

## **DECLARATION OF COVENANTS,**

## **CONDITIONS AND RESTRICTIONS**

If this document contains any restrictions based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

## TABLE OF CONTENTS

<b>PREAMBLE</b>	P-1
<b>RESTATEMENT OF CC&amp;RS</b>	A - 1

### **ARTICLE I - DEFINITIONS**

Section	1.1-Articles	I-1
Section	1.2-Association	I-1
Section	1.3-Board of Directors	1- 1
Section	1.4-By-Laws	I-1
Section	1.5-Common Area	1-1
Section	1.6-Declarant	I-1
Section	1.7-Declaration	I-1
Section	1.8-Eligible Insurer	I-2
Section	1.9-Eligible Mortgage Holder	I-2
Section	1.10-FHA	I-2
Section	1.11-Garden Wall	1-2
Section	1.12-Governing Instruments	I-2
Section	1.13-Manager	I-2
Section	1.14-Member	I-2
Section	1.15-Open Space Area	1-2
Section	1.16-Owner	I-2
Section	1.17-Party Wall	I-3
Section	1.18-Private Slopes	I-3
Section	1.19- P roject	I-3
Section	1.20-Public Slopes	I-3
Section	1.21-Residence	I-3
Section	1.22-Residential Lot	I-3
Section	1.23-Rules	I-4
Section	1.24-Tenant	I-4
Section	1.25-VA	I-4

### **ARTICLE II - THE PROPERTY**

Section	2.1-Property Subject to Declaration	I I-1
Section	2.2-Annexation of Additional Property	11-1
Section	2.3-Partition	11-2
Section	2.4-Exclusive Ownership and Possession	11-2
Section	2.5-Common Area	11-2
Section	2.6-Interest in Common Area	11-3
Section	2.7-Control of Common Area	11-3
Section	2.8-Nonexclusive Easements	11-3
Section	2.9-Other Easements	11-4
Section	2.10-Easements for Encroachment	11-4

**ARTICLE III - HOMEOWNERS' ASSOCIATION**

Section	3.1-The Association	III-1
Section	3.2-Membership	III-1
Section	3.3-Voting Rights	III-1
Section	3.4-Membership Meetings	III-2
Section	3.5-General Powers and Authority	III-3
Section	3.6-Duties of the Association	111-8
Section	3.7-Board of Directors	III-12
Section	3.8-Inspection of Books & Records	III-20
Section	3.9-Fidelity Bond	III-20

**ARTICLE IV - ASSESSMENTS, COLLECTION PROCEDURES**

Section	4.1-Covenants to Pay	I V- 1
Section	4.2-Assessments	IV-1
Section	4.3-Limitations on Assessments	IV-2
Section	4.4-Collections on Assessments	IV-3
Section	4.5-Mortgage Protection	IV-4
Section	4.6-Interest on Assessments	IV-5

**ARTICLE V - RESTRICTIONS AND COVENANTS**

Section	5.1-General Restrictions on Use	V-1
Section	5.2-Maintenance	V-5
Section	5.3-Damage Liability	V-5
Section	5.4-Non-Owner Occupants	V-5
Section	5.5-Common Area	V-7
Section	5.6-Grades, Drainage, & Structural Integrity	V-7
Section	5.7-Private Slopes	V-8
Section	5.8-Front Yards	V-8

**ARTICLE VI ARCHITECTURAL AND DESIGN CONTROL**

Section	6.1-Architectural & Design Approval	VI-1
Section	6.2-Architectural Control Committee	VI-1
Section	6.3-Board of Directors	VI-2
Section	6.4-Non Compliance with Laws	VI-2
Section	6.5-Inspection	VI-3

**ARTICLE VII - PARTY WALLS** **VI-1**

**ARTICLE VIII - DAMAGE OR DESTRUCTION**

Section	8.1-Rebuilding or Repair	VIII-1
Section	8.2-Partition	VIII-4
Section	8.3-Amendment	VIII-5

**ARTICLE IX - RIGHTS OF MORTGAGEES** IX-1

**ARTICLE X - FINANCING BY FEDERAL HOME LOAN  
MORTGAGE CORPORATION**

Section	10.1-Financing by FHLMC	X-1
Section	10.2-Written Consent	X-2
Section	10.3-Rights of First Mortgage	X-3
Section	10.4-Abandonment of the Project	X-3
Section	10.5-Insurance Proceeds	X-3
Section	10.6-Damage or Destruction of Lots	X-3
Section	10.7-Lease Agreements	X-4
Section	10.8-Right of First Refusal	X-4
Section	10.9-Enjoyment of Common Area	X-4
Section	10.10-Ingress and Egress	X-4
Section	10.11-Payment of Taxes	X-4
Section	10.12-Reserves	X-5
Section	10.13-Flood Insurance	X-5
Section	10.14-Notice of First Mortgage	X-5
Section	10.15-Insurance	X-5
Section	10.16-Definitions	X-6

**ARTICLE XI - GENERAL PROVISIONS**

Section	11.1-Amendment	XI-1
Section	11.2-Term of Declaration	XI-1
Section	11.3-Nonwaiver of Remedies	XI-1
Section	11.4-Severability	XI-1
Section	11.5-Binding Effect	XI-2
Section	11.6-Interpretation	XI-2
Section	11.7-Limitation of Liability	XI-2
Section	11.8-Fair Housing	XI-2
Section	11.9-Number, Gender, Heading	XI-2

**SECTION XII - AMENDMENTS TO CC&RS**

December 19, 1985-Insurance Provisions	XII-1
September 25, 1990-Roof Maintenance & Fumigation	XII-7
May 21, 1996-Declaration of Annexation	XII-16
May 21, 1996-Land Annexed from CALTRANS	XII-18
Jan. 29, 2003-Elimination of Cumulative Voting 2-Yr Staggered Terms Directors	XII-23

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
VILLA ANTIGUA HOMEOWNERS ASSOCIATION

PREAMBLE

WHEREAS, VILLA ANTIGUA HOMEOWNERS ASSOCIATION, a California Nonprofit Corporation and the Owners of the Residential Lots and Living Units of the HOMEOWNERS ASSOCIATION, hereinafter called "Declarant," are the owners of all the certain real property described in Exhibit "A" attached and incorporated herein by reference; and

WHEREAS, the Owners in the Project have received title to a Residential Lot plus a fractional interest as tenants in common to the Common Areas as hereinafter defined. Each Residential Lot has appurtenant to it a membership in the Association as hereinafter defined which is the management body for the Project; and

WHEREAS, it is Declarant's intention to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all said Residential Lots and the respective Owners thereof; and

WHEREAS, the Declarant pursuant to a common plan is desirous of imposing certain covenants, conditions, and restrictions for the benefit of declarant and any and all future owners of the property;

NOW, THEREFORE, Declarant hereby declares that the Project is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Project and every part thereof. All of the covenants, conditions, and restrictions shall run with the real property and shall be binding upon all parties having or acquiring any right, title, or interest therein or any part thereof, and shall be for the benefit of each Owner of any portion of said Project or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest to the Owners thereof.

AMENDMENT TO AND RESTATEMENT OF  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR VILLA ANTIGUA HOMEOWNERS ASSOCIATION

THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS executed by TIERRASANTA, INC., as Declarant on March 14, 1978, and recorded in the Office of the County Recorder of San Diego County, California, on March 15, 1978, as File/Page Number 78-102760 are hereby amended and restated.

The Declaration is hereby amended, modified, and restated in its entirety to read as hereinafter set forth. Upon recordation in the Office of the San Diego County Recorder of this Amendment and Restatement; the provisions contained in the Declaration as recorded on March 15, 1978, and the subsequent Amendments to the Declaration, shall be superseded in their entirety. Nothing contained in this Amendment and Restatement shall abrogate or change any obligations incurred under the original Declaration or subsequent Amendments prior to the recordation of this Amendment and Restatement.

ARTICLE I. DEFINITIONS

Section 1.1 "Articles" shall mean the Articles of Incorporation of VILLA ANTIGUA HOMEOWNERS ASSOCIATION, a California Nonprofit Corporation, hereinafter referred to as "Association," and amendments thereto which are or shall be filed in the Office of the Secretary of State of the State of California.

Section 1.2 "Association" means VILLA ANTIGUA HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assignees.

Section 1.3 "Board" or "Board of Directors" may be used interchangeably herein and shall mean and refer to the governing body of the Association as the same may from time to time be constituted.

Section 1.4 "Bylaws" shall mean the Bylaws of the Association and amendments thereto which are or shall be adopted by the Board, or amended by the Members.

Section 1.5 "Common Area" shall mean the entire Project except the Residential Lots as defined in this Declaration or as shown on the subdivision map.

Section 1.6 "Declarant" means VILLA ANTIGUA HOMEOWNERS ASSOCIATION, its successors and assignees.

Section 1.7 "Declaration" shall mean the within Declaration of Covenants, Conditions, and Restrictions, together with any amendments adopted hereto.

Section 1.8 "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested



notice from the Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws of the Association.

Section 1.9 "Eligible Mortgage Holder" shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice from the Association of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association.

Section 1.10 "FHA" shall mean and refer to the Federal Housing Administration.

Section 1.11 "Garden Wall" shall mean and refer only to any fence or stucco wall which is attached to a garage, faces a street, and was part of the original construction within the Project, and to the stucco wall along the entire length of Santo Road.

Section 1.12 "Governing Instruments" shall mean this Declaration for the Project and the Article and Bylaws of the Association.

Section 1.13 "Manager" shall mean the person or corporation, if any, appointed by the Board to manage the Project.

Section 1.14 "Member" shall mean every person or entity entitled to membership in the Association as provided herein.

Section 1.15 "Open Space Area" shall mean and refer to those portions of the Common Area over which open space easements have been dedicated on the subdivision maps of the Project to the City of San Diego.

Section 1.16 "Owner" shall mean the record owner, whether one or more persons or entities, of a Residential Lot which is part of the project. "Owner" shall not include any persons or

entities who hold an interest in a Residential Lot merely as security for performance of an obligation.

Section 1.17 "Party Wall" shall mean and refer to any wall that is located on or at the division line between adjoining parcels of land owned by different landowners, and used or intended to be used by both owners in the maintenance of improvements on their respective Lots. For purposes of this Declaration, fences located on or at the division line between adjoining parcels of land owned by different landowners shall be treated as Party Walls.

Section 1.18 "Private Slopes" shall mean and refer to those portions of Lots which are not part of the originally level graded building pad and which are: (a) adjacent to a dedicated street or an Open Space Area; and (b) which (by fence, wall, hedge, or other type of structure completed by Declarant as part of the original improvements of the Properties) are physically separated from the remaining portion of the Lots.

Section 1.19 "Project" shall mean the entire parcel of real property described on the Plan, which is divided into Residential Lots, including all structures thereon.

Section 1.20 "Public Slopes" shall mean and refer to those parcels of land in the public right of way lying between the public sidewalks along Santo Road and the boundaries of the Properties.

Section 1.21 "Residences" or "Dwelling" means a residential structure or structures, including enclosed yard, balconies, patio area, and garages located on a Residential Lot.

Section 1.22 "Residential Lot" or "Lot" means any of the lots located within the Project, including all improvements now

or hereafter thereon, which are improved with an attached or detached single family dwelling.

Section 1.23 "Rules" shall mean and refer to the Rules and Regulations adopted by the Association or its Board pursuant to Section 3.5(b) of this Declaration.

Section 1.24 "Tenant" shall mean and refer to the situation wherein through a contract one person gives to another the temporary possession and use of property, for reward, with an agreement that it shall be returned at a future time.

Section 1.25 "VA" shall mean and refer to the Veterans Administration.

## ARTICLE II. THE PROPERTY

### Property Subject to Declaration

Section 2.1 All the real property previously described in the Preamble to be described in the Plan, and the improvements thereon, shall be subject to this Declaration.

### Annexation of Additional Property

Section 2.2 Additional property may be annexed to the Project only as follows:

#### By Association

(a) Additional property may be annexed to the Project upon the vote or written assent of 66-2/3 percent of the total votes residing in Association Members.

#### Procedure

(b) Annexation of property pursuant to Section 2.2(a) above, shall be effected by the following procedure:

- (1) Recordation of a final subdivision map or maps, or final parcel map or maps for the real property to be annexed;
- (2) Recordation of a condominium plan for the property to be annexed; and
- (3) Recordation of a Declaration of Annexation covering the property to be annexed containing such modifications and additions to the terms of this Declaration as may be necessary to reflect the different character of the added property, provide cross easements, as required,

and as are not inconsistent with the general scheme of this Declaration.

#### Partition

Section 2.3 Except as provided by Section 1354 of the Civil Code of the State of California, there shall be no judicial partition of the Project or any part thereof, nor shall VILLA ANTIGUA HOMEOWNERS ASSOCIATION or any person acquiring an interest in the Project or any part thereof seek any judicial partition; provided, however, that if any Lot shall be owned by two or more persons as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such covenant.

#### Exclusive Ownership and Possession

Section 2.4 Each Owner shall be entitled to the exclusive ownership and possession of his or her Lot, however, such use shall not permit any structural changes in the Project, without the prior express approval of the Board of Directors of VILLA ANTIGUA HOMEOWNERS ASSOCIATION pursuant to Article VI of this Declaration which concerns Architectural and Design Control. An owner, however, shall be deemed to own and shall have the exclusive right to use his or her Lot subject to reasonable Architectural and Design Control pursuant to Article VI of this Declaration.

#### Common Area

Section 2.5 Each Lot Owner shall be entitled to an undivided interest in the Common Area in the percentage expressed in the Plan free of all liens and encumbrances, except current

real property taxes and any reservations, easements, covenants, conditions, and restrictions, of record, including those contained in this Declaration. The percentage of the undivided interest of each Owner in the Common Area as expressed in the Plan shall have a permanent character and shall not be altered without the consent of all Owners expressed in an amended Declaration duly recorded. The percentage of the undivided interest in the Common Area shall not be separated from the Lot to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Lot even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the common area in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners.

#### Interest in Common Area

Section 2.6 The undivided interest in the Common Area hereby established, and which has or shall be conveyed with each Residential Lot shall be one two hundred and secondth (1/202).

#### Control of Common Areas

Section 2.7 Control of the Common Areas shall be vested in VILLA ANTIGUA HOMEOWNERS ASSOCIATION.

#### Nonexclusive Easements

Section 2.8 Each Lot Owner shall have a nonexclusive easement for use and enjoyment of the Common Area and for

ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to, each Lot and shall be subordinate to the exclusive easements granted elsewhere in this Declaration, as well as to the right of the Association to regulate time and manner of use, to charge reasonable admission fees, and to perform its obligations under this Declaration.

#### Other Easements

Section 2.9 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, and each Lot Owner, in accepting his deed to the Lot, expressly consents to such easement. No such easement can be granted, however, if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his Lot.

#### Easements for Maintenance of Encroachments

Section 2.10 None of the rights and obligations of the Owners created herein, or by the deed creating the Planned Unit Development shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners.

## ARTICLE III. HOMEOWNERS ASSOCIATION

### The Association

Section 3.1 The Association is a nonprofit mutual benefit corporation, organized under the laws of the State of California, charged with the duties and invested with the powers prescribed by law and set forth herein in the Articles of Incorporation and in the Association Bylaws.

### Membership

Section 3.2 Membership in the Association is automatically granted to the Owner or Owners of each Residential Lot in the Project. Upon the transfer of title to any Lot, the membership of the transferor automatically ceases, and the new Owner or Owners become Members.

### Voting Rights

Section 3.3 The Association shall have one class of voting membership, as follows:

#### Class A

All Owners shall be entitled to Class A membership. Class A members shall be entitled to one vote for each Lot owned. When a Lot is owned by more than one person, such persons shall decide among themselves how that Lot's vote is to be cast, but in no event shall more than one vote be cast per Lot. The Owners may designate one of the Owners to be the "voting member" who shall have the authority to cast any vote as such Owner sees fit; or they may decide by majority vote among themselves how their Lot's vote is to be cast, but fractional votes shall not be allowed.



### Membership Meetings

Section 3.4 Meetings of the Members shall be held and conducted as follows:

#### Annual Meetings

(a) Annual meetings of the Members of the Association shall be held in April of each year, upon proper notice. The time shall be designated to encourage maximum attendance by Members.

#### Special Meetings

(b) Special meetings of the Members may be called at any time by a majority of a quorum of the Board, or upon receipt by the Board of a written request of the Members representing at least five percent (5%) of the total voting power of the Association.

#### Place

(c) Meetings of the Members shall be held within the Project or at a meeting place as close thereto as possible as the Board may specify in writing.

#### Notice of Meetings

(d) Written notice of all Members' meetings shall be given by or at the direction of the Secretary of the Association (or other persons authorized to call the meeting), said notice stating the purpose thereof, as well as the time and place where it is to be held, to the address of each Member as it appears on the Membership register of the Association, not less than ten (10) nor more than ninety (90) days prior to such meeting. The mailing or personal delivery of a notice in the manner provided

in this Section shall be considered notice served. Upon written request, therefore, written notice of each annual meeting shall be given to all first mortgagees.

#### Quorum

(e) The presence either in person or by proxy at any meeting of Members entitled to cast at least fifty-one percent (51%) of the voting power of the Membership, shall constitute a quorum for any action except as otherwise provided in the Articles, Bylaws, or this Declaration. In the absence of a quorum at a Members' meeting, a majority of those members present in person or by proxy may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the meeting date, at which meeting the quorum requirements shall be twenty-five percent (25%).

#### Proxies

(f) At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every proxy shall be revocable unless otherwise stated and shall automatically cease upon conveyance by the Member of his Lot, or upon receipt of notice by the Secretary of the death or after judicially declared incompetence of such Member. Proxies shall be valid according to California Corporations Code, Section 705 (b), as amended.

#### General Powers and Authority

Section 3.5 The Association shall have all the powers of a nonprofit corporation under California law, subject only to

the limitations in this Declaration or in the other Governing Instruments of the Association. It may perform all acts which may be necessary for or incidental to the performance of the obligations and duties imposed upon it by this Declaration or the other Governing Instruments. Its powers shall include, but are not limited to, the following:

#### Assessments

(a) The Association shall have the power to establish, fix, and levy assessments against the Residential Lot Owners in accordance with the procedures set out in Article IV of this Declaration and subject to the limitations therein.

#### Operating Rules

(b) The Association shall have the power to adopt reasonable operating rules governing the use of the Common Area and any facilities located thereon, and of any other Association property. Such rules may include, but are not limited to, reasonable restrictions on use by the Residential Lot Owners and their guests, rules of conduct, and the setting of reasonable fees for the use of recreational facilities. A copy of the current Association Rules shall be given to each Residential Lot Owner and shall be available for inspection during normal business hours at the Homeowners Association office.

#### Enforcement Power

(c) The Association has the right to institute and maintain actions for damages or to restrain any actual or threatened breach of any of the provisions of this Declaration,

the Articles, Bylaws, or Rules of the Association, in its own name and on its own behalf, or on the behalf of any consenting Residential Lot Owner. It may enforce payment of assessments in accordance with the provision of Article IV of this Declaration.

#### Discipline of Members

(d) In addition to the general power of enforcement above, the Association may discipline its Members for violation of any of the provisions of the Governing Instruments or Association Rules by suspending the violator's voting rights, privileges for use of the Common Area, and/or by imposing monetary penalties for such violations, subject to the following limitations:

- (1) Prior to any suspension of a Member's Association privileges, the Member must be notified in writing of the proposed suspension, and the reasons therefore, at least fifteen (15) days prior to the effective date of the suspension, and if requested by said Member in writing within five (5) days after receipt of notice thereof, a hearing on said suspension is held before the Board. Said hearing shall be held by the Board at least five (5) days before the effective date of the suspension, and at said hearing the Member may appear and defend himself against the matters resulting in the notice of suspension.

- (2) Any suspension of a Member's Association privileges shall not exceed sixty (60) days for each violation.
- (3) Any monetary penalty shall not exceed twenty-five dollars (\$25.00) for a first offense. For repeated offenses, fines shall not exceed five hundred dollars (\$500.00) for each offense.
- (4) Except under the provisions of Article IV of this Declaration, relating to foreclosure for failure to pay assessments, or as a result of the judgment of a court or a decision arising out of arbitration, the Association shall in no way abridge the right of any Owner to the full use and enjoyment of his Lot.
- (5) Any monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the governing instruments or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the Member was allegedly responsible, or in bringing the Member and his subdivision interest into compliance with the governing instruments may not be characterized nor treated as an assessment which may become a lien against the member's subdivision interest enforceable by a sale of the interest in

accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

- (6) The provisions of subdivision (5) above do not apply to charges imposed against an owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred, including attorney's fees, in its efforts to collect delinquent assessments.

#### Delegation of Authority

(e) The Association, acting through the Board, shall have the power to delegate its authority, duties, and responsibilities to such committees, officers, or employees as are allowed under the Governing Instruments. The Board of Directors may contract for the assistance of a reputable property management agent to assist it and its officers in carrying out its duties.

#### Right of Entry

(f) The Association's agents or employees shall have the right to enter any Residential Lot when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Lot Owner as is practicable, and any damage caused thereby shall be repaired by the Association at its own expense.

### Duties of the Association

Section 3.6 In addition to the duties delegated to the Association or its agents and employees elsewhere in these Governing Instruments, the Association shall be responsible for the following:

#### Maintenance of Common Areas

(a) The Association, acting through the Board, shall operate and maintain the Common Areas and the facilities located thereon; such duty shall include providing exterior maintenance of the dwelling structure situated on each Lot specifically and only as follows: paint, maintain, and repair and replace (if required because of normal wear, tear or deterioration) roofs, gutters, downspouts, exterior building surfaces, and maintain the Common Area landscaping, including the trees, shrubs, grass, walks, garden walls, and driveways. Such exterior maintenance shall not include glass surfaces, landscaping within the private entry and rear patio or backyard areas of each Lot (i.e., those areas not exposed to public view); patio covers or other additions built or maintained within said private patio areas by an Owner; repairs or replacement arising out of or caused by the willful or negligent acts of the Owner, his family, guests, lessees, contract purchasers, or invitees, or caused by flood, earthquake or other acts of God. Such excluded items shall be the responsibility of each Lot Owner. For the purpose solely of performing the exterior maintenance authorized by this provision, the Association's agents or employees shall have the right, after reasonable notice to the

Owners, to enter upon any Lot or exterior of any dwelling structure at reasonable hours. In addition, the Association, acting through the Board, shall be responsible for furnishings and equipment for the Common Area as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the Common Area.

Acquisition of Vital Services and Insurance

(b) The Association shall acquire and pay for out of the maintenance fund hereinafter provided for, the following;

- (1) Water, sewer, garbage, electrical, telephone, gas, and other necessary utility service for the Common Area.
- (2) A policy or policies of fire insurance with extended coverage endorsement for the full insurable replacement value of the Lots and Common Area, payable as provided in Article VIII herein, or such other fire and casualty insurance as the Board shall determine gives substantially equal or greater protection to the Owners, and their mortgagees, as their respective interests may appear;
- (3) A policy or policies insuring the Board and the Owners and/or Owners' Association against any liability to the public or to the Owners, their tenants and invitees, incident to the ownership and/or use of the Project, and



including the personal liability exposure of the Owners. Limits of eligibility under such insurance shall not be less than \$500,000.00 for any one person injured, \$1,000,000.00 for any one accident, including property damage. Such limits and coverage shall be reviewed at least annually by the Board and increased in its discretion. Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsement where the rights of named insured under the policy or policies shall not be prejudiced as respects his, her, or their action against another named insured;

- (4) Workers' compensation insurance to the extent necessary to comply with any applicable laws;
- (5) The services of such personnel as the Board shall determine to be necessary or proper for the operation of the Common Area; and
- (6) Legal and accounting services necessary or proper in the operation of the Common Area or the enforcement of this Declaration.

#### Budgets and Financial Statements

(c) The Association shall regularly prepare and distribute financial statements to the Members in accordance with the following:

- (1) a pro forma operating statement for each

fiscal year shall be distributed at least sixty (60) days before the beginning of the fiscal year.

- (2) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:
  - (A) A balance sheet as of the end of the fiscal year.
  - (B) An operating statement for the fiscal year.
  - (C) A statement of changes in financial position for the fiscal year.
  - (D) Any information required to be reported under Section 8322 of the Corporation's Code.
  - (E) The annual report referred to in (C) (2) above shall be prepared by an independent certified public accountant in any fiscal year in which the gross income of the Association exceeds \$75,000.00.
  - (F) In the event that the report is not prepared by an independent certified public accountant, the report shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

#### Independent Audits

(d) For any year in which the gross income of the Association exceeds \$75,000.00, an external audit by an independent certified public accountant shall be required for fiscal year financial statements other than budgets. A report of the audit shall be sent to each Lot Owner.

(e) The Association shall establish and maintain an adequate reserve fund for the replacement of common area improvements, which fund shall be funded by monthly payments rather than by extraordinary special assessments.

#### Board of Directors

Section 3.7 The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, subject to the following provisions:

##### Number

(a) The Board shall consist of a minimum of three (3) and a maximum of seven (7) persons, and all Directors must be Members of the Association.

##### Term

(b) At each annual meeting of the Association, the Members shall elect two (2) Directors for a term of two (2) years, based upon the individuals receiving the greatest number of votes. The other Director(s) elected at each annual meeting shall serve for a one (1) year term.

##### Nomination and Election

(c) The nomination and election of Directors shall be in accordance with the following:

#### Nomination

- (1) Nomination for election to the Board of Directors shall be made from the floor at the annual meeting of the Members and by a nominating committee appointed by the Board prior to each annual meeting of the Members.

#### Election

- (2) Every Owner entitled to vote at any election for Board of Directors members shall do so by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of this Declaration. The persons receiving the highest number of votes shall be elected. Cumulative voting is prescribed for all elections in which more than two (2) positions of the Board are to be filled, pursuant to the procedural prerequisites to cumulative voting prescribed in Section 7615(a) and 7615(b) of the Corporations code.

#### Removal

(d) Unless the entire Board is removed from office by the vote of Association Members, no individual Director shall be removed prior to the expiration of his term of office if the number of votes cast against his removal is greater than the votes cast against removal would be sufficient to elect the governing body Member if voted cumulatively at an election at which the same total number of votes were cast and the entire number of governing body Members authorized at the time of the most recent election of the governing body Members were then being elected.

#### Vacancies

(e) In the event of a vacancy on the Board caused by the death, resignation, or removal of a Director, the remaining Directors shall elect a successor who shall serve only until the next annual meeting, regardless of the length of term left remaining by the preceding Director.

#### Compensation

(f) A Director shall not receive any compensation for any

service he may render to the Association; provided, however, that any Director may be reimbursed for actual out-of-pocket expenses incurred by him in the performance of his duties.

#### Meetings

(g) The meeting of the Directors shall be held and conducted as follows:

##### Regular Meetings

- (1) Regular meetings of the Board of Directors shall be held monthly at such place within the Project, and at such time as may be fixed from time to time by resolution of the Board. Notice of the time and place of such meeting shall be available from the Association office during normal business hours.

##### Special Meetings

- (2) Special meetings of the Board of Directors may be called by the President or by any two members of the Board other than the President. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Notice of any special meeting must be given to each Director not less than three (3) days nor more than fifteen (15) days prior to the date fixed for such meeting;

##### Notice

- (a) Notice of regular or special meetings need not be given to any Board member who has signed a waiver of notice or a written consent to the holding of the meeting.

##### Written or Telephone Consent

- (b) The Board may take actions without a meeting or by telephone if all of the Board members consent in writing or unanimously by telephone to the action to be taken. If the Board has resolved by unanimous written or telephonic consent, to take action, an explanation of the action shall be available at the Association office during normal business hours within three (3) days after the consents of all the Board members

have been obtained. Such action taken by the Board pursuant to this section shall be entered into the minutes at the next Board meeting.

#### Quorum

- (3) A majority of the Board shall constitute a quorum, and if a quorum is present, the decision of a majority of the Directors present shall be the act of the Board.

#### Open Meetings

- (4) Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Association Members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board.

#### Executive Session

- (5) The Board may, with the approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

#### Powers

(h) The Board's powers and duties shall include, but shall not be limited to, the following:

##### Enforcement of Provisions in Governing Instruments

- (1) Enforcement of the applicable provisions of this Declaration, the Articles, Bylaws, and any Rules and Regulations of the Association.

##### Payment of Taxes

- (2) Payment of taxes and assessments which are, or could become, a lien on the Common Area or a portion thereof.

##### Contracting for Insurance

- (3) Contracting for casualty, liability, and other insurance on behalf of the Association.

##### Contracting for Goods and Services

- (4) Contracting for goods and services for the Common Area, facilities and interests of the Association.

##### Delegation of Powers

- (5) Delegation of its powers to such committees, officers, or employees of the Association as are expressly authorized by the Governing Instruments.

##### Preparation of Budgets

- (6) Preparation of budgets and financial statements for the Association as prescribed in the



Governing Instruments.

Formulation of Rules

- (7) Formulation of rules or operation for the Common Area and facilities owned or controlled by the Association.

Disciplinary Proceedings

- (8) Initiation and execution of disciplinary proceedings against Members of the Association for violations of provisions of the Governing Instruments in accordance with procedures set forth in the Governing Instruments.

Entering Lots

- (9) Entering any Residential Lot as necessary in connection with construction, maintenance, or emergency repair for the benefit of the Common Area or the Owners in the aggregate.

Management

- (10) Entering into any agreement for professional management of the Project so long as it will not exceed one (1) year and shall be cancellable by either party without cause and without imposition of a termination fee on thirty (30) days' written notice.

Limitations

(i) Notwithstanding the powers set out above, the Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the

voting power of the Association.

#### Contracts

- (1) Entering into a contract with a third person wherein the third person will furnish goods or services for a term longer than one (1) year, except insurance coverage which may be for a term longer than one (1) year.

#### Expenditures

- (2) Incurring aggregate expenditures for capital improvement to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

#### Selling Property

- (3) Selling during any fiscal year property of the Association have an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

#### Compensation

- (4) Paying compensation to Directors or to officers of the Association for services rendered in the conduct of the Association's business; provided, however, that the board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

### Inspection of Books and Records

Section 3.8 The Association's Governing Instruments and the Association's membership records, books of account, and minutes of the meeting of the Members, of the Board, and of committees of the Board shall be made available for inspection as follows:

#### By Members of the Association

(a) Any Member shall have the right to inspect the above records and copy them at any reasonable time and for a purpose reasonably related to his interest as a Member. This right is subject to the power of the Board to set reasonable times for inspection, notice requirements, and fees to cover the cost of making copies of the documents requested by a Member.

#### By Directors

(b) Every Director shall have the absolute right to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association at any reasonable time. The right of inspection by a Director includes the right to make extracts and copies of documents.

### Fidelity Bond

Section 3.9 A fidelity bond covering members of the Board, officers, and employees of the Association and employees of any management agent, whether or not such persons are compensated for their services, naming the Association as obligee and written in an amount equal to at least one hundred and fifty percent (150%) of the Association's annual assessments plus reserve shall be maintained by the Association.

## ARTICLE IV. ASSESSMENTS AND COLLECTION PROCEDURES

### Covenant to Pay

Section 4.1 Each Lot Owner covenants and agrees by acceptance of the deed to such Owner's Lot to pay to the Association the regular and special assessments levied pursuant to the provisions of this Declaration. All monies collected shall be put into a maintenance fund to be used to defray expenses attributable to the ownership, operation, and maintenance of common interests by the Association, but the Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Area or abandonment of such Owner's Lot. Each assessment, along with interest thereon, late charges, collection costs, and reasonable attorney's fees shall be a continuing lien upon the Lot to become effective upon recordation of a notice of assessment, and also shall be the personal obligation of the Lot Owner of record at the time of assessment.

### Assessments

Section 4.2 Regular and special assessments shall be made in accordance with the following:

#### Regular Assessments

(a) Within sixty (60) days prior to the beginning of each fiscal year, the Board shall estimate the net charges to be paid during such year, including a reasonable provision for contingencies and replacements with adjustments made for any expected income and surplus from the prior year's fund. Such estimated cash requirement shall be assessed to the Lot Owners

according to the ratio of the number of Lots owned by the Lot Owner assessed to the total number of Lots in the Project subject to assessment. Each Lot Owner is obligated to pay assessments to the Board in equal monthly installments on or before the first day of each month.

#### Increase in Regular Assessments

(b) The Board may not, without the vote or written assent of fifty-one percent (51%) of the voting power of the Association, impose a regular annual assessment per Residential Lot which is more than ten percent (10%) greater than the regular assessment for the immediately preceding fiscal year, or the increase in the average urban Consumer Price Index (C.P.I.) for the San Diego area, whichever is greater. For purposes of comparing the rise in the C.P.I., January shall be considered the comparison month.

#### Special Assessments

(c) If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements upon the Common Area, it shall make a special assessment for the additional amount needed. Any such special assessment shall require the vote or written assent of fifty-one percent (51%) of the voting power of the Association.

#### Special Assessments on Individual Lot Owners

Section 4.3 The above-described limitation on imposition of special assessments shall not apply to a special

assessment levied against a Lot Owner to reimburse the Association for funds expended in order to bring the Owner into compliance with provisions of the Association's Governing Instruments.

#### Collection of Assessments

Section 4.4 Each monthly portion of a regular assessment and each special assessment shall be a separate, distinct, and personal debt and obligation of the Lot Owner against whom the same are assessed. Such assessments shall be due and payable when rendered and shall be subject to late charges as determined by the Board for nonpayment within fifteen (15) days. The amount of any assessment not paid when due shall be deemed to be delinquent and shall become a lien upon the Unit when a notice of assessment lien is duly recorded as provided in Section 1356 of the California Civil Code. A notice of assessment lien shall not be recorded until the Lot Owner has been given a notice of delinquency and has not cured said delinquency within fifteen (15) days. A certificate executed and acknowledged by a majority of the Board and the Lot Owner stating the indebtedness secured by a lien on any Lot shall be conclusive upon the Board and the Lot Owner as to the amount of such indebtedness on the date of the certificate in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Lot Owner upon request at a reasonable fee.

Any such lien may be foreclosed by an appropriate action in court or in the manner provided by law for the foreclosure

of a mortgage under power of sale. Any action in court brought to foreclose such a lien shall be commenced not later than one (1) year nor less than ten (10) days after the recordation of the notice of assessment. In the event the foreclosure is under power of sale, the Board, or any other person designated by it in writing, shall be deemed to be acting as the agent of the lienor and shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted.

Such sale shall be conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c of the California Civil Code applicable to the exercise of powers of sale and mortgages and deeds of trust, or in any other manner permitted by law. The certificates of sale shall be executed and acknowledged by any two (2) members of the Board or by the person conducting the sale. A deed upon court foreclosure shall be executed in a like manner after the lapse of the period of redemption then required by statute.

#### Mortgage Protection

Section 4.5 The holders of first deeds of trust or mortgagees of Lots in the Project shall be entitled to the following rights and privileges:

#### Subordination of Liens

(a) Notwithstanding all other provisions of this Declaration, liens created hereunder upon any Lot shall be subject and subordinate to, and shall not affect the rights of the holder of, the indebtedness secured by any recorded first

mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to this Article on the interest of the purchaser at such foreclosure sale to secure all assessments assessed to such purchaser as a Lot Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

#### Amendments

(b) No amendment of this Article shall affect the rights of the holder of any first mortgage recorded prior to the recordation of such amendment who does not join in the execution thereof.

#### Interest on Assessments

Section 4.6 Any assessment, whether regular or special, not paid within thirty (30) days after the due date shall be delinquent, and shall bear interest at the rate of ten percent (10%) per annum from the due date until paid in full.



ARTICLE V. RESTRICTIONS AND COVENANTS

General Restrictions on Use

Section 5.1 The right of the Lot Owner and his guests to occupy or use his Dwelling, or to use the Common Area or any of the facilities thereon, is subject to the following restrictions:

(a) No Lot Owner shall occupy or use his Dwelling, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence. No occupation, profession, commerce, trade or other non-residential use shall be conducted in any portion of the project. Nothing in this Declaration shall prevent the Lot Owner from leasing or renting out his Dwelling, provided that it is not for transient or hotel purposes, is for a period of at least sixty (60) days, and is subject to the Association's Governing Instruments and Rules. In addition, tenants of Lot Owners shall be expressly prohibited from sub-leasing the premises without express Board approval.

(b) There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board except as hereinafter expressly provided, or in designated storage areas.

(c) Nothing shall be done or kept in any Lot or in the Common Area which will increase the rate of insurance on the Common Area without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his Residential Lot or in the Common Area which will result in the cancellation of insurance on any Lot or on any part of the

Common Area or which would be in violation of any law.

No waste shall be permitted in the Common Area.

(d) No sign of any kind shall be displayed to the public view on or from any Lot or the Common Area without the prior written consent of the Board, except a sign advertising the property for sale as provided in Section 712 of the California Civil Code. Signs advertising a Lot for rent or lease shall not be prohibited by this section.

(c) No animals, livestock, or poultry of any kind shall be raised, bred, or kept in a Dwelling or in the Common Area, except that dogs, cats or other household pets may be kept in Dwellings, subject to the Rules and Regulations adopted by the Board.

(f) No noxious or offensive activity shall be carried on in any Dwelling or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners.

(g) Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Board.

(h) There shall be no violation of the Rules for the use of the Common Area adopted by the Board and furnished in writing to the Owners and the Board is authorized to adopt such rules.

(i) No Owner shall park any automobile or other motor vehicle in the Common Area except on the City of San Diego's street. Pursuant to San Diego Municipal Code Section 81.09(A)(1), when any vehicle has been parked or left standing upon a street

or highway for seventy-two (72) or more consecutive hours, police officers are authorized to remove such vehicle to an appropriate garage. The Board shall adopt specific restrictions regulating the parking or storage of trailers, campers, mobile homes, trucks (other than standard size pick-up trucks), boats, inoperable vehicles, noisy or smoky vehicles, off-road, unlicensed motor vehicles and similar vehicles or equipment.

(j) Exterior clothes lines shall not be erected or maintained on the Common Area and there shall be no outside laundering or drying of clothes.

(k) Rubbish and trash shall not be allowed to accumulate in the Project and shall be regularly removed therefrom. Waste materials shall be kept in properly covered containers and all equipment, woodpiles, or storage piles shall be kept screened and concealed from view of the streets and the Common Area.

(l) No radio or television antenna, Or radio transmitter tower or facility shall be constructed, erected, or placed in the Project unless the same is wholly within a building designed and constructed for purposes to contain any such antenna tower or facility. Notwithstanding the preceding sentence, under no circumstances may the antenna component(s) of a master antenna system be constructed, erected or otherwise placed on any portion of the Project. Except as otherwise provided in this Declaration, there shall be no outside masts, poles, or flagpoles constructed, installed or maintained in the Project.

(m) Domesticated household pets may be kept by an Owner in his Dwelling or Lot. Such pet shall not be allowed on the Common Area except in accordance with such rules and regulations

as may be adopted by the Board of Directors of the Association. Caged birds or fish in a household aquarium may be kept and maintained in an Owner's Dwelling, provided the same shall not in the opinion of the Board of Directors create an unreasonable annoyance or nuisance to the Owners of the other Lots.

(n) No Owner shall have the right to paint or stain any exterior surface of his Dwelling without the written consent of the Board of Directors of the Association.

(o) Any garage shall be used solely by the occupants of the dwelling to which it is appurtenant and shall not be altered for use as living quarters or utilized for any purpose other than the storage of automobiles or other vehicles and household personal property.

(p) No Owner may install any solar energy device without the prior express written consent of the Board of Directors of the Association. The Board shall not unreasonably refuse such consent or impose unreasonable restrictions, within the meaning of Section 714 of the Civil Code, as conditions for granting of its consent.

(q) In the case of an emergency, the right of entry shall be immediate. The Association shall be liable for any damage which is caused to an Owner's Dwelling as a result of such emergency entry.

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

(s) No metallic foil shall be placed in the windows of any Dwelling.

#### Maintenance

Section 5.2 Except for those portions which the Association is required to maintain and repair, each Lot Owner shall, at his sole cost and expense, maintain and repair his Lot, keeping the same in good conditions and repair.

#### Damage Liability

Section 5.3 Each Lot Owner shall be liable to the Association for all damage to the Common Area or other Association property that is sustained by reason of the negligence or willful misconduct of that Owner, his family, guests, or tenants.

#### Non-Owner Occupants

Section 5.4 Subject to any limitations set forth in this Declaration, any Owner may delegate his right of use and enjoyment of the Common Area to the members of his family, his tenants, contract purchasers or other persons occupying the Owner's Lot (collectively "Non-Owner Occupants") provided that:

(a) Each Owner shall be responsible to the Association and the other Owners for any damage attributable to the conduct of any person using the Common Area or its facilities as the guest, invitee, tenant, or lessee of such Owner.

(b) In addition, every Residential Lot Owner who leases his Lot to a Tenant or allows a Non-Owner Occupant to reside in the Dwelling shall promptly provide the following information to the Board or Manager of the Association:

1. Name of the Tenant(s) or Non-Owner Occupant.
2. Address and work and home phone numbers of the Tenant(s), Non-Owner Occupant(s), and Owner.
3. Vehicle license number(s) of the Tenant(s) or Non-Owner Occupant(s).
4. Lease expiration date of the Tenant.
5. Written statement indicating that Tenant(s) or Non-Owner Occupant(s) agree to be bound by Association rules, and have either received a copy of the Homeowner's Manual or received a copy of these Covenants, Conditions and Restrictions and Bylaws.

Also, the Association may enforce any breach of the rules and regulations directly against the Tenant(s) or Non-Owner Occupants, by legal proceedings if appropriate, without the necessity of joining the Owner as a party to such proceeding..

(c) If the Association has established or in the future establishes any rules or regulations regarding the occupancy or use of the Lots and Common Area facilities by Tenants or

Non-Owner Occupants, the occupancy shall be subject to such rules and regulations and, before possession is transferred to any Tenant(s) or Non-Owner Occupant(s), the Owner and the Tenant(s) or Non-Owner Occupant(s) shall consent in writing to such rules and regulations.

Common Area

Section 5.5 The Common Area shall be used only for the following purposes:

(a) Affording pedestrian movement within the Project, including access to the Lots.

(b) Recreational use by the Owners and occupants of Lots and their guests, subject to rules established by the Board of Directors of the Association.

(c) Beautification of the Common Area and providing privacy to the residents thereof through landscaping and such other means as the Board of Directors of the Association shall deem appropriate.

Grades, Drainage and Structural Integrity

Section 5.6 (a) No grade of any Lot shall be altered or modified by fill or excavation so as to change its elevation or the direction or degree of its slope without the prior written approval of the Architectural Control Committee. Any applicant for an alteration or modification of grade shall furnish said committee with such engineering or geological data concerning erosion, earth movement, drainage, hazards to persons or public or private property and any other matter which said committee shall deem material thereto.

(b) There shall be no interference with the established drainage pattern over any Lot or any other part of parcel of the Project unless adequate provision for proper drainage is made and is approved in writing by the Architectural Control Committee. "Established drainage" shall mean the drainage existing immediately subsequent to the time of the overall grading of the Project.

(c) Nothing shall be done on any Lot which will impair the structural integrity of any other Lot or on any other part or parcel of the Project or will structurally affect any of such other structures.

#### Private Slopes

Section 5.7 No fence, wall, landscaping, or any other type of structure or improvement shall be placed, constructed, installed or erected upon the private slopes by any Owner. No Owner shall alter or remove from the Private slopes any improvements and/or landscaping of the Association. Easements are hereby reserved in favor of the Association over those portions of the Lots that constitute Private Slopes for the purpose of installing, landscaping, and otherwise improving said Private slopes and for the purpose of maintaining said landscaping and any improvement thereon.

#### Front Yards

Section 5.8 No fence, wall, landscaping or any other type of structure or improvement shall be placed, constructed, installed or erected by any Owner upon the front portion of his Lot. As used herein, the term "front portion" shall mean that portion of a Lot exposed to public view (excluding the



private entry area) and separated from the remainder of the Lot by the dwelling structure and any fence, wall, hedge or other barrier or screen. No Owner shall alter or remove any improvements and/or landscaping installed by the Association pursuant to its maintenance of the Project.

ARTICLE VI. ARCHITECTURAL AND DESIGN CONTROL

Architectural and Design Approval

Section 6.1 No building, addition, wall, fence, or alteration shall be begun, constructed, maintained, or permitted to remain on any Lot, or on the Common Area, until complete plans and specifications of the proposed work have been submitted to and approved by the Architectural Control Committee and the Board of Directors. The Committee shall review all such proposals to judge whether they are compatible with the standards of design, construction, and quality of the Project and, if they are not, to require that changes be made before approval.

Architectural Control Committee

Section 6.2 The Architectural Control Committee shall consist of one (1) to three (3) members, formed as follows:

Appointment

(a) The Board shall have the right to appoint the members of the Architectural Control Committee subject to the provisions of Section 3.7(h)(5) of this Declaration of Covenants, Conditions and Restrictions. Thereafter, the Board shall have the right to appoint all of the members of the Committee.

Members

(b) Members appointed to the Committee by the Board shall be from the membership of the Association.

#### Term

(c) The term of the initial appointees shall be one (1) year, and thereafter members will serve two-year terms. Notwithstanding the foregoing, all members of the Committee shall serve at the will of the Board, and may be removed by said party at any time with or without cause.

#### Meetings

(d) The Committee shall meet as often as it deems necessary to properly carry out the obligations imposed upon it, unless directed otherwise by the Board.

#### The Board of Directors

Section 6.3 All decisions of the Architectural Control Committee are subject to review by the Board of Directors and may be appealed to the Board. The Committee shall notify the Board of all violations of this Article and of any noncompliance with its rulings or with the plans and specifications submitted to and approved by it, after which the Board shall take such actions as it deems necessary in accordance with the provisions of this Declaration.

#### Non-Compliance with Laws

Section 6.4 Neither the Association nor the Architectural Control Committee shall be responsible for any defect in, or non-compliance with any governmental law, rule or regulation of, any building or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications, color scheme, plot plan or grading plan approved by said committee or any conditions or requirements that said committee may have imposed with respect thereto.

### Inspection

Section 6.5 All architectural changes shall have a final inspection by the Architectural Control Committee after completion of all work.

## ARTICLE VII. PARTY WALLS

Section 7.1 The rights and duties of the Owners with respect to party walls shall be as follows:

(a) General. Each wall which is constructed as a part of a Residence and any part which is placed on the dividing line between Residences shall constitute a party wall, and with respect to such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of this Declaration, and to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

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

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

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

(e) Dispute. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to binding arbitration by the Association or its designated representative.

(f) Binding Effect. The provisions of this paragraph shall remain in full force and effect unless modified or abrogated as to any particular party wall by the agreement of all persons that have an interest therein.

(g) Default in Payment. Upon failure of any Owner required hereby to pay for the rebuilding or repair of a party wall for a period of sixty (60) days, the Association may pay the cost thereof and assess such cost to the responsible party, which assessment shall be due and payable and become an assessment obligation of such Owner and a lien in all respects as provided in Article 4 of this Declaration.

ARTICLE VIII. DAMAGE OR DESTRUCTION

Rebuilding or Repair

Section 8.1 If the Project is damaged by fire or other casualty and said damage is limited to a single Lot, all insurance proceeds shall be paid to the Owner or Owners, mortgagee or mortgagees of the Owner or Owners, as their respective interests may appear, and such Owner or Owners, mortgagee or mortgagees, shall use the same to rebuild or repair such Dwelling in accordance with the original plans and specifications therefor. If such damage extends to two (2) or more Lots, or extends to any part of the Common Area:

(a) If the cost of rebuilding or repairing does not exceed the available insurance proceeds initially offered or paid by the insurer by Ten Thousand Dollars (\$10,000.00), such insurance proceeds shall be paid to the insurance trustee hereinafter designated. The Board shall thereupon contract to repair or rebuild the damaged portions of all Lots and the Common Area in accordance with the original plans and specifications therefor, and the funds held in the insurance trust fund shall be used for this purpose. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Board shall levy a special assessment on all Owners in proportion to the interest of each Owner in the Project, in an amount equal to the estimated deficiency.

(b) If subparagraph (a) is inapplicable, then: (1)

All insurance proceeds shall be paid to the

Association or to such other bank or trust company as may be designated by the Board of Directors to be held for the benefit of the Owners and their mortgagees as their respective interests may appear. The Board is authorized to enter on behalf of the Owners into such agreement, consistent with this Declaration, with such insurance trustee, relating to its powers, duties, and compensation as the Board may approve;

- (2) The Board shall obtain firm bids (including the obligation to obtain a performance bond) from two (2) or more responsible contractors to rebuild the Project in accordance with its original plans and specifications and shall, as soon as possible thereafter, call a special meeting of the voting Owners to consider such bids. If the Board fails to do so within sixty (60) days after the casualty occurs, any Owner may obtain such bids, and call and conduct such meeting as herein provided (failure to call such meeting or to repair such casualty damage within twelve (12) months from the date such damage occurred shall be deemed for all purposes a decision not to rebuild said building). At such meeting, the Owners may by sixty-six and two-thirds percent (66-2/3%) vote elect to



to reject all of such bids and thus not to rebuild, of by fifty-one percent (51%) vote elect to reject all such bids requiring amounts more than Five Hundred Dollars (\$500) in excess of available insurance proceeds. Failure to reject all bids shall authorize the Board to accept the unrejected bid it considers most favorable;

- (3) If a bid is to be accepted, the Board shall levy a special assessment in proportion to the interest of each Owner in the Project to make up any deficiency between the total insurance proceeds and the contract price for such repair or rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of mortgagees, shall be paid to said insurance trustee to be used for such rebuilding. If any Owner shall fail to pay the special assessment within thirty (30) days after the levy thereof, the Board shall make up the deficiency by payment from the maintenance fund. Upon payment, the Board shall let the contract to the successful bidder;
- (4) Upon an election not to rebuild, the Board, as soon as reasonably possible and as agent for

the Owners, shall sell the entire Project, in its then condition, free from the effect of these Restrictions, which shall terminate upon such sale, on terms satisfactory to the Board. The net proceeds, and all funds held by said insurance trustee, shall thereupon be distributed to the Owners in proportion to the interest of each Owner in the, Project, and to the mortgagees of the interest of the Owners, as their interests may appear.

(c) Within sixty (60) days after any such damage occurs, the Board, or if it does not, any Owner, the insurer, the insurance trustee, or any mortgagee of any Owner, shall record a sworn declaration stating that such damage has occurred, describing it, identifying the building suffering such damage, the name of any insurer against whom claim is made, and the name of any insurance trustee, reciting that the sworn declaration is recorded pursuant to this paragraph of these Restrictions, and that a copy of such sworn declaration has been mailed or personally delivered to each.

#### Partition

Section 8.2 If the Owners decide not to rebuild, either by calling a meeting and rejecting all bids presented or by failing to call such a meeting and failing to repair such damage within twelve (12) months after the damage occurs, then the Manager or the Board, or if they do not, any Owner or mortgagee or any Owner, shall record a sworn declaration

setting forth such decision and reciting that under the provisions of these Restrictions the prohibition against judicial partition provided for in Section 2.3 hereof has terminated and that judicial partition of the Project may be obtained pursuant to Section 1354 of the Civil Code of the State of California. Upon final judgment of a court of competent jurisdiction decreeing such partition, these Restrictions shall terminate.

#### Amendment

Section 8.3 The provisions of this Article cannot be amended without the vote or written consent of the Owners of seventy-five percent (75%) of VILLA ANTIGUA HOMEOWNERS ASSOCIATION.

ARTICLE IX. RIGHTS OF MORTGAGEES

Warranty

Section 9.1 Mortgagees of Lots in the Project shall be entitled to the following rights and guarantees:

No Impairment

(a) Should any of the Association's Governing Instruments provide for a "right of first refusal," such right shall not impair the rights of a first mortgagee to:

- (1) Foreclose or take title to a Lot pursuant to the remedies provided in the mortgage, or
- (2) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or
- (3) Interfere with a subsequent sale or lease of a Lot so acquired by the mortgagee.

Notice of Default

(b) A first mortgagee, upon request, will be entitled to written notification from the Association of any default in the performance by the mortgagor of any obligation under the Association's Governing Instruments which is not cured within sixty (60) days.

Unpaid Assessments

(c) Any first mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Lot's unpaid assessments which accrue prior to the acquisition of

title to said Lot by the mortgagee.

Mortgagee Approval

(d) Unless at least fifty-one percent (51%) of the first mortgagees (based upon one vote for each first mortgage owned), or Residential Lot Owners have given their prior written approval, the Association shall not be entitled to:

- (1) By act or omission, seek to abandon or terminate the Project;
- (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 Project and the improvements thereon;
- (3) Partition or subdivide any Lot;
- (4) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause.);
- (5) Use hazard insurance proceeds for losses to any Project property (whether to Lots or to the Common Area) for other than the repair,

replacement, or reconstruction of such property, except as provided by statute in case of substantial loss to the Lots and/or Common Area of the Project.

#### Liens

- (e) All taxes, assessments, and charges which may become liens prior to the first mortgage under local law, shall relate only to the individual Lots and not to the Project as a whole.

#### Priority

(f) No provision of the Governing Instruments of the Association gives any Owner, or any other party, priority over any rights of the first mortgagee of the Lot pursuant to its mortgage in the case of a distribution to such Residential Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of Lots and/or the Common Area or portions thereof.

#### Reserve Fund

(g) Association Assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those common elements that must be replaced on a periodic basis. Such a reserve fund will be funded through the regular monthly assessments rather than by special assessments.

ARTICLE X. FINANCING BY FEDERAL HOME  
LOAN MORTGAGE CORPORATION

Section 10.1 Notwithstanding any provision of this Declaration to the contrary, in order to induce the Federal Home Loan Mortgage Corporation ("FHLMC") to participate in the financing of the sale of Lots within the Project, this Article X is added hereto (and to the extent the provisions of this Article conflict with any other provisions of the Declaration, these added provisions shall control):

(a) A "First Mortgagee" (meaning herein a mortgagee under a mortgage encumbering a Lot with priority over other mortgages encumbering such Lot) at its request is entitled to written notification from the Association of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations under the "Enabling Documents" (meaning collectively the Declaration, the Articles, By-Laws, Association rules and Board resolutions) which is not cured within sixty (60) days;

(b) Any first mortgagee who comes into title or possession of a Lot by foreclosure of the mortgage shall be exempt from any "right of first refusal";

(c) Any first mortgagee who comes into title or possession of a Lot by foreclosure of the mortgage, shall take the Lot free of any claims for, and shall not be liable for, unpaid assessments or charges against the mortgaged Lot which accrued prior to the time such first mortgagee came into title or possession of the Lot (except for claims for a pro rata reallocation of such assessments or charges to all Lots including the mortgaged lot):

(d) Unless at least two-thirds (66 2/3%) of the first mortgagees (based upon one vote for each mortgage owned) of Lots

have given their prior written consent, the Association and the Owners shall not be entitled to:

- (1) Change the prorated interest or obligations of any individual Lot for the purpose of:
  - (a) levying assessments or charges of allocating distribution of hazard insurance proceeds or condemnation awards; or,
  - (b) determining the prorated shares of ownership of each lot in the Common Area;
- (2) Abandon or terminate the Planned Unit Development Project, except as may be provided by statute;
- (3) Fail to maintain fire and extended coverage on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
- (4) Use casualty insurance proceeds for losses to any improvements of the Common Area for other than the repair, replacement or reconstruction of such improvements; and
- (5) By action or inaction allow the Association to be dissolved.

Section 10.2 Unless all first mortgagees of Lots have given their prior written consent, the Association and the Owners shall not be entitled to, except as in statute made and provided, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or any improvement thereon. In this



regard, the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this Section 10.2.

Section 10.3 First mortgagees of Lots shall be entitled to (a) inspect the books and records of the Association during normal business hours; (b) receive an annual balance sheet and operating (income) statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and (c) written notice of all meetings of the Association, and to designate a representative to attend all such meetings.

Section 10.4 First mortgagees of Lots shall be entitled to thirty (30) days' written notice for abandonment or termination of the Project.

Section 10.5 Nothing in the Enabling Documents shall be construed as giving any Owner or any other party priority over any rights of first mortgagees of Lots pursuant to their respective mortgages in the case of a distribution to Owners or the Association of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Area. Such first mortgagees shall be entitled to thirty (30) days' written notice of any such damage, destruction, condemnation or taking.

Section 10.6 If any Lot or the Common Area or any portion thereof is substantially damaged or destroyed, or is made the subject matter of any condemnation or eminent domain proceeding, no provision of the Enabling Documents shall entitle the Owner of a Lot or other party to priority over any first mortgagees pursuant to their

respective mortgages with respect to the proceeds of any condemnation or eminent domain award or settlement. Such first mortgagees shall be entitled to a thirty (30) days' written notice of any such proceeding or proposed acquisition.

Section 10.7 Any lease agreement between an Owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles and By-Laws, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. A rental agreement shall be deemed a lease for the purposes hereof. Other than the foregoing, and except as provided in this Declaration, there is no restriction on the right of any Owner to lease his Lot.

Section 10.8 The right of any Owner to sell, transfer or otherwise convey his Lot may not be made subject to any right of first refusal or any similar restriction in favor of the Association.

Section 10.9 Each Owner shall be entitled to non-severable use and enjoyment of the Common Area, including the facilities thereon, subject only to suspensions of such use rights and easements as provided in this Declaration.

Section 10.10 There is no restriction upon any Owner's right of ingress to and egress from his Lot.

Section 10.11 A first mortgagee may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage on the lapse of a policy, covering the Common Area;

and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. In this regard, the Association, acting by and through the Board, is hereby expressly empowered and authorized to enter into an agreement in favor of all first mortgagees respecting such reimbursement, and, by the recordation of this Declaration, shall be deemed to have agreed to such reimbursement of all first mortgagees.

Section 10.12 Assessments shall include an adequate reserve fund for maintenance, repairs, and replacement of those Common Area improvements which must be replaced on a periodic basis, and such reserve must be funded by regular assessments collected on a monthly basis rather than by special assessments.

Section 10.13 If, at any time, flood insurance is required by any mortgagee of a Lot or by any lender who desires to become a mortgagee of any Lot by reason of any applicable law, ordinance, statute, or the like requiring flood insurance as a condition of such mortgagee's or lender's loan remaining or being made, the Association shall forthwith obtain such flood insurance covering the entirety of the Project in amount and coverage, and with such carrier(s) and subject to such terms as shall satisfy such mortgagee or lender.

Section 10.14 Upon request, the Association shall give a first mortgagee notice in writing of (a) any loss in excess of ten thousand dollars (\$10,000) or any taking of all or any portion of the Common Area, or (b) any loss in excess of one thousand dollars (\$1,000) or any taking of all or any portion of any Lot.

Section 10.15 The Association shall continuously maintain in effect all casualty, flood, and liability insurance required for

Planned Unit Development Projects by FHLMC, so long as it is a mortgagee or Owner of a Lot within the project, except to the extent such coverage is not available or has been waived in writing by FHLMC.

Sectio 10.16 Whenever the term "mortgage" is used herein, said term shall mean and include a deed of trust; whenever the term "mortgagee" is used herein, said term shall mean and include a beneficiary under a deed of trust; and, whenever the term "first mortgage" is used herein, said term shall mean and include a deed of trust having priority over all other mortgages and deeds of turst. The successor in interest (including an assignee) or an original mortgagee shall also be considered a "mortgagee" for purposes hereof.

## ARTICLE XI GENERAL PROVISIONS

### Amendment

Section 11.1 This Declaration may be amended by the vote or written consent of Members representing not less than seventy-five percent (75%) of the voting power of Members of the Association. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

### Term of Declaration

Section 11.2 The provisions of this Declaration shall continue in effect for an initial period of five (5) years from the date of execution after which time it shall be automatically extended for renewal periods of five (5) years, until the membership of the Association decides to terminate it.

### Nonwaiver of Remedies

Section 11.3 Each remedy provided for in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver thereof.

### Severability

Section 11.4 The provisions of this 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.

#### Binding

Section 11.5 This 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.

#### Interpretation

Section 11.6 The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

#### Limitation of Liability

Section 11.7 The liability of any Residential Lot Owner for performance of any of the provisions of this Declaration shall terminate upon sale, transfer, assignment, or other divestment of said Owner's entire interest in his Lot with respect to obligations arising from and after the date of such divestment.

#### Fair Housing

Section 11.8 No Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of his Lot to any person on the basis of race, color, sex, religion, ancestry, or national origin.

#### Number, Gender, and Headings

Section 11.9 As used in this Declaration, the singular shall include the plural and the masculine shall include the

feminine and the neuter, unless the context requires the contrary. All headings are not a part hereof, and shall not affect the interpretation of any provision.

Signature

IN WITNESS WHEREOF, the undersigned have executed this instrument this 11 day of \_\_\_\_\_, 19 W

VILLA ANTIGUA HOMEOWNERS ASSOCIATION  
A California Corporation  
Declarant

BY *Maine M. Simmonds*  
P r e s i d e n t      aine M. Simmonds

By \_\_\_\_\_ *Jr*  
S e c r e t a r y      n J. Hodik, *Jr.*

CAT. NO. N4100737  
TO 1945 CA 17-921  
(Corporation)

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FILE INSURANCE  
ANTI TRUST  
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STATE OF CALIFORNIA  
COUNTY OF San Diego      S S

On February 9, 1984 before me, the undersigned, a Notary Public it and for

said State, personally appeared Maine H. Simmonds

personally known to me of proved to me on the basis of satisfactory evidence to be the On who executed the Villa Ant Iguia DOA as the John J. Hodik Jr. President. and \_\_\_\_\_

personally known to me or moved to me on the basis of satisfactory evidence to be the person who executed the within Instrument u the \_\_\_\_\_ Secretary of the Corporation that executed the within instrument and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.  
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CERTIFICATE OF SECRETARY

KNOW ALL MEN BY THESE PRESENTS THAT:

The undersigned, Secretary of the Association known as the VILLA ANTIGUA HOMEOWNERS' ASSOCIATION, does hereby certify that the above and foregoing Covenants, Conditions, and Restrictions were duly adopted by the Board of Directors and members of said Association on the 6th day of

December, 19 83, and that they now constitute said Covenants, Conditions, and Restrictions.

Dated 2/11/84

Secretary (Rohn J. Hodik, Jr.) fi

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CAT. NO. NN00131 1 10 01411 CA 1 P 1121 (C011101 a lien)

STATE OF CALIFORNIA

COUNTY OF Sao Di ego

On February 9, 1984

before me, the undersigned, a Notary Public in and for

said State, personally appeared [redacted] personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the 1/111a Aug l Rita iit16 President. amid Pollo i Plod lk le- [redacted] personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument AT the STC 0000 y of the Corporation that executed the within instrument and acknowledged to me that such corporation executed the within instru. mesa pursuant to its bylaws or a resolution of its board of diocesans. WITNESS my hand anal official seal.

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Signature

IN WITNESS WHEREOF, the undersigned have executed this instrument this \_\_\_\_\_ day of L \_\_\_\_\_, 19 PI.

VILLA ANTIGUA HOMEOWNERS ASSOCIATION A  
California Corporation  
Declarant

BY M. Simmonds  
President Laine M. Simmonds

BY John J. Hodik, Jr.  
Secretary John J. Hodik, Jr.

CAT NO. NN00/3/  
TO 1045 CA 11 02)  
(Corporation)

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AND TRUST  
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couN of San Diego

On February 9, 1966 before me, the undersigned, a Notary Public in and of

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the withi..... ens as the Villa Antigua HOA  
President. and John J. Hodik, Jr.  
personally known to me or  
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that executed the within instrument and acknowledged to me  
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directors.  
wrrNESS my band and official seal.



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VILLA ANTIGUA HOMEOWNERS ASSOCIATION  
P. O. Box 24129  
San Diego, CA 92124

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TO RESTATEMENT OF

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DECLARATION OF VILLA ANTIGUA  
HOMEOWNERS ASSOCIATION, RECORDED FEBRUARY 16, 1984

THIS AMENDMENT TO DECLARATION was approved at a membership meeting of  
Villa Antigua Homeowners Association held December 19 , 1985.

W I T N E S S E T H

WHEREAS, Villa Antigua Homeowners Association, a California nonprofit  
corporation, has responsibility for the management and control of certain  
real property located in San Diego County, State of California, which is  
more particularly described on Exhibit A which is attached hereto.

WHEREAS, said property is subject to certain protective covenants,  
conditions, restrictions, reservations, liens and charges as set forth in  
the Declaration of Restrictions recorded February 16, 1984, at File/Page  
No. 84-058836, in the Office of the Recorder of San Diego County.

WHEREAS, Article XI, Section 11.1 of said Declaration provides that  
they may be amended at any time by the vote or written consent of members  
representing not less than seventy-five percent (75%) of the voting power  
of members of the Association.

NOW, THEREFORE, the Association hereby declares its Declaration shall  
be amended as follows:

A. Article III, Section 3.6, sub-part (a) entitled Maintenance of  
Common Areas shall be deleted and in lieu thereof the following inserted:

Maintenance of Common Areas

- (a) The Association, acting through the Board, shall operate and  
maintain the common areas and the facilities located thereon; such  
duty shall include providing exterior maintenance of the dwelling  
structure situated on each Lot specifically and only as follows:  
paint, maintain, and repair and replace (if required because of  
normal wear, tear or deterioration) roofs, gutters, downspouts,  
exterior building surfaces, and maintain the Common Area  
landscaping, including the trees, shrubs, grass, walks, garden  
walls, and driveways. Such exterior maintenance shall not include:  
glass surfaces, landscaping within the private entry and rear  
patio or backyard areas of each Lot (i.e., those areas not exposed  
to public view); patio covers or other additions built or  
maintained within said private patio areas by an Owner; repairs or  
replacement arising out of or caused by the willful or negligent  
acts of the Owner, his family, guests, lessees, contract  
purchasers, or invitees, or caused by flood, earthquake, other  
acts of God, fire, any type of casualty loss or any damage

## 1095

arising out of an event for which the Lot Owner's insurance policy provides coverage. Such excluded items shall be the responsibility of each Lot Owner. For the purpose solely of performing the exterior maintenance authorized by this provision, the Association's agents or employees shall have the right, after reasonable notice to the Owners, to enter upon any Lot or exterior of any dwelling structure at reasonable hours. In addition, the Association, acting through the Board, shall be responsible for furnishings and equipment for the Common Area as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the Common Area.

B. Article III, Section 3.6, sub-part (b) (2) entitled Acquisition of Vital Services and Insurance is hereby deleted and in lieu thereof the following is inserted:

### Acquisition of Vital Services and Insurance

- (2) A policy or policies of fire insurance with extended coverage endorsement for the full insurable replacement value of the Common Area, payable as provided in Article VIII herein, or such other fire and casualty insurance as the Board shall determine gives substantially equal or greater protection to the Owners, and their mortgagees, as their respective interests may appear;

C. Article III, Section 3.6, sub-part (b) (3) entitled Acquisition of Vital Services and Insurance is hereby deleted and in lieu thereof the following is inserted:

### Acquisition of Vital Services and Insurance

- (3) A policy or policies insuring the Board and the Owners and/or Owners' Association against any liability to the public or to the Owners, their tenants and invitees, incident to the ownership, maintenance activities by the Association and/or use of the Common Areas, and the portions of Lots for which the Association has the obligation to maintain, and including personal liability exposure of the Owners. Limits of eligibility under such insurance shall not be less than \$500,000.00 for any one person injured, \$1,000,000.00 for any one accident, including property damage. Such limits and coverage shall be reviewed at least annually by the Board and increased in its discretion. Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsement where the rights of named insured under the policy or policies shall not be prejudiced as respects his, her, or their action against another named insured;

## 1096

D. Article V entitled Restrictions and Covenants is hereby amended to include the following new provision:

### Insurance by Lot Owners

Section 5.9 Each Lot Owner shall acquire and pay for a policy of fire insurance with extended coverage endorsement for the full replacement value of the dwelling and all other improvements on the Lot, or such other fire and casualty insurance as the Board shall determine.

E. Article VIII entitled DAMAGE OR DESTRUCTION is hereby deleted and in lieu thereof the following is inserted:

### ARTICLE VIII. DAMAGE OR DESTRUCTION

#### Rebuilding or Repair

Section 8.1 If the Project is damaged by fire or other casualty and said damage is limited to a single Lot or Lots, insurance proceeds shall be used to rebuild or repair such dwelling in accordance with the original plans and specifications therefor. If such damage extends to any part of the Common Area, the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area in accordance with the original plans and specifications therefor, and the funds received from insurance shall be used for this purpose. If the insurance proceeds are insufficient to pay all the costs of repairing or rebuilding the Common Area, the Board shall levy a special assessment on all Owners in proportion to the interest of each Owner in the Project, in an amount equal to the estimated deficiency.

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting secretary of Villa Antigua Homeowners Association, a California nonprofit corporation;

2. On December /9 , 1985, at a duly called meeting of the membership of Villa Antigua Homeowners Association, seventy-five percent (75%) or more of the membership voted in favor of the amendments to the Declaration of Restrictions which are contained in this document.

IN WITNESS WHEREOF, I have hereunto subscribed my name this .;4..4 r' day of .1)e.c Gr\*V...< , 1985.

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Secretary of Villa AntigC Homeownet Association

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

On this the 24th day of December, 1985 before me the undersigned, a Notary Public in and for said County and State, personally appeared John J. Hodik, Jr. personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same, on behalf of the Corporation therein named, and acknowledged to me that the Corporation executed it.

  
\_\_\_\_\_  
Notary Public  
Leonore M. Rubalcaba

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                                  C I A L S A L  
                                  LEONORE M. RUBALCABA  
                                  NOTARY PUBLIC • CALIFORNIA  
                                  Principal Office in San Diego County  
                                  My Commis= Exo Fo. 10. 1986

# 1098

## Exhibit "A"

### PARCEL ONE:

Lots 16-55 inclusive of Villa Antigua Unit No. 2 according to the map thereof, No. 8587, filed in the Office of the County Recorder of San Diego County on May 27, 1977, in File No. 77-208595.

### PARCEL TWO:

Lots 1-6 inclusive, and Lots 13 and 14 of Villa Antigua Unit 1 according to the map thereof, No. 8574 filed in the Office of the County Recorder of San Diego County on May 13, 1977, in File No. 77-184502.

### PARCEL THREE;

Lots 56-93 inclusive of Villa Antigua Unit No. 3 according to the map thereof, Map No. 8616 filed in the Office of the County Recorder of San Diego County on July 7, 1977, in File No. 77-270864.

### PARCEL FOUR:

Lots 96-144 inclusive of Villa Antigua Unit No. 4 according to the map thereof, Map No. 8639 filed in the Office of the County Recorder of San Diego County on August 10, 1977, in File No. 77-325205.

### PARCEL FIVE:

Lots 145-211 inclusive of Villa Antigua Unit No. 5, which includes all that portion of Lot 8 of Rosedale Tract according to Map thereof No. 825 filed in the Office of the County Recorder of San Diego County, and that portion of Lot 73 of Rancho Mission of San Diego, according to Partition Map thereof made in Case No. 348 of the Superior Court of the State of California, in and for the County of San Diego entitled "Juan M. Luco, et al vs. Commercial Bank of San Diego, et al" all being in the County of San Diego, State of California, being described as a whole as follows:

Beginning at the most Northerly corner of Villa Antigua Unit No. 4, according to Map thereof No. 8639, filed in the Office of the County Recorder of San Diego County on August 10, 1977 as File No. 77-325205; thence along the Northeasterly and Easterly boundary ad follows: South 23°59'12" East 580.00 feet and South 1°23'29" West 274.03 feet, (274.83 feet as per Map No. 8639), to the most Southerly corner of said Map No. 8639; thence leaving the boundary of said Map, North 42°22'00" East 182.06 feet; thence North 66°20'48" East 60.00 feet; thence North 61°22'38" East 554.83 feet; thence North 16°59'38" West 190.00 feet; thence North 73°00'22" East 65.94 feet; thence North 16°59'38" West 60.00 feet; thence North 11°47'45" West 340.32 feet; thence South 81°46'44" West 500.63 feet to a point which bears North 66°20'48"

## 1099

East 344.58 feet from the most Northerly corner of Said Map No. 8639; thence South 66°20'48" West 344.58 feet to the most Northerly corner of said Map No. 8639; also being the POINT OF BEGINNING.

### PARCEL SIX:

Lots 7-12 inclusive of Villa Antigua Unit No. 1, according to the map thereof, Map No. 8574 filed in the Office of the County Recorder of San Diego County on May 13, 1977, in File No. 77-184502.



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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VILLA ANTIGUA HOMEOWNERS ASSOCIATION  
Post Office Box 24129  
San Diego, CA 92124

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AMENDMENT TO RESTATEMENT OF DECLARATION OF VILLA ANTIGUA  
HOMEOWNERS ASSOCIATION, RECORDED FEBRUARY 16, 1984

THIS AMENDMENT TO DECLARATION was approved by a written  
ballot of the membership of Vila Antigua Homeowners Association.

W I T N E S S E T H

WHEREAS, Villa Antigua Homeowners Association, a California  
nonprofit corporation, has responsibility for the management and  
control of certain real property located in San Diego County,  
State of California, which is more particularly described on  
Exhibit "A" which is attached hereto.

WHEREAS, said propety is subject to certain protective  
covenants, conditions, restrictions, reservations, liens and  
charges as set forth in the Declaration of Restrictions  
recorded February 16, 1984, at File/Page No. 84-058836, in the  
Office of the Recorder of San Diego County.

WHEREAS, Article XI, Section 11.1 of said Declaration  
provides that they may be amended at any time by the vote or  
written consent of members representing not less than seventy-  
five percent (75%) of the voting power of members of the  
Association.

NOW, THEREFORE, the Association hereby declares its  
Declaration shall be amended as follows:

1. Section 3.6 subparagraph (a) is deleted and in its place the  
following is substituted:

Maintenance of Common Areas

(a) The Association, acting through the Board, shall  
operate and maintain the Common Areas and the facilities located  
thereon; such duty shall include providing exterior maintenance  
of the dwelling structure situated on each Lot specifically and  
only as follows: paint, maintain, and repair and replace (if  
required because of normal wear, tear or deterioration) exterior  
building surfaces and maintain the Common Area landscaping,  
including the trees, shrubs, grass, walks, garden walls, and

driveways. Such exterior maintenance shall not include roofs, whether sloped or built-up, roof facia, roof jacks, gutters, downspouts, glass surfaces, landscaping within the private entry and rear patio or backyard areas of each Lot (i.e., those areas not exposed to public view); patio covers or other additions built or maintained within said private patio areas by an Owner; repairs or replacement arising out of or caused by the willful or negligent acts of the Owner, his family, guests, lessees, contract purchasers, agents, or invitees, or caused by flood, earthquake or other acts of God. Such excluded items shall be the responsibility of each Lot Owner. For the purpose solely of performing the exterior maintenance authorized by this provision, the Association's agents or employees shall have the right, after reasonable notice to the Owners, to enter upon any Lot or exterior of any dwelling structure at reasonable hours. In addition, the Association, acting through the Board, shall be responsible for furnishings and equipment for the Common Area as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the Common Area.

All repairs and replacements to roofs, roof facia, roof jacks, and gutters and downspouts must be made in conformance with specifications adopted from time to time by the Board of Directors. These specifications will be available to all Owners upon request and must be followed by all privately hired contractors to perform maintenance and/or repair of the roofs. The Association shall have the right at any reasonable time to inspect, at its own expense, roof replacement and repairs for conformance to required specifications.

2. Article VII is deleted in its entirety and in, its place the following is substituted:

ARTICLE VII. DUPLEX UNITS

Party Walls

Section 7.1. The rights and duties of the Owners with respect to party walls shall be as follows:

(a) General. Each wall which is constructed as a part of a Residence and any part which is placed on the dividing line between Residences shall constitute a party wall, and with respect to such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of this Declaration, and to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

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

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

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

(e) Dispute. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to binding arbitration by the Association or its designated representative.

(f) Binding Effect. The provisions of this paragraph shall remain in full force and effect unless modified or abrogated as to any particular party wall by the agreement of all persons that have an interest therein.

(g) Default in Payment. Upon failure of any Owner required hereby to pay for the rebuilding or repair of a party wall for a period of sixty (60) days, the Association may pay the cost thereof and assess such cost to the responsible party, which assessment shall be due and payable and become an assessment obligation of such Owner and a lien in all respects as provided in Article IV of this Declaration.

#### Duplex Roofs

Section 7.2. The rights and duties of the duplex Owners with respect to the roofs over their respective homes shall be as follows:

(a) General. All Owners have maintenance responsibility for the roofs over their individual homes, whether the roof is sloped or built up, roof fascia, roof jacks, gutters, and downspouts. The association is not responsible to maintain the aforementioned areas. The purpose of this section is to set forth the procedure and method for resolution of any dispute should it arise between duplex Owners sharing a common roof with regard to maintenance and repair of the areas listed in this paragraph.

(b) Damage by Owner. In the event any portions of the roofs, roof fascia, roof jacks, gutters, or downspouts are damaged or destroyed through the act of one adjoining Owner or any of his agents, invitees, tenants, or members of his family (whether or not such act is negligent or otherwise culpable) so as to cause property damage to the other adjoining Owner, then the first of the aforementioned Owners shall forthwith proceed to repair the same to as good condition as formerly existed, without cost to the adjoining Owner.

(c) Maintenance, Repair and Replacement. In the event any portion of the roof above a duplex Owner's home needs maintenance or repair which can be accomplished without affecting the roof of the adjoining duplex Owner, said maintenance and repair shall be performed at the sole cost of the Owner whose unit is affected.

In the event that the roof over a duplex unit needs replacement or extensive repairs such that the repairs extend over both units and both adjoining property Owners must cooperate to accomplish the work, then each Owner shall equitably bear the cost of maintenance, repair or replacement to the roof in proportion to the repairs done on the respective units.

(d) Conformance to Association Specifications. In conformance with Section 3.6(a), all roof repairs, maintenance or replacement shall be done in conformance with specifications adopted by the Board of Directors from time to time.

(e) Dispute. In the event of a dispute between adjoining duplex Owners regarding repair, maintenance or replacement of the roof, roof fascia, roof jacks, gutters and downspouts serving their property either to the cost and necessity for the anticipated repair or selection of a contractor, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors for resolution. The decision of the Board shall be final and binding on both Owners.

(f) Default in Payment. Upon the failure of any duplex Owner required hereby to pay for the repair, maintenance or replacement of their roof, roof fascia, roof jacks, gutters and downspouts serving his property for a period of sixty days, the Association may pay the cost thereof and assess such cost to the responsible party, which assessment shall be due and payable and become an assessment obligation of such Owner and a lien in all respects as provided in Article IV of this Declaration.

Once a lien has been recorded, the Association may commence foreclosure on the unit unless payment in full or a repayment schedule satisfactory to the Board is agreed upon within sixty days. Should the Owner default in payments under the agreed-upon schedule, the Association may immediately commence foreclosure of the property. The unpaid principal amount of the special assessment for the costs advanced by the Association shall bear interest in accordance with Civil Code section 1366 which sets the legal rate of interest at twelve percent (12%) per annum on unpaid assessments.

#### Fumigation of Duplex Units

Section 7.3. The rights and duties of duplex Owners with respect to fumigation of their units shall be as follows:

(a) General. Each Owner is responsible for the repair and maintenance of their respective home as may be occasioned by the presence of wood-destroying pests or organisms. This section sets forth the procedures and methods to resolve disputes between adjoining duplex Owners where wood-destroying pests or organisms cannot be treated locally and the entire duplex unit requires fumigation.

(b) Costs are Shared. In the event that an adjoining duplex Owner obtains a pest control report requiring fumigation of the entire duplex unit, the duplex Owner shall have the right to have the fumigation or other method of eradication performed. The cost of the fumigation or other method of eradication is to be borne equally between the adjoining duplex Owners. If one duplex Owner requires a method of eradication other than the standard fumigation, then that duplex Owner shall pay the increased cost.

(c) Dispute. In the event there is a dispute between adjoining duplex Owners as to the necessity for fumigation of the property and with regard to sharing of costs, one of such Owners may file a written request with the Association for submission of the matter to the Board of Directors for resolution. The Board of Directors shall have the power to retain an independent pest control company to do a separate evaluation on the necessity of fumigation versus other methods of localized treatment of wood-destroying pests and organisms. Said evaluation shall be at the expense of the duplex Owners. The decision of the Association shall be final.


(d) Default in Payment. Upon failure of any Owner required hereby to pay for his one-half share for fumigation of the duplex unit for a period of sixty days, the Association may pay the cost thereof and assess such cost to the responsible party, which assessment shall be due and payable and become an assessment obligation of such Owner and a lien in all respects as provided in Article IV of this Declaration.

(e) Relocation. The costs of relocation during fumigation shall be borne by the individual Owners. Should an adjoining Owner of a duplex unit refuse to vacate the property to allow the fumigation to proceed, the Association or the other adjoining duplex Owner may utilize the procedures in Civil Code section 1364 for removal.

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of Villa Antigua Homeowners Association, a California nonprofit corporation; and
2. That on September 4, 1990, a written ballot of the membership was concluded at which time seventy-five percent (75%) or more of the membership voted in favor of the amendment to the Declaration of Restrictions which is contained in this document.

IN WITNESS WHEREOF, I have hereunto subscribed my name this \_\_\_\_\_ day of 1-ctii-4.-6- , 1990.

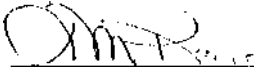
 f ) \_\_\_\_\_  
Don Spagnol  
Secretary of Vila Antigua  
Homeowners Association

ACKNOWLEDGEMENT

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

On this 18th day of September , 1990, before me, the undersigned, a Notary Public, State of California duly commissioned and sworn, personally appeared Don Spagnolo, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the instrument as Secretary on behalf of the corporation therein named, and acknowledged to me that the corporation executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of San Diego the day and year in this certificate first above written.

  
\_\_\_\_\_  
Notary Public in apd for  
the State of California  
L.M. Raya



(SEAL)

## Exhibit "A"

## PARCEL ONE:

Lots 16-55 inclusive of Villa Antigua Unit No. 2 according to the map thereof, No. 8587, filed in the Office of the County Recorder of San Diego County on May 27, 1977, in File No. 77-208595.

## PARCEL TWO:

Lots 1-6 inclusive, and Lots 13 and 14 of Villa Antigua Unit 1 according to the map thereof, No. 8574 filed in the Office of the County Recorder of San Diego County on May 13, 1977, in File No. 77-184502.

## PARCEL THREE;

Lots 56-93 inclusive of Villa Antigua Unit No. 3 according to the map thereof, Map No. 8616 filed in the Office of the County Recorder of San Diego County on July 7, 1977, in File No. 77-270864.

## PARCEL FOUR:

Lots 96-144 inclusive of Villa Antigua Unit No. 4 according to the map thereof, Map No. 8639 filed in the Office of the County Recorder of San Diego County on August 10, 1977, in File No. 77-325205.

## PARCEL FIVE:

Lots 145-211 inclusive of Villa Antigua Unit No. 5, which includes all that portion of Lot 8 of Rosedale Tract according to Map thereof No. 825 filed in the Office of the County Recorder of San Diego County, and that portion of Lot 73 of Rancho Mission of San Diego, according to Partition Map thereof made in Case No. 348 of the Superior Court of the State of California, in and for the County of San Diego entitled "*Juan M. Luco, et al vs. Commercial Bank of San Diego, et al*" all being in the County of San Diego, State of California, being described as a whole as follows:

Beginning at the most Northerly corner of Villa Antigua Unit No. 4, according to Map thereof No. 8639, filed in the Office of the County Recorder of San Diego County on August 10, 1977 as File No. 77-325205; thence along the Northeasterly and Easterly boundary ad follows t South 23°59'12" East 580.00 feet and South 1°23'29" West 274.03 feet, (274.83 feet as per Map No. 8639), to the most Southerly corner of said Map No. 8639; thence leaving the boundary of said Map, North 42°22'00" East 182.06 feet; thence North 66°20'48" East 60.00 feet; thence North 61°22'38" East 554.83 feet; thence North 16°59'38" West 190.00 feet; thence North 73°00'22" East 65.94 feet; thence North 16°59'38" West 60.00 feet; thence North 11°47'45" West 340.32 feet; thence South 81°46'44" West 500.63 feet to a point which bears North 66°20'48"



East 344.58 feet from the most Northerly corner of Said Map No. 8639; thence South 66°20'48" West 344.58 feet to the most Northerly corner of said Map No. 8639; also being the POINT OF BEGINNING.

PARCEL SIX:

Lots 7-12 inclusive of Villa Antigua Unit No. 1, according to the map thereof, Map No. 8574 filed in the Office of the County Recorder of San Diego County on May 13, 1977, in File No. 77-184502.

Recording Requested By:  
JOEL M. KR1GER, Esq.

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY SMITH, COUNTY RECORDER  
RF 9.00 FEES 19.00  
AF; 9.00  
Ift 1.00

When Recorded. Mail to:

163

Villa Antigua Homeowners Association  
P. O. Box 420129  
San Diego, CA 92142-0129  
Attn: Kim Johnson

(Space Above for Recorder's Use)

## Declaration of Annexation

This Declaration of Annexation is made this 21st day of May 19 <sup>96</sup>, by VILLA ANTIGUA HOMEOWNERS ASSOCIATION, a California nonprofit corporation, hereinafter referred to as *Assoc/al/on*, with reference to the following facts:

A. Association is the owner of property located in the City of San Diego, County of San Diego, State of California, more particularly described on Exhibit "A" attached hereto.

B. Association restated its Declaration of Covenants, Conditions and Restrictions with respect to the property, which was recorded on the 25th day of September, 1990, as Document No. 90-522647 in the San Diego County Recorder's Office (hereinafter referred to as *Declaration.*) Said Declaration provides in Article II, Section 2.2, that the Association may annex additional property and thereby make such additional property subject to the Declaration and subject to the jurisdiction of the Association, as provided in the Declaration. Two-thirds of the members of VILLA ANTIGUA HOMEOWNERS ASSOCIATION have approved annexation of said land

C. The Association is the owner of the property above described and now desires to annex the property to the project as described in the Declaration and thereby make said property subject to the terms, conditions, and restrictions of the Declaration.

NOW THEREFORE, Association declares as follows:

Pursuant to the terms of the Declaration, the Association, as the owner of certain property above described, declares that said property is hereby annexed to and made a part of the project as described in the Declaration. Said annexed property shall hereafter be subject to the terms,

provisions, covenants, conditions, restrictions and easements of the Declaration, including subsequent amendments thereto, which Declaration is by reference incorporated herein and made a part hereof.

IN WITNESS WHEREOF, VILLA ANTIGUA HOMEOWNERS ASSOCIATION has executed this Declaration of Annexation on the date set forth above.

VILLA ANTIGUA HOMEOWNERS ASSOCIATION, a  
California nonprofit corporation

By: Don Spagnolo , President  
Don Spagnolo  
[Name Primed],

By: \_\_\_\_\_ %y \_\_\_\_\_ , Secretary  
John L. Croft  
[Name: Primed]

ACKNOWLEDGMENT

State of California )  
) s.s.  
County of San Diego)

On May 21, 1996, before me, Kimberly A. Johnson, a Notary Public in and for said County and State, personally appeared Don Spagnolo and John L. Croft-----  
personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s)  
subscribed to the within instrument and acknowledged to me that he/she/it/they  
executed the same in his/her/its/their  
authorized capacity(ies), and that by his/her/its/their signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.  
Kimberly A. Johnson

Notary Seal  
-

Kimberly A. Johnson  
Notary Public - California  
San Diego County  
Comm. # 1006164

RECORDING REQUESTED BY:  
JOEL M. KRJGER. ESQ.  
Andcrson & Krigcr, A P.C.

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GRUJORY SMITH, COUNTY RECORDER  
9.00 FEES: 19.00  
AF: 9.00  
1.00

168

and WHEN RECORDED MAIL 70:  
VILLA ANTIGUA HOMEOWNERS  
ASSOCIATION  
P.O. Box 420129  
San Diego, California 92142-0129

Attn: Kim Johnson

Space Above line • Recorder's. Use

AMENDMENT TO DECLARATION OF RESTRICTIONS OF  
VILLA ANTIGUA HOMEOWNERS ASSOCIATION

THIS AMENDMENT TO DECLARATION was approved by a wrincn ballot scot to thc entire membership of VILLA ANTIGUA HOMEOWNERS ASSOCIATION.

W I T N E S S E T H

WHEREAS, VILLA ANTIGUA HOMEOWNERS ASSOCIATION, a California non- profit corporation, has responsibility for thc management and control of certain real property locatcd in San Diego County, State of California, which is more particularly dcscribcd in Exhibit "A" attached hereto.

WHEREAS, "aid property is subject to =min an4:4411ns, conditions, it:strict:um, reservations, liens and charges as set forth in thc Declaration of Restrictions recorded May 27, 1977, at Filc/Pagc No. 77-208595 in the Officc of thc County Recorder of San Diego County.

WHEREAS, Articic XI of said Declaration providcs that they may bc amcnddcd at any tiinc by an instrumcnt in writing approvcd by owners of 75 percent or more of thc living units locatcd on thc real property, which said written instrumcnt shall become effective upon rccording of the swim in the County Recordcr's Office of thc County of San Diego, California.

NOW, THEREFORE, the Association hcrccby dclclars that thc Declarations shall bc amcnddcd as follows:

**XII-18**

The following article is added to the CC&Rs of Villa Antigua Homeowners Association as set forth below:

ARTICLE XII

LAND ANNEXED FROM CAL TRANS

12.1 Background. In 1995 the Association purchased a strip of land from Cal Trans located between Route 52 and the rear lot lines of certain Owners in the Association. This property has been formally annexed and made subject to this Declaration and the jurisdiction of the Board of Directors. The land was purchased for a nominal amount of money to preserve the existing trees which serve as a visual barrier to the freeway and contributes to the aesthetics and quality of life for those whose back yards abut the excess land.

12.2 Maintenance. The Association will maintain the annexed property in its current unimproved condition. Currently, there are no irrigation systems in place. Weeds and grass will be trimmed on an as-needed basis to avoid fire hazard. Trees will also be maintained in a manner deemed appropriate by the Board of Directors. The cost of maintenance for this property will be paid from the Association's general operating account.

12.3 Restricted Use. The use and purpose of this property is strictly to maintain a visual barrier between Route 52 and the homes abutting the annexed land. Association employees and agents will have the right to enter upon that land for purposes of inspecting and maintaining the property. No other entry onto the property is permitted by the members or the general public without express consent of the Board of Directors.

12.4 Rear Yard Fences. Maintenance of the back yard fences for those Owners whose back yards abut the annexed property shall be the sole responsibility of the individual lot Owners. The Association shall not be responsible for maintenance, repair, or replacement of any back yard fences.

12.5 No Dumping. No dumping of trash, refuse, or yard waste shall be permitted to occur on the annexed property. Owners or residents of the Association who violate this restriction will be responsible for the cost of clean-up and any other monetary penalties imposed by the Board of Directors after notice of the violation and an opportunity for a hearing have been given to the violating Owner.

12.6 No Extension of Rear Yards. The use of the annexed property is strictly limited to that of Association employees and agents for the purpose of repair, maintenance and inspection. No Owners will be permitted to extend their rear yards into the annexed property, nor utilize it in any respect. Any improvements which have not been approved may be removed by the Association at the Owner's expense.

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of Villa Antigua Homeowners Association, a California non-profit corporation; and

2. That on April 16 1990 written ballot of the membership was concluded at which

time 75 permit or more of the membership voted in favor of the amendment to the Declaration of Restrictions which is contained in this document.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 21st day of May \_\_\_\_\_, 19 <sup>96</sup>.

VILLA ANTIGUA HOMEOWNERS ASSOCIATION, a  
California nonprofit corporation

By: \_\_\_\_\_ „/ „,ccrCtaiy

JOAN L. CROFF  
[Name Printed]

ACKNOWLEDGMENT

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

On this 21st day of May \_\_\_\_\_, 19 <sup>96</sup> , before inc. the undersigned, a Notary Public, State of California, duly commissioned and sworn, personally apparcd MIMI% John L. Ceof -----  
\_\_\_\_\_. personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as President (or Secretary) on behalf of the corporation therein named, and acknowledged to Inc that the corporation executed it

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of San Diego the day and year in this certificate first above written.

Notary Public in and for the State of California

Kimberly A. Johnson

(SEAL)

\_\_\_\_\_  
KIMBEALY A. COMM.  
#1006164 r-  
NOTARY PUBLIC CALIFORNIA  
SAN DIEGO COUNTY  
E zpu es Oc. —  
p w S

## Exhibit "A"

## PARCEL ONE:

Lots 16-55 inclusive of Villa Antigua Unit No. 2 according to the map thereof, No. 8587, filed in the Office of the County Recorder of San Diego County on May 27, 1977, in File No. 77-208595.

## PARCEL TWO:

Lots 1-6 inclusive, and Lots 13 and 14 of Villa Antigua Unit 1 according to the map thereof, No. 8574 filed in the Office of the County Recorder of San Diego County on May 13, 1977, in File No. 77-184502.

## PARCEL THREE;

Lots 56-93 inclusive of Villa Antigua Unit No. 3 according to the map thereof, Map No. 8616 filed in the Office of the County Recorder of San Diego County on July 7, 1977, in File No. 77-270864.

## PARCEL FOUR:

Lots 96-144 inclusive of Villa Antigua Unit No. 4 according to the map thereof, Map No. 8639 filed in the Office of the County Recorder of San Diego County on August 10, 1977, in File No. 77-325205.

## PARCEL FIVE:

Lots 145-211 inclusive of Villa Antigua Unit No. 5, which includes all that portion of Lot 8 of Rosedale Tract according to Map thereof No. 825 filed in the Office of the County Recorder of San Diego County, and that portion of Lot 73 of Rancho Mission of San Diego, according to Partition Map thereof made in Case No. 348 of the Superior Court of the State of California, in and for the County of San Diego entitled "Juan M. Luco, et al vs. Commercial Bank of San Diego, et al" all being in the County of San Diego, State of California, being described as a whole as follows:

Beginning at the most Northerly corner of Villa Antigua Unit No. 4, according to Map thereof No. 8639, filed in the Office of the County Recorder of San Diego County on August 10, 1977 as File No. 77-325205; thence along the Northeasterly and Easterly boundary ad follows: South 23°59'12" East 580.00 feet and South 1°23'29" West 274.03 feet, (274.83 feet as per Map No. 8639), to the most Southerly corner of said Map No. 8639; thence leaving the boundary of said Map, North 42°22'00" East 182.06 feet; thence North 66°20'48" East 60.00 feet; thence North 61°22'38" East 554.83 feet; thence North 16°59'38" West 190.00 feet; thence North 73°00'22" East 65.94 feet; thence North 16°59'38" West 60.00 feet; thence North 11°47'45" West 340.32 feet; thence South 81°46'44" West 500.63 feet to a point which bears North 66°20'48"

East 344.58 feet from the most Northerly corner of Said Map No. 8639; thence South  $66^{\circ}20'48''$  West 344.58 feet to the most Northerly corner of said Map No. 8639; also being the POINT OF BEGINNING.

PARCEL SIX:

Lots 7-12 inclusive of Villa Antigua Unit No. 1, according to the map thereof, Map No. 8574 filed in the Office of the County Recorder of San Diego County on May 13, 1977, in File No. 77-184502.



Recording Requested By:

Villa Antigua Homeowners Association

When Recorded, Return To:

Susan M. Hawks McClintic, Etc'  
Epsten Grinnell & Howell, APC 9980  
Carroll Canyon Road, Second Floor  
San Diego, CA 92131

YB RECORDED JAN 29, 2003  
RICE R20030106036  
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DIEGO MIR EM I OFFICE  
TIME: 3:50 PH

• For Recorder's Use

AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

*Villa Antigua*  
*San Diego, California*

. THIS AMENDMENT is made on the day and year hereinafter written by Villa Antigua Homeowners Association, a nonprofit mutual benefit corporation, hereinafter referred to as "Association," and its membership, with reference to the following:

RECITALS

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

LEGAL DESCRIPTION

PARCEL ONE:

Lots 16-55 inclusive of Villa Antigua Unit No. 2 according to the map thereof, No. 8587, filed in the Office of the County Recorder of San Diego County on May 27, 1977, in File No. 77-208595. ▶

PARCEL TWO:

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PARCEL SIX:

Lots 7-12 inclusive of Villa Antigua Unit No.1, according to the map thereof, Map No. 8574 filed in the Office of the County Recorder of San Diego County on May 13, 1977, in File No. 77-184502.

hereinafter referred to as "*Property.*"

B. The Property is subject to the covenants, conditions and restrictions contained in the Declaration of Covenants, Conditions and Restrictions recorded on May 27, 1977, as File/Page No. 77-208595 in the Official Records of the County

Recorder of San Diego County, California, and any amendments or annexations, and is hereinafter referred to as "*Declaration*."

C. The Members of the Association have voted to amend the Declaration to delete cumulative voting and establish two year, staggered terms for the Board of Directors.

D. The Association and its Members now wish to amend the Declaration as set forth herein.

#### DECLARATION

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Section 3.7(b) of the Declaration shall be deleted in its entirety and replaced with the following:

##### Term

"(b) At each annual meeting of the Association, the Members shall elect Directors for the terms specified in the Bylaws."

2. Section 3.7(c)(2) of the Declaration shall be deleted in its entirety and replaced with the following:

##### Election

"(2) Every Owner entitled to vote in any election for Board of Directors members shall do so by secret written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, one vote for each Lot owned by the Member. Cumulative voting is not permitted. The persons receiving the highest number of votes shall be elected."

3. Section 3.7(d) of the Declaration shall be deleted in its entirety and replaced with the following:

##### Removal

"(d) One or more directors may be removed prior to the expiration of their terms, without cause, at an annual or special meeting of the Members. Any removal without cause shall be approved by the vote of Members representing a majority of a quorum of the membership."

4. Section 3.7(e) of the Declaration shall be deleted in its entirety and replaced with the following:

Vacancies

"(e) In the event of a vacancy on the Board caused by the death, resignation or removal of a Director, other than a removal by the Association Members, the remaining Directors shall elect a successor who shall serve unexpired term of the Director he or she replaces."

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

IN WITNESS WHEREOF, this Amendment is made on this 21st day January 2003, by the undersigned president and secretary of the Association.

VILLA ANTIGUA HOMEOWNERS ASSOCIATION,  
a California nonprofit mutual benefit corporation

By: Gavle Martin  
President

By: Sharon Ford  
Secretary

STATE OF CALIFORNIA )

COUNTY OF SAN DIEGO )

On 1/7/1/n3 before me, pi ane P. Pew, Notary Public, personally at Gavle Martin and Sharon Ford

k] personally known to me

- OR -

(I proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she, (15... executed the same in his/her/its authorized capacity and that by his/het/it it is subscribed to on the instrument the person the entity upon behalf of which the person acted, executed the instrument. WITNESS my hand and official seal.

**Cat 4144.4, ?**

**P. FEW**  
Notary Public

1 .----40.  
DWE  
California a 1341500  
Notary Public - California  
p..7 San 01100 County  
Mr Caron. Expires Jan 27,2006