

*3-99 Disclosure: These original CCR's have been retyped for clarity and proofread to the best of our ability. The originals are recorded in San Diego County, FILE # 246954*

*There are approved amendments attached (2-20-83) that were recorded on 4-29-83 FILE #831-41006.*

*State Assembly Bills are passed that will overrule these (ie:rate increases). We adhere to these new laws.*

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**LARWIN MESA VIEW UNIT NO. 11, San Diego County**

LARWIN-SAN DIEGO, INC., a Corporation (hereinafter referred to as "Declarant"), the Owner of the real property described in Exhibit "A", said description being a portion of Larwin Mesa View No. 11, in the City of San Diego, County of San Diego, State of California, as per Map No. 7039 recorded in the office of the County Recorder of said County, (hereinafter referred to as this "Tract") for the purpose of establishing a General Plan for the residential development and improvement and use of said lots, as set forth in Part I of this Declaration, and for the use and enjoyment by the Owners of said lots of a private park and recreation facility, as set forth in Part II of this Declaration, does hereby declare that all of said real property shall be held, occupied, sold and conveyed subject to the covenants, conditions, restrictions, reservations, easements, liens and charges hereinafter set forth all of which shall run with the land, and shall be binding on all parties having or acquiring any right, title or interest in said real property, or any part thereof, and shall inure to the benefit of each Owner thereof; and all of which are imposed upon said land, and every part thereof, as a servitude in favor of each and every parcel thereof as the dominant tenement or tenements, as follows:

**PART I  
USE RESTRICTIONS PERTAINING TO RESIDENTIAL LOTS**

1. The property described in Exhibit "A" shall be known and described as residential lots. No structure shall be erected, altered, placed or permitted to remain on any residential lot other than one single-family dwelling not to exceed two stories in height, and a private garage for not more than three cars and other out-buildings incidental to residential use of the lots.

2. No building shall be erected, placed or altered on any residential lot described herein until the building plans, specifications, and plot plan showing the location of such building have been approved in writing as to conformity of external design with existing structures in the tract, and as to location of the building and with respect to topography and finished ground elevation, by a Committee of Rembrandt P. Lane, Lawrence Weinberg and Richard L. Weiss, 9100 Wilshire Boulevard, Beverly Hills, California, or by a representative designated by a majority of the members of said Committee. The

Committee shall notify an applicant for such approval of its action within thirty (30) days after said plans and specifications have been submitted to it; or, in any event, if no suit to enjoin the erection of such building or the making of such alteration has been commenced prior to the completion thereof, such approval will not be required, and this covenant shall be deemed to have been fully complied with. In the event of the death or resignation of any member of said Committee, the remaining member or members shall have the authority to approve a successor or successors. No member of such Committee, nor its designated representative, shall be entitled to any compensation for such services performed pursuant to this covenant. The powers and duties of such Committee, and of its duly-designated representative, shall cease three (3) years after the recording of this instrument. Thereafter, such powers and duties shall be vested in the Board of Directors of the Association referred to in Part II of this instrument, or in a Committee duly appointed by such Board of Directors.

3. All buildings erected or constructed on any lot shall conform to the ordinances and statutes pertaining thereto.

4. No building shall be located on any lot nearer to the front lot line or side street line, nor nearer to the side or rear yard line of such lot than shall be permitted by the ordinances and regulations of the applicable governmental agency governing the same, nor in any event closer to the front and side yard lines than established by the original construction of such building; provided that no side yard set-back shall be required for a garage or other permitted accessory building located thirty (30) feet or more from the front lot line. For the purposes of this covenant, eaves, steps and open porches shall not be construed to permit any portion of a building on a lot to encroach upon any other lot.

5. No noxious or offensive trade or activity shall be carried on upon any lot described herein, nor shall anything be done thereon which may be or become an annoyance to the neighborhood.

6. No trailer, basement, tent, shack, garage, bar or other cut-building erected on any lot described herein, shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

7. No residence shall be erected or permitted on any lot or building plot in said tract containing less than 900 square feet of floor area. Such area shall be exclusive of attached garage and open entries, porches, patio or basement. The minimum required floor shall be deemed to include the total enclosed floor area of the residence, building measurements to be taken for this purpose from the outer facing of exterior walls.

8. No derrick or other structure designed for use in boring, mining or quarrying for oil or natural gas, or precious minerals, shall be erected, maintained or permitted upon any lot in said tract, provided that nothing in this Declaration shall be construed to restrict a public utility from erecting, maintaining and operating upon any lot owned by it in said tract, a well, housing, and equipment for the purpose of extracting water from the subsurface and/or for the treatment, storage, and distribution of water through the system of such public utility.

9. No sign, billboard or other advertising device of any character shall be erected

or maintained upon any part of said tract or any lot therein; excepting, however, one sign for each lot (with dimensions of not more than 18 inches by 24 inches) advertising such lot for sale or rent, and provided, further, that Declarant (or its successors or assigns) may erect and maintain within said tract such signs, billboards and other advertising devices or structures as Declarant (or said successors or assigns) may deem necessary or proper in connection with the development, subdivision and sale of said tract, or the lots therein.

10. No radio or television receiving or transmitting antennae, or external apparatus shall be installed on any lot. Normal radio and television installations wholly within a building are excepted.

11. Easements for installation and maintenance of the utilities, sewer pipelines and facilities and drainage facilities over each of said lots, and all pipelines and other facilities located and to be located in said easements are reserved as shown on the said recorded map. Within these easements no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which public authority or a utility company is responsible. In addition, all sewer pipelines and other sewer facilities located and to be located within public roads, streets and highways abutting each of said lots are reserved.

12. The covenants in this Part I are to run with the land and shall be binding on all parties and persons claiming under them until December 31, 2001, at which time said covenants shall automatically be extended for successive periods of ten (10) years, unless by a vote of a majority of the then Owners of the lots it is agreed to change said covenants in whole or in part. Said covenants may be amended at any time prior to December 31, 2001, by an affirmative vote of not less than 75% of owners of the lots.

13. If any person or persons shall violate or attempt to violate any of the covenants in this Part I, it shall be lawful for any other person or persons owning any of the lots described herein to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants, and either to prevent him or them from so doing or to recover damages or other dues for such violations.

14. Breach of any of the covenants in this Part I shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said lots or property, or any part thereof, but such provisions, restrictions, or covenants shall be binding and effective against any owner of said property whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

**PART II**  
**PARK AND**  
**RECREATIONAL FACILITIES**

**ARTICLE I**  
**DEFINITIONS**

As used in Part II of this Declaration, the following terms shall have the meaning as follows:

Section 1. "Association" shall mean and refer to MESA VIEW HOMEOWNERS ASSOCIATION NO. 3., a non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean the real property, together with the recreational facility located thereon, owned by the Association for the common use and enjoyment of the members of the Association, as more fully described in Article II hereof.

Section 3. "Lot" shall mean and refer to a recorded lot within a tract located within the area described in Exhibits "A" and "C" hereof, upon which there has been or will be constructed a single family residence.

Section 4. "Member" shall mean and refer to every person or entity who holds membership in the Association. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot, but excluding those having such interest merely as security for the performance of an obligation. As used herein, "Owner" shall mean "Member" and "Member" shall mean "Owner".

Section 5. "Mortgage" shall mean the establishment of a lien upon a lot to secure the performance of an obligation.

Section 6. "Mortgagee" shall mean a person or entity to whom a mortgage is made; "Mortgagor" shall mean a person or entity who mortgages his or its property to another, i.e., the maker of a mortgage.

Section 7. Wherever the word "deed of trust" is used herein, it shall mean and be synonymous with the word "mortgage," and the same be used interchangeably with the same meaning; and likewise, the word "Beneficiary" shall be synonymous with the word "Mortgagee."

**ARTICLE II**  
**COMMON AREA**

Section 1. Conveyance of the Common Area. Prior to the first conveyance to an individual owner of any lot in this Tract which lot is improved with a single family residential structure, there will be conveyed to the Association the common area,

described as:

See Exhibit "B" incorporated herein by reference.

Such conveyance shall be made free and clear of all encumbrances and liens except current real property taxes, which taxes shall be prorated to the date of transfer, and easements for utility and drainage purposes and conditions, restrictions and reservations then of record, including those set forth in this Declaration.

Said common area shall be used and maintained as a private park and recreational area for purposes incidental thereto. Said common area shall be for the exclusive use and enjoyment of the owners of lots in this Tract, and of the owners of the lots in other tracts located within the area described in Exhibit "C" hereof, provided that such additional tracts have complied with the annexation provision set forth in Section 2 hereof.

Section 2. Annexation Pursuant to General Plan. The lot owners in each of the tracts located within the area described in Exhibit "C" hereof, shall be entitled to the members of the Association and to the use and enjoyment of the common area provided and on condition that:

(a) Any annexation pursuant to this section will be made prior to three (3) years from the date of recording of this Declaration.

(b) The development of the additional tracts shall be in accordance with a general plan of development submitted to the Federal Housing Administration and the Veterans Administration with the processing papers for this tract.

(c) Detailed plans for the development of each portion of the additional tracts shall have been submitted to, and approved by, the Federal Housing Administration or the Veterans Administration prior to the development thereof.

(d) There shall have been recorded with respect to such additional tract, a Declaration or Supplementary Declaration or similar instrument making the lots therein subject to the scheme of Part II of this Declaration, including provisions subjecting said lots to assessment by the Association.

(e) Prior to the conveyance of any improved lots in a recorded tract located within the real property described in Exhibit "C" of the Declaration, fee simple title to the common area within said tract shall be conveyed to the Association, free and clear of all encumbrances and liens, except current real property taxes, which taxes shall be prorated to the date of transfer, and easement, conditions and reservations then of record, including those set forth in this Declaration.

Section 3. Annexation Pursuant to Approval. Upon approval in writing of the Association, pursuant to a three-fourths majority of the voting power of its members, or the written assent of such members, excluding the voting power or written asset of the Declarant, the owner of any property who desires to add it to the scheme of Part II of this Declaration and to subject it to the jurisdiction of the Association, may file of record a

Declaration, or Supplementary Declaration as described in Paragraph (d) of Section 2 of this Article II. The procedure set forth in this Section shall be in addition to and not in substitution for the procedure outlined in Section 2 of this Article.

Section 4. Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Covenants and Restrictions established by Part II of this Declaration, together with the covenants and restrictions established upon any other properties, as one scheme.

### ARTICLE III MEMBERSHIP

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association and is entitled to the use and enjoyment of the common area, shall be a member of the Association. No owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from the fee ownership of any lot which is subject to assessment by the Association. Only owners of lots within this tract, within the areas described in Exhibit "C" hereof or within other areas annexed hereto pursuant to Article II, Section 3 hereof shall be eligible for membership. Ownership of such lot shall be the sole qualification for membership.

Section 2. Transfer. The membership held by any owner of a lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such lot, and then only to the purchaser or mortgagee of such lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. In the event the owner of any lot should fail or refuse to transfer the membership registered in his name to the purchaser of such lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new certificate to the purchaser; and thereupon the old certificate outstanding in the name of the seller shall be null and void as though the same had been surrendered.

### ARTICLE IV VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those owners as defined in Article III with the exception of the Declarant. Class members shall be entitled to one vote for each lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. Class B member(s) shall be the Declarant (as defined in the Declaration). The Class B member(s) shall be entitled to three (3) votes for each lot in which it holds the interest required for membership by Article III, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) Three (3) years from the date of recordation of this Declaration.

Section 2. Members shall be entitled to vote for each lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any lot, all such persons shall be members, and the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such lot. Said voting rights shall be subject to the restrictions and limitations provided hereinafter and in the Articles of Incorporation and the by-laws of the Association.

## ARTICLE V PROPERTY RIGHTS IN THE COMMON AREA

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of use and enjoyment in and to the common area, and such easement shall be appurtenant to and shall pass with the title to every assessed lot, subject to the following provision:

- (a) The right of the Association to limit the number of guests of members.
- (b) The right of the Association to establish uniform rules  
And regulations pertaining to the use of the common area and the recreational facilities located thereon.
- (c) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area.
- (d) The right of the Association, in accordance with its Articles and by-laws, to borrow money for the purpose of improving or reconstructing the common area and facilities thereof and in aid thereof, to mortgage said property, provided that the rights of such mortgagee shall be subordinated to the rights of the members.
- (e) The right of the Association to suspend the voting rights and right to use of the common area of a member for any period during which any assessment against his lot remain unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association, provided that any suspension of such voting rights or right to use of the common areas, except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in

accordance with the by-laws of the Association.

(f) 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 members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) nor more than sixty (60) days in advance.

(g) The right of Declarant or the developers of other tracts within the area described in Exhibit "C" hereof, (and their respective sales agents and representative) to the non-exclusive use of the common area and the facilities thereof, for display and exhibit purposes in connection with the sale of residential units within such tracts, which right Declarant hereby reserves, provided however, that such use shall not be for a period of more than three (3) years after the conveyance of the common area to the Association, or the sale of all the residential lots in said tract, whichever is the earlier; nor shall the members be otherwise restricted in their use and enjoyment of said common area.

Section 2. Delegation of Use. Any member may delegate, in accordance with the by-laws, of the Association, his right of enjoyment to the common area to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Waiver of Use. No member may exempt himself from personal liability for assessments duly levied by the Association, nor release the lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the common area by abandonment of his lot.

## ARTICLE VI COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personnel Obligation of Assessments. The declarant, for each lot owned by it within this Tract and any other lots annexed pursuant to Section 2 of Article II hereof, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) regular assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The regular and special assessments, together with the such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.



Section 2. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of operating the Association for the benefit, welfare and enjoyment of its members, and in this connection, for the maintenance and improvement of the common area and the facilities thereon, and to provide funds for the Association to carry on its duties set forth herein or in its Articles of Incorporation and By-Laws.

Section 3. Basis and Maximum of Regular Assessments. Until July 1st of the year immediately following the conveyance of the first lot to an owner, the maximum regular assessment shall not exceed \$ 3.99 per lot per month.

- (a) From and after July 1st of the year immediately following the conveyance of the first lot to an owner, the maximum monthly assessment may be increased effective July 1st of each year by the Board of Directors of the Association without a vote of the membership, provided that any such increase shall not be more than three (3%) per cent, exclusive of any increases resulting from increases in real property taxes on the common area. Such monthly assessment shall continue in effect for the fiscal year, which period shall be deemed to be the assessment period.
- (b) From and after July 1st of the year immediately following the conveyance of the first lot to an owner, the maximum regular assessment may be increased by the Board of Directors of the Association in an amount greater than provided for in subsection (a) hereof for the next succeeding twelve (12) calendar months, and at the end of each such period for each succeeding period of twelve (12) months, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members voting in person by proxy, at a meeting duly called for such purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.
- (c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the regular monthly assessment at a lesser amount than provided for above.

Section 4. Special Assessments for Capital Improvements. In addition to the regular assessments authorized above, the Association may levy in any fiscal year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the voting power of each class. Such vote shall be taken at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting.

Section 5. Uniform Rate of Assessment. Both regular and special assessments shall be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 6. Quorum for any Action Authorized under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty (60) percent of the votes of each class of membership, shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Regular Assessments and Fixing Thereof.

- (a) The regular assessments provided for herein shall commence as to all of LARWIN MESA VIEW UNIT NO. 11 of the Common Area to the Association. The regular assessments as to lots in other tracts, if said lots shall have become subject to assessment by the Association, shall commence with respect to all lots within each such tracts, on the first day of the month following the conveyance of the Common Area in such tract to the Association, and in the event there is no Common Area in a particular tract, then on the first day of the month following the conveyance of the first lot therein to an individual owner.
- (b) Subject to the Provisions of Section 3 hereof, the Board of Directors shall determine and fix the amount of the regular monthly assessment against each lot at least thirty (30) days in advance of each assessment period. An assessment period shall be deemed to be for the twelve (12) months of each fiscal year, provided that if the month of the commencement of the initial assessments shall be deemed to be to the end of such fractional fiscal year. Written notice of the assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors.

Section 8. Certificate of Payment. The Association shall, upon demand, furnish to any owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether the regular and special assessments on a specified lot have been paid and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) All properties dedicated to and accepted by a local public authority; (b) the common area; and (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of California. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

EFFECT OF NON PAYMENT OF ASSESSMENTS  
REMEDIES OF THE ASSOCIATION

Section 1. Delinquency. Any assessment provided for in this Declaration, which is not paid when due, shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the Association may, at its election, require the owner to pay a "late charge" in a sum to be determined by the Association, but not to exceed one dollar (\$1.00) per each delinquent assessment. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the then legal rate, and the Association may, at its option, bring an action at law against the owner personally obligated to pay the same, or, upon compliance with the notice provisions set forth in Section 2 hereof, to foreclose the lien (provided for in Section 1 or Article VI hereof) against the lot, and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing the complaint in such action, and in the event a judgement is obtained, such judgement shall include said interest and a reasonable attorney's fee, together with the costs of action. Each owner vests in the Association or it assigns, the right and power to bring all actions at law or lien foreclosures against such owner or other owners for the collection of such delinquent assessments.

Section 2. Notice of Lien. No action shall be brought to foreclose said assessment lien or to proceed under the power of sale herein provided less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the owner of said lot, and a copy thereof is recorded by the Association in the office of the County Recorder in which the properties are located; such notice of claim must recite a good and sufficient legal description of any such lot, the record owner or reputed owner thereof, the amount claimed (which may at Association's option include interest on the unpaid assessment at the legal rate, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of claimant.

Section 3. Foreclosure Sale. Any such sale provided for above is to be conducted in accordance with the provisions of Section 2924, 2924b and 2924c of the Civil Code of the State of California, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The association, through its duly authorized agents, shall have the power to bid on the lot at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

Section 4. Curing of Default. Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting owner of a fee, to be determined by the Association, but not to exceed Fifteen (\$15.00) Dollars, to cover the costs of preparing and filing or recording such release.

Section 5. Cumulative Remedies. The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgement for unpaid assessments, as above

provided.

Section 6. Subordination of Assessment Liens. If any lot subject to a monetary lien created by Part II of this Declaration shall be subject to the lien of a first mortgage or deed of trust: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage or deed of trust; and (2) the foreclosure of the lien of such mortgage or deed of trust or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage or deed of trust, with the foreclosure-purchaser or deed-in-lieu-grantee taking title free of the lien hereof for all said charges that have accrued up to the time of the foreclosure or deed given in lieu of foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the foreclosure or deed given in lieu of foreclosure.

## Article VIII DUTIES AND POWERS OF THE ASSOCIATION

In addition to the duties and power enumerated in its Articles of Incorporation and By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) Own, maintain, improve, construct, reconstruct (in the event of deterioration or destruction) and manage all of the common area and all facilities, improvements and landscaping thereon, and all property acquired by the Association, and to pay all the costs thereof.
- (b) Pay all real and personal property taxes and other charges assessed against the common area.
- (c) Have the authority to obtain, for the benefit of the common area, all water, gas and electric service and refuse collection.
- (d) Grant easements where necessary for utilities and sewer facilities over the common area to serve the common area.
- (e) Maintain such policy or policies of insurance on the common area as the Board of Directors of the Association deem necessary or desirable in furthering the purposes of and protecting the interests of the Association and its members.
- (f) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as manager or managing agent shall provide for the right of the Association to terminate the same at the first annual meeting of the members of the Association, or when membership in Class B is terminated as provided for in Section 1, Article IV of Part II.
- (g) Enforce applicable provisions of this Declaration and the By-Laws, of the Association and to establish and enforce uniform rules and regulations pertaining

to the use of the common area and the recreational facilities thereof.

## Article IX GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of Part II of this Declaration or any amendment thereto provided, however, that no Owner shall have the right to enforce any assessment lien by non-judicial means, and provided further that, as a condition prerequisite to enforcement of any part hereof by any Owner, such Owner must plead and prove (i) service of written demand upon the Board of Directors of the Association for enforcement and (ii) the failure, within a reasonable time, of the Board of Directors to act. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Term. The covenants, restrictions, liens, and charges of Part II of this Declaration shall run with and bind the properties, and shall insure to the benefit of and be enforceable by the Association, its respective legal representatives, successors and assigns, until December 31, 2001, after which time said Declaration shall be automatically extended for a successive period of ten (10) years, unless an instrument, signed by a majority of the then owners of all lots then subject to assessment by the Association, has been recorded, agreeing to change said covenants and restrictions in whole or in part.

Section 4. Interpretation. The Article and Section headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Amendments. Prior to the expiration of the original term of this Declaration, Part II of this Declaration of Covenants and restrictions may be amended only by an affirmative vote of not less than seventy-five (75%) percent of the owners of all lots subject to assessment by the Association, and, further, this amendment provision shall not be amended to allow amendments by vote of less than seventy-five (75%) percent of the owners.

Section 6. FHA or VA Approval. As long as the Declarant is the owner of more than twenty-five percent (25%) of the lots, the following actions will require the prior approval of the FHA or VA: Dedication of common area and amendment of Part II of this Declaration.

Section 7. Mortgage Protection Clause. No breach of the covenants, conditions

or restrictions contained in this Part II, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of said covenants, conditions whose title is derived through foreclosure or trustee's sale, or otherwise.

IN WITNESS WHEREOF, Declarant has executed this instrument this 26th day of October, 1971.

LARWIN-SAN DIEGO, INC.

By \_\_\_\_\_  
Vice President

Asst. Secretary      By \_\_\_\_\_

*3-99 Disclosure: These approved amendments to the CCR's (2-20-83) were recorded on 4-29-83  
FILE # 831-41006. They have been retyped for clarity and proofread to the best of our ability.*

*These 3 amendments increased the late charges and clarified the antennae & lien restrictions.*

*Since then, State Assembly Bills have been passed and we adhere to these new laws.*

## **RESOLUTION APPROVING AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

WHEREAS, a special meeting of the shareholders of Mesa View Homeowners Association No. 3, Inc. was held on February 20, 1983, at 1:10 p.m. at the common area known as the "pool", for the purpose of voting on amendments to certain provisions of the Declaration of Covenants, Conditions and Restrictions of the corporation; and

WHEREAS, a tabulation of the votes of the members at the special meeting was made by Sigrid Holtz, acting as the duly appointed and qualified Inspector of Elections, and was submitted by at the special meeting by Sharon McCollum; and

WHEREAS, it is deemed to be in the best interests of this corporation and its shareholders that the Declaration of Covenants, Conditions and Restrictions of the corporation be amended in certain respects;

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions of the corporation were previously filed and recorded with the San Diego County Recorders office, file/page number 246954, on October 26, 1971;

WHEREAS, the corporation has complied with all of the requirements of the Covenants, Conditions, and Restrictions in amending them;

NOW, THEREFORE, BE IT RESOLVED, that the following amendments to the Declaration of Covenants, Conditions, and Restrictions of this corporation are approved and adopted by the shareholders of this corporation:

**Part II, Article VII**, Section 1 of the Declaration of Covenants, Conditions, and Restrictions is hereby amended to read in its entirety as follows:

Section 1. Delinquency. Any assessment provided for in this declaration, which is not paid when due, shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the association may, at its election, require the owner to pay a "late charge" in a sum to be determined by the association, but not to exceed \$1.00 per, each delinquent assessment. A late notice may be issued 15 or more days after the assessment becomes delinquent. If the assessment is still not paid 15 days after the late notice has been issued, then an additional late chare may be added to the assessment, to be determined by the association, but not to exceed \$5.00 per each delinquent assessment. This second late charge cannot exceed \$5.00 during the 1<sup>st</sup> year it is initiated but may be increased annually on July 1<sup>st</sup> of each year by the Board of Directors, provided that any such increase shall not be more than five (5%) percent per year. If any assessment is not paid within thirty (30) days after the delinquency date, the

assessment shall bear interest (in addition to the late charges) from the date of delinquency at the then legal rate, and the association may, at its option, bring legal action against the owner personally obligated to pay the same, or, upon compliance with notice provisions set forth in Section 2 hereof, to foreclose the lien (provided for in Section 1 of Article VI hereof) against the lot, and there shall be added to the amount of such assessment the late charge, the cost of preparing and filing the complaint in such action, and in the event a judgement is obtained, such judgement shall include said interest and a reasonable attorney's fee, together with the cost of action. Each owner vests in the association or its assigns, the right and power to bring all actions at law or lien foreclosures against such owners or other owners for the collection of such delinquent assessments.

**Part I, #10** of the Declaration of Covenants, Conditions, and Restrictions is hereby amended to read in its entirety as follows:

10. No radio or television receiving antennae, no radio or television transmitting antennae, and no other radio or television receiving or transmitting external apparatus shall be installed on any lot. Normal radio and television installations wholly within a building are accepted.

**Part I, #14** of the Declaration of Covenants, Conditions, and Restrictions is hereby amended to read in its entirety as follows:

14. Breach of any of the covenants in this Part I shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said lots or property, or any part thereof, but such provisions, restrictions, or covenants shall be binding and effective against any owner of said property whose title thereto is acquired by foreclosure, trustee's sale, or otherwise. In addition, any owner of said property found in violation of covenants in Part I shall be duly liable to the Association and / or prosecuting home owner for any reasonable attorneys fees, costs, and expenses incurred by the Association or homeowner in order to enforce any covenants in Part I.

#### BOARD MEMBERS

Nancy Wahl  
Ike Suidan  
Joe Higgins  
Suzanne Selbrede  
Jim Euphrat  
Barbara Woycheese  
Sharon McCollum  
Don Robinson



CERTIFICATION

This is to certify,

That I am the duly elected, qualified and acting Secretary of Mesa View Homeowners' Association No. 3 and that the above amendments to the Declaration of Covenants, Conditions, and Restrictions of said Association were approved by the shareholders of said Association at the special meeting on February 20, 1983, and that the above Resolution which was adopted and approved by the Board of Directors of said corporation accurately reflects the results of the vote taken at said special meeting.

\_\_\_\_\_  
Suzanne Selbrede

STATE OF CALIFORNIA    )S  
COUNTY OF SAN DIEGO   )S

On April 27, 1983, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Suzanne Selbrede, known to me to be the secretary of the Corporation that executed the same as agent for the MESA VIEW HOMEOWNERS ASOCIATION, pursuant to authorization by its Board of Directors.

WITNESS my hand and official seal.

\_\_\_\_\_  
Judy Honisch