

**THE FOLLOWING DOCUMENT IS
AN ANNOTATED COMPILATION OF
THE AMENDED CC&R's RECORDED
DECEMBER 16, 1993
AND INCLUDES THE AMENDMENTS
RECORDED DECEMBER 19, 2002**

**THIS DOCUMENT WAS PREPARED
IN JUNE 2015
FOR INFORMATIONAL PURPOSES ONLY**

AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
VILLAGE PARK COMMUNITY ASSOCIATION

This Amended Declaration of Covenants, Conditions & Restrictions for Village Park Community Association (hereinafter this "Amended Declaration") is made this 16 day of Dec. 1993, by the Village Park Community Association, a California non-profit mutual benefit corporation.

RECITALS:

A. The Irvine Company, a corporation (hereinafter sometimes referred to as "Declarant") was the Owner in Fee of that certain real property described as Tract No. 6520, 6521, 6522, 6523, 6524, 6591, and 6592, as per Maps recorded in Miscellaneous Maps in the Office of the County Recorder of Orange County, California

B. On October 9, 1968, at Book 8747, page 77 et seq. of the Official Records of Orange County, Declarant recorded a Declaration of Covenants, Conditions & Restrictions applicable to Tract 6520 (hereinafter "the Declaration"). The Declaration was re-recorded November 12, 1968 in Book 8784, page 489, et seq., and again re-recorded on November 22, 1968 in Book 8796, pages 445 et seq. of the Official Records of Orange County.

C. Thereafter, Declarant annexed additional property and subjected it to the terms and conditions of the Declaration, by recording a series of "Notices of Covenants, Conditions & Restrictions", as follows:

(1) That certain "Notices of Covenants, Conditions & Restrictions" (Tract 6521) recorded October 14, 1968, in Book 8751, page 272, et seq. in the Official Records of Orange County, California.

(2) That certain "Notices of Covenants,

Conditions & Restriction” (Tract 6522) recorded October 14, 1968, in Book 8751, page 272, et seq. in the Official Records of Orange County, California.

(3) That certain “Notices of Covenants, Conditions & Restrictions” (Tract 6523) recorded March 21, 1969, in Book 8906, page 449, et seq. in the Official Records of Orange County, California.

(4) That certain “Notices of Covenants, Conditions & Restrictions” (Tract 6524) recorded November 17, 1969, in Book 9138, page 913, et seq. in the Official Records of Orange County, California.

(5) That certain “Notices of Covenants, Conditions & Restrictions” (Tract 6591) recorded June 13, 1969, in Book 8989, page 591, et seq. in the Official Records of Orange County, California.

(6) That certain “Notice of Covenants, Conditions & Restrictions” (tract 6592) recorded June 14, 1974, in Book 11171, page 1164, et seq. in the Official Records of Orange County, California.

Each of the foregoing Notices of Covenants, Conditions & Restrictions are hereinafter referred to as “The Supplemental Declaration.”

D. By this Amended Declaration, the undersigned, in accordance with the provisions of the Declaration, do hereby amend the Declaration and Each of the Supplemental Declarations and, in Conjunction therewith; do also hereby amend with Respect to the Property a plan for the individual Ownership of the Property, the Lots, and the Common Area. A list of the Owners of Lots appearing on the books and records of the Association is attached hereto as Exhibit “A”, and incorporated herein by this Reference.

THE UNDERSIGNED, ON BEHALF OF THE OWNERS, NOW, THEREFORE, incorporate the Foregoing recitals and hereby declare that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following amendments to the Declaration and Supplemental Declarations, all of Which are for the purpose of enhancing and Protecting the value and attractiveness of the Property, and every part thereof, in accordance with The plan for the improvement of such Property as provided in the Declaration and the Supplemental Declarations. All of the limitations, covenants, Conditions, restrictions, and easements set forth in the Declaration, the Supplemental Declarations, and this

Amended Declaration shall constitute covenants which shall run with the land and shall be binding upon the Association, the Owners and their successors, assigns, and all parties having or acquiring any right, title or interest in or to any part of the properties.

The undersigned are the President and the Secretary of the Village Park Community Association. The President and the Secretary of the Association hereby certify that this Amended Declaration has been approved by the vote or written Consent of the requisite number of Owners within the Association pursuant to the provisions of said Declaration.

In recording this Amended Declaration, it is the Intention of the association and the Owners that is Amend the Declaration, and the Supplement Declaration, but only with respect to those portions of the Amended Declaration set forth herein which actually amend, change or modify any of the provisions of the Declaration or the Supplemental Declarations. Except to the extent of any such Amendments, modifications or changes, the Declaration, and each of the Supplemental Declarations, are hereby republished and shall remain in full force and effect to the extent permitted pursuant to applicable law.

ARTICLE I
DEFINITIONS

SECTION 1. "Association" shall mean and refer to VILLAGE PARK COMMUNITY ASSOCIATION, its successors and assigns.

SECTION 2. "Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter

SECTION 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association and any real property used for ingress or egress to the Property which has been dedicated to, but is not being maintained by, the City of Irvine.

SECTION 4. "Lot" shall mean and refer to any Plot of land shown upon any recorded subdivision map of the property with the exception of the Common Area.

SECTION 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

SECTION 6. "Owner" shall mean and refer to the

record owner, whether one or more persons or entities, of a fee simple title to any Lot or a lessee with option to purchase any Lot which is a part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 7. "Declarant" shall mean and refer to THE IRVINE COMPANY, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II
RESPONSIBILITIES

The enjoyment and property values in the Association depend upon both the use and the condition of the common area facilities and of individual member Lots. The Board of Directors is responsible for maintaining the common area facilities and for regulating their use so as to enhance the enjoyment and property values of all members. Each member is responsible for the timely maintenance and proper use of his/her Lot so as not to unduly detract from the enjoyment and property values of other members. The Board of Directors is responsible for adopting reasonable architectural standards by which to evaluate plans and specifications per Article VII.

ARTICLE III
MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or a lessee with an option to purchase any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualifications for membership.

ARTICLE IV
VOTING RIGHTS

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.

ARTICLE V
PROPERTY RIGHTS

SECTION 1. Members' Easements of Enjoyment. Every resident member shall have a right and Easement of 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 provisions.

- (a) The right of the Association to limit the number of guests or members;
- (b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;
- (d) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days after notice and hearing for any infraction of its published rules and regulations; and
- (e) 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 has been signed by the Secretary of the Association certifying that such dedication, sale or transfer has been approved by two-thirds (2/3) of the entire membership. However, the Board of Directors may grant easements to public Agencies and utilities.

SECTION 2. *Delegation of Use.* Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

→ **COMMENTS:** Membership rights should only be suspended after the member has been given written notice of an opportunity to address the Board to explain why the member's rights should not be suspended. The owner should be given at least fifteen (15) days prior notice of the hearing date, and the suspension should become effective five (5) days after the hearing date. Civil Code Section 4040 provides that a document is deemed delivered by one or more of the following methods: (i) first-class mail (including certified mail), addressed to a member at the address last shown on the books of the Association or otherwise provided by the member; or (ii) e-mail, facsimile, or other electronic means if the member has agreed to that method of delivery.

ARTICLE VI
COVENANTS FOR MAINTENANCE ASSESSMENTS

SECTION 1. *Creation of the Lien and Personal Obligations of Assessments.* The Declarant, for each Lot owned within the property, 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) annual assessments or charges, and (2) special assessments for capital improvements, such assessment to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with 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 property against which each such assessment is made when the Association causes to be recorded with the County Recorder of the County of Orange a notice of Assessment stating the amount of such assessment And such other charges as herein below provided, a description of the property being assessed, and the name of the record Owner thereof executed by a duly authorized representative of the Association. 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 exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the property and in particular for the improvement and maintenance of the property, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated upon the property.

SECTION 3. *Basis and Maximum of Annual Assessments.* Until January 1 of the year immediately Following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be four Hundred dollars (\$400.00) per Lot.

(a) From and after January 1 of the year Immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington,

→ **COMMENTS: California Civil Code Sections 5600-5610 govern the ability of community associations to levy assessments and to increase the amount of assessments. Section 5605 permits associations to increase regular assessments up to twenty percent (20%) over the previous fiscal year's assessments without a vote of the members, provided the budget is timely mailed. Increases over twenty percent (20%) require the affirmative vote of a majority of the members voting in person or by proxy at a meeting or by written ballot, provided that a quorum has been established. This Section further provides that a quorum for this purpose is more than fifty percent (50%) of the members. The Civil Code supersedes the voting requirements in the Association's documents.**

Civil Code Section 5610 also provides for "emergency assessments" which may be levied by the Board without a member vote, as follows:

(1) An extraordinary expense required by an order of a Court.

(2) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.

(3) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the pro forma operating budget 5300. However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

Civil Code Section 5605(b) allows the board to levy special assessments not exceeding five percent (5%) of the Association's aggregate budgeted annual gross expenses for the current fiscal year without the approval of the

<p>D.C.) for the preceding month of July.</p> <p>(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding year and at the end of each such year, for each succeeding year, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this 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.</p> <p>(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fax the annual assessment at an amount not in excess of the maximum.</p> <p>SECTION 4. <i>Special Assessments for Capital Improvement.</i> In addition to the annual assessments authorized above, the Association may levy in any assessment 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 two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this 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.</p> <p>SECTION 5. <i>Uniform Rate of Assessment.</i> Both annual and special assessment must be fixed at a uniform rate for all Lots and may be collected on a monthly or other convenient basis.</p> <p>SECTION 6. <i>Quorum for Any Action Authorized Under Section 3 and 4.</i> At the first meeting called, as provided in Section 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all 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</p>	<p>members. Special assessments in excess of the five percent (5%) amount require the approval of the members, with the exception of “emergency assessments” as defined above.</p> <p>In addition, the Board must provide not less than thirty (30) nor more than sixty (60) days’ notice by first-class mail of any regular or special assessment increase. (Civil Code Section 5615).</p> <p>The laws concerning enforcement of assessments were substantially modified in 2006. Briefly, the Association must:</p> <ol style="list-style-type: none"> 1. Offer IDR and if so requested by the owner to participate in IDR, prior to recording a lien; 2. Offer IDR or ADR, and if so requested by the owner, participate in IDR or ADR, prior to commencing foreclosure of a lien. The decision to pursue IDR, or a particular type of ADR shall be the choice of the owner, but binding arbitration is not available if the association intends to initiate a judicial foreclosure. <p>Furthermore, the decision to record a lien must be made by the Board of Directors in an open meeting, and the vote must be recorded in the meeting minutes.</p> <p>In addition, commencing a judicial or nonjudicial foreclosure is not permitted if the principal amount of the assessments owed is less than \$1,800.00, unless the assessments are more than twelve (12) months delinquent. If the principal amount of the debt is less than \$1,800.00 (not including accelerated assessments, late fees, collection charges, attorney’s fees or interest) and the assessments are not more than twelve (12) months delinquent, the debt may be collected through filing a small claims actions, by recording a lien subject to the IDR requirement described below, or by any other manner provided by law, except for judicial or nonjudicial foreclosure. In addition to complying with the usual “pre-lien” requirements, the association must offer IDR, and if so requested by the owner the association must participate in IDR, prior to recording a lien when the principal amount of the debt is less than \$1,800.00.</p>
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<p>requirement set forth above, 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 thirty (30) days following the preceding meeting .</p> <p>SECTION 7. <i>Due Dates.</i> The Board of Directors shall fix the amount of the annual assessment against each Lot and send written notice of the annual assessment to every Owner subject thereto forty-five (45) to sixty (60) days in advance of each annual assessment period prior to the January 1 effective date of such annual assessment. Assessments are due monthly on the first of each month. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association or a duly authorized agent setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.</p> <p>SECTION 8. <i>Effect of Nonpayment of Assessments: Remedies of the Association.</i> Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear from the date delinquency at the rate of six percent (6%) per annum, and the Association may bring an ac law against the Owner personally obligated to pay the Same if notice has not been recorded as provided in Article Vi, Section 1, or foreclose the lien against the property, and interest, costs, and reasonable attorneys fees of any such action shall be added to the amount of such assessment. Said lien may also be enforced by the sale by the Board of Directors, its attorney or other person authorized by the Board 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 provision of Sections 2924, 2924(b), and 2924(c) of the Civil Code, applicable to the exercise of power of sale in mortgages and deeds of trust or in any other manner permitted by law. The Board of Directors shall have the power to bid in the property at foreclosure sale and to hold, assign, lease, mortgage, and convey the same in the name of this Association. Upon payment of said assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Board of Directors shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof. No owner may waive or otherwise escape liability for the assessments provided for here herein by non-use of</p>	<p>Commencing a judicial or nonjudicial foreclosure is permitted if the principal amount of the assessments, owed equals or exceeds \$1,800.00, or if the assessments are more than twelve (12) months delinquent, subject to compliance with the following conditions:</p> <ol style="list-style-type: none"> 1. The association must offer IDR or ADR, and if so requested by the owner, participate in IDR or ADR, prior to commencing foreclosure of a lien. The decision to pursue IDR, or a particular type of ADR shall be the choice of the owner, but binding arbitration is not available if the association intends to initiate a judicial foreclosure. If it is determined through the IDR or ADR process that the lien was recorded in error, the lien must be release, all charges and fees must be reversed, and the association must pay all costs related to the IDR or ADR process. 2. The decision to initiate foreclosure must be made by the Board of Directors in an executive session at least thirty (30) days prior to any public sale. 3. Notice of the Board of Director’s decision to foreclose must be delivered to a resident owner or to a resident owner’s “legal representative”. Notice to offsite owners must be given by first-class mail, postage prepaid.
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the Common Area or abandonment of his Lot.

SECTION 9. *Subordination of the Lien to Mortgages.* The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust or first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the Sale or transfer of any Lot which is subject to any first deed of trust or first mortgage, pursuant to a decree of foreclosure under such deed of trust or mortgage or trustee's sale or deed in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

SECTION 10. *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.

ARTICLE VII ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives approved by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

→ **COMMENTS: Please note that there are special rules for solar panels contained within Civil Code Sections 714 and 714.1. Also, application of state and federal disability laws may also have to be considered with respect to proposed improvements.**

In addition to evaluating whether an owner's proposed improvement complies with the objective land use restrictions contained within the recorded CC&R's (such as minimum square footage (Article VIII, Section 1), minimum setbacks (Article VIII, Section 2 and 4), height restrictions (Article VIII, Section 6) and the like), the Architectural Committee has the responsibility of determining whether an owner's proposed improvement is in "harmony of external design and location in relation to surrounding structures and topography." Clearly, this is a subjective

<p style="text-align: center;">ARTICLE VIII USE RESTRICTIONS</p> <p>The Lots shall be used solely for private single family residential purposes and there shall not be constructed or maintained thereon more than one single family dwelling with a private garage and the land and improvements thereto shall not be used so as to disturb the neighborhood or occupants of adjoining property, or to constitute a nuisance or to violate any public law, ordinance or regulation from time to time applicable thereto. The Common Area shall be used for park, recreational, social and other purposes directly related to the private single family residential use authorized hereunder. In addition the Lots shall be subject to the following restrictions:</p> <p>SECTION 1. No residential structure having floor area of less than eleven hundred square feet (1100) exclusive of open porches, patios and garages, shall be erected or placed on any residential Lot in said Tract.</p>	<p>standard. The Courts have held on many occasions that judges must defer to the subjective decisions of architectural committees, as long as the Committee’s decision is made in good faith, and not in an arbitrary or discriminatory manner. The Courts want aesthetic decisions within homeowners associations to be made by the residents who have been appointed to the architectural committee, not by judges.</p> <p>Civil Code Section 4765 establishes certain statutory requirements for architectural review, including a requirement that decisions shall be in writing and, if the proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board of Directors.</p> <p>An applicant of a disapproved application is now entitled to reconsideration by the Board at an open meeting of the Board.</p> <p>The Association must annually provide it members with notice of the types of changes that require association approval and the notice must include a copy of the procedure used to review and approve or disapprove a proposed change.</p> <p>→ COMMENTS: The California <u>Health & Safety Code</u> now allows homes to be used for licensed day care or family care purposes, provided the operator maintains a valid license to operate the facility, and provided the operator otherwise complies with certain insurance/indemnity requirements created by the Code.</p>
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SECTION 2. No building shall be located on any Lot nearer to the side street line than the minimum building setback lines shown on the recorded plan. In any event, no building shall be located on any Lot nearer than six feet (6') to the front lot line nor nearer than ten feet (10') to any street contiguous with a side lot line. No dwelling shall be located on any interior lot nearer than fifteen feet (15') to the rear lot line. For the purpose of this covenant, caves, steps and uncovered porches, shall not be considered as part of a building; provided however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

SECTION 3. No derrick or other structure designed for use in boring, mining or quarrying for water, oil or natural gas or precious minerals, shall be erected, maintained or permitted upon any Lot in said Tract.

SECTION 4. No dwelling shall be erected or placed on any Lot having a width of less than twenty feet (20') at the minimum building setback line nor shall any dwelling be erected or placed on any Lot having an area of less than three thousand square feet (3,000).

SECTION 5. No mercantile, manufacturing, mechanical or trade business establishment of any nature shall be maintained on said land. No horses, cattle, swine, sheep, goats, poultry, including chickens or rabbits, shall be maintained or kept on said land.

SECTION 6. No fence or wall shall be erected or permitted to remain between the street and the front setback line of any of said residential Lots of said Tract, nor shall any hedge exceeding a height of three feet (3') be permitted to remain between the street and the front setback line of any of said Lots, except that such a fence may be permitted if approved by the Architectural Committee.

SECTION 7. No noxious or offensive trade or activity shall be carried on upon any of the Lots covered hereby, nor shall anything be done thereon that may be or become any annoyance or nuisance to the neighborhood. Without limiting the generality of the foregoing, no laundry, clothing, rags or any similar material shall be hung or displayed upon the eaves, doors or upon the portion of any building which faces upon or is visible from the streets and roadways in said Tract.

SECTION 8. After The commencement of any building, out-building, private garage, structure, fence or wall permitted hereby to be constructed, the same shall be prosecuted to completion with reasonable diligence.

SECTION 9. No trailer, easements, tents, shack, garage or barn or other out-building erected on any residential Lot in said Tract 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 on any said Lots.

SECTION 10. No boats, trailers, house trailers or trucks larger than one-half ton capacity shall be parked or stored upon the roadways and streets of said Tract or in the driveways of any lot in said Tract, or upon the portion of any Lot which is visible from said streets and roadways. No automobile, motorcycle, trailer, boat, truck or similar vehicle shall be repaired or painted upon the portion of any Lot in said Tract which is visible from the streets or roadways of said Tract.

SECTION 11. Those owners who have a common wall adjoining their Lots, and such a wall dividing the Lots upon which their homes are constructed, shall equally have the right to the use of such wall, except that each shall have the exclusive right to the use of the interior surface of the wall on his side. Neither owner shall use any portion of the wall so as to interfere with the use and enjoyment of the other owner. This wall shall be considered to adjoin and abut against the property line from the bottom of the foundation over the full length and height of any building so erected for residential purposes. In the event that any portion of such a wall, except the interior surface of one side, is damaged or injured from any cause, other than the act of negligence of either party, it shall be repaired or rebuilt at their joint expense.

→ **COMMENTS: Most, but not all, of the single family lots within Village Park have a five, six, or seven and one-half foot easement on them extending from the front lot line to the rear lot line for the benefit of the neighboring lot adjoining the easement. In some instances, the easement is located on the common area. The Declaration of Establishment of Easement recorded against the single family lots creates several forms and conditions concerning the use of the easement.**

The easement may only be used “as a general recreational garden area, “which means the lot owner who has the easement over the adjacent lot may:

► **Install and maintain landscaping (including flowers, plants, lawn, and surface paving) on the easement, provided prior Architectural Committee approval is obtained.**

► **Establish and maintain a drainage and irrigation system on the easement, provided prior Architectural Committee approval is obtained.**

► **The lot owner who has the easement over the adjacent lot may not use the easement for any other purposes. No object may be attached to a wall or building which belongs to the neighboring lot without the homeowner’s provision, and the grading of the neighboring**

<p>SECTION 12. Lot shall be subject to any natural settlement of structures which are so constructed that they are shared in common by adjoining owners, or any encroachment not exceeding two (2) feet onto any Lot by reason of a roof or eave from a structure on an adjoining Lot.</p> <p style="text-align: center;">ARTICLE IX EASEMENTS</p> <p>The Declaration of Covenants, Conditions and Restrictions shall be subject to all easements heretofore and hereafter granted by the Declarant or its successors and assigns for the installation and maintenance of utilities and drainage facilities that are reasonably necessary to the development of the property.</p>	<p>lot must not be disturbed in any manner which would endanger the neighboring lot.</p> <p>▶ The lot owner who has the easement over the adjacent lot has a legal right to enter onto the easement area for permitted purposes at reasonable times, upon reasonable notice and in a reasonable manner. Owners are encouraged to cooperate with their neighbors in that regard. While gates may be kept locked, access over the easement area must be given to the easement owner upon reasonable notice. Generally, “reasonable notice” for a larger project would be 24-48 hours. In the case of an emergency, immediate access should be given.</p> <p>▶ The owner of the lot on which the easement is located also has a legal right at reasonable times to enter the easement area, including crossing over the neighboring lot for such entry, in order to perform maintenance and repairs to the residence and other improvements on his or her lot. Again, while gates may be kept locked, access must be given upon reasonable notice. Generally, “reasonable notice” for a larger project would be 24-48 hours. In the case of an emergency, immediate access should be given.</p> <p>In the event of a dispute between owners concerning the use of a side yard easement, the dispute must be resolved directly between the owners. VPCA does not become involved in such disputes.</p>
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ARTICLE X
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 nor or hereafter imposed by the provisions of this Declaration. The Board of Directors may also, in accordance with the Association's Bylaws, levy fines as a means of achieving Owner compliance with architectural standards concerning building, fences, walls, or other structures adopted by the Board of Directors pursuant to Articles II and VII hereof. 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.

→ **COMMENTS:** An owner's obligation to abide by the CC&Rs may be enforced through the Association's binding arbitration clause if fines (as applicable), letter writing, or hearings do not bring about compliance. Moreover, if an owner sues the Association in superior court for a claim that is covered by Section 5 ("Mandatory Arbitration"), the Association may petition the court to order the matter to binding arbitration.

In addition to arbitration, there are other methods of resolving disputes, including formal or informal mediation. Informal mediation is also known as Informal Dispute Resolution ("IDR"). IDR supplements, but does not replace, the Association's existing binding arbitration provision. No one is required to use these IDR procedures before initiating arbitration, but there may be instances where the Association might choose to do so. If an owner does ask for IDR, the Association is required to have the "meet and confer" session as described below.

The IDR procedures apply to disputes between an association and an owner involving rights, duties, or liabilities under (i) the Davis-Stirling Common Interest Development Act, (ii) the portions of the Corporations Code governing nonprofit mutual benefit corporations, and (iii) any of the association's governing documents.

Summary of IDR Procedure:

The member or the Association may make a written request to the other to meet and confer in an effort to resolve the dispute. A member may refuse the request; but the Association may not.

The Board designates a member of the Board to meet and confer (in my opinion, the statute does not prohibit the Board from designating more than Director to meet with the homeowner. The parties are to promptly meet at a mutually convenient time and place, explain their positions, and confer in a good faith effort to resolve the dispute. Any agreement for a resolution must be in writing signed by the parties, including the Board designee on behalf of the Association. The agreement binds both parties and is deemed judicially enforceable if (i) the agreement is not in conflict with law or the governing

<p>SECTION 2. <i>Severability.</i> Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.</p> <p>SECTION 3. <i>Amendment.</i> 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 to this Declaration, their respective legal representatives, heirs, successors and assigns, and are imposed upon the property as a servitude in favor of each and every parcel of land therein as a dominant tenement. The covenants and restrictions of this Declaration may be amended by an instrument signed by not less than two-thirds (2/3) of the Lot Owners. Any amendment must be properly recorded.</p> <p>SECTION 4. <i>Breach of Restrictions, Easements, Conditions, Covenants and Reservations.</i> A breach of any of the restrictions, easements, conditions, covenants and reservations herein contained shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Lot or portion of the Lots in the real property covered hereby, but said restrictions, easements, conditions, covenants and reservations shall be binding upon and effective against any Owner thereof whose title thereto is acquired by foreclosure, trustee's sale or otherwise.</p> <p>SECTION 5. <i>Mandatory Arbitration.</i></p> <p>(a) General Intent – Out of Court Dispute Resolution. It is the intent of this Association and its members to establish an ongoing private, out of Court, dispute resolution system or format whereby if the Association or any member has any type of claim, grievance, demand, cause of action, or dispute (of any kind whatsoever, other than those described under subsection (), below) which arises out of the purchase, ownership, occupancy,</p>	<p>documents, and (ii) the agreement is either consistent with the Board designee's authority, as granted by the Board, or the Board ratifies the agreement.</p> <p>It will be necessary to decide, on a case by case basis, whether to arbitrate or mediate any given dispute based upon the facts and circumstances involved.</p>
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management, use, or habitation of such member's Lot, unit or property, and which arises between said member and the Association (or any of its officers, directors, or agent(s), the Association or member (as the case may be) must submit that claim, demand or dispute (hereinafter sometimes referred to as "the Dispute") to final and binding arbitration without right of court appeal before a neutral retired judge selected from the panel of Judicial Arbitration and Mediation Services, Inc. ("JAMS").

(B) Filing of Complaint. Subject to the provisions of subsection (e) below, if any member shall have a claim, grievance, demand or complaint against the Association, or if the Association shall have any claim, grievance, demand or complaint against any member, such complaint shall be filed, in writing, with the Board of Directors of the Association, with a copy of same to be served upon the affected party or parties either in person or by certified mail. The complaint should include the names, addresses and telephone numbers of all concerned persons or organizations and, in addition, should set forth in detail full particulars including dates, times, places, etc., concerning not only the nature of the Dispute, but the proposed or requested solution to the Dispute.

(c) Formal Resolution. Within a period of forty-five (45) days from the date of submission of the complaint to the Board of Directors, the Board shall forthwith forward a copy of the complaint to the general manager of the nearest office of JAMS for the purpose of instituting formal arbitration before a retired panel member judge in accordance with the law and procedures set forth in subsection (d) below.

(d) Governing Law and Procedure. The arbitration will be conducted pursuant to Section 1280 et seq. of the California Code of Civil Procedure (or any successor statutes) and in accordance with the rules and procedures of JAMS governing homeowner disputes. The arbitrator will be required to apply the substantive law of the State of California.

The arbitrator's fees will be borne equally between all of the parties in accordance with the applicable JAMS fee schedule. Should any party fail to post their respective pro rata share of the arbitrator's fees, then the remaining party or parties may post the same, and at the time of the hearing, request the arbitrator to enter an award in the posting party's favor for fees posted on behalf of the nonposting party, in addition to any other relief

being sought in the proceedings.

The arbitration judgment or decree may include an award of attorney's fees and costs of arbitration.

Failure of any party to appear at a duly noticed arbitration hearing may result in a default judgment or decree being taken against the nonappearing party in accordance with the proof presented by the appearing parties.

(e) Claims and Disputes Exempt from Mandatory Arbitration. The following types of claims and/or disputes arising under the governing documents of Village Park Community Association shall be exempt from the mandatory arbitration provisions set forth in this Article S, Section 5:

(i) Claims and disputes arising solely between members of the Association and for which no claim or relief is sought against the Association, its officers, directors or agents;

(ii) Any dispute between the Association and its members on the one hand, and the original builders/developers of the Village Park Community Association, and/or their successors in interest on the other hand;

(iii) Any claim or dispute wherein the Association nor any member must obtain provisional or ancillary remedies as provided for in Title 7, Chapter 2 through 5 of the California Code of Civil Procedure, or any amendments thereto, from a Court of competent jurisdiction before, after, or during the pendency of any arbitration proceeding. By way of illustration, and not by way of limitation, any application to enjoin the construction or modification of any Improvement within the Project which is deemed to be in violation of the architectural control provisions of Article VII or the Use Restrictions of Article VIII hereof shall be exempt from the mandatory arbitration provisions of this Article. Subsequent to the Court's ruling on any application for such remedies, the Dispute shall be submitted for final and binding arbitration in accordance with the formal resolution procedures set forth in Subsection (c) above.

(iv) Any action for collection of assessments arising under Articles VI and X of this Declaration; and

(v) Any claim or dispute in which the Association seeks to impose disciplinary proceedings such as suspension of membership

<p>privileges or imposition of fines against members for violation of the provisions of the Declaration.</p> <p>(f) Selection of Alternate Arbitrator. If for any reason JAMS, or any successor entity, is not then doing business within Orange County, California as of the date of the Board of Directors of the Association receives the complaint pursuant to Subsection (b) above, then the claim or dispute shall be submitted to and resolved in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) before an arbitrator selected from the panels of the arbitrators of AAA.</p>	
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