorting to a court of law for relief with respect to any alleged violation of this Declaration, the Bylaws or the Rules and Regulations.

### **ARTICLE XIII GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association, and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration. Failure by the Association, or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

#### **Section 3. Amendments.**

(a) **Amendments in General.** Except as may otherwise be stated in this Declaration, this Declaration may be amended or revoked in any respect by the vote of at least two-thirds (2/3rds) of the voting power of Members casting votes by written ballot conducted in accordance with Corporations Code section 7513 or at a duly noticed meeting of the Members called for that purpose. With respect to any vote hereunder the Association shall be entitled to accept the vote of any Owner of Record of a Lot as the vote of all Owners of Record of such Lot unless the Association receives more than one vote from said co-Owners, in which case the vote of a majority of the co-owners shall bind all.

(b) **Effective Date of Amendment.** An amendment shall be effective upon the recordation of such amendment in the Office of the Recorder of San Diego County accompanied by a certificate, signed and acknowledged by the president and secretary of the Association, setting forth that the amendment has been approved by the requisite vote of the Owners.

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

Section 4. Term and Extension of Declaration. Each and all of these covenants, conditions and restrictions shall run with and bind the land for a term of fifty (50) years from the date this Declaration is recorded, after which date they shall automatically be extended for successive periods of ten (10) years, unless the Owners have executed and recorded at any time within six (6) months prior to the end of said twenty (20) year period, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a written instrument in which it is agreed that said restrictions shall terminate at the end of said twenty (20) year period or at the end of any such ten (10) year period.

Section 5. Encroachment Easement. In the event any improvement to a Lot encroaches upon the Common Area as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion thereof, an easement for the encroachment and for maintenance of the same shall exist so long as the encroachment exists; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed and then rebuilt, or repaired, the minor encroachments over adjoining Common Area shall be permitted and there shall be easements for maintenance of such encroachments so long as they shall exist.

Section 6. Litigation. In the event of litigation arising out of or in connection with this Declaration, the prevailing party shall be entitled to receive costs of suit and such sum for attorney's fees as the Court deems reasonable.

Section 7. Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

Section 8. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity, illegality or unenforceability of any provision hereof shall not affect or invalidate any other provisions hereof, and all other provisions shall remain in full force and effect.

Section 9. Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver thereof.

Section 10. Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

Section 11. Number; Gender. The singular shall include the plural and plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall include the masculine, feminine or neuter, as the context requires.

Section 12. No Public Rights. Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Properties to the general public or for any public use or purpose whatsoever.

Section 13. Notices:

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

(b) If to any Owner: To the street address of his or her Lot or to such other address as he or she may from time to time designate in writing to the Association.

(c) If to the Association: Village Park Recreation Club No. Four at the principal office of the Association (or to such other address as the Association may from time to time designate in writing to the Owners).

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

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

\*\*\* E N D \*\*\*

## CERTIFICATE OF AMENDMENT

The undersigned, being the duly elected and acting President of VILLAGE PARK RECREATION CLUB NO. FOUR, hereby certifies that an "Amended and Restated Declaration of Covenants, Conditions and Restrictions" was approved pursuant to the provisions of Civil Code section 1356 by the required vote in excess of fifty percent (50%) of the members of the Association. A certified copy of the Court's Order Granting Petition to Reduce Required Voting Percentage is attached.

Dated: 9/12/06

Robert Caldwell, President  
Robert Caldwell, President

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

**RONALD E. CARLON, NOTARY PUBLIC**

On 9/12/2006, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared **ROBERT CALDWELL**, ~~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 on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Ronald E. Carlon  
Notary Public in and for said State

