

AMENDED AND RESTATED BYLAWS  
OF  
AVIARA HOMEOWNERS ASSOCIATION  
(FORMERLY, THE TOWNES AT  
MOUNTAINVIEW RANCH HOMEOWNERS ASSOCIATION)

ARTICLE I

GENERAL

Section 1. Purpose. Aviara Homeowners Association (formerly, The Townes at Mountainview Ranch Homeowners Association) is an Arizona corporation organized for the purpose of acting as the council of co-owners, pursuant to an Amended and Restated Declaration of Covenants, Conditions and Restrictions for Aviara recorded in the office of the County Recorder of Maricopa County, Arizona.

Section 2. Conflict with Declaration. Should any provision of these Bylaws be inconsistent or conflict with any provision of the Declaration or the Articles of Incorporation, as amended from time to time, of the Association, such provision of the Declaration or Articles shall supersede and take precedence over such provision of these Bylaws.

Section 3. Application of Bylaws. All present and future Owners, Occupants and their respective licenses, invitees and employees shall be subject to and be bound by all of the provisions of these Bylaws. The act of ownership or the mere occupancy of a Lot shall establish a conclusive presumption that these Bylaws are accepted, ratified and will be complied with by such Owner or Occupant.

ARTICLE II

DEFINITIONS

Section 1. "Declaration" shall mean the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Aviara recorded on April 23, 1992 at Recorder's Number 92-215131 of the records of the County Recorder of Maricopa County, Arizona, as the same may be amended from time to time.

Section 2. The terms used in these Bylaws shall have the same meaning as set forth in the Declaration except where the context requires a different meaning.

## ARTICLE III

### MEMBERS

Section 1. Eligibility. The membership of the Association shall consist of all Owners of Lots. Membership in the Association shall be mandatory and no Owner during his ownership of a Lot shall have the right to relinquish or terminate his membership in the Association.

Section 2. Succession. The membership of each Lot Owner shall terminate when he ceases to be an Owner of a Lot, and his membership in the Association shall automatically be transferred to the new Owner succeeding to such ownership interest.

Section 3. Annual Meeting. The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association at such hour and at such place as may be specified in a written notice of such meeting, and each subsequent regular meeting of the Members shall be held in June of each year thereafter at such date, place, and time as may be designated in the written notice of such meeting. If the date set for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following such legal holiday.

Section 4. Special Meetings. Special meetings of the Members may be called at any time by the President or by a majority of the Board, or upon written request of more than one-fourth (1/4) of the Class A Members.

Section 5. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days but not earlier than sixty (60) days prior to the date of such meeting to each Member entitled to vote at such meeting, addressed to the Member's address last appearing on the books of the Association. Such notice shall specify the date, place and hour of the meeting, and, in the case of a special meeting, the purpose of such meeting.

Section 6. Voting. The Association shall have two classes of voting membership established according to the Declaration.

Section 7. Quorum. The presence at a meeting of Members representing one-tenth (1/10) of the eligible votes in the Association shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws. If, however, such quorum shall not

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be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum shall be present or represented.

Section 8. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall automatically cease upon conveyance by the Member of his Lot.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. Number. For so long as there is Class B membership in the Association, the affairs of the Association shall be managed by a Board of three (3) Directors. Thereafter, the Board shall consist of five (5) directors.

Section 2. Term of Office. While there are three (3) directors, the directors shall serve concurrent terms. At the first annual meeting of the Members held after the cessation of Class B membership, the first two directors to be elected (the directors with the most votes) shall be elected for a term of three (3) years; the second two directors to be elected shall be elected for a term of two (2) years; and the fifth director shall be elected for a term of one (1) year, and at each annual meeting thereafter, the Members shall elect directors for a term of three (3) years so as to stagger the terms of office of the directors. The initial directors, or their duly elected replacements, shall serve until the first meeting of the Association; thereafter, all directors shall be elected and removed according to these Bylaws.

Section 3. Qualifications. Each director shall be a Member or a spouse of a Member or an agent of Declarant (while Declarant remains a Lot Owner). If a Member is a corporation, partnership or trust, a director may be an officer, partner or beneficiary of such Member. If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director, and his place on the Board shall be deemed vacant. The requirements of this section do not apply to directors elected as a result of any of the votes cast by the Class B Member.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties as a director,

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## ARTICLE V

### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting by any Member not in default. The nominating committee shall consist of a Chairman, who shall be a member of the Board, and two or more Members of the Association. The nominating committee shall be appointed by the Board of Directors at least sixty (60) days prior to each annual meeting and shall serve until such annual meeting has been concluded. The nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 2. Election. Election to the Board shall be by secret written ballot. Those candidates for election to the Board receiving the greatest percentage of votes cast either in person or by proxy at the meeting shall be elected.

Section 3. Cumulative Voting. All elections in which positions on the Board are to be filled shall be conducted by cumulative voting.

Section 4. Removal. Unless the entire Board is removed from office by the majority vote of Association Members, an individual director shall not be removed prior to the expiration of his/her term of office unless the number of votes cast against his/her removal is greater than the quotient arrived at by dividing: (i) the total number of votes that may be cast for any one Director (without consideration of cumulative voting for this purpose); by a divider equal to (ii) one (1) plus the authorized number of directors. In the event of the death, resignation or removal of a director, his successor shall be selected by a majority of the remaining members of the Board and shall serve for the unexpired term of his predecessor.

## ARTICLE VI

### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board shall be held no less frequent than twice a calendar

year without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should the date of any meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board shall be held and called by the President of the Association, or by any two directors, after not less than three (3) days' notice to each director, or within a reasonable time after the presentation to the President of the Association of a petition signed by one-quarter (1/4) of the Class A Members.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. The Board shall have the power to:

(a) Elect and remove the officers of the Association;

(b) Adopt and publish rules and regulations governing the use of the Common Areas and related facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(c) Suspend the right of a Member to vote and to use the Common Areas during any period when such Member shall be in default in the payment of any assessment levied by the Association. Such right may also be suspended after notice and hearing, for a period not to exceed sixty (60) days, for infraction of any other provision of the Constituent Documents or published rules and regulations promulgated by the Board;

(d) Engage the services of an agent to maintain, repair, replace, administer and operate the Common Areas, or any part thereof, for the benefit of all of the Members, upon such terms and for such compensation as the Board may approve. Any agreement for the services of any such agent shall provide for termination by the Association with or without cause, and without payment of a termination fee or penalty, upon thirty (30) days' written notice, and no such agreement shall be of a duration in excess of one (1) year, renewable by agreement of the parties for successive one (1) year periods;

(e) Make repairs to the Structural Maintenance Areas of individual Townhome Lots where such repairs are required by the Constituent Documents or for the preservation or protection of the Common Areas;

(f) Grant or relocate easements over, across or through the Common Areas as the Board may determine to be beneficial to the Members;

(g) Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; and

(h) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws, the Articles of Incorporation or the Declaration.

Section 4. Duties. It shall be the duty of the Board of Directors to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote;

(b) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration, to:

(1) Administer, operate, maintain and repair the Common Areas;

(2) Determine the Common Expenses of the Association at least forty-five (45) days in advance of each annual assessment period;

(3) Send written notice of each Member's proportionate share of the Common Expenses to every Member subject thereto; and

(4) Record a notice and claim of lien against any Lot for which assessments are not paid, and foreclose the same within a reasonable time, and/or bring an action at law against the

Member personally obligated to pay the same, and/or otherwise seek and obtain enforcement of the Declaration and remedies for the violation thereof.

(d) Issue, or cause an appropriate officer to issue, upon written request by any person having any interest in any Lot, a statement setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of such a statement. If the statement provides that an assessment has been paid, such statement shall be conclusive evidence of such payments;

(e) Procure and maintain adequate casualty, liability and other insurance as more fully provided in the Declaration;

(f) Cause all officers or employees having fiscal responsibilities to be bonded by fidelity bonds in accordance with the provisions of the Declaration.

## ARTICLE VII

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of the Association shall be a President and Vice President, who shall at all times be members of the Board, a Secretary, and a Treasurer and such other officers as the Board may from time to time provide for by resolution.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of the Association shall be elected annually by the Board and shall each hold office for one (1) year unless such officer shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time prescribe.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board and the President or Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later

time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to



provisions of these Bylaws, or as required by law; be custodian of the records and seal of the Association, and see that the seal of the Association is affixed to all documents, when such is duly authorized; keep or cause to be kept under his general supervision by a registrar or transfer agent appointed by the Board, a register in the name and post office address of each Member as furnished by such Member; have general charge of the transfer books of the corporation; and in general perform all duties incident to the office of Secretary and such other duties as may be assigned to him by the President or by the Board.

(d) Treasurer - The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Association; receive and give receipts for monies due and payable to the corporation from any source whatsoever, and deposit all monies in the name of the Association in such banks, trust companies or other depositories as shall be directed by the Board; shall sign all checks and promissory notes of the Association except in those instances where the Board has delegated the authority to sign checks to a managing agent employed by the Association; shall keep proper books of account; shall cause an annual audit of the books of the Association to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Members at the regular annual meeting of the Members, and shall deliver a copy of such to the Members.

Section 9. Committees. The Association may appoint an architectural committee, as provided in the Declaration, and shall appoint a nominating committee, as provided in these Bylaws. In addition, the Board shall appoint other committees as the Board may deem appropriate to carry out the purposes of the Association.

## ARTICLE VIII

### BOOKS AND RECORDS

Section 1. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, and copies thereof may be purchased at reasonable cost from the Association.

## ARTICLE IX

### COMMON EXPENSES

Section 1. Annual Budget. The Board shall cause an estimated annual budget of the Common Expenses to be prepared for each fiscal year of the Association. The annual budget shall itemize, to the extent possible, the additional costs associated with maintaining the Townhome Lots. Such estimated annual budget shall take into account the estimated expenses and cash requirements that will be required for the operation, maintenance, repairs and restoration of the Common Areas and Structural Maintenance Areas of the Townhome Lots for the year, including but not limited to, salaries, wages, payroll taxes, attorneys' and accountants' fees, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power and adequate reserves for the restoration and replacement of the Common Areas and any appurtenances thereto, Structural Maintenance Areas of the Townhome Lots, and front yard areas of the Townhome Lots. To the extent that assessments for Common Expenses received from Members during the immediately preceding year shall be more or less than the Common Expenses incurred by the Association for the preceding year, the surplus or deficiency, as the case may be, shall also be taken into account. The annual budget shall also provide for a reserve for contingencies for the year and a reserve for restoration and replacements, in reasonable amounts as determined by the Board.

Section 2. Assessments for Common Expenses. The estimated annual budget for the Common Expenses for each fiscal year shall be approved by the Board, and copies thereof shall be furnished by the Board to each Member. On or before the first day of the first month of each fiscal year, the Board shall assess each Lot and each Member in the amounts established in the Declaration. The assessment levied against each Townhome Lot and Single Family Lot shall be payable in the amounts established in the Declaration in twelve (12) equal monthly installments commencing on the first day of the first month of the fiscal year and on the first day of each succeeding month thereafter. In the event the Board fails to approve an estimated annual budget for the Common Expenses or fails to determine the assessments for the Common Expenses for any year, or shall be late in so doing, each Member shall continue to pay on the first day of each month during the new fiscal year an amount equal to the monthly installment paid toward the assessment for the Common Expenses levied against the particular Lot for the immediately preceding fiscal year until the new assessment amount is fixed.

Section 3. Partial Years and Months for the First Fiscal Year. The annual budget for the Common Expenses for the first fiscal year shall be as approved by the first Board. If the first fiscal year, or any succeeding fiscal year, shall be

less than a full calendar year, the annual assessment for the Common Expenses shall be prorated in accordance with the number of months and days in such period covered by such budget for the purposes of determining the amount of the monthly installments.

Section 4. Special Assessments. 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, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, or to defray any unanticipated or underestimated expense normally covered by a regular assessment and, where necessary, for taxes assessed against the Common Areas, subject to the requirements of the Declaration. Special assessments may also be levied against the Owners of Townhome Lots on account of any increased or unanticipated costs associated with the maintenance of the Structural Maintenance Areas of Townhome Lots or any landscaping located on a Townhome Lot for which the Association is responsible to maintain. Special Assessments may also be levied to reimburse the Association for costs incurred in enforcing the provisions of the Constituent Documents.

Section 5. Lien for Unpaid Assessments. Each installment of each Member's proportionate share of the Common Expenses, together with interest, late charges, costs of collection and reasonable attorneys' fees, shall constitute the personal obligation of the Person who was a Member at the time such installment became due and the Association shall have all rights and remedies with regard to unpaid assessments set forth in the Declaration.

## ARTICLE X

### ADDITION OF NEW MEMBERS

Section 1. Additional Members. If and to the extent new phases are added in accordance with the provisions of the Declaration, each Owner of a Lot in the new phase shall become a Member of the Association, shall be entitled to all rights and privileges associated with membership in the Association, and shall be subject to all duties, responsibilities and obligations incident to membership. All Members of the Association shall have the nonexclusive right to use any or all of the Common Areas owned by the Association, including any additional Common Areas conveyed to the Association upon the subjecting of any new phase or any portion thereof to the Declaration in accordance with the rules and regulations promulgated by the Association.

Section 2. Voting Rights of Additional Members.


All Members of the Association, including all Members in any new phases if such new phases are subsequently subjected to the Declaration, shall be entitled to vote on all matters in the manner provided in the Declaration.

ARTICLE XI

AMENDMENTS

Section 1. These Bylaws may be changed, modified or amended, at a regular or special meeting of the Members called for that purpose, by a vote of fifty-one percent (51%) of a quorum of the total voting power of the Association, provided, however, that so long as any Class B Membership remains outstanding, the Veterans Administration, shall have consented in writing to any change, modification or amendment and provided further, that fifty-one percent (51%) of all Eligible Mortgage Holders have consented to any change, modification or amendment which established, provided for, governs or regulates any of the matters described in the applicable provisions of the Declaration. Any Eligible Mortgage Holder who receives a written request to approve any such change, modification or amendment and who does not give notice of disapproval to the requesting party in the manner provided in Paragraph 22 of the Declaration for notices within thirty (30) days after receipt of such request shall be deemed to have approved such change, modification or amendment.

The President of Aviara Homeowners Association has hereunto set his hand as of \_\_\_\_\_, 1992.

  
\_\_\_\_\_  
President

CERTIFICATION

The undersigned does hereby certify:

THAT he/she is the duly elected and acting Secretary of Aviara Homeowners Association, an Arizona non-profit corporation, and

THAT the foregoing Amended and Restated Bylaws constitute the original Amended and Restated Bylaws of Aviara as duly adopted at a meeting of the Members thereof, held on \_\_\_\_\_, 1992.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand and affixed the seal of the corporation as of \_\_\_\_\_, 1992.

  
\_\_\_\_\_  
Secretary