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RF: 54.00 FEES: 155.00
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MF: 1.00
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Recording Requested By:
Avocado Homeowners Association

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For Recorder's Use

1997 AMENDED AND RESTATED

DECLARATION OF RESTRICTIONS

FOR

AVOCADO HOMES
A Residential Planned Development

Lots 1 through 53, Map 8417, Lots 54 through 90, 92 through 96,
and Lots 131, 140 & 141, Map 8945
San Diego, California

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**1997 AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
FOR
AVOCADO HOMES**

THIS 1997 AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made on the day and year hereinafter written, by Avocado Homeowners Association, a California nonprofit mutual benefit corporation ("Association"), with reference to the following Recitals.

R E C I T A L S

A. Association is a corporation whose Members are the Owners of all the Lots within that certain real property in the County of San Diego, State of California, described as follows:

LEGAL DESCRIPTION

Lots 1 through 53, inclusive, of AVOCADO ESTATES, LTD., Unit No. 1, in the County of San Diego, State of California, according to Map thereof No. 8417, filed in the Office of the County Recorder of San Diego County of November 19, 1976;

Lots 54 through 149, inclusive, of County of San Diego Tract No. 3610-2 in the County of San Diego, State of California, according to Map thereof No. 8945, filed in the Office of the County Recorder of San Diego August 3, 1978;

hereinafter referred to as "*Property*."

B. The Property was developed as a Planned Development, as defined in Section 1351(k) of the California Civil Code, and consists of one hundred one (101) residential Lots and forty-eight (48) Common Area Lots.

C. The Property is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the following documents:

1. The Declaration of Covenants, Conditions and Restrictions for Avocado Estates recorded May 6, 1977 as File/Page No. 77-171662; and

2. The Supplementary Declaration of Covenants Conditions and Restrictions for Avocado Estates recorded December 27, 1978 as File/Page No. 78-554455;
3. The Supplemental Declaration of Covenants Conditions and Restrictions of Avocado Estates recorded December 12, 1980 as File/Page No. 80-418909;
4. The Supplementary Declaration of Covenants Conditions and Restrictions for Avocado Estates recorded March 14, 1984 as File/Page No. 84-092936;

all of Official Records of the County Recorder of San Diego County, hereinafter referred to together as "*Original Declaration*," unless the context clearly indicates otherwise.

D. Association now desires to amend and restate the Original Declaration and replace it in its entirety with this Restated Declaration. Association further desires that, upon recordation of this Restated Declaration, the Property shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein, and that this Restated Declaration take the place of and relate back in time to the recording of the Original Declaration.

E. The Original Declaration, in Section 12.2, provides that it may be amended by the affirmative vote or written consent of a majority of the voting power of the Association. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of Association Members has been obtained.

NOW, THEREFORE, Association hereby declares that all of the Property is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Restated Declaration, and as may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property. All provisions of this Restated Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Property, and shall be binding on and for the benefit of all of the Property and all parties having or acquiring any right, title, or interest in all or any part of the Property, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of a Lot.

DECLARATION

ARTICLE 1 - DEFINITIONS

1.1 **"Articles"** means the Articles of Incorporation of Avocado Homeowners Association, filed in the Office of the Secretary of State of the State of California on May 5, 1977 as File No. 795262, as amended by that Certificate of Amendment, filed on May 13, 1988 as File No. A351288, and any amendments thereto now existing or hereafter adopted.

1.2 **"Association"** means Avocado Homeowners Association, a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development.

1.3 **"Board"** means the Board of Directors of the Association.

1.4 **"Borrower"** means a Person who mortgages his, her, or its property to another (i.e., the maker of a mortgage), and shall include the trustor of a deed of trust. The term "Trustor" shall be synonymous with the term "Borrower."

1.5 **"Bylaws"** means the Bylaws of the Association and any amendments thereto.

1.6 **"Common Area"** means those portions of the Property and all improvements thereon owned by the Association for the common use and enjoyment of the Owners, more particularly described in Exhibit "A," attached hereto and incorporated herein by reference.

1.7 **" Dwelling "** shall mean a residential structure or structures, including garages and other appurtenances attached to the residential structure.

1.8 **"Eligible Lender"** a holder, insurer or guarantor of a First Mortgage that provides a written request to the Association stating the name and address of such holder, insurer or guarantor and the Lot number, and requesting notice to which such Eligible Lender is due under the Governing Documents.

1.9 **"Governing Documents"** means this Restated Declaration and any other documents such as the Articles, Bylaws, or Rules and Regulations which govern the operation of the Association.

1.10 **"Lender"** means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. "Institutional Lender" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan

Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). "First Lender" means a mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Lot or other portions of the Project. The term "Beneficiary" shall be synonymous with the term "Lender."

1.11 "Lot" shall refer to all the Lots within the Project, including all improvements now or hereafter thereon, with the exception of the Common Area.

1.12 "Member" means every person or entity entitled to membership in the Association as provided in this Restated Declaration.

1.13 "Mortgage" means a mortgage or deed of trust encumbering a Lot or any other portion of the Project. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Lot or other portions of the Project.

1.14 "Owner" means any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Lot, including Association, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Lot merely as security for performance of an obligation. For purposes of exercising membership rights and incurring membership obligations when an Owner is a corporation, any director, officer, employee or agent designated by corporate resolution may exercise the membership rights attributable to the corporation. When an Owner is a trust, the trustee may exercise the membership rights attributable to the trust unless otherwise designated in writing by the trustee.

1.15 "Person" means a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

1.16 "Project" means the entire common interest development as described in Recital "A" herein including all improvements thereon.

1.17 "Property" means the real property described in Recital "A" attached hereto.

1.18 "Restated Declaration" means this Amended and Restated Declaration of Restrictions and any amendments thereto.

1.19 "Rules and Regulations" means any Rules and Regulations for the Association regulating the use of the Lots, the Common Areas, the Project and any facilities located thereon adopted by the Board pursuant to Subsection 3.7.2 herein.

ARTICLE 2 - THE PROPERTY

2.1 *Project Subject to Restated Declaration.* The entire Project shall be subject to this Restated Declaration upon recordation hereof.

2.2 *Equitable Servitudes.* The covenants and restrictions set forth in this Restated Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both.

2.3 *Prohibition Against Partition.* There shall be no judicial partition of the Project or any part of it, nor shall the Association or any person acquiring an interest in the Project or any part of it seek any judicial partition, except upon showing that such partition is consistent with the requirements of Section 1359 of the California Civil Code.

2.4 *Prohibition Against Severance of Elements.* Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Lot shall include all interests and appurtenances as shown in the original deed of conveyance. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's membership interest in the Association, as provided in Article 3 herein. Any transfer that attempts to sever those component interests shall be void.

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

All drainage of water from within the Property is designed to flow into drainage systems designed to accept such drainage, into adjacent streets, and/or across and upon adjoining Lots and Common Areas. No structures, planting or other material shall be placed or permitted to remain, or other activities undertaken on any Lot or Common Area within the Property, including but not limited to Lots 54, 55, 56, 64, 65, 67, 68, 75, 93, 94, 95, 96, 105, 106, 109, 139, 143, 147, and 148, which might damage or interfere with established drainage plans, functions or facilities.

2.6 *Easements Over Lots.* The Association has an easement over each Lot, as the servient tenement, for the purpose of allowing the Association's agents to enter the Lot to perform such duties as may be required by the Governing Documents. Each Owner subject to this Restated Declaration acknowledges and expressly consents to this easement.

2.7 *Easements Over Common Area.* Each Owner shall have a nonexclusive easement for use and enjoyment of the Common Area now or hereafter owned by the Association and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to each Lot and shall be subordinate to any exclusive easements granted elsewhere in this Restated Declaration, as well as to the right of the Association to regulate time and manner of use, to charge reasonable admission fees, and to perform its obligations under this Restated Declaration. Each of the easements reserved or granted herein shall be covenants running with the land for the use and benefit of the Owners and their Lots superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Lots may, but shall not be required to, set forth the easements specified in this Article.

2.8 *Association Grant of Easements.* The Association may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, or for any other purpose reasonably related to the operation and maintenance of the Project, and each Lot Owner, in accepting his or her deed to the Lot, expressly consents to such easement. No such easement can be granted, however, if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot without the approval of the affected Owner.

2.9 *Encroachment Easements.* None of the rights and obligations of the Owners created herein, or by the deed creating the Project shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments over the Common Area or contiguous Lot upon which the encroachment exists so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners. In the event a structure on a Lot is partially or totally destroyed and then rebuilt or repaired, the Owners of such Lots agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for maintenance of such encroachment so long as they shall exist.

2.10 *Utility Easements.* In the case where utility facilities are located on a Lot or Lots owned by other than the Owner of a Lot served by said utility facilities, the Owners of any Lots served by said utility facilities shall have the right of reasonable access

for themselves or their agents to repair, replace and generally maintain said utility facilities as and when the same may be necessary. A Lot Owner shall be entitled to reasonable access to the Common Area for the purpose of maintaining utility facilities servicing such Owner's Lot. The access shall be subject to the consent of the Association, whose approval shall not be unreasonably withheld, and which may include such conditions as the Association determines reasonable.

In the case of utility facilities which serve more than one (1) Lot, the Owner of each Lot served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility facilities as service his or her Lot.

2.11 *Easements over Lots 140 and 142.* Portions of Common Area Lots 140 and 142 of Map No. 8945 are subject to easements and rights of way for ingress, egress, road and utility purposes, all as more fully described in that certain corporation grant deed, recorded November 15, 1985 as File/Page No. 85-430349 of Official Records of the County Recorder of San Diego County. Said easements were made and accepted on the express conditions that grantees and their successors and assigns "...forever maintain the roadway constructed within said easement to the same standards as roadways within the Avocado Estates subdivision are maintained..." and "...shall further maintain and repair any other portions of property within this easement which require maintenance or repair as a result of the acts of grantee, or grantee's successors or assigns." The Board shall have the power and right to act in accordance with the terms and conditions of the grant deed.

ARTICLE 3 - ASSOCIATION

3.1 *Organization of the Association.* The Association is incorporated as a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. The Association is created for the purpose of managing the Project and is charged with the duties and invested with the powers prescribed by law and set forth in the Governing Documents.

3.2 *Board of Directors.* The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in Article 3 of the Bylaws.

3.3 *Membership.* Every Owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Lot is the sole qualification for membership. Each Member shall have the rights, duties, privileges, and obligations as set forth in the Governing Documents. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Lot. All memberships shall be appurtenant to the Lot conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire

ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Lot shall automatically transfer the appurtenant membership to the transferee.

3.4 *Membership Class; Voting Rights.* The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents. Each Member shall be entitled to cast one (1) vote for each Lot owned, subject to the provisions set forth in the Bylaws.

3.5 *Membership Meetings.* Meeting of Members shall be held in accordance with Article 2 of the Bylaws.

3.6 *Inspection of Accounting Books and Records.* The rights of Owners and Directors to obtain and inspect the accounting books and records of the Association shall be in accordance with Article 6 of the Bylaws, provided, however, that the Board may impose reasonable regulations on the inspection and copying of such books and records in accordance with Section 6.5 of the Bylaws.

3.7 *General Powers and Authority.* The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in the Governing Documents. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it. Its powers shall include, but are not limited to:

3.7.1 The power to establish, fix, levy, collect, and enforce the payment of Assessments against the Owners in accordance with the procedures set forth in Article 4 herein.

3.7.2 The power to adopt reasonable Rules and Regulations governing the use of the Lots and Dwellings, the Common Area, and any common facilities and Association owned property, and the conduct at Board and Members' meetings, in accordance with the following:

(a) The Rules and Regulations may include, but are not limited to:

(i) Reasonable restrictions on use of the Common Area, Lots and Dwellings by the Owners and their families, guests, employees, tenants and invitees.

(ii) Reasonable restrictions on the conduct of Owners and their families, guests, employees, tenants and invitees as to

activities on the Common Area, Lots and Dwellings.

(iii) The setting of reasonable fees, deposits and use fees for any Common Area recreational facilities and other common amenities.

(iv) In accordance with Section 3.11 of the Bylaws, the establishment of reasonable hearing procedures and a schedule of monetary penalties and fines which may be imposed for violations of any provisions of the Governing Documents.

(b) A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be given to each Owner.

(c) If any provision of the Rules and Regulations conflicts with any provision of this Restated Declaration, the Articles, or the Bylaws, the Restated Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

3.7.3 The power to reasonably restrict access to the Project by tenants, guests, invitees and other persons. Owners agree to indemnify the Association, the Board and its members from liability for damages resulting from any denial of access, absent gross negligence.

3.7.4 The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to:

(a) Enforcement of the Governing Documents.

(b) Damage to the Common Area.

(c) Damage to any Lots that the Association is obligated to maintain or repair.

(d) Damage to the Lots that arises out of, or is integrally related to, damage to the Common Area or Lots that the Association is obligated to maintain or repair.

(e) Enforcement of payment of assessments in accordance with the provisions of Section 4.15 herein.

(f) Any other matter(s) in which the Association is a party, including, but not limited to contract disputes.

3.7.5 Subject to the limitations set forth in Section 3.11 of the Bylaws, the right to discipline Owners for violation of any of the provisions of the Governing Documents by (i) suspending the Member's membership rights, including the Member's voting rights and the rights and privileges to use the Common Area and facilities appurtenant to the Members' Lot, (ii) imposing monetary fines, and (iii) recording a notice of noncompliance in the Office of the County Recorder of San Diego County encumbering the Lot of the Owner.

3.7.6 The right for its agents and employees to enter any Lot when necessary in connection with any maintenance, landscaping, or construction work for which the Association is responsible. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any damage caused thereby shall be repaired by the Association at its own expense.

3.7.7 The right for its agents and employees to enter any Lot at reasonable times after reasonable notice to inspect the Lot for compliance with the Governing Documents.

3.7.8 Notwithstanding any nonexclusive easement rights to the Common Area granted herein or by any deed or other conveyance, the right to allow one or more Owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Lot, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.

3.7.9 The power to remove any vehicle within the Project parked in violation of this Restated Declaration or the Rules and Regulations in accordance with the provisions of California

Vehicle Code Section 22658.2 and any amendments thereto.

3.7.10 The power, without the approval of the membership, to bid on and acquire any Lot at a foreclosure sale.

3.7.11 The power to separately meter and charge owners for use of utilities by such means as may be determined in the sole discretion of the Board.

3.8 *Duties of the Association.* In addition to the duties of the Association, its agents and employees set forth elsewhere in the Governing Documents, the Association shall be responsible for the following:

3.8.1 The Association, acting through the Board, shall operate, maintain, repair, and replace those components described in Section 6.2, or contract for the performance of that work, subject to the provisions of the Governing Documents.

3.8.2 The Association shall use the maintenance fund described in Article 4 herein to, among other things, acquire and pay for goods and services for the Project, including, but not limited to:

(a) Water, sewer, refuse, electrical, telephone, gas, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Lots. If any utility service to a Lot is separately metered by either the utility provider or the Association and the Association is liable for payment to the utility provider, the costs thereof may be assessed against Owners as a utility assessment or as otherwise provided herein.

(b) The insurance policies described herein.

(c) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area and the Association.

(d) Legal and accounting services necessary or proper in the operation of the Common Area and the Association or the enforcement of the Governing Documents.

ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 *Covenant to Pay.* Each Owner by acceptance of the deed to the Owner's Lot is deemed to covenant and agree to pay to the Association the regular, special, individual and utility assessments levied pursuant to the provisions of this Restated Declaration. A regular, special, individual or utility assessment and any monetary penalty, fine, late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall be a personal debt of the Owner of the Lot at the time the assessment or other sums are levied. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Area or abandonment of the Owner's Lot.

4.2 *Purpose of Assessments.* Except as provided herein, the Association shall levy regular, special, individual and utility assessments sufficient to perform its obligations. The assessments levied by the Association shall be used exclusively to promote the recreation and welfare of the Owners; for the operation, replacement, improvement, and maintenance of the Project, and to discharge any other obligations of the Association under this Restated Declaration. All assessment payments shall be put into a maintenance fund to be used for the foregoing purposes.

4.3 *Regular Assessments.* Concurrently with preparation of the financial documents and budget as required in Section 3.10 of the Bylaws, the Board shall estimate the net charges to be paid during that next fiscal year, including a reasonable provision for contingencies, replacements and reserves, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the regular assessments for the budgeted year. Regular assessments shall be divided equally among all Lots and allocated among, assessed against and charged to each Owner according to the ratio of the number of Lots owned by the assessed Owner to the total number of Lots subject to assessment. Each Lot shall bear an equal share of the total assessment. Failure of the Board to estimate the net charges within the time period stated herein shall not void any assessment imposed by the Board. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

4.4 *Special Assessments.* If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements upon the Common Area, or any other reason, it shall make a special assessment for the additional amount needed. Special assessments shall be levied and collected in the same manner as regular assessments.

4.5 *Individual Assessments.* Subject to the limitations of the Governing Documents and in addition to regular and special assessments, the Board may levy individual assessments against Owners and Lots whenever the Association (i) performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, or (ii) incurs any costs which by law or as required by the Governing Documents must be reimbursed by an Owner. Such individual assessment shall include the cost thereof, together with any financing costs and administrative costs incurred by the Association. Prior to levying an individual assessment, the Board shall provide the Owner with notice and a hearing in accordance with Section 3.11 of the Bylaws. The notice and hearing regarding the levy of an individual assessment may be combined with the notice and hearing regarding the underlying violation.

4.6 *Utility Assessments.* In addition to any other assessment levied against a Lot, the Association may impose a utilities assessment for any utilities that are not separately metered and charged to the Lots by the utility company. If any such utility assessment is imposed by the Association, each Owner shall be obligated to pay to the Association, or its agent, a utilities assessment comprised of the costs for those utilities used by each Lot as determined by the Board in its discretion. The amount of the utilities assessment levied by the Association against a Lot shall be based upon each Lot Owner's and/or tenants actual use of the utility and may vary from month to month based upon such actual usage. The rate charged to each Lot shall be based upon the utility company's rate for multifamily, residential dwellings or an equivalent designation established by the utility company. The utility assessment may include a nominal fee charged by a person or firm to read the sub-meter and administer the utility assessment.

Anything in the Declaration to the contrary notwithstanding, the utilities assessment shall be separate from, and not considered a part of either regular or special assessments, and shall not be subject to the limitations on the increases or decreases thereof contained in this Declaration or in Section 1366 of the California Civil Code or any successor statute or law. Duly levied utility assessments shall be subject to Section 4.12 herein regarding costs, late charges and interest for delinquent payment, and may become a lien on the Lot in the same manner as regular and special assessments.

4.7 *Monetary Penalty Assessments.* The Board of Directors may levy, subject to the limitations of the Governing Documents, monetary penalties or fines against an Owner and his or her Lot. In the event the Board of Directors imposes a monetary penalty or fine, that fine shall be subject to costs, late charges and interest as described in Section 4.12 for delinquent payment, and may become a lien on the Lot, collectable by the Association through judicial foreclosure as allowed by Section 4.15 herein. In

no event may the Association collect a monetary penalty or fine through nonjudicial foreclosure.

4.8 Lots Not Subject To Assessment. Assessments which would normally become due on Lots, but which Lots are owned by the Association by virtue of the Association having acquired such Lots through foreclosure, shall be deemed to be common expenses collectible from all of the remaining Lots in the same proportion that each Lot bears to the others less the number of Lots owned by the Association.

4.9 Limitations on Regular and Special Assessments. Except in emergency situations, the Board may not, without the approval of Owners constituting a quorum of the Owners and casting a majority of the votes at a meeting or election of the Association conducted in accordance with Corporations Code Sections 7510 - 7527 and 7613, impose a regular assessment per Lot that is more than twenty percent (20%) greater than the regular assessment for the preceding fiscal year, or levy special assessments that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section, a "quorum" means more than fifty percent (50%) of the Owners of the Association. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

- 4.9.1 Required by a court order;
- 4.9.2 Necessary to repair or maintain the Project or any part of it for which the Association is responsible when a threat to personal safety in the Project is discovered; or
- 4.9.3 Necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget. Before the Board may impose or collect an assessment in this emergency situation, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

4.10 Owner Notice of Regular and Special Assessments. The Association shall provide notice by first-class mail to the Owners of any increase in the regular assessments or the imposition of a special assessment not less than thirty (30) nor more than sixty (60) days prior to the increase in the regular assessment or special assessment becoming due.

4.11 *Limitation on Regular Assessment Increases.* Unless the Board has complied with subdivision (a) of Section 1365 of the California Civil Code with respect to that fiscal year, the Board shall not be permitted to increase the regular assessments without first obtaining the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the California Corporations Code and Section 7613 of the California Corporations Code. For the purposes of this Section, "quorum" means more than fifty percent (50%) of the Owners of the Association.

4.12 *Costs, Late Charges and Interest.* Late charges may be levied by the Association against an Owner for the delinquent payment of regular, special, individual and utility assessments, fines and monetary penalties. An assessment, including any installment payment, is delinquent fifteen (15) days after its due date. If an assessment is delinquent the Association may recover all of the following from the Owner:

- 4.12.1 Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees;
- 4.12.2 A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, or the maximum amount allowed by law; and
- 4.12.3 Interest on the foregoing sums, at an annual percentage rate of twelve percent (12%) commencing thirty (30) days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. The amounts delinquent, including the entire unpaid balance and any related costs described herein, may be collected by the Association as provided in Section 4.15 hereinbelow.

4.13 *Priority of Payments.* The Board, in its sole discretion, may enact policies, not in violation of applicable law, including Civil Code Section 1367, regarding how payments received from Owners will be applied to any outstanding balances due the Association from that Owner.

4.14 *No Offsets.* All assessments shall be payable in the amounts specified by the Association, and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

4.15 *Enforcement of Assessments and Late Charges.* A delinquent regular, special, individual or utility assessment, monetary penalty, fine, and any related late charges, reasonable costs of collection (including actual attorneys' fees), and interest assessed in accordance with Section 4.12 herein, shall become a lien upon the Lot when a Notice of Assessment Lien is duly recorded as provided in Section 1367 of the California Civil Code or applicable statute. Unless otherwise provided by statute, the Notice of Assessment Lien shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Declaration, the legal description of the Lot, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice may be signed by any officer or director of the Association, or any employee or agent of the Association authorized to do so by the Board. The Notice shall be mailed in the manner set forth in Civil Code Section 2924b, to all record owners of the Lot no later than ten (10) calendar days after recordation.

Unless otherwise allowed by statute, the Notice of Assessment Lien may not be recorded until after the Association has mailed, via certified mail, a written demand for payment to the delinquent Owner. The written demand shall include the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the principal owed, any late charges and the method of calculation, and any attorney's fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. If the delinquent assessment or installment and related charges are paid or otherwise satisfied in accordance with the demand for payment, the Association shall not record the Notice of Assessment Lien.

If not paid in full within thirty (30) days after recordation of the Notice of Assessment Lien, any lien described herein may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice or by a trustee substituted pursuant to Section 2934(a) of the California Civil Code, in accordance with the provisions of Sections 2924, 2924(b), and 2924(c) of the California Civil Code.

If all sums specified in the Notice of Assessment Lien are paid before the completion of any judicial or nonjudicial foreclosure, the Association shall (i) record a notice of satisfaction and release of lien, and (ii) upon receipt of a written request by the Owner, shall also record a notice of rescission of any recorded notice of default and demand for sale.

The Notice of Assessment Lien is not required to be amended by the Association or Trustee to reflect any partial payments made on

the account of the delinquent Owner after its recordation, and any such partial payments received shall not be construed to invalidate the Notice of Assessment Lien and said Notice of Assessment Lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments.

Notwithstanding any other provision herein, a monetary penalty or fine may not become a lien on a Lot enforceable by the sale of the Lot through nonjudicial foreclosure. Any Notice of Assessment Lien recorded to enforce a monetary penalty or fine must specifically state that such lien may not be enforceable by sale of the Lot through nonjudicial foreclosure.

4.16 Priority of Assessment Lien. As set forth hereinbelow, the assessment lien referred to in Section 4.15 shall be superior to all other liens, except (i) all taxes, bonds and governmental assessments which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of record. Notwithstanding any other provision to the contrary, the following provisions shall govern the priority and obligation for payment of the assessment lien:

4.16.1 Only the judicial or nonjudicial foreclosure of the First Mortgage shall operate to transfer title free of the assessment lien or obligation for any assessment lien, and then only as to payments which became due prior to the date of sale, and excluding those assessment liens recorded prior to the recording of the First Mortgage.

4.16.2 Neither the transfer of a Lot pursuant to a foreclosure of any Mortgage, nor an election by the Association to proceed against any new Owner for payment, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent assessments and charges which accrued during such Owner's period of ownership. The personal obligation of any Owner for payment of delinquent assessments and charges may only be satisfied, and therefore discharged, by payment of the entire amount of the delinquent assessments and charges, whether or not such Owner remains in possession of his or her Lot.

4.16.3 No sale or transfer of any Lot shall relieve such Lot or its new Owner from liability for any future assessments which accrue during such Owner's period of ownership.

4.17 Statement of Delinquent Assessment. The Association shall provide any Owner, upon written request, with a statement

specifying the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Lot.

ARTICLE 5 - USE RESTRICTIONS AND COVENANTS

5.1 *General.* The use and enjoyment of the Project by Owners and their tenants, guests, invitees or any other person deriving rights from such Owner, shall be subject to the covenants and restrictions contained in this Restated Declaration. Each such person shall comply with the provisions hereof and be subject to any enforcement actions in the event of violations. Unless otherwise stated in the Governing Documents, the Association, through the Board of Directors, shall be responsible for the enforcement of these provisions.

5.2 *Common Area.* The following provisions govern the use and enjoyment of the Common Area:

5.2.1 Owners may use the Common Area subject to the provisions of this Restated Declaration, and each Owner has a non-exclusive easement for ingress, egress, enjoyment, support and use over the Common Area. This easement shall be appurtenant to the deeds of conveyance, whether or not expressed in such deeds. However, these rights shall not interfere with, and shall be subordinate to, any exclusive right.

5.2.2 An Owner who has sold his or her Lot to a contract purchaser or who has leased or rented the Lot shall be deemed to have delegated his or her rights to use and enjoy the Common Area to such contract purchaser or tenant, subject to reasonable regulation by the Board. If the Owner is deemed to have delegated such rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective.

5.2.3 The Board may:

- (a) Adopt and enforce reasonable rules and regulations for the use of the Common Area and the Project.
- (b) Reasonably limit the number of guests and tenants using the Common Area.
- (c) Charge a fee or deposit for use of any Common Area facilities.

- (d) Assign or otherwise control the use of any unassigned parking spaces within the Common Area.
- (e) Remove any vehicle within the Project parked in violation of this Declaration or the Rules and Regulations of the Board in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto.
- (f) Suspend the right of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any assessment or as otherwise provided in the Governing Documents.
- (g) Cause the construction of additional improvements in the Common Area, or cause the alteration or removal of existing improvements on the Common Area.
- (h) Dedicate, grant, or join in the grant or conveyance of easements, licenses or rights-of-way in, on and over the Common Area to any public agency, authority or utility as may be determined by the Board to be in the best interests of the Association; provided that no such easement, license or right-of-way may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot.
- (i) Approve any proposed alteration of or modification to the Common Area or any Lot.

5.2.4 The Board, with the approval of two-thirds (2/3) of the total voting power of the Association, may:

- (a) Dedicate, grant or join in the grant or conveyance of easements, licenses or rights-of-way in, on, and over the Common Area, other than those allowed by Section 5.2.3(h), above. These easements, licenses or rights-of-way may be granted (i) to third parties for purposes reasonably related to the operation of the Project, or (ii) to one or more Owners to exclusively use portions of the Common Area subject to the Governing Documents. No such easement, license or

right-of-way may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot. Each Owner, in accepting his or her deed to the Lot, expressly consents to these easements.

- (b) Mortgage or encumber the Common Area or portions thereof.

5.3 General Restrictions on Use. In exercising the right to occupy or use a Lot or the Common Area and its improvements, the Owner and the Owner's family, guests, employees, tenants, and invitees shall not:

- 5.3.1 Modify, construct, build or otherwise alter any portion of his or her Lot or Dwelling other than as provided in Article 7, below.
- 5.3.2 Attempt to further subdivide a Lot.
- 5.3.3 Occupy or use a Lot, or permit all or any part of a Lot to be occupied or used, without Board approval, for any purpose other than as a private residence. The Board may establish guidelines in the Rules and Regulations to allow certain home occupations which (a) are consistent with the normal residential usage of the Project, (b) do not cause any external effects which are detrimental to neighboring Lots or the Project, or (c) are compatible with the characteristics of residential use in the Project.
- 5.3.4 Lease a Lot in derogation of the following:
 - (a) All leases must be in writing.
 - (b) All leases must be for the entire Dwelling, and not merely parts thereof, unless the Owner remains in occupancy.
 - (c) No lease shall be for a period of less than thirty (30) days.
 - (d) All leases shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease which may be cured by eviction of the tenant either by the Owner or the Association.

- (e) An Owner who leases their Lot shall promptly notify the Association in writing of the names of all tenants and members of a tenants' family occupying such Lot and shall provide the Association with a complete copy of the lease.
- (f) All Owners leasing their Lot shall promptly notify the Association of the address and telephone number where such Owner can be reached.
- 5.3.5 Permit anything to obstruct the Common Area or store anything on the Common Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents.
- 5.3.6 Perform any act or keep anything on or in any Lot or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept on his or her Lot or in the Common Area that would result in the cancellation of insurance on any Lot or on any part of the Common Area or that would violate any law.
- 5.3.7 Store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Area or in any Lot; provided, however, that amounts of these liquids, substances or materials which are reasonable for household use may be placed in appropriate containers and properly stored.
- 5.3.8 Erect or display any sign on or from any Lot except as allowed by Sections 712 and 713 of the California Civil Code. No signs may be erected or displayed on the Common Area without the prior written approval of the Board.
- 5.3.9 Erect or display any radio or television antenna, satellite dish or other equipment or apparatus for transmitting or receiving transmissions. Notwithstanding the foregoing, an Owner may erect a video or television antenna, including a satellite dish, as allowed by any applicable statute or law, with Board approval. The Board may impose reasonable restrictions on its approval.
- 5.3.10 Raise or keep pet(s) or other animal(s) in or on the Project except as permitted by regulations

adopted by the Board. Notwithstanding the foregoing, no Owner or other occupant of a Lot may raise or keep pets which interfere with, or have a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Lot to the peaceful and quiet enjoyment of the Lot. In the event the Board determines that any such pet(s) or other animal(s) create an unreasonable annoyance or nuisance to any Owner or other occupant of a Lot, the raising or keeping thereof shall be discontinued within a reasonable time after such determination. No pets or other animals shall be permitted in the Common Area except as specifically permitted by regulations adopted by the Board. No owners may raise or keep animals for commercial purposes. The Association, its Board, officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person on the Project, for any damage or injury to persons or property caused by any pet, absent any willful or wanton negligence on the part of the Association, or its Board, officers, employees and agents.

- 5.3.11 Engage in any illegal, noxious or offensive activity in any part of the Project, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Project.
- 5.3.12 Operate, fire, discharge or otherwise use any gun, air powered rifle, BB gun, arrows, cross-bows or similar weapon within the Project.
- 5.3.13 Alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.

5.4 *Parking and Storage of Vehicles.* No mobilehome, camper, boat, trailer, truck over three-quarter ton gross carrying capacity, or other recreational or commercial vehicle of any kind shall be kept, stored, parked, maintained, constructed or repaired in the Project in such a manner as to be visible from the Common Area or any Lot except as allowed by the Rules and Regulations. Vehicles such as mopeds, mini-bikes, motorcycles, all terrain vehicles, dirt-bikes and similar machines shall not be operated in the Common Area except for direct ingress and egress between the Lot and the nearest public street access at the Project boundary. No Owner may park any automobile or other motor vehicle in the Common Area except in a space designated for the Owner by the Board or the Governing Documents. Guests must park in areas designated

for guest parking by the Board of Directors. No parking is permitted on the streets. The Board, in its discretion, may adopt reasonable additional rules governing the operation, maintenance, storage and parking of any vehicle, including trucks, campers, trailers, boats or commercial vehicles on the Common Area.

5.5 *Damage Liability.* Each Owner shall be liable to the Association for any damage to the Common Area or to Association owned property, including any access control systems, to the extent that the damage is not covered by insurance, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the case of joint ownership of a Lot, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

ARTICLE 6 - REPAIR AND MAINTENANCE

6.1 *General.* The Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article "maintenance" shall include without limitation painting, weatherproofing and cleaning to keep a clean, safe and sanitary condition necessary to preserve the attractive appearance of each Lot, Dwelling and the Project and protect the values thereof. The Board shall have the power to determine the standards of such maintenance.

6.2 *Association Responsibility.* The Association shall provide for the maintenance and repair of the Common Areas, including:

- 6.2.1 All improvements in the Common Area, including the pool, tot lot(s), playground equipment, pond, entry gate, other Common Area improvements and the systems associated therewith.
- 6.2.2 All Common Area utility fixtures, including lighting fixtures, water heaters, hose bibs and other utility fixtures not used exclusively by Owners of any one Lot.
- 6.2.3 All common landscaping, both "soft-scape" and "hard-scape," including the avocado grove and other trees, and any shrubs, lawns, Common Area drainage facilities and brow ditches, fountains and other items.
- 6.2.4 All furnishings, equipment and property that is owned by, or may be acquired by the Association.

6.2.5 All Common Area walls, railings, fences and signage.

6.2.6 All common utility service facilities, including common water, sewer and gas pipes and plumbing, common electrical and telephone lines and cables, and common heating and air-conditioning systems not otherwise maintained by a utility company, and only up to the point where such utility service facility exclusively serves one Lot.

6.2.7 All Common Area private roads and sidewalks.

6.3 *Owner Responsibility.* Except for those portions of the Project which the Association is required to maintain and repair, each Lot Owner shall, at his or her sole cost and expense, maintain, repair and replace his or her Lot and all improvements thereon in an attractive and neat manner, including:

6.3.1 The Dwelling on such Owners' Lot, including all interior and exterior elements and components, and the structure itself.

6.3.2 All landscaping on such Owners' Lot.

6.3.3 All utility service connections, pipes, wires, cables and conduits which exclusively serve such Owners' Lot, wherever located.

6.3.4 All fences and walls located on such Owners' Lot; provided, however, the cost of maintenance and repair of any shared fence or wall (i.e. a fence or wall on any dividing line between Lots or between Lots and the Common Area) shall be shared by the parties who share such fence or wall in accordance with the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions.

6.3.5 All slopes and drainage facilities located on such Owners' Lot, to enhance their appearance, maintain established slope ratios, prevent erosion or sliding problems, and to facilitate the orderly discharge of water.

No rubbish or debris of any kind shall be placed or permitted by an Owner to accumulate upon or adjacent to any Lot, so as to render such property or portion thereof unsanitary, unsightly, offensive or detrimental to other residents.

6.4 *Landscaping.* As required above, Owners are responsible for maintenance and replacement of their landscaping. The Board may, in its sole discretion, require an Owner to trim or remove landscaping which unreasonably interferes with the view from any Lot. Upon request by an Owner, the Board, in its sole discretion, shall make a determination as to whether a view is unreasonably impaired, which decision shall be final and binding on the parties involved. In the event an unreasonable interference is found, the Board shall have the power to require the removal or trimming of the offending landscaping.

6.5 *Failure to Maintain.* In the event an Owner fails to maintain, repair or replace the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within a reasonable time from the giving of such Notice. In the event the Owner fails to carry out such maintenance within said time period, the Board may, following notice and a hearing, cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

6.6 *Termite Control.* The responsibility for control of wood destroying pests or organisms shall be as follows:

6.6.1 Each Owner shall be responsible for the maintenance and repair of their personal property, their Dwelling and any other Lot improvements as required to control the presence of or damage caused by wood-destroying pests or organisms.

6.6.2 The Association shall be responsible for the maintenance and repair of the Common Area as required to control the presence of or damage caused by wood destroying pests or organisms in accordance with the provisions of Civil Code Section 1364.

6.6.3 Neither the Association, the Board, officers, agents and employees shall have any liability, absent willful or wanton negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment.

6.7 *Damage Caused by Owner or Item Under Control of Owner.* Should any damage to the Common Area, any Lot or Dwelling result from the willful or negligent act or neglect of any Owner, or such Owner's tenants, guests, invitees, pets or other person or entity deriving any interest through such Owner, or from any item the maintenance, repair or replacement of which an Owner is responsible, the cost of all repairs shall be borne solely by the culpable Owner.

The Association shall be responsible for performing the repair of any damage to the Common Area or items over which the Association has control at the culpable Owner's expense. The culpable Owner shall be responsible for performing the repair of any damage to his or her own property. The Owner of any other property which sustained damage shall be responsible for performing the repair of any such damage, and may charge the cost thereof to the culpable Owner.

If the culpable Owner disputes or refuses to pay any repair costs incurred by the Association, the Association, after reasonable notice and hearing procedures as provided for the imposition of monetary fines or suspensions, may charge the cost of those repairs to such Owner as an individual or special assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the Association, the Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the culpable Owner shall be responsible for the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, the Owner shall be responsible for the total cost of repair.

All repairs performed to correct any damage shall be sufficient to return the damaged property only to its condition prior to the damage, with upgrades as may be required to conform with any applicable building codes in effect at the time the damage is repaired.

ARTICLE 7 - ARCHITECTURAL AND DESIGN CONTROL

7.1 *General.* Any change or improvement to the exterior of a Dwelling or any portion of a Lot shall be governed by this Article. Changes or improvements to the Common Area by the Association do not need to comply with the requirements of this Article. The powers and duties set forth in this Article shall be vested in, and exercised by, the Board. The Board may establish an architectural committee as provided herein to assist the Board in reviewing architectural submittals, and to provide recommendations to the Board with regard to approval or disapproval of any submittal. The foregoing notwithstanding, the Board shall be solely responsible for approving or rejecting any architectural submittal.

7.2 *Architectural Changes Requiring Prior Approval.* Nothing may be erected, placed or planted on the exterior of any Dwelling or Lot, or on the Common Area by any Owner, including any building, fence, wall, pool, spa, obstruction, outside or exterior wiring, basketball standard or other fixed sports apparatus, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, tree, grass, shrub or other landscaping, any improvement

or structure of any kind without the prior written approval of the Board in accordance with this Article.

7.3 Architectural Changes Not Requiring Prior Approval. Maintenance of the landscaping, Lot and Dwelling (e.g. pruning trees, trimming shrubs, replacing annual flowers, washing windows, cleaning window screens, cleaning stucco or wood siding, polishing metal work, etc.) shall not be considered a modification for purposes of this Article. No permission or approval shall be required to repaint in accordance with the original color scheme or as previously approved by the Board, or to rebuild or replace in accordance with plans and specifications previously approved by the Board. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his or her Dwelling any color desired, or to improve or alter any improvements within the interior of the Dwelling; provided such improvement or alteration does not impair or alter the Common Area, any utilities, or other systems servicing the Common Area or other Lots.

7.4 Architectural Rules. The Board may, in its sole discretion, adopt, amend and repeal, as it deems necessary and by majority vote, rules and regulations to be known as "Architectural Rules." Said Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards for review by the Board and any architectural committee and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that said Architectural Rules shall not be in derogation of the standards required by this Restated Declaration. The Architectural Rules may also address the information which is required to be presented in connection with an architectural submittal.

7.5 Procedure for Obtaining Approval of Architectural Changes. Plans and specifications for the proposed architectural change shall be submitted to the Board by personal delivery or certified mail to the secretary of the Association. In the event the Board fails to approve or disapprove such design and location within 45 days after completed plans and specifications have been submitted to it, the request shall be deemed denied. Under such circumstances, the written request may be resubmitted. Approval of the Board may contain conditions or requests for modification of particular aspects of the Owner's plans and specifications.

7.6 Standard of Architectural Review. An architectural submittal made by an Owner shall be reviewed for conformity with the Architectural Rules and the Governing Documents. Additional factors to be considered include, but are not limited to, (i) the quality of proposed workmanship, (ii) the design and harmony of the improvement with existing structures, (iii) the location of the improvement in relation to surrounding structures, topography, and finish grade elevation, (iv) the unreasonable interference, or potential for unreasonable interference with the view from any Lot,

(v) Owner and contractor insurance coverage, (vi) compliance with governmental permit requirements, and (vii) contractor license status.

7.7 *Architectural Committee.* The Board may appoint an Architectural Committee composed of not less than three (3) nor more than seven (7) members. Committee members appointed shall be from the membership of the Association. Members of the committee shall serve for a term of one year. The Board shall have the power to remove committee members with or without cause. In the event of the death or resignation of any member of the Architectural Committee, a successor shall be appointed by the Board.

7.8 *Fee for Review.* The Board or architectural committee shall be entitled to charge a reasonable fee, as determined by the Board from time to time in their sole discretion, in order to defray the time, costs and expense involved in reviewing the materials submitted to it. Should the Board or architectural committee determine that all or a portion of the materials submitted require resubmittal, it may charge an additional fee to defray the time, costs and expense involved in re-reviewing such materials, provided that the applicant is notified of the amount of the fee to be charged at the time the Owner is notified that such matters must be resubmitted.

7.9 *Compensation.* The members of the Board and architectural committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder.

7.10 *Liability.* Neither the Board, the architectural committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the neighborhood; or (d) the execution and filing of a certificate, pursuant to Section 7.11 above, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

7.11 *Estoppel Certificate.* Within a reasonable time after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee, if any, the Board shall provide the Owner with an estoppel certificate certifying that as of the date thereof, either: (a) all improvements made and other work completed by said Owner complies with the Governing Documents, or (b) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchase from the Owner, or from anyone

deriving any interest in said Lot through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, the Owners and such persons deriving any interest through them.

7.12 *Enforcement.* In addition to other enforcement remedies set forth in this Restated Declaration, including the right to impose monetary penalties, the Board shall have enforcement rights with respect to any matters required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or in equity.

7.13 *Non-Compliance with Laws.* Neither the Association, the Board nor the architectural committee shall be responsible for any non-compliance with any governmental law, rule or regulation of any building or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or any defect in any conditions or requirements they may have imposed with respect thereto.

7.14 *Approval by Governmental Agency.* Prior to commencing any alteration or improvements approved by the Board, the Owner shall comply with all appropriate governmental laws and regulations. The Association shall not be obligated to enforce the provisions of this Section. Approval by the Board shall not be considered to satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction, nor shall the approval of any governmental entity be considered to satisfy the requirement of Board approval. An Owner's failure to obtain such governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Board, which penalties shall be the responsibility of such Owner.

ARTICLE 8 - INSURANCE

8.1 *Fire and Casualty Insurance.* The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of the improvements in the Common Area. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Lenders, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Restated Declaration. If required by any First Lender who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an agreed amount endorsement, an inflation guard endorsement, and a construction code endorsement.

8.2 *General Liability Insurance.* The Association shall obtain and maintain a comprehensive public liability and property damage liability policy or policies insuring the Association, Board members, any manager, Owners, and occupants of Lots against any liability for bodily injury, death, and property damage arising from ownership and use of the Common Area. Limits of liability under the insurance shall not be less than three (3) million dollars covering all claims for death, personal injury, and property damage arising out of a single occurrence.

8.3 *Directors and Officers Liability Insurance.* The Association shall obtain and maintain one or more policies of insurance which include coverage for individual liability of officers and directors of the Association for negligent acts or omissions of those persons acting in their capacity as officers and directors. Limits of liability under this insurance shall be determined by the Board at its sole discretion.

8.4 *Fidelity Coverage.* The Association shall purchase and maintain fidelity coverage for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If an agent handles Association funds, such agent shall be covered by the Association's coverage, unless such agent provides similar coverage. The Association's coverage may be in the form of a separate bond, a separate policy (e.g. crime policy), or may be added by endorsement to the general policies carried by the Association. The Board shall have the discretion to determine the amount of coverage. However, in no event may the aggregate amount of these bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots plus reserve funds. The bond or policy must contain a provision that it may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

8.5 *Other Association Insurance.* The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Association may purchase such other insurance that the Board considers necessary or advisable, including earthquake insurance coverage.

8.6 *Review of Insurance; Notice of Cancellation or Modification.* The limits and coverage of insurance carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion. Such policies shall include a provision for at least ten (10) days' prior written notice to the Association, and, if available, to each First Lender which is listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation or substantial modification by any party.

8.7 *Qualifications of Insurance Carriers.* The Association shall use generally acceptable insurance carriers from which to purchase and maintain the coverage required herein.

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

The Association, and its directors and officers, shall also have no liability to any Owner or Lender if it does not obtain any of the insurance referenced hereunder which is not required but may be obtained at the discretion of the Association. The Board may, in good faith in its sole discretion, determine that obtaining any of the discretionary insurance is unreasonable or unnecessary under the circumstances. In making a determination as to whether to acquire any such discretionary insurance, the Board may, but is not required to, base its decision upon, among other things, a vote of the Owners.

8.9 *Trustee for Policies.* The Association, acting through its Board, is appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described in Article 9 herein. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

8.10 *Insurance Premiums.* Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular or special assessments. That portion of the assessments necessary for the required insurance premiums shall be used solely for the payment of the premiums when due.

8.11 *Insurance Policy Deductibles.* The Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association insurance coverage is used, the responsibility for payment of any deductible shall be as follows:

8.11.1 Owners shall be responsible for the cost of any deductible if the damage or loss occurs to the Owners' real or personal property, or other property for which the Owner is responsible.

8.11.2 The Association shall be responsible for the cost of any deductible if the damage or loss occurs to any item owned by the Association, or for which the Association is responsible.

8.11.3 If the damage or loss occurs to any Lot or Lots and the Common Area, the responsibility for the payment of any deductible shall be apportioned among the affected parties on the basis of the ratio of each parties' cost of repair to the total costs of repair.

8.11.4 The foregoing notwithstanding, if the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner, the responsible Owner shall be liable for the full amount of the deductible.

8.12 *Owner Notification of Insurance.* The Association shall disclose such information regarding insurance coverage as and when required by any applicable statute or law. Failure to disclose such information shall not impose any liability upon the Association or Board other than that provided for in such statute or law.

8.13 *Individual Insurance.* An Owner shall separately insure his or her Lot, Dwelling and personal property, and shall obtain and maintain such insurance as may be required by any Lender of the Owner's Lot, and in no event less than the amount and type as is customary and reasonable with respect to similar projects in the area, provided that the insurance contains a waiver of subrogation rights by the carrier as to the other Owners, the Association, and the institutional First Lender of the Owner's Lot. The Owner shall integrate his or her personal insurance with the Association's insurance.

8.14 *Damage to or Loss of Owner Property; Insurance; Limitation of Liability.* An Owner is responsible for obtaining and maintaining such insurance, at his or her sole expense, to protect against any damage to, or loss of property, and the cost of repair or replacement of damaged items, including, but not limited to, any personal property, decorations, floor and wall coverings, appliances, fixtures or other items therein, or any exterior items such as landscaping, which is caused by any Common Area component or any component maintained by the Association. The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or loss of any such property, or the cost of repair or replacement of any damaged property or portions of such Owners' Lot, unless such damage is caused by the gross negligence of the Association, its Board, officers, agents or employees.

ARTICLE 9 - DAMAGE OR DESTRUCTION

9.1 *Duty to Restore Lot.* If all or any portion of any Lot or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Lot to rebuild, repair or reconstruct the Dwelling on such Lot in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the Board. The Owner of any damaged Lot or Dwelling and the Board shall be obligated to proceed with all due diligence hereunder, and such Owner shall mitigate any danger presented by such damage or destruction and thereafter cause reconstruction to commence within three (3) months after the damage occurs and be completed within one year after damage occurs, unless prevented by causes beyond his or her reasonable control.

9.2 *Duty to Restore Common Area.* If all or any portion of the Common Area is damaged or destroyed, it must be repaired or replaced promptly by the Association unless:

- 9.2.1 The Project is terminated;
- 9.2.2 Repair or replacement would be illegal under a state statute or municipal ordinance; or
- 9.2.3 The damaged or destroyed portion of the Project is partitioned in accordance with Section 2.3, above.

9.3 *Cost of Repair.* Any cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense, levied against Lots in the same proportion as regular assessments are levied.

9.4 *Repair Plans.* The Common Area must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved in writing by the Board and a majority of Owners. Updates to conform to currently applicable building codes shall be deemed to be repairs and restoration in accordance with the original plans.

9.5 *Minor Repair.* The Board shall have the duty to repair and reconstruct all Common Areas without the consent of Members and regardless of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction in excess of insurance proceeds does not exceed an amount equal to five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. In the case of damage to Common Areas which does not exceed that amount, all Lots shall be assessed for an equal portion of any uninsured expense, if necessary. The Board may waive this absolute duty to repair by a unanimous vote, which shall be duly noted in the minutes of the

meeting at which the vote was taken, and shall be communicated to Owners.

9.6 *Insurance Proceeds.* An insurance trustee appointed by the Board or insurance company, or if there is no trustee, then the Board, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and lien holders as their interests may appear. Subject to the provisions of this Restated Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property. The Association, Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the Common Areas have been completely repaired or restored, or unless the Project is terminated.

9.7 *Disbursements to Owners and Lenders.* Any insurance proceeds distributed to Owners and Lenders shall be distributed proportionately according to the fair market values of the Lots at the time of the destruction as determined by an independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Board and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

9.8 *Certificates By Board.* The trustee, if any, may rely on the following certifications in writing made by the Board:

- 9.8.1 Whether or not damaged or destroyed property is to be repaired or restored; and
- 9.8.2 The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

9.9 *Certificates by Attorneys or Title Insurance Companies.* If payments are to be made to Owners or Lenders, then the Board and the trustee, if any, shall obtain and may rely on a title insurance company's or attorney's title certificate or a title insurance policy based on a search of the Official Records of the County Recorder, stating the names of the Owners and the Lenders.

ARTICLE 10 - EMINENT DOMAIN

10.1 *Association as Trustee for Owners.* If all or part of the Common Area is threatened to be, or shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected Lots, shall be payable to the Association as trustee for all Owners and Lenders according to the loss or damages to their respective interest in the Common Area. The Association, acting through the Board, shall have the right to act on behalf of the

Owners with respect to the negotiation, settlement and litigation of the issues with respect to the taking and compensation affecting the Common Area. Each Owner hereby designates and appoints the Association as his or her attorney-in-fact for such purposes.

10.2 *Condemnation of a Lot.* If all or any part of a Lot is taken by eminent domain, the award shall be disbursed to the Owner of the Lot subject to the rights of the Owner's Lenders. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Project, including membership in the Association, and the interest of the remaining Owners shall be adjusted accordingly.

ARTICLE 11 - RIGHTS OF LENDERS

11.1 *General.* No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Lender on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

11.2 *No Right of First Refusal.* This Restated Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Lot can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any First Lender to: (a) foreclose or take title to a Lot pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a Borrower, or (c) sell or lease a Lot acquired by the Lender.

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

11.4 *Action Requiring Lender Approval.* Except as provided by statute in case of condemnation or substantial loss to the Lots and Common Area, unless at least two-thirds (2/3) of the First Lenders (based upon one (1) vote for each Mortgage owned), or two-thirds (2/3) of the total voting power of the Association have given their prior written approval, the Association and/or the Owners shall not be entitled to:

- 11.4.1 By act or omission seek to abandon, or terminate the Project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain).
- 11.4.2 Change the pro rata interest or obligations of any individual Lot for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Lot in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner.
- 11.4.3 Partition or subdivide any Lot.
- 11.4.4 By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, or any property owned, directly or indirectly, by the Association (the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association is not a transfer in the meaning of this clause).
- 11.4.5 Use hazard insurance proceeds for losses to any of the Project (whether to Lots or to Common Area) for other than the repair, replacement or reconstruction of such property.

11.5 *Payment of Taxes and Insurance.* First Lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area property. First Lenders making such payments shall be owed immediate reimbursement from the Association.

11.6 *Priority of Proceed or Award Distribution.* Any other provision herein contained to the contrary notwithstanding, no provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the First Lender pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

11.7 *Notification of Lender.* Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any Eligible Lender will be entitled to timely written notice of:

- 11.7.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or the Lot insured or guaranteed by such Eligible Lender;
- 11.7.2 Any default in the performance by an Owner of any obligation under the Governing Documents not cured within sixty (60) days;
- 11.7.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- 11.7.4 Any proposed action which would require the consent of a specified percentage of Eligible Lenders as required by the Governing Documents.

11.8 *Termination of Professional Management.* Provided professional management has previously been required by any Eligible Lender, any decision to establish self-management by the Association shall require the consent of at least sixty-seven percent (67%) of the total voting power of the Association and at least fifty-one percent (51%) of Eligible Lenders; provided that so long as any Mortgage which is a lien on a Lot is insured or guaranteed by the Federal Housing Administration, any termination and failure to replace professional management shall require the prior written approval of the Federal Housing Administration.

11.9 *Inspection of Documents, Books and Records.* The Association shall make available to Eligible Lenders, current copies of the Governing Documents and the accounting books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

11.10 *Non-Curable Breach.* Any Lender who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

11.11 *Loan to Facilitate.* Any First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

11.12 *Lenders Furnishing Information.* Any Lender can furnish information to the Board concerning the status of any Mortgage.

11.13 *Financial Statement.* Any First Lender shall be entitled, on written request therefor, to have the Association

provide an audited financial statement for the immediately preceding fiscal year, which statement shall be furnished within a reasonable time following such request.

11.14 *Termination without Substantial Destruction.* Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, the consent of at least sixty-seven percent (67%) of the total voting power of the Association and the approval of fifty-one percent (51%) of Eligible Lenders shall be required to terminate the Project; provided that if termination is for reasons other than substantial destruction or condemnation, the agreement of sixty-seven percent (67%) Eligible Lenders is required.

11.15 *Provisions from Original Declaration.* The following two provisions, which shall control over contrary provisions of this Restated Declaration, are included verbatim from the Original Declaration to avoid the requirement of obtaining the approval of one hundred percent (100%) of First Lenders to amendment of the Original Declaration:

"4.13 Subordination of the Lien to Mortgages

The lien of the assessments provided for herein shall be subordinate to the lien of any first trust deed or first mortgage now or hereafter placed upon any of the Lots subject to assessment, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, sale under a power of sale included in any such trust deed, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereunder becoming due, nor from the lien of any such subsequent assessment. Nothing in this Section shall be construed to release any Owner from his obligation to pay for any assessment levied pursuant to this Declaration."

"12.6 Mortgage Protection

A breach of any of the covenants, conditions, restrictions, easements or reservations herein contained shall not defeat or render invalid the lien of any first mortgage or first trust deed made in good faith and for value as to any Lot, but said covenants, conditions, restrictions, easements, and reservations shall be binding upon and affective against any Owner thereof whose title thereto is acquired by foreclosure, trustee's sale or otherwise."

ARTICLE 12 - ENFORCEMENT

12.1 *Right to Enforce; Remedies.* The Association or any Owner shall have the right to enforce, by any proceeding at law or

in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the Governing Documents. Each Owner of a Lot shall have a right of action against the Association or any Owner for failure to comply with the provisions of the Governing Documents. The remedies provided for herein are to be considered cumulative and the use of one remedy shall not preclude the use of any other.

12.2 *Nuisance.* The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in the Governing Documents is violated in whole or in part, is declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner and/or the Association. Each remedy provided herein shall be cumulative and not exclusive.

12.3 *Failure to Enforce.* Failure by the Association or any Owner to enforce any provisions of the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

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

12.5 *Compliance with Statute.* All activities to enforce the provisions of the governing documents shall be conducted in accordance with all applicable laws, statutes and ordinances. This Section shall apply to both the Association and to all Owners.

ARTICLE 13 - AMENDMENTS

13.1 *Owner Approval of Amendments.* This Restated Declaration may be amended by the vote or written consent of Owners representing not less than sixty-seven percent (67%) of the voting power of the Association. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Restated Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (a) the approval of the required percentage of Owners has been given, (b) that fact has been certified in the form of a written document executed and acknowledged by an officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association and (c) the document has been recorded in San Diego County.

13.2 Eligible Lender Approval of Amendments. Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, the consent of sixty-seven percent (67%) of the voting power of the Association and the approval of fifty-one percent (51%) of Eligible Lenders shall be required to add or amend (i) any provision which is for the express benefit of holders or insurers of First Mortgages, or (ii) any material provisions of this Restated Declaration which establish, provide for, govern or regulate any of the following:

- 13.2.1 Voting rights.
- 13.2.2 Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or the priority of assessment liens.
- 13.2.3 Reductions in reserves for maintenance, repair and replacement of the Common Area.
- 13.2.4 Responsibility for maintenance and repairs.
- 13.2.5 Reallocation of interests in the Common Area or Exclusive Use Common Area, or rights to their use.
- 13.2.6 Redefinition of any Lot boundaries.
- 13.2.7 Convertibility of Lots into Common Area or vice versa.
- 13.2.8 Expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project.
- 13.2.9 Hazard or fidelity insurance requirements.
- 13.2.10 Imposition of any restrictions on the leasing of Lots.
- 13.2.11 Imposition of any restrictions on an Owner's right to sell or transfer his or her Lot.

13.3 Eligible Lender Approval Response Time. An Eligible Lender who receives a written request to approve additions or amendments by certified or registered mail, return receipt requested, addressed to the address provided by such Eligible Lender, who does not deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment, shall be deemed to have approved such request. No Lender may charge a fee in connection with reviewing a request for a response. Any response from a Lender

which only requests a fee for review shall not be deemed a "negative response" for the purposes of determining Lender consent within the meaning of this Section.

ARTICLE 14 - GENERAL PROVISIONS

14.1 *Term.* The provisions of this Restated Declaration shall continue in effect for a term of fifty (50) years from the date of execution. Thereafter, it shall be automatically extended for successive periods of ten (10) years, until the membership of the Association decides to terminate it.

14.2 *Nonwaiver of Remedies.* Each remedy provided for in this Restated Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

14.3 *Severability; Invalidity.* The provisions of this Restated Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one (1) provision shall not affect the validity or enforceability of any other provision. If for any reason this Restated Declaration is declared completely invalid in its entirety, the Original Declaration shall be automatically revived and thereafter become effective without any further action.

14.4 *Binding.* This Restated Declaration, as well as any amendment thereto and any valid action or directive made pursuant to it, shall be binding and the Owners and their heirs, grantees, tenants, successors, and assigns.

14.5 *Interpretation.* The provisions of this Restated Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a common interest development. Failure to enforce any provision of this Restated Declaration shall not constitute a waiver of the right to enforce that provision or any other provision of this Restated Declaration.

14.6 *Limitation of Liability.* The liability of any Owner for performance of any of the provisions of this Restated Declaration shall terminate upon sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Lot with respect to obligations arising from and after the date of the divestment.

14.7 *Fair Housing.* Neither Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Lot to any person on the basis of race, color, sex, sexual orientation, religion, ancestry, national origin, age, marital status or physical handicap.

14.8 *Number and Headings.* As used in this Restated Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Restated Declaration, and shall not affect the interpretation of any provision.

14.9 *Attorneys Fees.* In the event an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its attorneys fees and costs so incurred. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys fees and costs. Said costs and attorneys fees shall constitute a lien on the Lot which is enforceable pursuant to Article 4 herein. This Section shall also apply to attorneys fees incurred to collect any post-judgment costs.

14.10 *Variances.* The Board may authorize variances from compliance with any of the architectural or use provisions of this Restated Declaration as follows:

- 14.10.1 Variances may be granted, without limitation, to restrictions upon use contained in Article 5, restrictions on repair and maintenance in Article 6, and architectural restrictions in Article 7, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant.
- 14.10.2 Variances shall be in writing and shall become effective upon final approval by the Board or an authorized committee.
- 14.10.3 When a variance is granted, no violation of the Restated Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Restated Declaration for any purpose except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the premises, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the County of San Diego or any other governmental authority.
- 14.10.4 The Association may charge a reasonable fee to cover any costs associated with the variance

approval process, or for issuance of a variance.

14.10.5 The Board may enact additional rules and regulations regarding the variance approval process, the circumstances under which a variance may be granted, and the execution of indemnity or other agreements by the Owner as a condition to issuance of a variance.

14.11 *Governing Document Priorities.* In the event of a conflict between the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) the Articles, (2) this Restated Declaration, (3) the Bylaws, and (4) the Rules and Regulations.

14.12 *Conflict with Statutes.* Provided any federal, state or local statute, law or ordinance ("Law") is inconsistent with any provision or provisions of the Governing Documents, and compliance with that Law is mandatory, neither the Association, the Board nor any member thereof shall have any liability for complying with the Law or for failing to comply with provisions of the Governing Documents if compliance would violate such Law.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of Restrictions this 22nd day of March, 1997.

ASSOCIATION:

AVOCADO HOMEOWNERS ASSOCIATION,
a California nonprofit corporation

By: Edgar T Roesch
President

By: David A Thomas
Secretary

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On March 22, 1997, before me, FRED NAULT,
Notary Public, personally appeared Edgar T Roesch
and David A Thomas,

[] personally known to me
 - OR -

[X] proved to me on the basis of satisfactory evidence

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

WITNESS my hand and official seal.

[Signature]
Notary Public

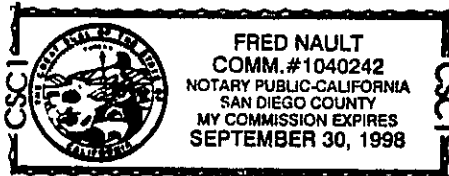


EXHIBIT "A" - COMMON AREA LEGAL DESCRIPTION

Lots 1 through 5, inclusive, Lot 12, Lots 15 through 17, inclusive, Lots 24, 25, 36, 37, 41, 49 and Lots 52 and 53, of AVOCADO ESTATES, LTD., Unit No. 1, in the County of San Diego, State of California, according to Map thereof No. 8417, filed in the Office of the County Recorder of San Diego County of November 19, 1976.

Lot 57, Lot 59, Lot 63, Lot 66, Lot 76, Lot 79, Lot 82, Lot 84, Lot 86, Lot 88, Lots 91 through 92, inclusive, Lot 97, Lot 103, Lot 108, Lot 110, Lot 114, Lot 117, Lot 119, Lot 125, Lots 131 through 133, inclusive, Lot 138, Lots 140 through 142, inclusive, Lots 144 through 146, inclusive, and Lot 149, of County of San Diego Tract No. 3610-2 in the County of San Diego, State of California, according to Map thereof No. 8945, filed in the Office of the County Recorder of San Diego August 3, 1978.