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Summorcreek Homeowners Association

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2009 AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
FOR
SUMMERCREEK HOMEOWNERS ASSOCIATION
A Residential Planned Development

NOTICE
(Gov't. Code §12956.1)

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2009 AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
FOR
SUMMERCREEK
A Residential Planned Development

THIS 2009 AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made on the day and year hereinafter written, by Summercreek Homeowners Association a California nonprofit mutual benefit corporation (“**Association**”), with reference to the following Recitals.

RECITALS

Association is a corporation whose Members are the Owners of all the residential Lots within that certain real property in the City of Escondido, County of San Diego, State of California, more particularly described below (hereinafter “Community”):

Lots 1 through 222 of Escondido Tract No. 557 in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 11390 (“**Map No. 11390**”) filed in the Office of the County Recorder of San Diego County, California on December 12, 1985.

The Community was developed as a Planned Development, as defined in section 1351(k) of the California Civil Code, and consists of two hundred eleven (211) residential Lots and eleven (11) Common Area Lots.

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

The Declaration of Covenants, Conditions and Restrictions for Summercreek Recorded April 2, 1986 as Document No. 86-127671.

The Declaration of Annexation for Summercreek Phase 2 Recorded May 13, 1986 as Document No. 86-188670;

The Declaration of Annexation for Summercreek Phase 3 Recorded August 4, 1986 as Document No. 86-327553;

The Declaration of Annexation for Summercreek Phase 4 Recorded August 4, 1986 as Document No. 86-327552;

The Declaration of Annexation for Summercreek Phase 5 Recorded August 4, 1986 as Document No. 86-327551;

The Declaration of Annexation for Summercreek Phase 6 Recorded February 24, 1987 as Document No. 87-097996;

The Declaration of Annexation for Summercreek Phase 6 (Common Area) Recorded February 24, 1987 as Document No. 87-097995;

The Declaration of Annexation for Summercreek Phase 7 Recorded March 9, 1987 as Document No. 87-122978;

The Declaration of Annexation for Summercreek Phase 8 Recorded March 9, 1987 as Document No. 87-122979;

The 2007 Amendment to Declaration of Covenants, Conditions and Restrictions for Summercreek Recorded October 29, 2007 as Document No. 2007-0690560; and

Any other amendments, annexations or similar documents containing restrictions applicable to the Community that may appear of record;

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

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

Article XIII, Section 3 of the Original Declaration, as amended, provides that the Original Declaration may be amended by voting in accordance with Civil Code Section 1363.03, provided that the amendment is approved by the affirmative vote of at least two-thirds of the ballots cast and provided that the total number of ballots cast must represent at least a simple majority (*i.e.*, more than half) of the Voting Power of the Members.

The undersigned President and Secretary of the Association certify that the affirmative vote or written consent of at least the required percentage of Association Members has been obtained as more fully set forth in Exhibit A attached.

Under California Civil Code Section 1355, an amendment is effective after (1) approval of the percentage of Owners required by the Governing Documents has been given, (2) that fact has been certified in a writing executed and acknowledged by the Association President if no Officer has been designated in the Original Declaration for such purpose, and (3) the writing has been recorded in the County in which the Community is located.

NOW, THEREFORE, Association hereby declares that all of the Community is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Restated Declaration, and as may be amended from time to

time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Community. All provisions of this Restated Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Community, and shall be binding on and for the benefit of all of the Community and all parties having or acquiring any right, title, or interest in all or any part of the Community, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of a Lot.

DECLARATION

ARTICLE 1 - DEFINITIONS

1.1 ***Use of Capitalized Words.*** Unless otherwise defined in this Restated Declaration, capitalized terms or words used in this Restated Declaration shall have the definitions found in this Article, or elsewhere in this Restated Declaration or in the Davis-Stirling Common Interest Development Act (California Civil Code Section 1350 et seq., hereafter “Act”). Words not defined in the Restated Declaration or in the Act shall be understood in their ordinary and popular sense, as determined by the context in which they are used, unless the context indicates that the term or word is a defined term which was inadvertently not capitalized.

1.2 ***References to Statutes and Administrative Regulations*** means statutes or administrative regulations that are shown in brackets, usually at or near the beginning of a section or paragraph in this Restated Declaration, are intended to show that the respective section or paragraph is based on the particular statute or administrative regulation referred to in the brackets. Unless otherwise noted, all references are to statutes and administrative regulations of the State of California. Any issues not addressed expressly by the Governing Documents of the Association shall be controlled by relevant provisions of the Act and the California Corporations Code and by judicial interpretations of them, whether the Association is incorporated or not. If any Applicable Laws cited herein are amended, or otherwise changed, the references herein shall be deemed to refer to the Applicable Laws as amended or otherwise changed. If an Applicable Law is repealed or otherwise deleted, any reference herein shall be deemed to refer to any Applicable Law that is a successor of the repealed Applicable Law.

1.3 ***“Applicable Law”*** means the statutes and public laws and ordinances in effect at the time a provision of the Governing Documents is applied, and pertaining to the subject matter of the Governing Document provision. Statutes and ordinances specifically referenced in the Governing Documents are “Applicable Law” on the date of the Governing Document, and are not intended to apply to the Community if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

1.4 ***“Architectural Rules”*** means the Rules and Regulations regulating modifications and alterations to the Lots adopted pursuant to Section 8.6 herein.

1.5 ***“Articles”*** [Corp Code §5035] means the Articles of Incorporation of Summercreek Homeowners Association, filed in the Office of the Secretary of State of the State of California on November 19, 1985 as File No. 1291026, and any amendments thereto now existing or hereafter adopted.

1.6 **“Association”** [Civil Code §1351(a)] means Summercreek Homeowners Association, a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development.

1.7 **“Board”** [Corp Code §5038] means the Board of Directors of the Association. One or more members of the Board of Directors may be referred to as a “Director” or “Directors.”

1.8 **“Bylaws”** [Corp Code §5037] means the Bylaws of the Association and any amendments thereto.

1.9 **“Capital Expenditure” or “Capital Improvement”** means the use of Association funds to construct or build an addition to the Community, where such use of funds is optional under the Governing Documents, rather than mandatory, and is not otherwise required by Applicable Law. For purposes of the Governing Documents, the maintenance, repair or replacement of Improvements within the Community which the Association is obligated to maintain, using materials of similar kind, or using materials which are needed due to changes in building or fire codes or due to discontinued fabrication or unavailability, or using materials that have substantially similar cost over the useful life of the material shall not be considered a Capital Expenditure or Capital Improvement, notwithstanding that such expenditure or Improvement may be considered a Capital Expenditure or Capital Improvement for tax purposes.

1.10 **“Common Area”** means those portions of the Community and all improvements thereon owned by the Association for the common use and enjoyment of the Owners, consisting of Lot Nos. 212 through 222, inclusive, of Escondido Tract No. 557 as described in Recital A above.

1.11 **“Common Expenses”** [Civil Code §1365(a)(1)] means and includes the actual and estimated expenses of operating the Community, and any reasonable reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Governing Documents.

1.12 **“Community” or “Properties”** means the entire common interest development as described in Recital A herein, including all Improvements thereon.

1.13 **“Director” or “Directors”** [Corp. Code §5047] means one or more members of the Board of Directors.

1.14 **“Dwelling”** means a residential structure or structures, including any enclosed yard, balconies, patio areas and garages located on a Lot.

1.15 **“Estate Homes”** mean the following Lots within the Community: Lots 90 through 108 and Lots 192 through 210 of Escondido Tract No. 557.

1.16 **“Electronic Transmission”** [Corp. Code §§20 & 21] means a communication delivered by facsimile, electronic mail or other means of electronic communication as more fully described in California Corporations Code Sections 20 and 21.

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

1.18 **“Governing Documents”** [Civil Code §1351(j)] means this Restated Declaration and any other documents such as the Articles, Bylaws, Rules and Regulations, or Architectural Rules which govern the operation of the Association.

1.19 **“Improvement”** means any structure or appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, carports, swimming pools, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, stairs, decks, landscaping, hedges, windbreaks, exterior surfaces of any visible structure and the paint or finish on such surfaces, planted trees and shrubs, poles, signs and water softener fixtures or equipment.

1.20 **“Lender” or “Mortgagee”** 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), the Government National Mortgage Association (GNMA) and other lenders. **“First Lender”** means a mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Lot or other portions of the Community. The term **“Beneficiary”** shall be synonymous with the term “Lender.”

1.21 **“Lot”** [Civil Code §1351(l)(3)] means all the residential Lots within the Community, including all improvements now or hereafter thereon. Lot does not mean the Common Area.

1.22 **“Member”** means every person or entity entitled to membership in the Association as provided in this Restated Declaration and the Bylaws.

1.23 **“Mortgage”** means a mortgage or deed of trust encumbering a Lot or any other portion of the Community. **“First Mortgage”** means a mortgage that has priority over all other mortgages encumbering the same Lot or other portions of the Community.

1.24 **“Neighborhood Homes”** mean the following Lots within the Community: Lots 1 through 89, Lots 109 through 191 and Lot 211 of Escondido Tract No. 557.

1.25 **“Notice and Hearing”** [Civil Code §1363(g) & (h)] means notice to an Owner and an opportunity for the Owner to be heard, prior to the imposition of any fine, penalty or other disciplinary measure, in the manner set forth in the Bylaws or other Governing Documents and in compliance with any Applicable Law.

1.26 ***“Officers”*** means the Officers of the Association appointed by the Board of Directors pursuant to the Bylaws.

1.27 ***“Owner”*** means any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Lot, as shown on the most recent deed for the Lot recorded in the Office of the San Diego County Recorder, including Association, and any contract sellers under recorded contracts of sale. “Owner” shall not include any persons or entities that hold an interest in a Lot merely as security for performance of an obligation. For purposes of exercising membership rights, including the right to serve as a Director, and incurring membership obligations when an Owner is a corporation, firm, limited liability company or other legal entity, any director, officer, employee or agent designated in writing by the Owner may exercise the membership rights attributable to the Owner. 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.

1.28 ***“Phase”*** means certain groups of Lots which were previously annexed to the Community by various Declarations of Annexation, as described in the Recitals.

1.29 ***“Record” or “Recording”*** means, with respect to any document, the recording or filing of such document in the Office of the County Recorder of San Diego County, California unless the context indicates otherwise.

1.30 ***“Reserves” or “Reserve Account”*** [Civil Code §1365.5(c)] means funds that the Board has identified from the Association's annual budget for use to defray the future repair or replacement of, or additions to, those major components which the Association, under the Governing Documents, is obligated to maintain.

1.31 ***“Restated Declaration” or “Declaration”*** means this Amended and Restated Declaration of Restrictions and any amendments hereto.

1.32 ***“Rules”*** means any Rules, including the Architectural Rules, for the Association regulating the use of the Lots, the Common Areas, the Community and any facilities located thereon adopted by the Board pursuant to Subsection 3.5.2 and Section 8.6 herein.

1.33 ***“Voting Power”*** [Corp. Code §5078] means the total number of votes eligible to be cast in the Association based on one vote per Lot, less the votes of any Lot where voting rights have been suspended.

ARTICLE 2 - THE COMMUNITY

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

2.2 ***Equitable Servitudes.*** [Civil Code §1354] 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.*** [Civil Code §1359] There shall be no de-annexation of any part of the Community without first obtaining the same approval of Owners as required by Article 14 herein for amendments to this Restated Declaration.

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. Any transfer that attempts to sever those component interests shall be void.

2.5 ***Drainage Easements.*** The Owner of a Lot shall permit free access by Owners of adjacent or adjoining Lots, or the Association and its agents, to slopes or drainageways located on his or her Lot, when such access is essential for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities for the protection and use of property other than the Lot on which the slopes or drainageway is located. Each Lot Owner shall keep, maintain, water, plant and replant all slope banks located on such Owner's Lot, so as to prevent erosion and to create an attractive appearance. The Owner of any Lot shall not in any way interfere with established slope ratios or do or omit to do anything that would create erosion or sliding problems. The Owner of any Lot shall not interfere with the established drainage pattern over his or her Lot from adjacent or adjoining Lots without prior Board approval and unless the Owner makes adequate provisions for continued drainage over his or her Lot from adjacent or adjoining Lots. For the purpose herein, "established drainage" is defined as the drainage which occurred at the time a Lot was first conveyed from the Community developer to an Owner.

2.6 ***Association Easements Over Lots.*** The Association has an easement over each Lot, as the servient tenement, for the purpose of allowing the Association's agents to enter the Lot to perform such duties and exercise such powers as may be set forth by the Governing Documents. The Association shall have the right to enter upon and inspect any Lot and any Dwelling or Improvements thereon to determine whether or not the provisions of this Declaration are being complied with and shall not be deemed guilty of trespass by reason of such entry.

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

2.8 ***Association Grant of Easements.*** The Association may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or

maintaining necessary utilities and services, or for any other purpose reasonably related to the operation and maintenance of the Community. No such easement may be granted, however, if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot without the approval of the affected Owner.

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

2.10 Utility Easements. In the case where utility facilities are located on a Lot or Lots owned by other than the Owner of a Lot served by the utility facilities, the Owners of any Lots served by the utility facilities shall have the right of reasonable access for themselves or their agents to repair, replace and generally maintain the utility facilities as and when the same may be necessary. A Lot Owner shall be entitled to reasonable access to the Common Area for the purpose of maintaining utility facilities servicing such Owner's Lot. The access shall be subject to the consent of the Association, whose approval shall not be unreasonably withheld, and which may include such conditions as the Board determines reasonable.

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

2.11 Right to Exercise Easements. Each Owner agrees for himself and his heirs, successors, executors, administrators and assigns, and the Association agrees, for itself, its successors and assigns, that each will permit free access at reasonable times and upon reasonable notice by the party for whose benefit an easement has been created hereunder for the purpose of exercising any easements granted under this Article or elsewhere in this Restated Declaration.

ARTICLE 3 - ASSOCIATION

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

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

3.3 **Membership.** 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. On matters presented to the membership for a vote, each Lot shall be assigned one vote, subject to the provisions of the Bylaws.

3.5 **General Powers and Authority.** [Civil Code §1363(c)] The Association shall have all the powers of a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in the Governing Documents. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it. Its powers shall include, but are not limited to:

3.5.1 The power to establish, fix, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set forth herein.

3.5.2 [Civil Code §1357.100 *et seq.*] The power to adopt reasonable Rules governing the use of the Lots, Dwellings, Common Area, any common facilities and Association-owned property, and the conduct at Board and Members' meetings, in accordance with the following:

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

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

(ii) Reasonable restrictions on the conduct of Owners and their families, guests, employees, tenants and invitees as to activities on the Common Area, Lots and Dwellings.

(iii) The establishment of Notice and Hearing procedures and a schedule of monetary penalties and other disciplinary measures which may be imposed for violations of any provisions of the Governing Documents.

(iv) Campaign, election and voting information.

- (b) The Board must comply with any Applicable Law when adopting any Rules, including, without limitation, Civil Code §§1357.100-1357.150.
 - (c) A copy of the current Rules, if any, and all modifications, revisions and updates shall be given to each Owner within fifteen days of adoption by the Board.
 - (d) If any provision of the Rules conflicts with any provision of this Restated Declaration, the Articles, or the Bylaws, the Restated Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.
 - (e) The Rules shall have the same force and effect as if they were set forth in and were part of this Restated Declaration and shall be binding on the Owners and their successors in interest whether or not actually received by them.
- 3.5.3 The right to institute, defend, settle or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, as provided in any Applicable Law.
- 3.5.4 [Civil Code §1363(g) & (h)] Subject to Notice and Hearing requirements, the right to discipline a Member for violation of any of the provisions of the Governing Documents by (a) suspending the Member's membership rights, including the Member's voting rights, right to run as a candidate for election to the Board of Directors, and the rights and privileges to use the Common Area recreational facilities, (b) imposing monetary fines, and (c) recording a notice of noncompliance in the Office of the County Recorder of San Diego County encumbering the Lot of the Owner, if allowed by Applicable Law.
- 3.5.5 The right for its agents and employees to enter any Lot when necessary in connection with any maintenance, landscaping, or construction work for which the Association is or may be responsible or to reduce the likelihood of or prevent damage to the Common Areas or another Lot. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any entry by the Association to investigate a reported or suspected water intrusion shall be deemed an emergency.

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

- 3.6.1 The Association, acting through the Board, shall operate, maintain, repair, and replace those components assigned to the Association by Article 6 or contract for the performance of that work, subject to the provisions of the Governing Documents.
- 3.6.2 The Association shall use the general operating fund described in Article 4 herein to, among other things, acquire and pay for goods and services for the Community.

ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 ***Covenant to Pay.*** [Civil Code §1367.1] Each Owner by acceptance of the deed to the Owner's Lot is deemed to covenant and agrees to pay to the Association all assessments described in this Article and all other charges duly levied by the Association pursuant to the provisions of this Restated Declaration. An assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall also be a personal debt of each Owner of the Lot at the time the assessment or other sums are levied. Co-Owners of a Lot shall be jointly and severally liable for all charges levied by the Association on that Lot. No Owner may waive or otherwise escape liability for these assessments by non-use of the Common Area or abandonment of the Owner's Lot.

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

4.3 ***Regular Assessments.*** [Civil Code §§1365 & 1366] Concurrently with preparation of the financial documents and budget for each fiscal year, the Board shall estimate the net charges to be paid during that next fiscal year, including a reasonable provision for contingencies, replacements and Reserves, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the regular assessments for the budgeted year. Regular assessments shall be divided equally among all Lots. Failure of the Board to estimate the net charges within the time period stated herein shall not void any assessment imposed by the Board. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

4.4 ***Special Assessments.*** [Civil Code §1366] 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 Improvements upon the Common Area, or any other reason, it shall make a special assessment for the additional amount needed, subject to any limitations imposed by Applicable Law or the Governing Documents. Special assessments shall be levied equally against each Lot and

collected in the same manner as regular assessments. The Board may levy a special assessment in one lump sum or in installments over a period of time the Board determines appropriate.

4.5 Limitations on Regular and Special Assessments. [Civil Code §1366] Except in emergency situations, the Board may not, without the approval of Members constituting a majority of a quorum of the Owners, impose a regular assessment per Lot that is more than twenty percent greater than the regular assessment for the preceding fiscal year, or levy special assessments that in the aggregate exceed five percent of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section, a “quorum” means more than fifty percent of the Owners of the Association. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense defined by Applicable Law.

4.6 Owner Notice of Regular and Special Assessments. [Civil Code §1366] The Association shall provide notice by first-class mail to the Owners of any increase in the regular assessments or the imposition of a special assessment not less than thirty nor more than sixty days prior to the increase in the regular assessment or special assessment becoming due.

4.7 Individual Assessments. Subject to the limitations of the Governing Documents and in addition to regular and special assessments, the Board may levy individual assessments against Owners and Lots whenever the Association (a) performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, or (b) incurs any costs which by Applicable 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 a Notice and Hearing. The Notice and Hearing regarding the levy of an individual assessment may be combined with the Notice and Hearing regarding any underlying violation. Duly levied individual assessments shall be subject to the provisions in the Governing Documents regarding costs, late charges and interest for delinquent payment, and may become a lien on the Lot, in the same manner as regular and special assessments.

4.8 Monetary Penalty Assessments. [Civil Code §1367] 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, that monetary penalty shall be subject to costs, late charges and interest as described in this Article for delinquent payment, and may become a lien on the Lot, collectible by the Association through judicial foreclosure as allowed in this Article. In no event may the Association collect a monetary penalty through nonjudicial foreclosure.

4.9 Costs, Late Charges and Interest. [Civil Code §1366] Late charges may be levied by the Association against an Owner for the delinquent payment of assessments, including monetary penalty assessments. An assessment, including any installment payment, is delinquent fifteen days after its due date. If an assessment is delinquent, the Association may recover all of the following from the Owner:

- 4.9.1 Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees.
- 4.9.2 A late charge not exceeding ten percent of the delinquent assessment or ten dollars, whichever is greater, or the maximum amount allowed by Applicable Law.
- 4.9.3 Interest on the foregoing sums, at an annual percentage rate of twelve percent commencing thirty days after the assessment becomes due.

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

4.10 ***Priority of Payments.*** [Civil Code §1367.1] The Board, in its sole discretion, may enact policies, in compliance with Applicable Law, including Civil Code sections 1367 and 1367.1, regarding how payments received from Owners will be applied to any outstanding balances due the Association from that Owner.

4.11 ***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.

4.12 ***Enforcement of Assessments and Late Charges.*** [Civil Code §§1367, 1367.1, 1367.4 & 2924b] A delinquent assessment, and any related late charges, reasonable costs of collection (including actual attorneys' fees), and interest assessed in accordance with this Article, shall become a lien upon the Lot when a Notice of Assessment Lien is duly recorded as provided in Applicable Law. Unless otherwise provided by statute, the Notice of Assessment Lien shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Restated Declaration, the legal description of the Lot, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice may be signed by any Officer or Director of the Association, or any employee or agent of the Association authorized to do so by the Board. The Notice shall be mailed by certified mail to every person whose name is shown as an Owner of the Lot in the Association's records, and the notice shall be mailed no later than 10 calendar days after recordation.

Unless otherwise allowed by Applicable Law, the Notice of Assessment Lien may not be recorded until after the Association has mailed, via certified mail, a written demand for payment to the delinquent Owner. The written demand shall comply with the requirements of Applicable Law.

If not paid in full within thirty days after recordation of the Notice of Assessment Lien, any lien described herein may be enforced in any manner permitted by law, including

judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice or by a trustee substituted pursuant to Applicable Law.

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

The Notice of Assessment Lien is not required to be amended by the Association or Trustee to reflect any partial payments made on the account of the delinquent Owner after its recordation, and any such partial payments received shall not be construed to invalidate the Notice of Assessment Lien. The Notice of Assessment Lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments.

Notwithstanding any other provision herein, a monetary penalty 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 must specifically state that such lien may not be enforceable by sale of the Lot through nonjudicial foreclosure.

4.13 Priority of Assessment Lien. [Civil Code §1367.1(d)] As set forth hereinbelow, the assessment lien referred to in this Article shall be superior to all other liens, except (i) all taxes, bonds and governmental assessments which, by Applicable 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:

- 4.13.1 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.
- 4.13.2 Neither the transfer of a Lot pursuant to a foreclosure of any Mortgage, nor an election by the Association to proceed against any new Owner for payment, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent assessments and charges which accrued during such Owner's period of ownership.
- 4.13.3 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.
- 4.13.4 The personal obligation of any Owner for payment of delinquent assessments and charges may be satisfied, and therefore discharged, only by payment of the entire amount of the delinquent assessments and charges, whether or not such Owner remains in possession of his or her Lot.

- 4.13.5 To the extent permitted by Applicable Law, each Owner hereby waives the benefit of any homestead or exemption laws of the State of California now in effect, or in effect from time to time hereafter, to the extent of any liens created pursuant to the Governing Documents, whether such liens are now in existence or are created at any time in the future.

4.14 ***Statement of Delinquent Assessment.*** [Civil Code §1368] 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.

4.15 ***Exempt Property.*** All property dedicated to and accepted by a local public authority shall be exempt from the assessments created in this Article, but no Lot shall be exempt from said assessments.

ARTICLE 5 - USE RESTRICTIONS AND COVENANTS

5.1 ***General.*** The use and enjoyment of the Community by Owners and their tenants, guests, invitees or any other person deriving rights from such Owner, shall be subject to the covenants and restrictions contained in this Restated Declaration and to the provisions of any open space easements dedicated to the City of Escondido, California, on Map No. 11390 covering the Community. Each such person shall comply with the provisions hereof and be subject to any enforcement actions in the event of violations. As more fully set forth in this Restated Declaration, both the Association, through the Board of Directors, and each Owner shall be entitled to enforce the Governing Documents.

5.2 ***Compliance with Governmental Requirements.*** Each Owner shall at all times comply with all applicable governmental requirements which include, but are not limited to, review and approval of any future construction by the Planning Department of the City of Escondido to determine compliance with the Escondido Zoning Ordinance and Conditions of Approval, as stated in Tract 557/83-73-PD, and Planning Department approval for development of the Community.

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

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

effective. The rights of a contract purchaser or tenant shall be subject to the same restrictions and regulations in the Governing Documents as are applicable to Owners.

5.3.3 The Board may:

- (a) Adopt and enforce reasonable Rules for the use of the Community.
- (b) Reasonably limit the number of guests and tenants using all or any portion of the Common Area.
- (c) Charge a fee or deposit for use of any Common Area recreational facilities and improvements.
- (d) Establish speed limits and other traffic regulations within the Community.
- (e) Establish fire lanes within the Common Area.
- (f) Assign, rent, lease or otherwise control the use of any unassigned parking spaces within the Common Area.
- (g) Require the use of parking passes or decals.
- (h) Remove any vehicle within the Community parked in violation of this Restated Declaration or the Rules of the Board in accordance with the provisions of California Vehicle Code section 22658 and any amendments thereto.
- (i) [Civil Code §1363(g) & (h)] Suspend the right of any Owner, and the persons deriving rights from any Owner, to use and enjoy the Common Area recreational facilities for any period during which the Owner is delinquent in the payment of any assessment, is in violation of the Governing Documents, or as otherwise provided in the Governing Documents.
- (j) Cause the construction of additional Improvements in the Common Area, or cause the alteration or removal of existing Improvements on the Common Area.
- (k) Dedicate, grant, or join in the grant or conveyance of permits, easements, licenses or rights-of-way in, on and over the Common Area as may be determined by the Board to be in the best interests of the Association; provided that no such permit, easement, license or right-of-way may be granted if it would unreasonably interfere with any exclusive easement, or with

any Owner's use, occupancy, or enjoyment of the Owner's Lot without the approval of the affected Owner.

- (l) Approve any proposed alteration of or modification to the Common Area.

5.3.4 [Civil Code §1363.07] Notwithstanding any nonexclusive easement rights to the Common Area granted herein or by any deed or other conveyance, the right to allow one or more Owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Lot, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Community unless that Owner consents to the use.

5.4 ***Modification to Lot or Dwelling.*** No one may modify, construct, build or otherwise alter any portion of a Lot or Dwelling other than as provided in Article 8, below.

5.5 ***Subdividing Lot.*** No one may attempt to further subdivide a Lot.

5.6 ***Residential Use of Lot.*** Lots shall be used for residential purposes only. Subject to the prior written approval of the Board, a Lot may be used for in-home professional or administrative occupations or similar home office use so long as only minimal external evidence is observable, and if: (i) such occupations are merely incidental to the use of the Lot as a residence, (ii) employees or business invitees do not regularly visit or conduct business in the Community, and (iii) the occupation is conducted in conformance with any Applicable Law and the Rules. The Board shall not unreasonably withhold its consent for any such business use, but any permission may be revoked if the use violates the requirements herein or in any Rules.

5.7 ***Residential Use.*** Dwellings must be occupied by a family. A family is defined for purposes of this restriction as related or unrelated persons who jointly occupy and have equal access to all areas of a Dwelling and who function together as an integrated economic unit.

5.8 ***Leasing or Renting Lot.*** No one may lease or rent a Lot in violation of the following:

5.8.1 All leases and rental agreements must be in writing.

5.8.2 All leases and rental agreements must be for the entire Dwelling, and not merely parts thereof and as part of only one leasing agreement or contract, unless the Owner remains in occupancy. A carport, garage or parking space may not be leased or rented separate and apart from the Dwelling to which it is appurtenant.

5.8.3 No lease or rental shall be for a period of less than thirty days or for hotel, transient, fractionalized ownership interest or time-share purposes.

- 5.8.4 All leases and rental agreements shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease which may be cured by eviction of the tenant either by the Owner or the Association. If the Association must evict the tenant, the Association may recover all the costs and expenses, including attorneys' fees, from the Owner whether or not the matter actually proceeds to court.
- 5.8.5 Any Owners leasing or renting their Lot shall promptly notify the Association, in writing, of the names of all tenants and members of a tenant's family occupying such Lot.
- 5.8.6 Any Owner leasing or renting the Owner's Lot shall promptly notify the Association of the address, telephone number where such Owner can be reached.
- 5.8.7 Any Owner leasing or renting the Owner's Lot shall promptly notify the Association of the address, telephone number where such Owner can be reached in an emergency.

5.9 ***Number of Persons.*** Due to the limited nature of the Common Area facilities, including parking, each Dwelling shall be occupied solely for single family residential purposes and the total number of persons allowed to reside in each Dwelling shall not exceed the number determined by multiplying the number of bedrooms in each Dwelling by two and adding one. For example, a maximum of three people may reside in each one-bedroom Dwelling, a maximum of five people may reside in each two-bedroom Dwelling and so on. This section shall not prevent temporary guests of an Owner from staying in such Dwelling, however, any person occupying a Dwelling for longer than fourteen days each year shall conclusively be deemed to reside in such Dwelling.

5.10 ***No Storage in Common Area.*** No one may permit anything to obstruct the Common Area or store anything on the Common Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents. Nothing shall be stored within the Common Area unless it is stored within an appropriate structure approved by the Board.

5.11 ***Affecting Association Insurance.*** No one may perform any act or keep anything on or in any Lot or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept on his or her Lot or in the Common Area that would result in the cancellation of insurance on any Lot or on any part of the Common Area or that would violate any law.

5.12 ***Storage of Flammable or Hazardous Materials.*** No one may store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Area or in any Lot; provided, however, that amounts of these liquids,

substances or materials which are reasonable for household use may be placed in appropriate containers and properly stored.

5.13 ***Discharge into Streets or Gutters.*** No one may discharge anything other than water and residue allowed by applicable water quality ordinances into the streets, gutters and drains of the Association or into the Common Area.

5.14 ***Emissions into the Air.*** No one may discharge or cause the emission of any dust, sweepings, dirt, cinders, odors, gases, mold spores, or other substances into the atmosphere other than those caused by normal residential use.

5.15 ***Signs.*** [Civil Code §§712, 713 & 1353.6] No one may erect or display any sign on or from any Lot except as allowed by Applicable Law and the Rules. No signs may be erected or displayed on the Common Area without the prior written approval of the Board.

5.16 ***Antennas and Satellite Dishes.*** [Federal Telecommunications Act] Exterior antennas and satellite dishes, not exceeding one meter (39.37") in diameter, are permitted, but only in strict compliance with Applicable Laws and not on any portion of the Common Area. Except as permitted by Applicable Law, there shall be no outside television or radio antennae, satellite dishes, masts, poles or flag poles constructed, installed or maintained in the Community for any purpose whatsoever without the prior written consent of the Board. The Board may adopt Rules restricting the construction, installation, maintenance or replacement of any such equipment as long as such restrictions do not conflict with Applicable Law.

5.17 ***Pets.*** [Civil Code §1360.5] No one may keep pets or other animals in violation of the following:

- 5.17.1 Owners or residents of the Community may keep usual and ordinary domestic pets, such as dogs, cats, birds and fish, on the Lot subject to the provisions of the Rules; provided, however, that no Owner or other occupant of a Lot may keep any pet which interferes with, or has a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Lot to the peaceful and quiet enjoyment of the Lot. In the event the Board determines that any pet or other animal creates an unreasonable annoyance or nuisance to any Owner or other occupant of a Lot, the keeping thereof shall be discontinued within a reasonable time after such determination.
- 5.17.2 No pets or other animals shall be permitted in the Common Area except as specifically permitted by the Rules, and then only when on a leash held by a person capable of controlling the animal.
- 5.17.3 No Owners or residents of the Community may keep animals for commercial purposes.
- 5.17.4 The Association, its Board, Officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person on the

Community, for any damage or injury to persons or property caused by any pet, absent any willful or wanton negligence on the part of the Association, or its Board, Officers, employees and agents.

5.18 **Trash.** No one may allow rubbish, trash, and garbage to accumulate within the Lot or Common Area.

5.19 **Power Equipment** No one may set up a hobby shop for commercial purposes, except upon the written consent of the Board. Use of power equipment may be subject to reasonable Rules as to the time and duration of use and the level of noise.

5.20 **Offensive Activity.** No one may engage in any illegal, noxious or offensive activity in any part of the Community, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Community.

5.21 **Brush and Weeds.** No one may allow brush, weeds, or undergrowth to accumulate upon any Lot so as to render the Lot or any portion of it a fire hazard, unsightly, or detrimental to other Lots or the Common Area.

5.22 **Harassment.** No one may engage in any type of harassment, illegal, noxious or offensive activity toward any Owners, residents, Association representatives, management representatives, Board members and/or vendors working in the Community.

5.23 **Alter Common Area.** No one may alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.

5.24 **Garages.** No one may convert any garage for purposes other than parking of the number of vehicles such garage was designed to contain and storage of reasonable amounts of household goods.

5.25 **Vehicle Use and Parking.**

5.25.1 Authorized Vehicles. The following vehicles are Authorized Vehicles: standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten or fewer people, motorcycles and pick-up trucks having a manufacturer's rating or payload capacity of one ton or less. Authorized Vehicles may be parked in any portion of the Community intended for parking of motorized vehicles, subject to the Rules. No Owner may park any vehicle in a manner so that the Association determines that the vehicle unreasonably extends beyond the boundaries of a parking space or into streets or sidewalks within the Community. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules to adapt this restriction to all types of vehicles produced by manufacturers.

5.25.2 Prohibited Vehicles. The following vehicles are Prohibited Vehicles: (i) recreational vehicles (e.g., motorhomes, travel trailers, camper vans, jet skis and boats), (ii) commercial-type vehicles (e.g., stake bed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (iii) buses or vans designed to accommodate more than ten people, (iv) vehicles having more than two axles, (v) trailers, (vi) inoperable vehicles or parts of vehicles, (vii) unregistered vehicles, (viii) aircraft, (ix) other similar vehicles, or (x) any vehicle

or vehicular equipment deemed a nuisance by the Board. Prohibited Vehicles may not be parked, stored or kept on any public or private street within, adjacent to or visible from the Community unless (a) they are owned and used by the Association in connection with management or maintenance of a part of the Community, (b) they are parked for brief periods defined in the Rules, or (c) they are parked within an Owner's fully enclosed garage with the door closed. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board. The Association has the power to identify additional vehicles as Prohibited Vehicles in the Rules to adapt this restriction to all types of vehicles produced by manufacturers. The Board, in its discretion, may adopt reasonable Rules governing the operation, maintenance, storage and parking of any vehicle, trailer or watercraft on the Common Area and on the Lots, including within the garages or driveways.

5.25.3 City of Escondido Requirements. [Escondido RV Parking Ordinance, Article 25] No recreational vehicles (including, but not limited to, motor homes, campers, boats, travel trailers and similar equipment) shall be parked or stored within any portion of the Community subject to this Restated Declaration unless the same are located outside of public view. No commercial vehicles or equipment shall be parked or stored within the Community, except for the purposes of construction or maintenance of the Community or unless located outside of public view.

5.26 ***Vehicle Maintenance.*** Except for minor maintenance and repair or work performed in the garage, no one may perform any vehicle overhaul, repair, or non-emergency maintenance within the Community.

5.27 ***Mechanic's Lien.*** No labor performed or services or materials furnished with the consent of, or at the request of, an Owner, the Owner's agents or contractors shall be the basis for the filing of a lien against any other Lot or Common Area or any other Owner in the Community unless that other Owner has expressly consented to or requested the performance of the labor or furnishings of the materials or services. However, express consent shall be deemed to have been given by the Owner of any Lot in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Common Areas, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner of any Lot may remove his or her Lot from a lien against two or more Lots or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien which is attributable to the Owner's Lot.

5.28 ***Damage Liability.*** Each Owner shall be liable to the Association for any damage to the Common Area or to Association-owned property, including any access control systems, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment, repair, or maintenance of any Improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the case of joint ownership of a Lot, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

5.29 **Owner Responsibility.** Owners shall be responsible for their family members, guests, tenants, contract purchasers, and invitees while in the Community and may be held responsible for any violations of the Governing Documents committed by such persons.

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

5.31 **Tents, Shacks and Storage of Vehicles.** No tent, shack, recreational vehicle, trailer, basement, garage or outbuilding shall at any time be used on any Lot as a residence, either temporarily or permanently, nor shall any residence of a temporary character be constructed, placed or erected on any Lot. No boat, camper, recreational vehicle, trailer, van or motor vehicle of any type other than a standard automobile shall be stored or parked on any Lot other than in the garage, except temporarily and solely for the purpose of loading and unloading.

5.32 **No Wells** No well for the production of, or from which there is produced, water, oil or gas shall be operated upon any Lot, nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business without the approval of the Board. No slant drilling shall be permitted above a plane 500 feet below the surface of the land.

5.33 **Landscaping** All landscaping of every kind and character, including shrubs, trees, grass and other plantings, within any Lot shall be neatly trimmed, properly cultivated and continuously maintained by the Owner thereof in a neat and orderly condition and in a manner to enhance its appearance. The Board shall have the right to require any Owner to remove, trim, top or prune any shrub, tree, bush, plant or hedge which the Board reasonably believes impedes the view of any other Lot Owner. No plants or seeds infected with noxious insects or plant disease shall be brought upon, grown or maintained upon any Lot.

ARTICLE 6 - REPAIR AND MAINTENANCE

6.1 **General; Standards of Maintenance.** [Civil Code §1364] The Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article “maintenance” shall include, without limitation, painting, weatherproofing and cleaning to keep Improvements in a clean, safe, properly ventilated, watertight, dry and sanitary condition necessary to preserve the attractive appearance of the Lots, Dwellings, and the Community, and protect the values thereof. The Dwellings and improvements on the Lots shall be kept in good condition and repair and landscaping shall be neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. The Board shall have the power to determine the standards of such maintenance.

6.2 **Association Maintenance.** The Association shall maintain and provide for the maintenance of (a) all of the Common Area, and (b) all street parkways within the Community which are not maintained by the City of Escondido. The Association shall be liable for damage and costs of repair to any City utilities in the event the Association causes such damage or need for repair, whether such cause be by reason of the Association's repair or replacement of facilities within the Community or otherwise.

All Common Area landscaping shall be maintained in a flourishing manner and all the Common Area shall be maintained in a manner approved by the City of Escondido; provided, however, the Association shall have no obligation to replace or restore improvements unless there exists adequate reserve funds, insurance proceeds and/or special assessments levied pursuant to Article IV hereof for such replacement. The Association shall provide landscaping and gardening to properly maintain and periodically replace when necessary any vegetation placed in the Common Area.

6.3 ***Owner Maintenance*** Each Owner shall keep and maintain in good repair and appearance all portions of his Lot and improvements thereon. The Owner of each Lot shall water, weed, maintain and care for the landscaping located on his Lot so that the same presents a neat and attractive appearance and shall at all times keep his Lot free of weeds and debris.

6.4 ***Owner Improvements.*** Each Owner shall be responsible for the maintenance, repair, and replacement of any Improvements installed or planted anywhere within the Community by the Owner, any resident in the Owner's Dwelling, or the Owner's predecessor in interest. The Owner is also responsible for any damages to the Common Area caused by such installation, maintenance, use, or repair. Installation of any Improvement within the Community is subject to the architectural review provisions herein. Any unauthorized Improvement in the Common Area shall be considered a trespass on the Common Area and shall give the Board the right to remove the unauthorized Improvement summarily and without compensation to the party who installed it. See also Section 8.12 herein.

6.5 ***Access over Common Area.*** The Owner of the Lot shall be entitled to reasonable access over and through the Common Area, subject to the consent of the Association and to any other conditions reasonably imposed by the Association, for the purposes of performing any maintenance, repairs or replacement as required by the Governing Documents. The Association's consent shall not be unreasonably withheld.

6.6 ***Failure to Maintain.*** If an Owner fails to maintain, repair or replace the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within a reasonable time from the giving of such notice. If the Owner fails to complete such maintenance within said time period, the Board may, following a Notice and Hearing, cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent per annum (but no greater than the maximum rate authorized by Applicable Law). The Association shall have an easement over the Lots pursuant to Section 2.6 herein for the purpose of performing the work described herein.

6.7 ***Termite Control.*** [Civil Code §1364] The responsibility for control of wood destroying pests or organisms shall be as follows:

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

6.7.2 The Association shall be responsible for the maintenance and repair of the Common Area, as required to control the presence of or damage caused by wood destroying pests or organisms in accordance with the provisions of Civil Code section 1364. The Board shall determine the method and timing of any treatment in its sole discretion. Neither the Association, the Board, Officers, agents nor employees shall have any liability, absent willful or wanton negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment.

6.8 ***Damage Caused by Owner or Item Under Control of Owner.*** [Civil Code §1367] 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 Improvement the maintenance, repair or replacement of which an Owner is responsible, the cost of all repairs shall be borne solely by the responsible Owner.

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

[Civil Code §1367.1] If the responsible Owner disputes or refuses to pay any repair costs incurred by the Association or the Owner of any other property which sustained damage, the Association, after Notice and Hearing, may charge the cost of those repairs to such Owner as an individual assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the Association, the Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the responsible Owner shall pay the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, or the Board elects not to submit the claim, the responsible Owner shall be responsible for the total cost of repair.

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

6.9 ***Limitation of Liability.*** The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or loss of any property, or the cost of repair or replacement of any damaged property or portions of such Owner's Lot unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

6.10 ***Owner Notification to Association.*** If, at any time, an Owner discovers or otherwise becomes aware of any condition within the Common Area that may constitute a risk to the health, safety or welfare of the Owners, their family members, tenants, and any other persons

entering the Community, the Owner shall notify Association representatives of the condition as soon as possible.

ARTICLE 7 - COMMON WALLS, FENCES AND ROOFS

7.1 ***Party Walls.*** Each wall and fence which is built as a part of the original construction of the Dwellings and placed on the dividing line between the Lots shall constitute a Party Wall (thus the term “Party Walls” refers to both shared walls and fences). To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.2 ***Sharing of Repair and Maintenance.*** The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the Party Wall in equal proportion to such use.

7.3 ***Destruction by Fire or Other Casualty.*** If a Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the Party Wall may restore it, and if the other Owner thereafter makes use of the Party Wall, they shall contribute to the cost of restoration thereof in equal proportion without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

7.4 ***Weatherproofing.*** Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his or her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

7.5 ***Party Wall Easements.*** In all cases where a structural Party Wall constituting a portion of a single Dwelling, or a structural Party Wall constituting a common wall or fence for two Dwellings, is located upon the dividing line between adjacent Lots, the Owner of said adjoining Lots shall have reciprocal mutual nonexclusive easements for the maintenance of the Party Wall, the reconstruction of the Party Wall in the event of the partial or total destruction of the same, drainage associated with the Party Wall or the Dwelling of which the Party Wall is a part, and an easement to accommodate the foundation and/or roof or eaves encroachment as depicted in the original design, plans and specifications which were the basis for the original construction of the Dwelling or Dwellings on said Lot or Lots. The Owner of a Lot having a structural Party Wall situated on the boundary line between his or her Lot and the adjoining Lot shall not attach anything to the outside of the Party Wall which shall protrude across the boundary line into the adjoining Lot, and the Owner of the adjoining Lot upon which such Party Wall is situated shall not attach anything to the outside of the Party Wall without the consent and permission of the Owner of the adjoining Lot upon which the Dwelling of which the Party Wall is a part is situated.

7.6 ***Rights of Contribution Are Appurtenant.*** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

7.7 ***Dispute Resolution.*** In the event of any dispute between Owners concerning a Party Wall or sharing the cost of repair or replacement of any Party Wall, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Association's Board of Directors who shall be empowered to decide the dispute. The Board's decision on the matter shall be conclusive and binding on the parties.

ARTICLE 8 - ARCHITECTURAL AND DESIGN CONTROL

8.1 ***General.*** [Civil Code §1378] Any change or improvement to the exterior of a Dwelling or a Lot shall be governed by this Article. Changes or improvements to the Common Area by the Association do not need to comply with the requirements of this Article. The powers and duties set forth in this Article shall be vested in, and exercised by, the Board. The Board may establish an architectural committee as provided herein to assist the Board in reviewing architectural submittals, and to provide recommendations to the Board with regard to approval or disapproval of any submittal. The foregoing notwithstanding, the Board shall be solely responsible for approving or rejecting any architectural submittal.

8.2 ***General Modifications Requiring Prior Approval.*** Nothing may be erected, placed or planted on the exterior of any Dwelling or Lot, or on the Common Area by any Owner, including any building, shed, fence, wall, pool, spa, obstruction, wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, tree, grass, shrub or other landscaping, any Improvement or structure of any kind, nor may any excavation or demolition commence without the prior written approval of the Board in accordance with this Article. Additionally, and except as provided in Section 8.4 below, prior written Board approval shall be required for any alteration, modification, painting or other change, addition or deletion to any existing Improvement or landscaping. **Such improvements are subject to any applicable requirements of the City of Escondido.**

8.3 ***Specific Modifications.*** The following provisions govern the specific changes and modifications outlined below:

8.3.1 [Civil Code §1360] Modifications or alterations of the exterior of any Dwelling or other portion of the Lot or Common Area to facilitate handicapped access, as provided by California Civil Code Section 1360, must have the prior written consent of the Board. Any approval of such handicapped access modification to the Common Area may be conditioned on such modification's removal by the Owner at his or her sole expense once the handicapped access is no longer necessary for the Lot.

8.3.2 Installation of any landscaping, either "hard-scape" or "soft-scape," must have prior approval of the Board. Replacement of such landscaping will require approval only if it differs from the

landscaping being replaced (e.g., replacing stone walkway with concrete, or annual flowers with shrubs).

- 8.3.3 No Owner may enclose any patio, balcony, or deck without the prior written consent of the Board.
- 8.3.4 Maintenance of the landscaping, Lot and Dwelling (e.g., pruning trees, trimming shrubs, replacing annual flowers, etc.) shall not be considered a modification for purposes of this Article.
- 8.3.5 Interior shutters, blinds, curtains, drapes or other appurtenances in or on any window or door do not need prior approval but must be in conformance with any standards established by the Board. Owners shall be responsible for correcting any nonconforming appurtenances.
- 8.3.6 Except as provided by the Governing Documents, Owners shall not have the right to paint, decorate, remodel or alter the Common Area without the prior written consent of the Board.
- 8.3.7 No building of any kind shall be moved from any other place onto any Lot, nor from one Lot to another Lot, without the prior written permission from the Board
- 8.3.8 No balcony or deck shall be higher above the ground than the highest dwelling floor level, except with the written approval of the Board.
- 8.3.9 No second-hand materials shall be used in the construction of any Dwelling or other structure on any Lot without the prior written approval of the Board. All buildings and fences which are of frame construction shall be painted or stained upon completion with the paint or stain coverage (including the number of coats) as provided in the plans approved by the Board.
- 8.3.10 The work of constructing and erecting any Dwelling or other structure shall be prosecuted diligently from the time of commencement, and the same shall be completed within a reasonable time in accordance with the requirements of this Article. No outbuilding shall be completed prior to the completion of the Dwelling, except that temporary storage and convenience facilities may be erected for workers engaged in building a Dwelling on the Lot, but such temporary facilities shall be removed as soon as the dwelling is completed.

8.4 ***Architectural Changes Not Requiring Prior Approval.*** Notwithstanding Sections 8.2 and 8.3 above, no permission or approval shall be required 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.

8.5 ***Procedure for Obtaining Approval of Architectural Changes.*** The procedure for obtaining approval of any architectural change shall be as follows:

- 8.5.1 Complete plans and specifications showing the nature, kind, shape, color, size, height, materials to be used and location of any proposed Improvements, alterations or landscaping, as well as the proposed contractor and any other information as required by the Board, shall be prepared by the requesting Owner and submitted to the architectural committee along with any fee established in the Architectural Rules. A duplicate request shall be submitted to the Board at the same time as the submittal to the architectural committee. The Board may establish a fee to cover the Association's costs to hire an architect or other professional to assist in reviewing plans for any major remodeling project. **Any applicable permits from the City of Escondido must be obtained within the process of obtaining approval changes. Permits, when required, must be obtained prior to commencing any work.**
- 8.5.2 The architectural committee shall review the submission and provide a written recommendation as to approval or disapproval of any such submission, including the reasons for any decision, to the Board and the requesting Owner.
- 8.5.3 The Board shall review such recommendation within thirty days of receipt of the architectural committee's written recommendation, or within sixty days of receipt of the submission, whichever is earlier, and provide a written response to the requesting Owner, including an explanation of the reasons for any disapproval.
- 8.5.4 In the event the Board fails to provide a written response to the requesting Owner within sixty days of receipt of the request from the Owner, the Owner may notify the Board in writing that a response has not been received. If the Board fails to respond within thirty days of the receipt of the notice, approval will not be required and the related covenants shall be deemed to have been fully satisfied.
- 8.5.5 Once an Owner has obtained approval for an architectural submittal, work on such approved submittal shall promptly commence and shall be completed within a reasonable time. The Board may establish a deadline within which work must be completed.

8.6 ***Architectural Rules.*** [Civil Code §1357.100 *et seq.*] Subject to Civil Code Section 1357.100 *et seq.*, the Board may, in its sole discretion, adopt, amend and repeal, as it deems necessary, Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards for review by the Board and architectural

committee and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Community; provided, however, that said Architectural Rules shall not be in violation of the standards required by this Restated Declaration. The Architectural Rules may also address the information which is required to be presented in connection with an architectural submittal. Unless any such Architectural Rules are complied with, an Owner's plans and specifications shall be deemed incomplete and not submitted.

8.7 ***Standard of Architectural Review.*** An architectural submittal made by an Owner shall be reviewed for conformity with the Architectural Rules. Additional factors to be considered include, but are not limited to, the quality of proposed workmanship, the design and harmony of the Improvement with existing structures, the location of the Improvement in relation to surrounding structures, topography, and finish grade elevation, Owner and contractor insurance coverage, compliance with governmental permit requirements and contractor license status.

8.8 ***Architectural Committee.*** The architectural committee shall consist of at least three members, formed as follows:

- 8.8.1 The Board shall have the right to appoint all of the members of the committee.
- 8.8.2 Members appointed to the committee by the Board must be Members of the Association.
- 8.8.3 Members shall be appointed for terms as prescribed by the Board. All members of the committee may be removed by the Board at any time with or without cause.
- 8.8.4 The committee shall meet as often as it deems necessary to properly carry out the obligations imposed upon it, unless otherwise directed by the Board.
- 8.8.5 The vote or written consent of the majority of the committee shall be required for any recommendation.

8.9 ***Fee for Review.*** The Board shall have the right to establish a fee for the review and approval of plans and specifications which must be submitted to it pursuant to the provisions of this Article, which shall be reasonably related to the duties performed. Owners shall be responsible for the Association's costs incurred for review of their plans.

8.10 ***Compensation.*** The members of the Board and architectural committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder. However, the Board may hire an architect or other professional to consult with the committee and Board and the Association may compensate the architect or professional for services rendered to the Association.

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

8.12 ***Effect of Owner-Installed Improvements.*** This Section shall apply to all Improvements installed on any Lot or elsewhere in the Community, either by a current or former Owner or by that Owner's family members, agents, tenants, or anyone exercising the Owner's powers, and without regard to whether the Owner first complied with the requirements of this Article, including without limitation, the requirement for seeking and obtaining prior written approval before installing any such Improvements.

Owner shall pay all costs and expenses incurred in the construction and installation of any such Improvements, and shall be fully responsible for the maintenance, repair and replacement of such Improvements. Each Owner shall be responsible for any damages to persons, property or otherwise that result from the construction, maintenance, use or continued existence of such Improvements and shall hold Association free and harmless from any and all costs and expenses attributable to the construction, installation, maintenance, repair, or replacement of such Improvements or to their continued existence or use. Association shall have no responsibility either for securing or maintaining insurance for any such Improvements.

Each Owner covenants and agrees that any such Improvements shall be constructed in strict compliance with the plans and specifications and in the exact location approved by Association, if so approved, and shall be maintained in good condition and repair in accordance with generally accepted construction, maintenance and repair practices, and shall comply with all Applicable Laws. Owner shall be obligated to obtain any necessary building permits and inspections and to verify compliance with all requirements imposed by law. Association's approval of any such Improvements, if given, is limited to an approval based solely on the criteria contained in the Governing Documents and does not include a review for compliance with Applicable Laws.

All such Improvements shall be subject to the jurisdiction of the Association, acting through the Board, and to the Governing Documents; and shall be subject to an easement in favor of Association to perform its duties under the Governing Documents. As such, each Owner shall pay all costs and expenses incurred in removing and replacing the Improvements, if such removal is required by Association, in its sole discretion, to perform its maintenance and repair responsibilities under the Governing Documents. Association shall exercise such discretion reasonably and not arbitrarily.

Owner shall defend, indemnify and hold harmless the Association, its Members, Board, Officers, agents and employees from and against any and all injuries, damages, causes of action or claims which may exist or be instituted against any or all of said parties because of, or in any manner arising from or connected with, the granting of written confirmation of approval

for any Improvements, the power to grant and confirm such approval in writing, or the construction, maintenance, repair, replacement, existence or use of any such Improvements.

Each Owner releases the Association, its Members, Board, Officers, agents and employees from any duty or obligation to pay, or otherwise be responsible, for the cost of construction, maintenance, repair or replacement of any such Improvements, and releases said parties from any and all claims, injuries, damages and causes of action which may arise as a result of the construction, maintenance, repair or replacement of the Improvements or the continued existence or use of the Improvements.

If any Owner fails to construct, maintain or use such Improvements in accordance with any architectural approval granted by Association and according to the terms of this Article, Association shall have the power, at Owner's expense, either to maintain, repair or replace the Improvements or to remove the Improvements, in Association's sole discretion.

Association shall have the power, but not the obligation, unilaterally to record a document against the title to Owner's Lot identifying the nature, description and location of any Improvements installed by Owner, whether installed with or without Association's approval, to put subsequent Owners on notice of their duties and obligations with respect to such Improvements under this Article.

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

- 8.13.1 No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation or commencement of a suit to enjoin such work.
- 8.13.2 The Board shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Board or if it does not conform to the plans and specifications submitted to the Board.
- 8.13.3 The Board or committee may periodically enter any Lot to ensure that construction is proceeding according to any approved plans.
- 8.13.4 If the Owner fails to remedy any noticed noncompliance within the time specified by the Board, the Board shall provide Notice and Hearing regarding the alleged noncompliance.
- 8.13.5 At the hearing, the Owner, a representative(s) of the architectural committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance.

- 8.13.6 If a noncompliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Board, at its discretion, may grant.
- 8.13.7 If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board at its option, may pursue all legal and equitable remedies available to remedy or remove the non-complying Improvement and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the Association, the Board may recover such expenses through the levy of an individual assessment against such Owner.
- 8.13.8 The approval by the Board of any plans, drawings or specifications for any work or Improvement done or proposed, or for any other matter requiring the approval of the Board under this Restated Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different location for Improvements, the size of the structure, proximity to other Dwellings or the Common Area and other factors may be taken into consideration by the Board and committee in reviewing a particular submittal.
- 8.13.9 Notwithstanding any other provisions herein, the Board of Directors shall have the authority to obtain a restraining order or injunction at any time after discovery that work is proceeding without approval of the Board or in a manner that is different than that approved by the Board, if the Board deems such action necessary to protect the Association's interests.

8.14 ***Non-Compliance with Applicable Laws.*** Neither the Association, the Board, nor the architectural committee shall be responsible for any noncompliance with any Applicable Law of any Improvement erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or any defect in any conditions or requirements they may have imposed with respect thereto.

8.15 ***Governmental Approval.*** Prior to commencing any alteration or improvements approved by the Board, the Owner shall comply with all Applicable Laws, including the requirements of the City of Escondido as described in Section 5.2. The Association shall not be obligated to enforce the provisions of this Section. Approval by the Board shall not be considered to satisfy any Applicable Law, nor shall the approval of any governmental entity be considered to satisfy the requirement of Board approval. An Owner's failure to comply with any Applicable Law may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Board, which penalties shall be the responsibility of such Owner. Each Owner, by accepting a deed to his or her Lot, agrees to reimburse the Association for any loss resulting from the violation of any Applicable Laws.

8.16 ***Conflicts Between Applicable Law and Association.*** In the event of any conflict between any Applicable Law and the Association's Governing Documents or other requirements, the more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Association from imposing conditions of approval of any proposed Improvements which are more restrictive than any Applicable Law.

ARTICLE 9 - INSURANCE

9.1 ***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 cost of the Improvements in the Common Area, including irrigation equipment. The Association shall have no obligation to insure any Lot, Dwelling or any Improvements or fixtures such as cabinets, built-in appliances or floor or wall coverings, fences, walls or landscaping within the Lot. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Lenders, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Restated Declaration. If required by any First Lender who notifies the Association of its requirements, and if economically feasible and available, such policies shall contain an inflation guard endorsement and a construction code endorsement.

9.2 ***General Liability Insurance.*** [Civil Code §§1365.7] The Association shall obtain and maintain a comprehensive public liability and property damage liability policy or policies insuring the Association, its officers, directors, agents and employees and the Owners against any liability for bodily injury, death, and property damage arising from ownership and use of the Common Area. Limits of liability under the insurance shall not be less than one Million Dollars covering all claims for death, personal injury, and property damage arising out of a single occurrence. If the minimum amount necessary to comply with Civil Code Section 1365.7 or any successor statute is a larger amount, the statute shall control.

9.3 ***Directors and Officers Liability Insurance.*** [Civil Code §1365.7] 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. If the minimum amount necessary to comply with Civil Code Section 1365.7 or any successor statute is a larger amount, the statute shall control.

9.4 ***Fidelity Coverage.*** The Association shall purchase and maintain fidelity coverage for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If an agent handles Association funds, such agent shall be covered by the Association's coverage, unless such agent provides similar coverage. The Association's coverage may be in the form of a separate bond, a separate policy (*e.g.*, crime policy), or may be added by endorsement to the general policies carried by the Association. The Board shall have the discretion to determine the amount of coverage. The bond or policy must contain a provision that it may not be cancelled or substantially modified without at least ten days' prior written notice to the Association.

9.5 ***Other Association Insurance.*** The Association shall purchase and maintain worker's compensation insurance to the extent necessary to comply with any Applicable Laws. The Association may purchase such other insurance that the Board considers necessary or advisable, including earthquake insurance coverage.

9.6 ***Review of Insurance; Notice of Cancellation or Modification; General Requirements*** . The limits and coverage of insurance carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion. Such policies shall include a provision for at least ten days' prior written notice to the Association, and, if available, to each First Lender which is listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation or substantial modification by any party. Such policies shall also contain a waiver of subrogation as to the Association and its Officers, Directors, Owners and Mortgagees, and severability of interest endorsement insuring each insured against liability to each other insured.

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

9.8 ***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.

9.9 ***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. 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.

9.10 ***Insurance Premiums.*** Insurance premiums for any insurance coverage obtained by the Association shall be a Common Expense.

9.11 ***Insurance Policy Deductibles.*** [Civil Code §1365(f)] 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:

- 9.11.1 Owners shall be responsible for the cost of any deductible if the damage or loss occurs to the Owners' real or personal property, or other property for which the Owner is responsible ("**Owner Property**").
- 9.11.2 The Association shall be responsible for the cost of any deductible if the damage or loss occurs to any real or personal property owned by the Association, or for which the Association is responsible ("**Association Property**").
- 9.11.3 If the damage or loss occurs to any Owner Property and any Association Property or to more than one Owner's Property, the responsibility for the payment of any deductible shall be apportioned among the affected parties on the basis of the ratio of each party's cost of repair to the total costs of repair.
- 9.11.4 The foregoing notwithstanding, if the Board determines the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner or is the Owner's responsibility pursuant to Section 6.8 herein, such Owner shall be liable for the full amount of the deductible.

9.12 ***Owner Notification of Insurance.*** [Civil Code §1365] 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 Applicable Law.

9.13 ***Individual Property Insurance.*** The Association provides no property and casualty insurance to insure residential Lots. An Owner is responsible for obtaining and maintaining such insurance, at his or her sole expense, to protect against any damage to, or loss of the Owner's real or personal property, and the cost of repair or replacement of damaged items, including, but not limited to, the Dwelling, any Improvements made by an Owner, any personal property, decorations, floor and wall coverings, appliances, cabinets, fixtures or other items therein, or any exterior items for which such Owner is responsible such as landscaping.

9.14 ***Individual Liability Insurance.*** An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Lot that he or she desires.

ARTICLE 10 - DAMAGE OR DESTRUCTION

10.1 ***Duty to Restore Lot.*** [Civil Code §1365] If all or any portion of any Lot or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of

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

10.2 ***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:

10.2.1 The Community is terminated.

10.2.2 Repair or replacement would be illegal under an Applicable Law.

10.2.3 The damaged or destroyed portion of the Community is de-annexed in accordance with 2.3, above.

10.3 ***Cost of Repair.*** Any cost of repair or replacement of the Common Area in excess of insurance proceeds and Reserves shall be a Common Expense, levied against Lots as a special assessment.

10.4 ***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.

10.5 ***Insurance Proceeds.*** An insurance trustee appointed by the Board or insurance company, or if there is no trustee, then the Board, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and Lenders. Subject to the provisions of this Restated Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property. The Association shall receive any excess proceeds left after restoration or repair of the damaged property. The Owners and Lenders are not entitled to receive payment of any portion of the excess proceeds unless the Community is terminated.

10.6 ***Disbursements to Owners and Lenders if Community is Terminated.*** Any insurance proceeds distributed to Owners and Lenders if the Community is terminated shall be distributed equally to each Lot.

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

10.7.1 Whether or not damaged or destroyed property is to be repaired or restored; and

- 10.7.2 The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

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

ARTICLE 11 - EMINENT DOMAIN

11.1 ***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. No such sums shall be disbursed to the Owners (or their Mortgagees as their interests then appear) except on an equal basis.

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

ARTICLE 12 - RIGHTS OF LENDERS

12.1 ***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.

12.2 ***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.

12.3 ***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.

12.4 ***Action Requiring Lender Approval.*** Except as provided by statute in case of condemnation or substantial loss to the Lots and Common Area, approval of at least two thirds of the Eligible Lenders (based upon one vote for each Mortgage owned), is needed to:

- 12.4.1 Abandon or terminate the Community (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain).
- 12.4.2 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.
- 12.4.3 Partition or subdivide any Lot.
- 12.4.4 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).
- 12.4.5 Use hazard insurance proceeds for losses to any of the Community (whether to Lots or to Common Area) for other than the repair, replacement or reconstruction of such property.

12.5 ***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.

12.6 ***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.

12.7 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:

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

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

12.9 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.

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

12.11 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.

12.12 Lenders Furnishing Information. Any Lender shall be entitled and authorized to furnish information to the Board concerning the status of any Mortgage.

12.13 Financial Statement. Any First Lender shall be entitled, on written request therefor, to have the Association provide a review of the financial statement for the immediately preceding fiscal year, which statement shall be furnished within a reasonable time following such request.

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

ARTICLE 13 - ENFORCEMENT

13.1 ***Right to Enforce; Remedies.*** . [Civil Code §§1354, 1363.810. *et seq.*, 1363.510, *et seq.*; Corp. Code §7231] The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the Governing Documents.

13.2 ***Board Discretion Whether to Enforce.*** In deciding whether to take any action to enforce the restrictions, conditions, covenants, reservations, liens and changes in the Governing Documents, the Board may exercise its discretion using the business judgment rule of Corporations Code section 7231.

13.3 ***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.

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

13.5 ***Violation of Applicable Law.*** Any violation of any Applicable Law pertaining to the ownership, occupancy or use of any Lot within the Community is declared to be a violation of this Restated Declaration and subject to any or all of the enforcement procedures herein set forth.

13.6 ***Compliance with Applicable Law.*** [Civil Code §§1354, 1363.810. *et seq.*, 1363.510, *et seq.*; Corp. Code §7231] All activities to enforce the provisions of the governing documents shall be conducted in accordance with all Applicable Laws. This Section shall apply to both the Association and to all Owners.

ARTICLE 14 - AMENDMENTS

14.1 ***Owner Approval of Amendments.*** [Civil Code §§1355 & 1363.03] This Restated Declaration may be amended by the following procedure or as otherwise specified in Section 14.4 herein.

First, the vote will be conducted by a secret ballot in accordance with the requirements of Applicable Law. Second, to constitute a quorum, the total number of ballots returned must come from at least a majority (*i.e.*, more than half) of the Voting Power. Third, the vote must remain open for at least thirty days after the date the ballots are mailed, but the initial deadline may be extended periodically after that date, if a quorum of ballots has not been received by the initial deadline, and may be extended automatically for additional periods of time until a quorum of ballots has been returned. Fourth, the amendment must be approved by the affirmative vote of at least two-thirds of the ballots cast. A blank ballot or other action indicating an intention to abstain will be deemed to have a neutral effect, so it will be counted toward the quorum only, but it will not be counted as a ballot cast for purposes of computing the two-thirds approval. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (a) the approval of the required fraction of the Voting Power of Members 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.

An amendment may change this Restated Declaration in any manner, including adding or deleting restrictions or increasing or decreasing the burdens on the Lots as long as the amendment is approved as specified herein or pursuant to Civil Code Section 1356.

14.2 *Eligible Lender Approval of Amendments.* In addition to the approval required by Section 14.1 above, the approval of fifty-one percent of Eligible Lenders shall be required to add or amend (i) any provision which is for the express benefit of holders or insurers of First Mortgages, or (ii) any material provisions of this Restated Declaration which establish, provide for, govern or regulate:

- 14.2.1 Changing the fundamental purpose for which the Community was created such as a change from residential to a different use;
- 14.2.2 Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or the priority of assessment liens;
- 14.2.3 Reductions in Reserves for maintenance, repair and replacement of the Common Area;
- 14.2.4 Responsibility for maintenance and repairs;
- 14.2.5 Hazard or fidelity insurance requirements;
- 14.2.6 Reconstruction in the event of damage or destruction.
- 14.2.7 Reallocation of interests in the Common Area or rights to its use;

- 14.2.8 Expansion or contraction of the Community, or the addition, annexation, or withdrawal of property to or from the Community;
- 14.2.9 Voting rights;
- 14.2.10 Redefinition of any Lot boundaries;
- 14.2.11 Converting Owner Lots into Common Area or vice versa;
- 14.2.12 Imposition of any restrictions on the leasing of Lots;
- 14.2.13 Imposition of any restrictions on an Owner's right to sell or transfer his or her Separate Interest;
- 14.2.14 Changing any provisions which, by its terms, is specifically for the benefit of first Mortgagees or insurers or guarantors of first Mortgages on Lots; or
- 14.2.15 Any provision which, by its terms, is specifically for the benefit of the First Mortgagees, or specifically confers rights on First Mortgagees.

An amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors, or for clarification, or for making a change which is of no practical significance.

14.3 ***City of Escondido Approval.*** None of the following provisions of this Restated Declaration shall be amended without the approval of the City of Escondido: Section 5.2 entitled “Compliance with Governmental Requirements,” Section 5.10 entitled “No Storage in Common Area,” Section 5.25.3 entitled “City of Escondido Requirements,” Section 6.2 entitled “Association Maintenance,” Section 6.3 entitled “Owner Maintenance” and this Section 14.3.

14.4 ***Eligible Lender Approval Response.*** An Eligible Lender who receives a written request to approve additions or amendments by certified or registered mail, return receipt requested, addressed to the address provided by such Eligible Lender, who does not deliver or post to the requesting party a negative response within thirty days after the notice of the proposed addition or amendment, shall be deemed to have approved such request. No Lender may charge a fee in connection with reviewing a request for a response. Any response from a Lender which only requests a fee for review shall not be deemed a “negative response” for the purposes of determining Lender consent within the meaning of this Section.

14.5 ***Amendment of Restated Declaration or Bylaws by Board Vote.*** The Board of Directors shall have the power to amend this Restated Declaration or the Bylaws, as the case may be, but only as this Section permits. By a majority vote of the full Board, the Board shall have the power to prepare and, in the case of the Restated Declaration, to record an amendment for the following purposes:

- 14.5.1 To correct any printing or grammatical error or omission in this Restated Declaration or Bylaws.

- 14.5.2 To make any change in the Restated Declaration or Bylaws required by a change in any applicable law, including court decisions, which obligate the Association, the Board or the Owners to conform their conduct to the terms of the law.
- 14.5.3 To make any change in the Restated Declaration or Bylaws needed to comply with any requirements of an Institutional Lender.

If the Board approves an amendment using the procedure in this subsection 14.4.2 or 14.4.3, the amendment shall not be recorded or filed until the following procedure is implemented. The Board shall first send notice of such action to the Owners, which notice shall include the text of the proposed amendment and an opinion from legal counsel that the proposed change in the Governing Documents is either required by Applicable Law or by an Institutional Lender. An amendment shall be considered ratified, unless within thirty days after the date such notice is sent to the Owners, the Owners entitled to cast twenty percent of the votes in the Association, sign a written petition to reconsider the Board's action and file it with the Board. If such a petition is filed, the Board shall call a special meeting of the Members to reconsider the Board's action. At the meeting, unless a majority of the total voting power of the Association rejects the proposed amendment, the amendment shall be considered ratified, whether or not a quorum is present at the special meeting.

This section shall not restrict the powers of the Owners to amend this Restated Declaration or the Bylaws by any other method, but is intended to authorize a simple process for amendment where the property rights of Owners are not materially or adversely affected.

14.6 ***Statute of Limitations to Challenge Amendments.*** [Civil Code §1363.09] No action to challenge the terms or validity of any amendment to this Restated Declaration or to the Bylaws may be made more than one year after the recording date in the case of an amendment to the Restated Declaration, or more than one year after the official tally of the vote in the case of an amendment to the Bylaws.

ARTICLE 15 - GENERAL PROVISIONS

15.1 ***Term.*** The provisions of this Restated Declaration shall continue in effect for a term of fifty years from the date of execution. Thereafter, it shall be automatically extended for successive periods of ten years, until the membership of the Association decides to terminate it by recording an amendment to terminate and vacate this Restated Declaration. This Section shall not preclude amending this Restated Declaration during the term of its existence.

15.2 ***Annexation by Association*** Additional residential property and Common Area may be annexed to the Community and to the Declaration by approval of an amendment to the Declaration, as provided in Section 14.1. Upon such approval, the owner of the property wishing it to be annexed may Record a Declaration of Annexation which shall extend the scheme of this Declaration to such property.

15.3 ***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.

15.4 ***Severability.*** The provisions of this Restated Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision. If for any reason this Restated Declaration is declared completely invalid in its entirety, the Original Declaration shall be deemed to have survived and thereafter become effective without any further action.

15.5 ***Binding.*** Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Community is and shall be conclusively deemed to have consented and agreed to every restriction and all of the provisions of this Restated Declaration. This Restated Declaration, as well as any amendment thereto and any valid action or directive made pursuant to it, shall be binding on the Owners and their heirs, grantees, tenants, successors, and assigns.

15.6 ***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. All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board, and its decision shall be final, binding and conclusive on all of the parties affected.

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

15.8 ***Fair Housing.*** [42 U.S.C. §§3601 *et seq.*, Gov't Code §12950 *et seq.*] 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, physical handicap or any other classification prohibited by law.

15.9 ***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.

15.10 ***Attorneys' Fees.*** [Civil Code §1354] In the event an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its attorneys' fees and costs so incurred, whether or not such controversy proceeds to litigation. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Said costs and attorneys' fees shall constitute a lien on the Lot which is enforceable as an assessment pursuant to the Governing Documents. This Section shall also apply to attorneys' fees incurred to collect any post-judgment costs.

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

- 15.11.1 Variances may be granted, without limitation, to restrictions upon use, restrictions on repair and maintenance, and architectural restrictions, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant.
- 15.11.2 Variances shall be in writing and shall become effective upon final approval by the Board.
- 15.11.3 When a variance is granted, no violation of the Restated Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Restated Declaration for any purpose except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all Applicable Laws affecting the use of the premises, including, but not limited to, zoning ordinances and lot set back lines or requirements imposed by the County of San Diego or any other governmental authority.
- 15.11.4 The Association may charge a reasonable fee to cover any costs associated with the variance approval process, or for issuance of a variance.
- 15.11.5 The Board may enact additional Rules regarding the variance approval process, the circumstances under which a variance may be granted, and may require the execution of indemnity or other agreements by the Owner as a condition to issuance of a variance.

15.12 ***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.

15.13 ***Conflict with Applicable Laws.*** Provided any Applicable Law is inconsistent with any provision or provisions of the Governing Documents, and compliance with that Applicable Law is mandatory, neither the Association, the Board, nor any member thereof shall have any liability for complying with the Applicable Law and not with the inconsistent provision or provisions of the Governing Documents.

15.14 ***References to Code Sections.*** In the event any of the Applicable Laws referenced herein are amended, modified, or otherwise changed, the references herein shall be deemed to refer to the Applicable Laws as amended, modified or otherwise changed. If an Applicable Law is deleted, any reference herein shall be deemed to refer to any successor Applicable Law.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of Restrictions this _____ day of _____, 2009.

SUMMERCREEK HOMEOWNERS ASSOCIATION
a California nonprofit mutual benefit corporation

By: _____
Sandra J. Dabasinskas, President

By: _____
Pat Wagner-Rasmussen, Secretary

[illegible]

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 signatures(s) on the instrument and the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

(47)

Exhibit A

Certification of President and Secretary As to Approval of the 2009 Amended and Restated Declaration of Restrictions

We, Sandra J. Dabasinskas and Pat Wagner-Rasmussen, declare and state as follows:

1. We certify that we are the President and Secretary, respectively of Summercreek Homeowners Association, a California nonprofit mutual benefit corporation (hereafter "Association").

2. This certification is executed as provided in California Civil Code Section 1355 to certify that the amendment requirements of the Declaration have been met.

3. We certify that (a) there are currently two hundred eleven (211) residential Lots that are subject to the Declaration, (b) that there is a total voting power of two hundred eleven (211), one (1) vote for each residential Lot in the Association, and (c) that there are no residential Lots whose voting rights have been suspended.

4. We certify that, based on the facts recited in Paragraph 3 above and according to Article XIII, Section 3 of the Declaration, as amended in 2007, an amendment to the Declaration is approved if: (i) a quorum of ballots is returned (at least 106 ballots), (ii) at least two-thirds of the ballots cast are in favor of the amendment, and (iii) the number of affirmative votes cast must also be at least two-thirds of the minimum required quorum.

6. We certify that, as December 7, 2009, the date on which the ballots were counted, the following represents the votes cast for and against the 2009 Amended and Restated Declaration by the voting power of the Association as tallied by the election inspector.

Voting Power Cast For and Against the 2009 Amended and Restated Declaration

For	Against
100	12

7. Since these totals reflect (i) the return of at least 106 ballots sufficient to meet quorum, (ii) approval by at least two-thirds of the ballots cast, and (iii) the number of affirmative votes is more than two-thirds of the minimum required quorum, *i.e.*, at least seventy-one (71) affirmative votes, we certify that the 2009 Amended and Restated Declaration was approved.

On behalf of the Association, we declare under penalty of perjury under the laws of the State of California that the foregoing facts are true and correct. Executed on _____, 2009 at San Diego, California.

By: _____
Sandra J. Dabasinskas, President

By: _____
Pat Wagner-Rasmussen, Secretary