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FIESTA GARDENS HOMES ASSOCIATION

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Assessor-County Clerk-Recorder



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RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
FIESTA GARDENS HOMES ASSOCIATION, INC.

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID. ANY PERSON HOLDING AN INTEREST IN THIS PROPERTY MAY REQUEST THAT THE COUNTY RECORDER REMOVE THE RESTRICTIVE COVENANT LANGUAGE PURSUANT TO SUBDIVISION (c) OF SECTION 12956.1 OF THE GOVERNMENT CODE.

RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
FIESTA GARDENS HOMES ASSOCIATION, INC.

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**RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
FIESTA GARDENS HOMES ASSOCIATION, INC.**

This Restated Declaration supersedes the Declaration of Covenants, Conditions and Restrictions and any amendments.

RECITALS

1. FIESTA GARDENS HOMES ASSOCIATION, INC. (hereinafter referred to as "FIESTA GARDENS" or "the Association") is a common interest development and it owns the following Property in the City of San Mateo, County of San Mateo, State of California, which is described as:

All of the lots, units, pieces, or parcels of land designated by lot and block number respectively on those certain maps entitled respectively as follows:

A. Resubdivision of Lot 1, Block 3, Blocks 6, 7, 8, 9, 10 and 11, San Mateo Village Unit No. 6, San Mateo, California, filed in the Office of the County Recorder of the County of San Mateo, California, February 26, 1953 in Book 36 of Maps at pages 21 and 22;

B. San Mateo Village Unit No. 6A, San Mateo, California, filed in the Office of the County Recorder of the County of San Mateo, California on the 21st day of October, 1953, in Book 37 of Maps at pages 40 and 41;

C. San Mateo Village Unit No. 6B, San Mateo, California, filed in the Office of the County Recorder of the County of San Mateo, California, on the 15th day of June, 1954, in Book 39 of Maps at page 8;

D. Fiesta Gardens Unit No. 1, San Mateo, California filed in the Office of the County Recorder of the County of San Mateo, California on the 15th day of June, 1954, in Book 39 of Maps at pages 9 and 10;

E. Fiesta Gardens Unit No. 2, San Mateo, California, filed in the Office of the County Recorder of the County of San Mateo, California on the 18th day of May, 1955, in Book 42 of Maps at page 20.

All of the above-described lots, units, pieces, or parcels of land shall hereinafter be referred to as (the "Association"); see Exhibit "A".

2. No property other than that described above shall be deemed subject to this Declaration, unless and until specifically made subject thereto; provided however, that the

following described real property situate in the City of San Mateo, County of San Mateo, State of California, is hereby, and shall be, excluded from this Declaration:

PARCEL ONE:

LOTS 3, 4, 5 AND 6, block 4, and that portion of the Northerly 1/2 of Bermuda Drive, lying contiguous to said lots, as designated on the map entitled "SAN MATEO VILLAGE UNIT NO. 6A SAN MATEO, CALIFORNIA", which map was filed in the Office of the Recorder of San Mateo County on October 21, 1953 in Book 37 of Maps at pages 39 and 40.

PARCEL TWO:

Lot 1 in Block 1 and that portion of the Northerly 1/2 of Bermuda Drive, lying contiguous to said lots, as designated on the map entitled "FIESTA GARDENS UNIT NO. 1 SAN MATEO, CALIFORNIA", which map was filed in the Office of the Recorder of San Mateo County on June 15, 1954 in Book 39 of Maps at pages 9 and 10.

PARCEL THREE:

Portion of that certain 0.512 of an acre parcel of land, designated as Parcel 2 in the Deed to the State of California, recorded April 10, 1944 in Book 1111 of Official Records of San Mateo County at page 239 and being more particularly described as:

COMMENCING at the southwesterly corner of said parcel; thence along the southerly line of said parcel, North 89° 16' 42" East 389.01 feet to the easterly line of said parcel; thence from a tangent that bears North 57° 09' 49" West, along a curve to the right, with a radius of 60 feet, through an angle of 31° 49' 04", an arc distance of 33.32 feet to a point of reverse curvature; thence along a tangent curve to the left, with a radius of 60 feet, through an angle of 65° 22' 33", an arc distance of 68.46 feet to the northerly line of said parcel; thence along last said line, South 89° 16' 42" West 313.09 feet to the westerly line of said parcel; thence along last said line, South 0° 43' 18" East 60.00 feet to the point of commencement.

The Association may, from time to time subject additional real property to the conditions, restrictions, covenants, reservations, liens and charges herein set forth by appropriate reference thereto, by document recorded in the Office of the County Recorder of said County of San Mateo.

By this instrument, the Members of the Association hereby revoke all previous declarations of covenants, conditions and restrictions recorded on November 26, 1954, as well as all

amendments thereto and substitute in their place these CC&Rs, which shall:

1. Benefit Members. Be for the benefit of Members of the Association;

2. Benefit the Development. Be for the benefit, enhancement and protection of the desirability, value and attractiveness of the Development and each Lot therein;

3. Bind Successors in Interest. Inure to the benefit of and be binding upon each successor in interest of the Association, each Member, Tenant, Resident, and occupant of any portion of the Development, as well as their respective heirs, personal representatives, grantees, Tenants, licensees, successors and assigns; and

4. Run With the Land. Run with the land and be binding upon all parties having or acquiring any right, title or interest in the Development or any portion of the Development, whether as sole owners, joint owners, Tenants, Residents, occupants or otherwise.

5. All Lots in the Development, as well as any conveyance, transfer, sale, assignment, rental, lease or sublease of a Lot, shall be deemed to incorporate the provisions of these CC&R's. Each successor in interest is subject to all of the covenants, conditions and restrictions contained in these CC&R's.

ARTICLE I DEFINITIONS

1.01 Act. "Act" means The Davis-Stirling Common Interest Development Act (commencing with Civil Code §§ 4000 to 6100), as amended from time to time.

1.02 Articles. "Articles" means the Articles of Incorporation of the Association, including any amendments.

1.03 Association. "Association" means FIESTA GARDENS HOMES ASSOCIATION, INC., a California nonprofit mutual benefit corporation, its successors and assigns. It also means "FIESTA GARDENS".

1.04 Board. "Board" means the Board of Directors of the Association.

1.05 Bylaws. "Bylaws" means the Restated Bylaws of the Association, including any amendments or restatements.

1.06 Common Area. "Common Area" means all property owned by the Association for the common use and enjoyment of the Owners except the separate interests owned by Members. The Common Area is one area that consists of a swimming pool, tennis courts and a playground.

1.07 Declaration. "Declaration" means this Restated Declaration and any further amendments. The term "Declaration" is interchangeable with the term "Covenants, Conditions and Restrictions" or "CC&R's".

1.08 Fines. The Association will create and distribute fines for violating the Governing Documents and current law.

1.09 Governing Documents. "Governing Documents" means this Restated Declaration, the Restated Bylaws, the Articles of Incorporation, Operating Rules and Regulations, and any amendments to such documents.

1.10 Lot. "Lot" shall mean any real property such as lots, sublots, and parcels in the property subject to these CC&R's.

1.11 Map. "Map" means certain real property located in the Maps described in the Recitals, paragraph 1.

1.12 Member. "Member" means a Member of the Association who is the Owner of a Lot within the property.

1.13 Member in Good Standing. "Member in good standing" means a Member who is not in violation of the Governing Documents and is current on assessments, fees and fines.

1.14 Membership Approval. "Membership approval" means approval by the affirmative vote of a majority of a quorum of Members in good standing.

1.15 Mortgage. "Mortgage" means a mortgage or deed of trust.

1.16 Mortgagee. "Mortgagee" means the holder of the beneficial interest in any mortgage.

1.17 Notice and Opportunity for Hearing. "Notice and opportunity for hearing" means giving at least fifteen (15) days prior notice of a proposed action and the reasons, and an opportunity to be heard by the Association, orally or in writing, not less than five (5) days before the effective date of the proposed action.

1.18 Owner. "Owner" means the record Owner, whether one or more persons or entities, of a fee simple title to any Lot and the contract vendee under a recorded contract of sale. "Owner" shall not include any person or entity which holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

1.19 Property. "Property" means the legal description in the Recitals, Paragraph 1.

1.20 Rules and Regulations. "Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been given to Owners in

accordance with the requirements of this Restated Declaration and current law.

1.21 Total Voting Power of the Association. "Total voting power of the Association" means the total of 575 votes allocated to the Members.

1.22 Voting Power. "Voting power" means those Members who are eligible to vote for the election of Directors or with respect to any other matter, issue, or proposal properly presented to the Members for approval at any time a determination of voting rights is made. To be a part of the voting power, a Member must be in good standing.

ARTICLE II DESCRIPTION OF PROJECT

2.01 Property Subject to Declaration. All of the real property described on the Maps, in the Recitals, paragraph 1, is hereby declared to be subject to these Restrictions.

2.02 Easements. Every owner shall have a right and easement of access and enjoyment in and to the Common Area and of access to the various dedicated streets adjacent to the Property, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

B. The right of the Association to adopt reasonable rules and regulations governing the use, maintenance and administration of the Common Area and for the health, comfort, safety and general welfare of persons using the Common Area.

C. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his or her Lot remains unpaid; for any infraction of its Governing Documents after hearing by the Board of Directors of the Association.

D. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Members agreeing to such dedication or transfer has been recorded.

2.03 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the following persons provided they reside on the Owner's Lot: members of his family, his tenant, or contract purchasers.

2.04 Partition of Common Area. There shall be no subdivision or partition of the Common Area, nor shall any Owner seek any partition or subdivision thereof.

Notwithstanding any provisions to the contrary contained in this Declaration and in order to provide for a means of terminating the property if this should become necessary or desirable, on occurrence of any of the conditions allowing an Owner of a Lot to maintain an action for partition (as such conditions are presently set forth in the California Civil Code or as such conditions in the future may be set forth in any amendment thereto or comparable provisions of law), two-thirds (2/3) of the Owners of Lots shall have the right to petition the Superior Court having jurisdiction to alter or vacate the recorded subdivision map of the property under California Government Code 66499.21 et seq., or any comparable provisions of law and to vest title to the property in owners as tenants in common and order an equitable partition of the property in accordance with the laws of the State of California.

ARTICLE III
PROPERTY RIGHTS

3.01 Common Area. The Common Area shall be owned by the Owners of Lots as tenants-in-common.

3.02 Severance. No Owner shall have the right to and no Owner shall sever his or her Lot from his or her Membership in the Association or sever his or her Lot and Membership from his or her undivided interest in the Common Area. Any sale, conveyance, encumbrance, hypothecation or other action in violation of this prohibition shall be void. Each Owner shall have the right to mortgage or encumber his or her Lot. No Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever any part of FIESTA GARDENS Common Area. No Lot may be partitioned or subdivided, or combined with other Lots.

3.03 Restrictions. Each Owner's interest in the Common Area and easements, whether exclusive use or nonexclusive, shall be appurtenant to and pass with the title to his or her Lot and shall be subject to the rights and restrictions, if any, of:

A. Any recorded easements;

B. The right of the Association, after notice and opportunity for hearing by the Association, to suspend the right of an Owner to use any recreational facilities on the Common Area (1) for any period during which any assessment against such Owner's Lot or any monetary penalty or fine imposed against an Owner remains unpaid; and, (2) for a period not to exceed thirty (30) days for any infraction of the rules and regulations or any violation of or failure to comply with the provisions of the Governing Documents; and

C. The right of the Association to grant easements as

provided in this Restated Declaration.

3.04 Rules and Regulations. The Association shall have the right to adopt reasonable and nondiscriminatory rules and regulations governing the use and enjoyment of the Common Area. All rules and regulations and their application must be consistent with the Governing Documents and not in conflict with current law.

A. The Board of Directors shall provide written notice of a proposed rule change to the Owners at least 30 days before making the rule change. The notice shall include the text of the proposed rule change. A decision on a proposed rule change shall be made at a meeting of the Board of Directors, after consideration of any comments made by Association Members.

B. As soon as possible after making a rule change, but not more than 15 days after making the rule change, the Board of Directors shall deliver notice of the rule change to every Owner. If the rule change was an emergency rule change, the notice shall include the text of the rule change, and the date that the rule change expires.

C. If the Board of Directors determines that an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make an emergency rule change.

3.05 Partition. There shall be no partition of the Common Area or any Lot, unless ordered by a Court.

ARTICLE IV
ASSOCIATION MEMBERSHIP, OBLIGATIONS AND VOTING RIGHTS

4.01 Ownership and Management of Common Area. The Association shall manage the Common Area in accordance with the Governing Documents and current law.

4.02 Membership. Every owner of a Lot within FIESTA GARDENS is a Member of the Association. To be a Member of the Association, there must be a recorded deed showing ownership and title. Upon the sale, conveyance or transfer of a Member's interest, the Member's membership shall automatically transfer to the new Member. Proof of membership shall be in the form of a recorded deed showing fee ownership of a Lot. Member must be in good standing with the Association.

4.03 Member Voting Rights. Each Member who owns a Lot shall be entitled to one (1) vote for each Lot, except for the apartments and duplexes, where the owner gets to vote according to the number of units on the Lot (by way of example, duplexes get 2 votes). When more than one person owns an interest in a Lot, a single vote cast shall be deemed the authorized vote for that Lot. If conflicting votes are cast, no vote shall be counted except a single vote shall be counted for purposes of a quorum (when a quorum is required).

4.04 Supervision of Minors. Members shall be liable for the conduct, behavior, and proper supervision of minors residing or visiting their Lots and/or using the Association's Common Area.

4.05 Security. Members shall be responsible for their own security and may not rely on any security provided by the Association.

4.06 Purchase Subject to Violations. Buyers shall take ownership of Lots subject to any violations of the CC&R's, Architectural Standards, or Rules which may exist concerning the Lot, whether or not such violations were disclosed by the seller of the Lot and whether or not the Association knew of the violations at the time of sale. Such buyers shall be liable for correcting such violations upon demand by the Association. Assessments, fines, and other charges not secured by a lien on the Lot prior to transfer of title are exempt from this provision.

4.07 Obligation to Provide Contact Information. Members and Tenants shall provide the Association with the current contact information at which they can be reached in an emergency, such as telephone numbers and/or e-mail address.

4.08 Notice of Transfer of Ownership. No later than five (5) days after the assignment, sale, quitclaim or other transfer of their Lots, Members shall notify the Association of the name and address of the transferee and the nature of the transfer.

**ARTICLE V
POWERS AND DUTIES OF THE ASSOCIATION**

5.01 Duties. In addition to the duties enumerated in its Governing Documents and current law without limitation, the Association shall perform the following duties:

A. Powers Generally. The Association shall have the responsibility of managing and maintaining the Common Area and discharging the duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a non-profit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its properties and the discharge of its responsibilities for the benefit of its Members, subject only to such limitations concerning the exercise of such powers as are set forth in the Governing Documents and current law. The Association shall have the power to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners;

B. Association as Attorney-in-Fact for Owners. The Association is irrevocably appointed as the attorney-in-fact for

the Owners of each and every Lot to (1) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Association to fulfill all of its duties and obligations and to exercise all of its rights; (2) deal with the Property upon its destruction or obsolescence; and (3) deal with and handle insurance and insurance proceeds, and condemnation and condemnation awards. The acceptance by any person or entity of any interest in any Lot shall constitute an appointment of the Association as the Owner's attorney-in-fact;

C. Assessments. The Association shall fix, levy, collect, and enforce assessments;

D. Budget. The Association shall prepare an annual budget and all financial documents as required by law;

E. Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost to the Member or Members responsible for the existence of the lien after notice and a hearing, as provided in the Governing Documents;

F. Enforcement. The Association shall enforce the Governing Documents;

G. Insurance. The Association shall maintain such policy or policies of insurance as are required by the Governing Documents;

H. Maintenance. The Association shall maintain, repair replace, restore, operate and manage the Common Area (and all facilities, improvements, utilities and landscaping thereon);

I. Payment of Expenses. The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the Property of the Association;

J. Utilities. The Association shall pay for water, sewage, garbage, electrical, gas, janitorial, telephone and other necessary utility services for the Common Area; and

K. Compliance. Comply with current law.

5.02 Powers. In addition to the powers enumerated in its Governing Documents and without limitation, the Association shall have the following powers:

A. Acquisition and Disposition of Property. The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal Property in connection with the affairs of the Association. Any transfer of Common Area shall be approved by sixty-seven percent (67%) of the Members, unless otherwise

restricted by current law.

B. Adoption of Rules. The Board of the Association may adopt reasonable rules and procedures not inconsistent with this Restated Declaration relating to the use of the Common Area and all facilities, and the conduct of Owners and their families, tenants and guests with respect to the Property and other Owners; notice of proposed rule changes shall be given as required by current law.

C. Appointment of Trustee. The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce assessment liens by sale as provided in this Declaration and Civil Code § 5740.

D. Assessments, Liens and Fines. The Association shall have the power to levy and collect assessments in accordance with the Governing Documents and current law. The Association may impose fines or take disciplinary action against any Owner for failure to pay assessments or for violation of any provision of the Governing Documents. Penalties may include but are not limited to: fines, temporary suspension of voting rights, or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Governing Documents, prior to the imposition of any fine or disciplinary action.

E. Contracts. The Association shall have the power to contract for goods and/or services for the Common Area, and interests of the Association, subject to the limitations of the Governing Documents.

F. Delegation. The Association, through the Board, shall have the power to delegate its authority and powers to committees, officers, or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

- 1) To make expenditures for capital additions or improvements chargeable against the reserve funds;
- 2) To conduct hearings concerning compliance by an Owner or his tenant, lessee, guest, or invitee with the Governing Documents;
- 3) To make a decision to levy monetary fines, impose special assessments against individual Lots, temporarily suspend an Owner's rights as a Member of the Association, or otherwise impose discipline;
- 4) To make a decision to levy regular or special assessments; or
- 5) To make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of assessments.

G. Easements. The Association shall have the authority, after a sixty-seven percent (67%) affirmative vote by Members, to grant easements in addition to those shown on the map where necessary for utilities, cable television, a community satellite dish, sewer facilities, water, electricity, gas, telephone, television service, cables, lines, and computer services over the Common Area to serve the common and open space areas and the Lots, unless otherwise restricted by current law.

H. Enforcement. The Association shall have the authority to enforce the Governing Documents and shall comply with current law concerning dispute resolution.

I. Inspection of Association Books and Records. Any Owner, or that Owner's duly appointed representative, shall have access to the Association's Membership register, books of account, and minutes (except executive session minutes), from any meeting of the Owners, the Board, or any committee of the Board in order to inspect and copy such records for any purpose reasonably related to his or her interest as an Owner. Access shall be at any reasonable time at the office of the Association or such other place within the Property as the Board prescribes. The Board shall establish rules regarding the notice the Owner must give to the custodian of the records to obtain access, the hours and days of the week when the records may be inspected and copied, and the charges imposed by the Association for copying records requested by the Owner. Any Member of the Board may at any reasonable time inspect, copy, or make extracts of any books, records, and documents of the Association and inspect the Common Area of the Association.

J. Limitation on Liability of Officers and Directors. No Director, officer, committee member, employee, or other agent of the Association, shall be liable to any Owner or any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person has acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association.

K. Loans. The Association shall have the power to borrow money only with the assent (by vote or written consent) of two-thirds of the total voting power of the Association, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal Property as security for money borrowed or debts incurred.

L. Manager. The Association shall have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any portion of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures; provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed

a one (1) year term, and shall provide for the right of the Association to terminate the same upon sixty (60) days' written notice.

M. Other Powers. In addition to the powers contained herein, the Association may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code section 7140.

ARTICLE VI
MAINTENANCE

6.01 Association. Except as otherwise stated, the Association shall operate, maintain and repair the Common Area. If the Association provides any maintenance or inspection to areas other than the Common Area, this shall not create a duty or obligation of the Association to do so in the future. The Association shall have the right to exercise its right to levy an assessment or special assessment to reimburse the Association for costs of maintenance, repair and replacement; where repair or replacement crosses lines of responsibility, the Association may undertake the work and charge the Owner an appropriate amount and/or impose a reimbursement or repair Assessment.

6.02 Association Maintenance Responsibility With Respect to Lots. The Association shall have no maintenance or repair responsibilities for each Lot.

6.03 Owner Maintenance Responsibilities.

A. Each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot.

B. Each Owner shall maintain any slopes, terraces, drainage devices, landscaping and utility lines or conduits that exclusively service the Lot.

6.04 Association's Recovery of Costs of Certain Repairs and Maintenance.

A. Association Maintenance Necessitated by Owner Negligence. If the need for maintenance or repair that would otherwise be the Association's responsibility is caused through the willful or negligent acts of an Owner, his or her family, tenants, or invitees and is not covered or paid for by insurance policies maintained by the Association or the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner. If a deductible is incurred by the Association, the responsible Lot Owner shall pay for it.

6.05 Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the performance of its work.

ARTICLE VII
COVENANTS FOR ASSESSMENTS

7.01 Covenant to Pay Assessments; Lien. Every Owner of any Lot by acceptance of a deed, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association such regular assessments or charges, and special assessments or charges, as may be levied by the Association pursuant to the provisions of the Governing Documents. The amount of any such regular, special, reimbursement or repair assessment plus any other charges, such as interest, late charges, collection costs and costs (including attorneys' fees), shall be and become a lien upon the Lot, according to the Governing Documents and current law. The lien may be enforced by sale of the Lot by the Association, its attorney or other person authorized by the Association to make the sale, after failure of the Owner to pay such an assessment in accordance with its terms. Such sale to be conducted in accordance with the provisions of current law, applicable to the exercise of powers of sale in mortgages and deeds of trust or in any other manner permitted by law. The Association shall have power to purchase the Lot at a foreclosure sale and to hold, lease, mortgage and convey the same.

7.02 Personal Obligation.

A. Personal Obligation. Each assessment, together with any late charge, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of each person or entity, other than any mortgagee, who held an ownership interest in the Lot at the time such assessment was levied. If more than one person or entity held an ownership interest in the Lot at such time, the personal obligation to pay such assessment or installment shall be both joint and several. No Owner may exempt himself from payment of assessments, or installments, by waiver of the use or non-use of recreational facilities on the Common Area or of any other portion of the Common Area or by abandonment or leasing of his or her Lot.

B. Termination and Commencement of Obligations. Any assessment is payable when ownership change occurs. The obligation shall be paid pro-rata by each individual/entity according to the date of ownership.

7.03 Use of Assessments. Regular or annual assessments paid shall be used to pay for operation, maintenance, preservation, enhancement, repair and improvement of the Common Area, other purposes reasonably related to the foregoing, and to promote the recreation, health, safety and welfare of the Owners. In addition, such assessments shall be used to pay the cost of administration of the affairs of the Association, including payment of applicable taxes, and for the preservation of the Association's existence, to the extent properly allocable to the performance and exercise of the Association's duties and powers under the Governing Documents.

7.04 Reserve Funds. The Association shall establish and maintain reserves in accordance with standard accounting practices and procedures for Common Area replacements and maintenance. Each budget adopted by the Association shall provide for reserve funds. Funds deposited in reserve for a particular purpose shall be held for that purpose and shall not be expended for any other purpose without the affirmative vote or written consent of all Members, except that if the Association determines that funds held in reserve for a particular purpose exceed an amount reasonably required for that purpose, then, without the vote or written consent of Members, the excess may be allocated to any other reserve fund established by the budget of the Association. The Association shall abide by current law when establishing and maintaining its reserves.

A. At least once every three years, the Board shall cause to be conducted a competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore, or maintain as part of the reserve account requirements of the Association. The Board shall review this study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

B. This study shall comply with the minimums as established by current law.

C. An annual summary of the Association's reserves and required disclosures shall be distributed pursuant to current law.

7.05 Regular Assessments. Regular annual assessments shall be payable yearly or at such other time as the Association may fix. The Association shall fix the amount and due date of the annual assessment on a yearly basis at least thirty (30) days in advance of each assessment year. The regular annual assessment may be increased by an amount not in excess of twenty percent (20%) of the regular annual assessment for the preceding assessment year without the vote or written consent of a majority of the votes of the Members. Written notice of the regular annual assessment shall be sent to every Owner pursuant to law. If the Association fails to so fix the regular annual assessment, the assessment applicable for the previous assessment year shall remain in effect until the Association shall fix a new regular annual assessment.

7.06 Special Assessments. In addition to the regular annual assessments, upon the vote or written consent of a majority of the Members, the Association may levy, in any assessment year, a special assessment against all Owners for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements, reserve contribution, and related fixtures and personal property on or comprising a part of the Common Area, provided, however, no such vote or written consent shall be required for special

assessments which in the aggregate do not exceed five percent (5%) of the budgeted gross expenses of the Association for that assessment year.

7.07 Returned Checks. A Member who writes a check or transfers funds electronically to the Association which is returned for any reason shall pay a reasonable charge set by the Association for processing such check or charge.

7.08 Assessment as Remedy. After notice and opportunity for hearing, the Board of Directors, without the vote or written consent of Members, may levy a reimbursement or repair assessment against a Member:

A. As a remedy to reimburse the Association for costs (including attorneys' fees) incurred in bringing the Member into compliance with the provisions of the Governing Documents or to reimburse the Association for any loss, damage or expense suffered by the Association as a result of misconduct or other action by any Member, including guests, invitees, and tenants which violates any provision of law or the Governing Documents; or

B. As a fine for infraction of the Governing Documents.

7.09 Revised Assessments. If at any time during the course of any year the Association shall deem the amount of the regular annual assessment to be inadequate or over adequate by reason of a revision of its estimate of either expenses or income, or otherwise, the Association shall have the right, at a regular or special meeting, to revise the regular annual assessment for the balance of the assessment year. Any such revised assessment shall become effective on the first day of the next month following the date of adoption.

7.10 Emergency Assessments. In emergency situations, the Board may increase regular assessments or impose special assessments according to current law.

7.11 Delinquent Assessments. Any assessment not paid within thirty (30) days after the due date or period as established in the Governing Documents shall be delinquent. There shall accrue with each delinquent assessment a late charge or such other reasonable amount as may be provided in the Governing Documents, to cover administrative expenses, and delinquent assessments shall bear interest thirty (30) days after the due date and shall accrue until paid at twelve percent (12%) per annum. The collection of delinquent assessments shall comply with current law. The Association may bring legal action against the Owner personally obligated to pay a delinquent assessment and/or foreclose the delinquent assessment lien against his or her Lot. In any legal action to enforce payment of an assessment, the Association shall be entitled to recover interest, late charges, collection costs, costs and reasonable attorneys' fees. While the debt remains delinquent and unpaid, the Association, after notice and hearing, may suspend a Member's right to use the recreational facilities and the right to vote.

7.12 Transfer of Lot by Sale or Foreclosure. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale of any Lot pursuant to mortgage foreclosure of a first mortgage shall extinguish the lien of such assessments (including attorney's fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such sale or transfer, except for assessment liens recorded prior to the mortgage. No sale or transfer shall relieve such Lot from liability for any assessment becoming due or from the lien previously recorded.

A. Where the mortgagee of a first mortgage of record or other purchaser of a Lot obtains title as a result of foreclosure of the first mortgage, the acquirer of title, his or her successor and assigns, shall not be liable for the assessment by the Association chargeable to such Lot which became due prior to the acquisition of title to the Lot by the acquirer, except for assessment liens recorded prior to the mortgage. No amendment to the preceding sentence may be made without the consent of the owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the consent of the first mortgage holders holding first mortgages on Lots comprising fifty-one percent (51%) of the Lots subject to first mortgages.

B. In any transfer of a Lot, a grantor shall remain liable to the Association for all unpaid assessments against the Lot up to the date of the transfer. The grantee shall be entitled to a statement from the Association dated as of the date of the transfer, setting forth the amount of the unpaid assessment against the grantor due the Association, and the Lot so transferred shall not be subject to a lien for the unpaid assessment in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any assessments that become due after the date of the transfer.

ARTICLE VIII
USE RESTRICTIONS

8.01 Common Area. All use of the Common Area is subject to the Governing Documents.

A. Nothing shall be done or kept 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 the Common Area which will result in the decrease in coverage or cancellation of insurance on any Lot or Common Area, or which would be in violation of any law.

B. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board.

C. Nothing shall be done to or in the Common Area which has an adverse effect on its enjoyment, use, value, condition or

appearance. Owners shall be liable for their own acts, as well as jointly for those of family Members, tenants, guests and invitees. Any damage or destruction to the Common Area may be cause for a Reimbursement Assessment against the tenant, lessee, Owner and his or her Lot.

D. Nothing shall be altered or constructed or removed from the Common Area, except upon the written consent of the Board. Owners are prohibited from painting any part of the Common Area.

E. The Association may require deposits and/or user fees for the private use of the Common Area, such as Association recreational facilities.

8.02 Flammable Materials. Explosives, fireworks or highly flammable or highly corrosive materials are prohibited on the property.

8.03 Harassment. Members shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at Members, Residents, guests, occupants, invitees, management, vendors, or their agents or employees.

8.04 Health/Safety Hazards. Members shall not permit conditions which constitute a health, safety, or fire hazard.

8.05 Nudity. Nudity is prohibited in public.

8.06 Lots.

A. Residential Use. All Lots shall be used as residences and for no other purpose, and (except for uses permitted by law), no Owner shall use or cause or permit the Common Area or his or her Lot to be used for any business, commercial, manufacturing use or purpose, or for any other nonresidential use or purpose, which shall disturb the residential character of FIESTA GARDENS.

B. Business/Work Use. Owners or tenants may use a small area in the residence for office purposes, provided that the primary use of the Lot is as a residence, and provided no advertising or sign is used in any manner in connection with the office, and no customers, clients, or other non-residents enter the Lot on any regular basis. There shall be no external evidence of a Lot's business. In no event shall a business be conducted which will (a) have a measurable negative impact on neighbors, (b) increase vehicle or foot traffic within FIESTA GARDENS or to the Lot, (c) cause any damage to the Common Area, (d) adversely affect or increase the cost of Association insurance or (e) increase, by any significant amount, electrical or water consumption. The use of a Lot as a bed and breakfast or for transient short term rentals is prohibited. The Association shall have the authority to adopt Rules regarding the use of Lots as offices in order to maintain the residential

character of the development.

C. Governmental Compliance. All Members shall comply with the requirements of governmental authorities, federal, state and local, and all laws, ordinances, rules and regulations applicable to his or her Lot.

8.07 Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate.

8.08 Hazardous Materials. If the Association learns of the presence of any material or substance in the Common Area or Lot which is deemed by any governmental agency to be potentially hazardous, the Board may, at its discretion, make written findings as to the circumstances and the need to take certain action and establish and implement appropriate policy and actions as are in the best interest of the Association.

8.09 Liability of Owners for Damage to Common Area. The Owner of each Lot shall be liable to the Association for all damages to the Common Area caused by the Owner or any tenants, guests or invitees of his or her Lot. Liability shall be established only after notice and a hearing.

8.10 Overloading. No machinery, apparatus, appliance or equipment shall be located within any Lot or the Common Area which in any manner structurally overloads the Common Area or another Lot, or in any manner vibrates, shakes or otherwise damages a Lot or the Common Area.

8.11 Paint. Members shall prevent their Lots from becoming unsightly by reason of deterioration of paint, stain or other materials, and shall do whatever is necessary or desirable to keep his/her Lot in a neat and clean order.

8.12 Pets. No animals shall be raised, bred or kept on any Lot or elsewhere within the Property. In no event shall animals be kept, bred or raised for commercial purposes. Dogs are to be kept on a leash at all times when on or in the Common Area. Any unleashed pet found within the Common Area may be removed to a pound or animal shelter at the animal owner's expense. Owners of pets shall clean up after them.

A. All pets rules and regulations and their application shall comply with current law.

8.13 Right to Lease. In order to foster a sense of community, to help potential Owners obtain financing, and to develop a viable pool of Owners to handle responsibilities of the Association, these restrictions are made. As used herein, "lease" shall mean any and all agreements, including, but not limited to, leases, subleases, or rental agreements, for the occupancy of any Lot.

A. Any Owner who rents or leases his or her Lot to a

tenant shall not be entitled to use and enjoy any recreational or other Common Area facilities during the period the Lot is occupied by such a tenant.

B. In the event an Owner shall rent or lease his or her Lot, such Owner shall provide to the Association in writing five (5) days prior to the effective date of the rental or lease:

- 1) the tenant's name, e-mail address, and phone number;
- 2) the address of the Lot rented or leased;
- 3) the Owner's current address and phone number; and
- 4) a true statement that the tenant has been given a copy of the Governing Documents and that such tenant has been advised of the obligations he or she may have thereunder as a tenant.

C. In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular and special assessments to the Association, regardless of whether the obligation to pay assessments has been delegated to the tenant in such lease or rental agreement.

D. When a Lot is rented or leased, the Owner agrees to an assignment of any rents/lease payments made to satisfy any amount owed to the Association. The Association may take any legal action to enforce this clause. The Association shall give the Owner and tenant twenty (20) days' notice of its action.

8.14 Smoking. Smoking is prohibited in the Common Area.

ARTICLE IX INSURANCE

9.01 Duty to Maintain Insurance. The Association shall have the duty and the authority to maintain Property insurance on the Common Area in an amount not less than the full insurable value thereof (if reasonably available) including betterments and improvements, and liability insurance with limits in amounts reasonably adequate to protect the Association and the Owners in the event of property damage, personal injury or death occurring in or about the development. All endorsements shall be obtained after consultation with an insurance expert.

A. The Board shall have the authority to settle or enforce on behalf of the Association and on behalf of the Owners, by legal action or otherwise, any claim arising under any insurance carried by the Association. The Association, in its discretion, shall determine if any other insurance is necessary and to obtain such.

B. Each Owner shall maintain Property and personal liability insurance pertaining to his or her Lot.

C. All policies of insurance carried by the Association shall include a waiver of subrogation if such waiver is

reasonably available, unless otherwise provided in the Governing Documents.

9.02 Types of Insurance. The Association shall procure and maintain the following types of insurance:

A. Fire and Hazard Insurance. Fire and hazard insurance with extended coverage for the full replacement value of all improvements in the Common Area. The Association shall also insure any Property, whether real or personal, owned by the Association, against loss or damage, with the Association as the owner and beneficiary for such insurance.

B. Additional Endorsements. To the extent not included in the basic policy coverage, the Association may procure the following additional coverage: demolition, foundations, building code mandated upgrades, retaining walls, fences and appurtenant structures.

C. Liability Insurance. Liability insurance to protect against any liability to the public or to any Owner incident to the ownership and use of the Common Area. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. The liability insurance shall identify as separately protected insurers the Association, the Members, and the Board from liability in connection with the maintenance and use of the Common Area.

D. Director and Officer Insurance. Insurance covering Directors, Officers, committee Members and volunteers acting under the direction of the Board from errors and omissions.

E. Fidelity Bond. A fidelity bond covering officers, Directors and employees in an amount to be determined by the Board.

F. Other Insurance. Worker's compensation insurance shall at all times be carried to the extent necessary to comply with applicable laws, and any other insurance deemed necessary to comply with applicable laws and/or deemed necessary by the Board.

9.03 Provisions and Limitations. Terms of insurance coverage do not always coincide with defined areas of Owner and Association ownership, or responsibilities to maintain, repair or replace. Notice is hereby given to any insurer issuing policies in accordance with CC&R requirements that the Association's fire and hazard insurance shall be construed to provide the maximum coverage possible for all improvements to the Common Area. Should there be a conflict or inconsistency between the coverage provided in the policy and that required by the CC&R's, the more comprehensive of the two shall be applied.

9.04 Coverage Not Available. If any required insurance policy or endorsement as required above is not available, or is economically unfeasible, then the Association shall obtain alternate insurance which provides, as nearly as possible, such coverage.

9.05 Additional Insurance by Owner. The Association is not obligated to procure liability insurance for any individual Owner or resident. Every Owner and resident is encouraged to insure his or her Lot and personal property against loss. Additionally, every Owner and resident is encouraged to carry Comprehensive Personal Liability Insurance. Insurance procured by the Association does not cover many perils and liabilities individual Owners and residents may incur. Owners are further encouraged to consult with their insurance professionals to maintain loss assessment coverage generally and loss assessment coverage for earthquake damage.

9.06 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

9.07 Claims. The Association shall make all claims against any of the insurance carried by the Association. An Owner shall not make a claim on the Association's insurance. Failure to adhere to this restriction shall result in a hearing before the Board to determine the monetary penalty.

9.08 Proceeds of Insurance. The proceeds of property insurance carried by the Association shall be used for repair, replacement or reconstruction to the extent necessary.

ARTICLE X DAMAGE AND DESTRUCTION

10.01 Minor Damage and Major Damage Defined. Damage or destruction to the Common Area where the estimated cost of repair, restoration or reconstruction does not exceed Fifty Thousand Dollars (\$50,000) is referred to in this Restated Declaration as "minor damage." Damage or destruction to the Common Area where the estimated cost of repair, restoration or reconstruction exceeds Fifty Thousand Dollars (\$50,000.00) is referred to in this Restated Declaration as "major damage."

10.02 Minor Damage. If minor damage occurs, the Association shall promptly contract for the repair, restoration or reconstruction of the Common Area improvements which have been damaged or destroyed. The difference, if any, between the insurance proceeds and the cost of such repair, restoration and reconstruction may be recovered by one or more special assessments levied by the Association against all Owners.

10.03 Major Damage. In the event of any major damage to or destruction of any portion of the Common Area by fire or other

casualty:

A. The Association shall cause to be prepared plans and specifications for the repair, restoration or reconstruction of the Common Area so damaged or destroyed, which plans and specifications shall be comparable to the original plans and specifications of the Common Area, and the Association shall obtain firm bids from two (2) or more licensed general contractors for the repair, restoration or reconstruction of the Common Area;

B. The Association may, and upon the written request of Members holding at least ten percent (10%) of the votes of the Association shall, cause an appraisal to be made, which appraisal shall set forth an opinion as to the value of the Common Area as it then exists together with an opinion of the increment in value, if any, which would accrue if the Common Area or some portion thereof were razed;

C. No later than one hundred eighty (180) days after the occurrence of major damage, the Association shall hold a special meeting of Members after notice. Such notice shall include a summary of the appraisal (if any) and of the bids for repair, restoration and reconstruction and the amount of insurance proceeds payable to the Association.

D. The Association shall repair, restore or reconstruct the Common Area improvements which have been damaged or destroyed, unless at least seventy-five percent (75%) of the Members agree by vote or written consent and one hundred percent (100%) of all mortgagees (based upon one (1) vote for each first mortgage owned) agree in writing within two hundred forty (240) days after the occurrence of such major damage, that such repair, restoration or reconstruction shall not take place.

E. Unless the Common Area shall not be repaired, restored or reconstructed, the Association shall promptly contract for and complete such repair, restoration and reconstruction in accordance with plans and specifications approved by the Association. The difference, if any, between the insurance proceeds and the total cost of repair, restoration and reconstruction shall be recovered by a special assessment levied by the Association against all Owners.

F. If major damage occurs and the Common Area shall not be repaired, restored or reconstructed, the Association shall cause the appraisal described above to be made (if such appraisal has not previously been obtained) and the appraisal shall be made available to the Owners and mortgagees. The Association shall sell the entire Property, in one or more sales, for and on behalf of all Owners upon such terms and conditions and for such price as may be approved by two-thirds of the Owners. The Association shall be and hereby is irrevocably appointed attorney-in-fact to act on behalf of all Owners to sell the entire development upon such terms and conditions and for such price as shall have been approved by the

Members. The President or other duly designated officer of the Association shall promptly execute, acknowledge and record in the official records of the county a certificate declaring the intention of the Members not to rebuild and stating that the Association is the attorney-in-fact for the Owners. The acts of the Association in exercising its power of attorney shall be binding on all Owners.

G. In connection with the sale of the Property the Association, by resolution, shall instruct the appropriate officers of the Association to make, execute and deliver on behalf of any Owner, as his or her interest may appear, any and all instruments, certificates and documents, including, but not limited to maps, plans, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be necessary or convenient for the sale of the Property. The Association shall be authorized to incur fees for legal and accounting services, appraisals, engineering, examination of title and other expenses reasonably related to the sale of the Property.

H. The recordation of the deed or deeds conveying the Property shall terminate the title of each Owner in his or her Lot. The title conveyed shall be free from the effect of the Governing Documents and, upon conveyance of title, this Restated Declaration and the limitations, restrictions, liens, covenants, conditions, easements and equitable servitudes herein contained shall terminate and cease to be effective, except that the provisions of this Restated Declaration providing for disbursement of the proceeds of sale shall continue to be binding on the Association and the Members and no Member shall be relieved of personal liability for any charges or assessments previously levied or imposed.

I. After payment of expenses directly relating to the sale of the Property, the Association shall disburse such proceeds, together with any other sums it holds and any remaining assets of the Association (which assets shall be liquidated to the extent possible), as follows:

1) To pay any outstanding expenses of the Association relating to the sale of the Property, including but not limited to, costs of appraisal, collection of insurance proceeds, engineering, legal and accounting expenses, costs of preparing the Property for sale and other related expenses;

2) To pay all other debts and liabilities of the Association; and

3) Among the respective Owners in the Property, with the amount distributed to each Owner as fair and equitable, minus each Owner's liability for unpaid assessments, fines, fees, late charges, and/or any amount owed to the Association.

ARTICLE XI
EMINENT DOMAIN

11.01 Eminent Domain. If all or any portion of the Common Area is taken by action in eminent domain ("taking"), the Association shall give written notice of the proceedings to all Owners and mortgagees, and the condemnation award shall be fairly and equitably apportioned among the Owners, mortgagees and the Association as they may agree or if they do not agree, as the court determines.

11.02 Repair, Restoration, Reconstruction. If only a portion of the Common Area is taken, the Association shall promptly contract for the repair, restoration or reconstruction of the Common Area, to the extent such repair, restoration and reconstruction is reasonably necessary. If the cost of repair, restoration and reconstruction of the Common Area exceeds the amounts awarded by the court for such purposes, the difference shall be recovered by a special assessment levied against all Owners whose Lots have not been taken. The amount of any such special assessment payable by each Owner shall be equitably assessed.

11.03 Adjustment of Undivided Interests. If any part of the Common Area is taken, and at least one Lot is taken, the undivided interests of the Owners in the Common Area shall be adjusted as follows:

A. The interest in the remaining portions of the Common Area of any Owner whose entire Lot is taken shall automatically cease and terminate;

B. The interest in the remaining portion of the Common Area of each Owner whose Lot is not taken shall increase proportionately so that each such Owner shall own an equal undivided interest as tenant-in-common with all other such Owners in the remaining portion of the Common Area. The Association shall be and hereby is appointed attorney-in-fact for all Owners to make such adjustments of the undivided interests. The Association shall instruct the President or other duly designated officers of the Association to make, execute and deliver on behalf of any Owner, as his or her interest may appear, any and all instruments, certificates and documents, including, but not limited to, maps, plans, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be necessary or convenient in connection with such adjustments of undivided interests.

ARTICLE XII
MORTGAGEE PROTECTION

12.01 Interpretation. In the event any provision of this Article is inconsistent with or contrary to any other provision of this Restated Declaration, the provisions of this Article shall control.

12.02 Notices. Any mortgagee of any Lot, by written notice to the Association setting forth the Lot encumbered, the Owner and the address to which notices may be sent, may request and be

entitled to receive written notice from the Association of (i) any default which is outstanding for sixty (60) days or longer by the Owner of such Lot in the performance of his or her obligations under or in compliance with the provisions of the Governing Documents, (ii) any damage to or destruction of the Common Area, if the cost of repair, restoration or reconstruction exceeds Fifty Thousand Dollars (\$50,000), and (iii) any proposed or threatened taking by power of eminent domain of the Common Area of any portion thereof or of any Lot or portion thereof.

12.03 Right of First Refusal. Any right given by an Owner of a Lot to any third person to purchase such Lot before it is offered for sale or sold to any other person ("right of first refusal") shall not be binding upon or enforceable against any mortgagee acquiring such Lot pursuant to exercise of remedies provided for in the mortgage, including foreclosure by judicial action or exercise of a power of sale, or by acceptance of a deed or assignment in lieu of foreclosure.

12.04 Subordination. No provisions contained in this Restated Declaration shall defeat or render invalid the lien of any first mortgage or deed of trust encumbering a Lot and the lien for assessments shall be subordinate to the lien of any such mortgage or deed of trust recorded prior to the date assessments become due. This subordination shall apply only to assessments on a Lot which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or exercise of power of sale. The sale, transfer or conveyance of title to a Lot shall not relieve an Owner or his or her grantee from liability for any assessments which became due and payable prior to such sale, transfer or conveyance or which thereafter become due and payable, nor relieve such Lot from a duly recorded lien for any such prior or subsequent unpaid assessment, nor relieve any former Owner from personal liability for assessments which become due and payable prior to such sale, transfer or conveyance.

12.05 Payments by Mortgagees. Any mortgagee, after at least ten (10) days prior written notification to the Association of the items to be paid and the failure of the Association within such time to make payment, may pay, alone or in conjunction with other mortgagees, delinquent taxes, liens or assessments which may be or become a charge against the Common Area, or any portion thereof, and any overdue premiums on policies of fire and extended coverage insurance for the Common Area and in the event of a lapse of such a policy of insurance, may pay premiums to secure a new policy. In the event such payments are made, the mortgagee making such payment shall be entitled to immediate reimbursement from the Association.

12.06 Insurance Proceeds and Condemnation Awards. No provisions of the Governing Documents shall give an Owner or any other party priority over any rights of mortgagees pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards or settlements.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

13.01 Power to Settle Claims. The Association shall have the power and authority to compromise, settle, release and otherwise adjust claims, demands, causes of action and liabilities in favor of the Association and the Owners, on behalf of the Association and Owners, as the case may be, provided any such claim, demand, cause of action or liability arises out of or relates to a condition or defect common to all or a majority of the Lots, or to the development, design, construction, condition, repair or maintenance of or damage or injury to or defect in the Common Area or part thereof, and the Association shall have the right and the power to make and receive all payment or other consideration necessary. For such purposes, the Association shall be, and hereby is, irrevocably appointed attorney-in-fact to act on behalf of all Owners upon such terms and conditions and for such consideration as may be approved by a majority of the Association.

13.02 Independence of Provisions. The provisions of this Restated Declaration shall be deemed independent and severable. Invalidation or partial invalidation of any provision of this Restated Declaration by judgment or court order shall not affect any other provision of this Restated Declaration, and the remaining provisions shall remain in full force and effect.

13.03 Notices.

A. Notice to Association:

1) If a document is to be delivered to the Association, it shall be delivered to the person designated in the annual policy statement, or if no person has been designated, then the document shall be delivered to the President or Secretary of the Association.

2) A document may be delivered by any of the following:

a. by e-mail, facsimile or other electronic means if the Association has assented to that method of delivery.

b. by personal delivery, if the Association has assented to that method of delivery.

c. by first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express mail center.

B. Individual Notice: A document may be delivered by any of the following:

1) by first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service courier. The document shall be addressed to the

recipient at the address last shown on the books of the Association.

2) by e-mail, facsimile, or other electronic means if the recipient has assented in writing to that method of delivery.

3) if a Member has requested delivery of notices to a secondary address, for financial and reserve documents and annual policy statements, the Association shall deliver an additional copy of those notices to the secondary address.

C. General Notice: A document may be delivered by one or more of the following methods:

1) by first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service courier. The document shall be addressed to the recipient at the address last shown on the books of the Association.

2) by mail, facsimile or other electronic means if the Association has assented to that method of delivery.

3) inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided above in C.1 and C.2.

4) posting the printed document in a prominent location that is accessible to all Members, if the location has been designated for the posting of general notices by the Association in the annual policy statement.

5) by television programming.

D. Time and Proof of Delivery:

1) if a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail.

2) if a document is delivered by electronic means, delivery is complete at the time of transmission.

13.04 Headings. The headings used in this Restated Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Restated Declaration.

13.05 Liberal Construction. The provisions of these Restated CC&R's and the Governing Documents shall be liberally construed to effectuate the operation of the Association.

13.06 No Waiver. Failure to enforce any provision of the Governing Documents shall not be considered a waiver of the right to enforce any provision in the future.

13.07 Enforcement. The failure of an Owner or the Association to comply with the Governing Documents shall give an Owner or

the Association the right to commence internal dispute resolution, alternative dispute resolution, or to initiate a lawsuit for damages or injunctive relief or both. The Association shall be entitled to all of its costs, including, but not limited to, attorney fees, alternative dispute resolution fees, expert and/or consultant fees and costs. All remedies provided in the Governing Documents shall be cumulative and in addition to any other remedies available at law or in equity. The Association shall disclose its Dispute Resolution Procedures as required by law. All enforcement of the Governing Documents shall be made according to current law.

13.08 Successors and Assigns. The Governing Documents shall inure to the benefit and be binding upon the successors, assigns, heirs, personal representatives, grantees, and lessees of all Owners of the Property.

13.09 Conflicts.

A. If there is a conflict between the Governing Documents and the law; the law shall prevail.

B. If there is a conflict between the Articles of Incorporation and the Restated Declaration; the Restated Declaration shall prevail.

C. If there is a conflict between the Restated Bylaws and the Articles of Incorporation or the Restated Declaration; the Articles of Incorporation or the Restated Bylaws shall prevail.

D. If there is a conflict between the Operating Rules and the Restated Bylaws, Articles of Incorporation or Restated Declaration; the Restated Bylaws, Articles of Incorporation or Restated Declaration shall prevail.

13.10 Variances. The Board may, upon unanimous approval of all Directors, allow reasonable variances and adjustments of the Governing Documents in order to overcome difficulties and prevent unnecessary hardships on the application of the Governing Documents. However, such variances shall only be granted which conform to the intent and purposes of the Governing Documents. The Board may, in its sole discretion, impose limitations on any variance granted, including terms, conditions and duration. Where notice of a request for a variance has been given to Members potentially affected and a Member fails to object (according to the terms of the notice), that Member shall be barred from later contesting the decision of the Association. A written record must be kept of all such requests and proceedings.

13.11 Davis-Stirling Common Interest Development Act. Given that the statutory law applicable to homeowner associations is frequently amended by the legislature, and given the Association's desire to keep the provisions of the Restated Declaration not in conflict with applicable statutory law, the

Association may find it useful to update the mandatory requirements of Davis-Stirling that are included in this Restated Declaration by unanimous vote of the Directors. The Association may periodically update the provisions of this Restated Declaration to reflect changes in the Davis-Stirling Common Interest Development Act which would otherwise be in conflict with and would preempt these provisions. Any such updated provisions shall be (1) recorded in the Official Records of San Mateo County and cross-reference this Restated Declaration and (2) distributed to all Owners.

13.12 Provision of Municipal Services. To assure the County, City or local districts of access to maintain and repair their services and facilities and for the provisions of police and fire protection, the Association shall keep all access ways, roadways and appurtenances thereto on the subdivided property unobstructed and in a state of good condition and repair consistent with the standard of said roadways and appurtenances upon original installation.

**ARTICLE XIV
AMENDMENTS**

14.01 Amendments. Any amendment of this Restated Declaration shall require the vote or written consent of fifty-one percent (51%) of the total voting power of the Association; provided, however, that the percentage of the votes necessary to amend a specific provision of this Restated Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

CERTIFICATE OF AMENDMENT

The Association desired to restate the CC&R's and on January 10, 2017, voted and approved these Restated CC&R's. Pursuant to a Court Order dated July 18, 2017, the required percentage to amend these Restated CC&R's is fifty-one percent (51%).

The undersigned declare under penalty of perjury under the laws of the State of California that the matters set forth in this Restated Declaration of Covenants, Conditions and Restrictions are true and correct of their own knowledge.

Executed at San Mateo, California on July 18, 2017.

FIESTA GARDENS HOMES ASSOCIATION, INC.

By: _____

JOE D'AGOSTINO, President

KAREN DEBONO, Secretary

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Mateo)

On July 18, 2017, before me, Violet Fier, Notary Public, personally appeared JOE D'AGOSTINO and KAREN DEBONO, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Violet Fier



