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**FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
VISTA MADERA**

This First Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Vista Madera ("Restated Declaration") is made this 28th day of September, 2001, with reference to the following facts:

A. Declarant, Vista Madera, Ltd, was the owner of the real property located in the City of Santa Barbara, County of Santa Barbara, State of California, commonly known as Vista Madera and more particularly described in Exhibit "A" attached hereto and made a part hereof.

B. It was the desire and intention of the Declarant to subdivide and sell the lots in the subdivision described above and to impose on said lots mutually beneficial restrictions under a general plan of improvements, and to provide for the management, maintenance and care of the common areas within said subdivision, all for the benefit of all of said lots and the owners thereof.

C. Declarant executed that certain "Declaration of Covenants, Conditions, and Restrictions" on January 27, 1978, which was recorded as Instrument No. 78-4096 of Official Records of Santa Barbara County, California ("Declaration").

D. The purpose of this Restated Declaration is to restate the Declaration, incorporating the amendments approved by 75% of the homeowners in 1985 and 2001.

NOW THEREFORE, the Declaration is hereby amended and restated in its entirety to read as follows:

That all of the real property described above is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to and easements, all of which are declared to be in furtherance of a plan for the subdivision, improvement and sale of said real property and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property and every part thereof. All of the limitations, restrictions, covenants, conditions and easements shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the described real property or any part thereof, and shall be for the benefit of each owner of any portion of said real property, or any interest therein.

ARTICLE I

Definitions

Unless expressly provided otherwise, the following terms as used herein shall have the following meanings:

- 1.01. Association. The Vista Madera Owners' Association.
- 1.02. Declarant. Vista Madera, Ltd., a California Limited Partnership, its successors and assigns, but not including persons acquiring not more than three (3) residential lots.
- 1.03. Property. The real property described in Article II hereof.
- 1.04. Residence. A private residence for a single family.
- 1.05. Residence Lot. One of the Separate lots for residential use numbered 1-20 of the subdivision comprising the property
- 1.06. Common Area. All real property owned by the Association for the common use and enjoyment of the owners of the property or any part thereof. Including, without limitations, Lot 21 of the subdivision comprising the property.
- 1.07. Common Facilities. All Structures and improvements located on Lot 21 including driveways, walks, paved roads, parking areas, storage facilities, planted and landscaped areas, electrical, water, sewer, gas and telephone service and fixtures, sprinkling system and recreational facilities.

- 1.08. Common Structures. Those foundations, walls and other structures located on a common property line between two residence lots.
- 1.09. Patio or Balcony. An area contained within a residence lot which is, at the time of the original construction of such residence pursuant to the original plans, designated as a patio or balcony on such original plans.
- 1.10. Owner. The record owner, whether one or more persons or entities, of the fee simple title to any residence lot, including contract sellers, but excluding those having such interest merely as security for performance of an obligation.
- 1.11. Board. The Board of Directors of the Vista Madera Owners' Association, A California nonprofit corporation.
- 1.12. Bylaws. The duly adopted bylaws of the Association, as amended.

ARTICLE II

Property Subject to Declaration

- 2.01. The real property initially subject to this Declaration is located in the City of Santa Barbara, State of California, and is more particularly described in Exhibit "A" attached hereto and made apart hereof.

ARTICLE III

Uses of the Property

- 3.01. The property is hereby restricted to residential use. No buildings or structures shall be erected or placed, temporarily or permanently, upon the property other than residential units substantially the same as those originally erected thereon by Declarant and the common facilities used in connection therewith. In the event of damage or destruction by fire or other casualty of one or more residences, which damage or destruction is at least partially covered by insurance regardless whether such insurance is procured by the Association or the owners and regardless whether such insurance proceeds are adequate to pay for all reconstruction as required hereunder, the owner or owners shall reconstruct the same substantially in accordance with the original plans and specifications, to the end that the exterior appearance resembles that obtaining prior to such restoration shall be

approved in writing by the Association prior to such restoration shall be approved in writing by the Association prior to commencement of construction.

3.02. The Property shall be subject to the following restrictions:

- a) Each residence lot shall be used as a residence for a single family and for no other purpose.
- b) No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the subject property, except that dogs, cats or other household pets may be kept provided that they do not become a nuisance to other owners and/or occupants of property subject to the control of the Association, such dog, cat or other household pet or pets shall be forthwith removed from the subject property.
- c) No signs shall be erected on the property or any lot, except a sign of customary and reasonable dimensions advertising the property for sale.
- d) No obnoxious or offensive activity shall be carried on upon any portion of the subject property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which shall increase the rate of insurance on an adjacent lot or in connection with any common facility.
- e) No clothesline, woodpile, storage pile or any unsightly, noxious or offensive object shall be installed or situated on the property and be visible or apparent from a neighboring residence or the common area. All rubbish, trash, refuse and recyclable materials shall be deposited in tightly covered trash and recycling containers and placed at each residence's collection site no earlier than the evening before the scheduled day of collection.
- f) All streets, driveways, sidewalks, entries and passages outside of the residences shall remain unobstructed and shall not be used for purposes other than ingress and egress to and from the residence. Guest parking spaces designated as such on the original plans shall be used for guest parking only. Residents may park in the guest parking spaces on a temporary basis only with prior permission of the Association.

A "guest" is someone who is not an owner, renter or household member of an owner or renter living under the roof as an owner or renter on a permanent basis, and whose primary residence is not at Vista Madera.

A guest who is visiting an owner or renter may park his or her vehicle in a guest parking area for not more than 30 days in the course of a year, counting from the first day the vehicle is parked at Vista Madera. Requests for parking extensions must be submitted in writing. Approval of extensions and making exceptions for special situations will be at the discretion of the Board.

The penalty for a guest who exceeds the 30-day parking limit without attaining an approved extension will be a daily monetary fine in an amount specified by the board in its schedule of fines and penalties. If the vehicle is not removed after five (5) days from the date the first warning is issued, the vehicle will be towed at the owner's expense. If the monetary penalty is not paid, it may result in a lien being filed against the property owner.

Parking rules may be enforced by any resident or Board member who documents such violations. Notification and evidence of parking violations must be presented to the Board in writing.

- (g) No combustible material or any other material which would increase the risk of fire shall be stored on the subject property.
 - (h) No boats, trucks, trailers or recreational vehicles including campers and motor homes may be parked on Vista Madera, other than in garages, without authorization from the Board of Directors. All owner and renter vehicles are to be parked in garages and not on the driveway in front of the garage or on the street except for short times or with special permission of the Board of Directors. If an owner or renter has a vehicle too large to fit in the garage, this will not be an acceptable excuse for violating the rules.
 - (i) No roofs shall be erected over the patio or balcony areas and the fences surrounding the patio areas shall be less than six feet in height with out the written approval of the Association.
 - (j) No awnings, sunshades or screen doors, other than those originally installed, shall be installed without written approval of the Association.
 - (k) No fences, statuary, or structures of any kind shall be installed or erected on the property, except by, or with the written consent of, the Association, and subject to such conditions as may be set by the Association.
 - (l) No exterior radio or television antenna or satellite dish 36" in diameter or more, or visible from neighboring residences and/or common area, shall be erected on the property or on any structure without authorization of the resident's two closest neighbors and the Board of Directors. The Association, however, may erect one or more community antennae or satellite dish of any diameter, if needed.
 - (m) Garage doors shall not be kept open for extended periods.
- 3.03. The provisions of this Article shall not apply to the Declarant's activities in the development, improvement or sale of the subject property. This provision shall apply only for a period of eighteen (18) months following the recording of this Declaration.

ARTICLE IV

The Association

- 4.01. The Vista Madera Owners' Association is a nonprofit membership corporation organized under the laws of the State of California for the purpose of owning, operating, maintaining and managing the common facilities of the property and for providing such service for, and conducting such common business affairs of, its members as herein specified.
- 4.02. The powers of the Association, the membership and voting rights therein and the authority of its officers and Board of Directors shall be set forth in the articles of Incorporation and the bylaws.

ARTICLE V

Assessments and Liens

- 5.01. Each lot within the subject property and the improvements thereon, except such as are owned by the Association, shall be subject to general and special charges and assessments and liens to secure the payment of same. The Association shall have the sole authority to fix and establish the amounts of the general and special charges and assessments provided for in this Declaration and the amounts of such interest, costs and penalties for the late payment or non-payment thereof.
- 5.02. The general charge and assessment shall be fixed and established annually or more often by the Board and shall be collected monthly by the Association as hereinafter provided. In no event may the Board impose a general charge and assessment hereunder which is more than twenty percent (20%) greater than the general charge and assessment for the immediately preceding fiscal year without the vote or written approval of the majority of owners other than Declarant.
- 5.03. The Board shall, as hereinafter provided by resolution duly adopted, annually estimate in its best judgment the cash requirements and reserves for future maintenance or contingencies, reasonably necessary and proper for the management, operation, maintenance, care and improvement of the subject property, in accordance with those rules set forth in this Declaration and in the Articles of Incorporation and bylaws for the year or portion of the year for which such estimate is made.

- 5.04. Subject to the terms of Section 5.02, the Board may, from time to time, by resolution adopted at any regular or special meeting establish and estimate and fix general charges and assessments or modify any estimate or estimates previously made and increase or diminish the amount of the general charge and assessment, provided that no such determination by the Board shall have any retroactive effect on the amount of charge or assessment payable by any owner of a lot for any period elapsed prior to the date of such determination. The general charges and assessments shall be collected on a monthly basis, due on the first of the month to which such assessment pertains. The notice provisions of Section 5.07 notwithstanding, assessments on all lots shall begin upon the close of the first escrow of a residence lot in the property in an amount per month equal to that set forth in the Final Subdivision Public Board at any meeting thereafter legally held shall determine by resolution in the amount of the assessment and the first date for payment of such changed assessment.
- 5.05. The Board shall at a regular or special meeting held during the month of October of each year, or at such other time designated by the Board, make its estimate of cash requirements as hereinbefore provided for the ensuing Calendar year. Such estimate of cash requirements and reserve and the whole thereof, shall be equally apportioned among all the lots, and the sum allocable to each lot shall be the general charge and shall be the assessment again due and payable monthly in the amount of one-twelfth (1/12) of the total amount of said general charge and assessment charged and assessed against each such lot on or before the first day of each calendar month beginning on the first day of January in the ensuing calendar year.
- 5.06. A special assessment and charge is an assessment to reimburse the Association for expenses incurred or to be incurred which are not ordinarily included in the annual estimate expenses referred to in the preceding paragraph. Special assessments, other than those levied pursuant to Sections 5.06 (b), 5.13 and/or 7.05, shall be allocated among all the lots as provided in Section 5.04. The Association shall have the right to impose special assessments and charges, including but not limited to, the following purposes:
- a) As provided in Section 7.05, Section 7.05, Section 7.06(c), Section 5.13 and Section 7.07.
 - b) A special assessment and charge against any lot for the repair or restoration of any structure or improvement on the common area which has been damaged or destroyed by the owner or such lot, his guest or member of his family.
 - c) A special assessment to defray the cost of any construction or reconstruction, unexpected repair or replacement of a common facility or any other improvement the common area, provided that any such assessment shall have the assent of at least two-thirds (2/3) of the members voting in person or by proxy at a meeting duly called or noticed for this purpose and shall be assessed equally against each lot. Declarant's vote shall not count for purposes of this subparagraph.

Except for special assessments levies pursuant to subsections (a) and (b), the Board may not levy special assessments to defray the costs of any action or undertaking of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the vote or written consent of the majority of the voting power of the Association for the residing in members other than Declarant.

- 5.07. Notice of the amount of any general or special assessment or charge imposed by the Association shall be mailed to the lot owner not less than thirty (30) days prior to the date such assessments or charges become due and payable.
- 5.08. Thirty (30) days after any general or special charge and assessment shall be due and payable, and unpaid or not otherwise satisfied, the same shall be and become delinquent, and shall so continue until the amount of said charge and assessment, together with all costs, penalties and interest as herein provided, have been fully paid or otherwise satisfied.
- 5.09. At any time after any general or special charge and assessment against any lot has become delinquent, the Association may record a Notice of Delinquency as to such lot, which Notice shall state therein the amount of such delinquency and the interest, costs and penalties which have accrued thereon, a description of the lot against which the same has been assessed, and the name of the recorded or reputed record owner thereof, and such notice shall be signed by an officer of the Association; provided that upon the payment of said charges and assessments, interest, penalties and costs in connection with which such notice has been so recorded or other satisfaction thereof, the Association shall record a further notice stating the satisfaction and the satisfaction and the release of the lien thereof.
- 5.10. Immediately upon the recording of any Notice of Delinquency pursuant hereto, the amounts of the delinquency set forth therein and the interest, costs and penalties accruing thereon shall be and become lien upon the lot or lots described therein, which lien shall continue until the amount of such delinquency and the interest, costs and penalties accrued thereon has been fully paid or otherwise satisfied or the lien foreclosed as provided for herein.
- 5.11. Each lien created pursuant to the provisions of this Declaration by the recordation of a Notice of Delinquency, as hereinabove provided, may be enforced by sale by the Association, its attorney or other person authorized to make the sale. Such sale may be conducted in accordance with the provisions of Section 2924, 2924b and of 2924c of the California Civil Code or in any other manner permitted in law. The Association may bring separate legal action to collect said delinquent assessments without foreclosing such lien and before the Association has recorded a Notice of Delinquency. Interest shall accrue at the rate of ten percent (10%) per annum upon unpaid charges or assessments from the date of delinquency; in any action to collect said delinquent assessments or foreclose any such lien the Association shall be entitled to costs, including reasonable

attorney's fees as determined by a court of competent jurisdiction, and such penalties for delinquent charges and assessments as shall have been established by the Board.

- 5.12. Each and every lien, charge and assessment, together with any cost, penalties or interest, established, reserved or imposed under this Declaration shall be subordinate to any valid bona fide mortgage or trust deed (and the lien and/or title thereto) which has been or may hereafter be given in good faith and for value on any lot or property covered by this Declaration; provided, however, that any subsequent owner of any such lot shall be bound by the restrictions, conditions, covenants, reservations, liens and charges set out in this Declaration or any modification thereof, whether obtained by foreclosure or trust deed sale or otherwise, not including, however, any lien, charge or assessment arising prior to any sale under any such mortgage or trust deed.
- 5.13. The Association shall have the right, to the extent not paid by the several owners thereof, to pay all real property taxes and assessments levied upon any part or portion of the subject property for the amount paid by the Association pursuant to the right given by this section. Such assessment and lien imposed by the Association shall be enforced as provided in this Article.

ARTICLE VI

Insurance

- 6.01. The Association is authorized to maintain and continue any fire insurance policy originally taken out by Declarant on the property and improvements constructed thereon until the policy required by Section 6.02 is effective. The Association shall pay its pro-rata share of any premium on said policy taken out by Declarant accruing after the first meeting of the Board.
- 6.02. The Association shall contract for and pay for out of its general assessments funds a blanket fire insurance policy with extended coverage endorsements insuring all of the residences on the property. The premium for said blanket insurance policy shall be allocated equally to each of the residences on the property. Any such insurance coverage shall be for the benefit of the owners and each of them and their respective mortgages in accordance with their interest, and it shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgages of each residence, if any. Such policies may also be combined with other insurance, which the Association is obligated to maintain hereunder. Within three (3) days after it has obtained such insurance policy for the benefit of the owners, the Association shall give written notice thereof to the members. Within fifteen (15) days thereafter each owner shall execute any and all documents necessary to effectuate fully said coverage with respect to his residence, including cancellation of any existing coverage with respect to his residence, including cancellation of any existing coverage which may, in the opinion of the Board, by operation of a co-insurance or other clause serve to affect or reduce the coverage or potential recovery under any such blanket policy.

- 6.03. Each owner shall be responsible for maintaining insurance on the contents of his residence at his own expense and on his own account. Additionally, each owner shall be responsible for his own liability for incidents arising out of the use or occupancy of his residence.
- 6.04. The Association shall purchase and maintain fire insurance, with extended coverage and all physical loss endorsements, covering all structures, if any, constructed on the common area in an amount not less than the full replacement value of such structures. The Association shall also purchase and maintain liability insurance insuring against any liability incidental to any right of the Association or the owners to use or enjoy, under license or otherwise, any public property immediately adjacent to the property subject to the Declaration. Limits of liability under such policy shall not be less than \$200,000 for any one person injured, \$500,000 for any one accident and \$100,000 for property damage. Such policy shall insure the Association and all owners of interests in the common area and shall provide cross-liability endorsements wherein the rights of named insured's under the policy shall not be prejudiced respecting any action against another named insured. The Board may, from time to time, increase the limits of liability and may purchase and maintain such other insurance as the Board deems necessary, including, without limitation, workmen's compensation insurance, demolition insurance on personal property.

ARTICLE VII

Maintenance, Replacement and Improvement

- 7.01. The common area will be conveyed by Declarant to the Association and all such common areas and common facilities shall be maintained, cared for and managed exclusively by the Association for the benefit and use of the members of the Association. In addition, the Association may, to the extent it deems the same reasonably necessary for the maintenance of the appearance of the property, or any part thereof, maintain and improve any adjacent public areas, including street rights-of-way, not otherwise maintained by a public agency.
- 7.02. In the event any common area or common facility is damaged or destroyed through the act or omission of any owner or his guests, members of his family, agents, or employees, whether or not such act or omission is negligent or otherwise culpable, such owner shall forthwith proceed to rebuild and repair the same to as good condition as formerly existed, without cost to the Association.

- 7.03. In order to preserve a uniform and attractive appearance of these residences, the Association shall have the exclusive right to maintain the exterior walls, fences, roofs and all other building parts affecting the exterior appearance of the buildings located on Lots 1-20, inclusive. Such exterior maintenance shall not include the repair, replacement of cleaning or glass surfaces or the maintenance of any floor, deck surface or area within the interior of the balconies or patios. Nor shall it impose any obligation on the Association to rebuild or replace any damaged or destroyed residence, irrespective of the cause thereof, such restoration being provided for above in Section 3.01. In addition, the Association shall have the exclusive right to landscape and maintain such landscaping of all portions of Lots 1-20, inclusive, except those areas within the balconies or patios as herein defined. In the event that the need for exterior maintenance or repair is caused by an act of an owner or any of his agents or guests or members of his family, whether or not such act is negligent or culpable, and then such owner shall pay the cost of such maintenance or repair.
- 7.04. Except for the maintenance of the exterior as provided in Section 7.02m each owner shall maintain at his own cost and expense, his residence, provided that no owner shall make any alteration, repair or addition to his residence which would affect the exterior appearance thereof, without the written approval of the Association. In the event an owner shall fail to maintain the premises as herein specified, the Association should have a right to repair, maintain, rehabilitate and restore the same.
- 7.05. In the event any owner fails to repair or replace any common facility which he is required to repair under Section 7.02, or fails to repair or replace any exterior walls, roofs or landscaping for which he is liable under Section 7.03, or in the event the Association is required to undertake the maintenance of the interior of the residence of any owner pursuant to Section 7.04, then in any event the cost thereof shall be a special assessment upon the lot of such owner under Section 5.06.
- 7.06. With respect to the maintenance of sanitary, sewer, water, electricity, gas, telephone and television lines and connections, herein referred to as "utility lines", the following shall be applicable:
- a) In the event any such utility line is damaged or destroyed by an act of an owner or any of his agents or guests or members of his family, whether or not such act is negligent or culpable, then such owner shall replace or repair the same to as good a condition as formerly existed without cost to other owners served by such utility line.
 - b) In the event any such utility line is damaged or destroyed by some cause other than the act of any owner or any person for whose action the owner is responsible, including ordinary wear and tear and deterioration from the lapse of time, then in such event if such damage or destruction or condition occurs within the boundaries of a residence lot, the owner of such residence lot shall replace or repair the same and if such damage or destruction or condition occurs within the common area, the Association shall replace or repair the same.

- c) In the event that one or more owners shall fail to repair any utility line as hereinabove specified, the association shall have the right to repair such line. The cost thereof shall be a special assessment upon the lot or lots of the owners who are responsible therefore under the provisions of this section.

7.07. Damage or Destruction

- a) In the event of damage to \or destruction of a residence and such loss is covered by an insurance policy carried by the Association pursuant to Article VI, the proceeds allocable to such damage or destruction shall be paid to the owner who shall be obligated to rebuild such residence pursuant to Section 3.03.
- b) In the event of damage to common facilities and no owner is responsible therefore under the terms of Section 7.02, and, regardless of the existence or adequacy or insurance proceeds to cover the loss, the Association shall rebuild such common facilities substantially in accordance with the original plans and specifications therefore. Any funds required for such reconstruction and not covered by insurance proceeds shall be assessed to the owners by special assessment pursuant to Section 5.06.

7.08. In the event of a taking by condemnation of a portion or all of the property and improvements thereon, the awards for each residence lot shall be paid to the owner's thereof and shall include such lot's interest in all the common area and common facilities, and the award made to the Association, if any, for the condemned common area and common facilities shall be paid to the Association as trustee for division among all owners of residence lots not taken in the condemnation proceedings.

7.09. When termite/dry rot damage is discovered, usually when a unit is sold, it is the responsibility of the selling owner to cause the repairs to be completed. The Vista Madera Homeowners Association has no financial responsibilities.

ARTICLE VIII

Easements

8.01. The common area shall be owned by the Association in fee simple for the use, enjoyment and convenience of the owners, and shall contain the streets, parking areas, walkways, recreational areas, storage and trash areas, and all other areas not a part of the residence lots. Each residence lot within the properties Subject to this Declaration is hereby declared to have an easement over all of the common area, for the benefit of the residence

lots, the owners of the residence lots and each of them for their respective families, guests and invitees, for all of the purposes and uses hereinabove set forth and without limiting the generality of the foregoing for recreational and parking purposes and use, and for ingress and egress over and through the common area, subject, however, to the right of the Declarant and the Association to regulate all uses of the common area and common facilities by reasonable rules and regulations.

- 8.02. Each residence lot is hereby declared to have an easement over all adjoining residence lots and the common area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhangs or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of owners shall not be altered in any way by said encroachment, settling or shifting, 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 misconduct of said owner or owners.

In the event a structure on any residence lot is partially or totally destroyed, and then repaired or rebuilt, the owners of each residence lot agree that minor encroachments over adjoining residence lots shall be permitted, and there shall be valid easements for the maintenance of said encroachments as long as they shall exist.

- 8.03. Declarant and the Association shall have an easement over each lot its maintenance, repair and replacement obligation imposed hereunder both for the common area and the residences.
- 8.04. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the residence lots and hereafter be applied against or in favor of the property which is the subject of this Declaration or any portion thereof with the exception of (a) easements granted under Section 8.06 (b) licenses granted under Section 8.07, and (c) assignment of vehicle parking spaces made under Section 8.08.
- 8.05. The rights and duties of the owners of the residence lots within the properties with respect to sanitary sewers and water, electricity, gas, television, and telephone, and telephone lines shall be governed by the following:
- a) Wherever sanitary sewer house connection and/or water house connections or electricity, gas, or telephone or television lines are installed within the properties, which connections or any portion thereof lie in or upon residence lot served by said connections, as and when the same may be necessary as set forth below; if entry into a residence is required hereunder, the party making such entry must give reasonable notice to the owner of such residence.

- b) Wherever sanitary sewer house connections and/or water house connections or electricity, gas, or telephone and television lines are installed within the properties, which connections serve more than one residence lot, the owner of each residence lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his residence lot.
- 8.06. Until conveyed to the Association Declarant shall have the right to grant exclusive and non-exclusive, specific as well as blanket easements in, on, over, under and through the common area for all utility services and purposes. After the common area is conveyed to the Association, it shall have the exclusive right to grant such easements.
- 8.07. The Association may license portions of the common area to an owner provided that (i) the license is revocable at the will; (ii) such owner maintains such common area; and (iii) upon termination of the license such common area shall be restored by the licensee-owner to its condition as existing upon the grant of the license.
- 8.08. The Association shall have the right to grant exclusive and non-exclusive, and specific as well as blanket, easements in, on, over, under and through the common area for all utility services and purposes.

ARTICLE IX

Miscellaneous

- 9.01. No breach of said covenants, conditions, restrictions and rights, or any right of entry by reason thereof, shall defeat or render invalid any lien or any mortgage of deed of trust made in good faith and for value. However, each and all of said covenants, conditions, restrictions, rights, liens and charges may be enjoined, abated or reviewed by appropriate proceedings, notwithstanding the lien or existence of any such mortgage.
- 9.02. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, and reservations imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 9.03. The purchaser of any lot in said subdivision, by the acceptance of a deed therefore, whether from Declarant or from subsequent owners of such property, or by the signing of a contract or agreement, if such contract provides for a transfer of membership rights and obligations upon the signing thereof, consent to becoming a member of the Association, to abide by the Articles of Incorporation and bylaws thereof and to accept all of the benefits and obligations of members thereof.
- 9.04. Declarant shall be liable for the payment of all general and special charges and assessments and subject to all liens to secure the payment of same pursuant to Article V

of this Declaration upon any lot or lots owned by Declarant at the times as provided in Article V thereof and in the same manner as such charge or assessment shall be an obligation of any other lot owner within the subject property.

- 9.05. In the event of any litigation to enforce the terms of this Declaration of Covenants, Conditions and Restrictions, including the collection of any delinquent assessment or any of the terms hereof, the prevailing party therein shall be allowed to recover from the other party all court costs and a reasonable attorney's fee, which shall be fixed by the court.
- 9.06. Except as provided by Section 752b of the California Code of Civil Procedure, there shall be no judicial partition of the common area or any part thereof, nor shall Declarant or any person acquiring interest in one or more of the lots or any part thereof, and/or residence constructed thereon, seek any judicial partition, provided however, that if any lot and residence thereon shall be owned by two or more cotenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such cotenants.
- 9.07. Any lease of a residence in the development shall provide that the lease is subject to in all respects the provisions of the Declaration, the Articles of Incorporation of the Association and the Bylaws. Such lease shall further provide that any failure by the lessee to comply with the terms of such document shall be a default under the lease. All leases of residences shall be in writing.
- 9.08. In the event of any condemnation or other taking of property within the development by a public or governmental agency, the following shall govern:
- a) The Association shall give notice to any holder of a first trust deed against the real property involved in the pending proceedings.
 - b) Any proceeds obtained pursuant to such proceedings shall be divided among the owners and lenders as their interests may appear.
- 9.09. Any owner who is damaged by the breach by another owner of this Declaration or the Bylaws or the Articles of Incorporation of the Association, may bring an action either to recover damages for any loss sustained thereby or to seek injunctive relief to enforce such provisions, or both.
- 9.10. The provision hereof shall be deemed independent and severable, and invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.
- 9.11. In the event that there is any conflict between the terms of this Declaration, the Bylaws or Articles of Incorporation of the Association, this Declaration shall control.

ARTICLE X

Information for and Rights of Holders of First Trust Deeds

- 10.01. This article shall pertain to and be for the benefit of all first mortgages and all beneficiaries of first deed of trust covering a residence lot.
- 10.02. The Association will give notice, in writing, to the record holder of any first mortgage of any residence lot, if he has filed a written request for notification with the Board of Directors of the Association, in the event that the owner of such shall default in his monetary obligations under this Declaration and such default shall not be cured within thirty (30) days after the occurrence thereof.
- 10.03. Any holder of a first mortgage who comes into possession of a residence lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall take the property free of any claims for unpaid assessments or charges against the mortgaged lot which accrue prior to the time such holder comes into possession of the lot (except for claims for a pro-rata share of such assessments or charges resulting from a pro-rata reallocation of such assessments or charges to all lots including the mortgaged lot.)
- 10.04. Unless the holders of seventy-five percent (75%) of first mortgages against the residence lots have given their prior written approval, the Association shall not be entitled to:
- a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by Association for the benefit of the residence lots.

The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the owners of the Association shall not be deemed a transfer within the meaning of the clause.
 - b) Change the method of determining the obligations, assessments, dues or other charges, which may be levied against the owner of a residence lot.
 - c) By act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the Development.
 - d) Use hazard insurance proceeds for losses to any common property for other than the repair, replacement or reconstruction of such improvements.
- 10.05. All first mortgages of residence lots shall have the right to examine Association books and records during normal business hours.

- 10.06. All first mortgages of residence lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of policy, for such property and first mortgages making such payment shall be owed immediately reimbursement therefore from the Association.
- 10.07. There is, or will be, established by Association an adequate reserve fund for replacement of common property, which reserve is, or shall be, funded by regular monthly payments.

The Association will at all times:

- a) Maintain fire and extended coverage on insurable common property 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.) Such insurance must name as the insured the Association.
- b) Maintain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers, responsible for handling funds collected and held for the benefit of the owners. The fidelity bond or insurance must name the Association as the name insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.
- c) Maintain a comprehensive policy of public liability insurance covering all the common area. Such insurance shall contain a "Severability of Interest" endorsement, which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Association or other owners.

ARTICLE XI

Duration and Amendment

- 11.01. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject tot his Declaration, their respective legal representation, heirs, successors, and assigns, for a term of twenty (20) years from the date of this Declaration's recordation, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless prior to the exploration of any term, including the initial term, an instrument executed by not less than seventy-five (75%) of the owners other than Declarant has been recorded canceling and terminating this Declaration..

11.02. This Declaration of Restrictions may be amended or terminated in whole or in part as to all or any part of the subject property by a written instrument duly executed by the following and recorded in the Office of the County Recorder of Santa Barbara County;

- a) As to all or any part of said property at the time all is owned by Declarant, the same may be executed by Declarant alone.
 - b) After the sale of the first lot in the property, the same shall be executed by the owners of record of seventy-five percent (75%) or more of the lots within the property other than Declarant.
-

CERTIFICATION

The undersigned hereby certifies that:


The foregoing Restated Declaration has been approved by seventy-five percent (75%) of the owners of interest, being the number required for amendments pursuant to the terms of the "Declaration of Covenants, Conditions, and Restrictions for Vista Madera" recorded January 27, 1978 as Instrument No. 78-4096.

I am the duly elected and acting President of the Vista Madera Owners' Association.

THEREFORE the undersigned executes this Restated Declaration pursuant to Civil Code Section 1355, and it shall be deemed effective for all purposes on the date of its recording in the Office of Official Records of Santa Barbara County, California.

DATED: September 28, 2001

VISTA MADERA OWNERS' ASSOCIATION

By: 
Gabriele Huth, President

Lots 1 through 21 of Tract 20,126, in the City of Santa Barbara, County of Santa Barbara, State of California, as shown on map filed in Book 93, Pages 78 and 79 of Maps, in the Office of the County Recorder of Santa Barbara County.

Exhibit "A"

STATE OF CALIFORNIA)
) : ss.
COUNTY OF SANTA BARBARA)

On this 2 day of September, 2001, before me the undersigned, a Notary Public in and for said state and county, personally appeared Gabriele Huth, ~~personally known to me~~, (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal. (seal)

Brigitte L. Spencer

