

TORREY PINES AT PELICAN SOUND NEIGHBORHOOD ASSOCIATION

31 October 2001

File No. 01353T.wpd, Rev.

EXHIBIT NO. 1 - RULES AND REGULATIONS

Landscape Maintenance & Replacement Program

The Declaration of Covenants, Conditions, Restrictions and Easement for Torrey Pines at Pelican Sound which is the basis of our Neighborhood Association ("Association") sets forth and provides for the broad term of Landscaping under section 7. MAINTENANCE; IMPROVEMENTS., items 7.1 Responsibility of Owners and 7.2 Landscaping, all as set forth herein below:

7.1 Responsibility of Owners. The maintenance, repair and replacement of each Lot and Living Unit is the responsibility of its Owner, except as provided in Section 7.2 below. The Owner's responsibility includes the driveway located on his Lot.

7.2 Landscaping. In order to provide a means by which the covenants in this Declaration requiring Lots to be maintained may be fulfilled without jeopardizing the security of the Community by the possibility of admission thereto of a large number of landscaping contractors and their agents and employees, the Association shall be responsible for the maintenance of landscaping and in particular lawn care and irrigation system maintenance for each and every Lot within the Neighborhood, and the cost shall be a common expense; provided however, such duty of maintenance shall not extend to areas specifically designated by the Association as an "area of high maintenance", such as a rose garden. Areas of high maintenance shall be maintained by the owner of the Lot or by special arrangement as may be approved by the Association.

The concept of "to maintain" is generally accepted to entail keeping in a certain condition, especially of good repair. This also may be extended to attempt to preserve. The concept of "repair " is generally accepted to entail the putting back to good condition after damage. The concept of "replacement" is generally accepted to entail the putting back into the former position, to take the place of, or in a broad sense, taking the place of something that is now lost, gone, destroyed, worn out, or in this context, may include, which dies or is dead.

In as much as the governing documents require the Association to "maintain" the landscaping and holds the Owner responsible for "repair" and "replacement" (of the landscaping). these terms must be fully understood and developed in order to hold the Owner's expectation for performance of Landscape Maintenance of and by the Association to not include the broadly defined "repair and replacement" (of the landscaping).

In addition to the foregoing, the Association's Board of Directors, understanding that not all Owner's are full time residents and in most instances are seasonal residents; wishes to deal with various issues which may arise while such Association members are in residence or not in residence. Some or all of these issues or situations which may arise could lead to unsightly and dead or dying landscape materials which would detract from the Association's aesthetic qualities and could lead to disease, insect and rodent or other pest infestation problems. Notwithstanding any of these potential problems or issues, no situation or condition should be permitted to exist or remain which may lead to a diminishment or loss of the first class

residential nature of the community affecting either quality of life issues or the market value of these residences and/or the properties constituting the Association. These landscape maintenance, repair or replacement situations or issues may include, but not be limited to the following Classes:

- I. Normal life cycle death of a plant, grass, tree, flower, shrub, or other planting
- II. Damage /death of a plant, grass, tree, flower, shrub, or other planting due to any other reason or cause of any nature or origin, excluding Item I. immediately herein above, but including among others, casualty loss. These types of reasons, causes or occurrences may include but not be limited to the following:

- Fire
- Flood including water surges or tidal surges including contamination with salt water and deposition of such materials as mud and/or debris
- Wind or wind born debris
- Hurricane
- Tornado
- Wind damage Lighting
- Foraging animals Insect attack
- Disease attack Drought
- Lightning
- Failure of irrigation system or lack of available irrigation water supplies
- Failure of Owner to spot water areas of coverage not adequately covered by the proper operation of the irrigation system
- Failure of Owner to water immediately upon replacement with new plantings or as may otherwise be required with newly planted landscape materials
- Lack of proper drainage
- Vandalism or mischievous behavior of known or unknown origin
- Vehicular, pedestrian or other traffic of any type or nature including among others pulling into and out of individual Owner's driveways or garages
- Damages resulting from Owner's or Association's repair, maintenance, cleaning and/or painting of the exterior of a residence by contractors or subcontractors employed for such purposes.
- Spills or contamination with such items as paint, oils or lubricants, swimming pool chemicals and the like
- Failure of Storm water retention system(s) including the "pooling" of water on landscaped areas
- Damage due to Golfers or others walking or seeking out golf balls and the like, access to which may have been granted under certain easement(s) granted in the governing documents.

Any and all other causes of any kind or nature not included in item No. I set forth above.

These descriptions apply to exterior landscaping only and specifically exclude any planting or landscaping of any type or nature within the areas of an Owner's Lanai or residence including exterior or interior window flower boxes or hanging plants of any type or nature.

Based on the recitations and descriptions set forth above and herein, as well as the Governing Documents including the Declaration of Covenants, Conditions, Restrictions and Easements for the Torrey Pines at Pelican Sound Association as well as the CLUB, Community Development District, Conservation District and others;

the Board of Directors hereby sets forth the following Policy including Rules and Regulations relating thereto:

1. All trees of any type or nature, including all species of Palm trees upon their death or damage due to any Class I or Class II occurrence shall immediately be replaced in "kind", with no substitutions unless approved by the Board of Directors and ARC prior thereto, at the exclusive cost and obligation of the Owner. This would include both trees originally provided by the Developer, which were added prior to occupancy or closing by extra fees paid to the Developer, or as may have been added at the Owner's cost or direction after closing and occupancy by the Owner. Landscaping changes made after this time period as may have been approved by the Association and the Architectural Review Committee ("ARC"), which included the permission to add Trees or Special types of Landscaping are included in this Rule.
2. All other landscaping falling under Class I. but specifically excluding Trees of any type or nature and Special types of Landscaping, including high maintenance plantings, provided by Owners at their own cost; shall be replaced by the Association at the Association's cost. The Association shall have the exclusive right to replace in kind, or to replace with a better "pallet of plant selection" more suitable to the area of planting as conditions so indicate and based upon our Landscape Contractor's recommendation or opinion. This would provide that immediately upon observing such dead or dying other planting falling under Class I, the Association may respond immediately and provide that such replacement is performed notwithstanding the occupancy status of the Owner's residence.
3. The Association shall maintain the right, but not the obligation to replace "minor" damage occurring to any other landscaping materials which occurs due to Class II items.
4. The Owner shall have the obligation to replace any Tree or Special Plantings Under Class II items and shall have the obligation to replace any and all other items under Class II items to the extent that the Association determines that it shall not replace at its option, "minor" plantings under such Class II items. The Association's determination of what constitutes "minor" plantings under Class II items shall be the exclusive determination of the Association and is not subject to challenge or deliberation by the Owner. It is the intention of this item to provide that the Association may replace one or two small or inexpensive plantings during normal maintenance and not bother the Owner by the undertaking of sending written determinations to the Owner or Property Management Company.
5. To the extent it is available, and if the Owner so desires, it is recommended that each Owner provide insurance, including lightning insurance for larger more mature trees.
6. The replacement of any Tree or exterior landscaping, including additions or removals relating thereto, require the permission of both the Association as well as the ARC.
7. Should an Owner not be in residence at the time of a Class I or Class II occurrence, the Association shall have the right, but not the obligation, to immediately replace the dead or dying Tree or high maintenance area and charge the Owner with an assessment to cover such cost or expenditure, substantiated by the presentation of an invoice by the landscape contractor providing

such services to the Association.

8. Should the Owner be in residence at the time of a Class I or Class II occurrence, the Owner shall have the right and obligation to immediately replace the dead or dying Tree or high maintenance area in kind with no substitutions permitted. Failure on the part of the Owner to so provide for such replacement after written notice is provided by the Association or its Property Management Firm, the Association shall have the dead or dying Tree or high maintenance area replaced in kind and charge the Owner with an assessment to cover such cost or expenditure, substantiated by the presentation of an invoice by the landscape contractor providing such services to the Association.
9. The Association shall have the exclusive right to substitute a plant or tree of a "better pallet" to replace any dead or dying landscape item without seeking oral or written approval of or by the Owner prior to or after such replacement.
10. The Association shall institute a "Flag" or "Tag" Program that shall permit the Owner to remove a landscape item from certain of these rules and regulations. The purpose of the Flag Program would be to establish, identify and remove a particular plant or plantings from the general care of the Landscape Contractor and/or Association's responsibility. Thus, should an Owner desire to install a high maintenance item, or simply an item close to their heart, and if approved by the ARC &/or Association if so required, the Plant or Plantings may be set out and identified by use of a Flag or Flags of a particular color put in the ground at, on or near the Planting(s). This would indicate to the Landscape Contractor that they shall not fertilize, prune, trim, shape, or otherwise attend to these Flagged Items. Upon their death or damage, the Owner shall be totally responsible for their timely replacement at their own cost, notwithstanding the applicability of a Class I or Class II designation. Should an Owner not respond to written notice by the Property Management Firm or Association about their obligation to immediately replace such dead or dying plant(s), the Association shall have the right, at the cost of the Owner, to replace such Flagged Item with the nearest or closest available matching planting without seeking out the Owner's approval for such replacement.
11. Where such replacement of a dead or dying large or mature Tree, shrub, planting or other item is required; it is anticipated that the replacement shall be with a smaller and less mature Tree, shrub, planting or other item which is substantially less costly and may provide for less damage to grass and other landscaping items in the delivery and installation of such item(s). The landscape contractor and Association shall have the right to select what they consider to be the most desirable and appropriate size for such replacement. If, however, the Owner desires to provide, at their exclusive cost or additional cost, the larger replacement Tree, shrub, planting or other item; the Association shall not unreasonably withhold approvals for such actions after receiving written approvals to so proceed from such Owners and with the Owner's written consent to provide for the cost of such increased size of replacement.
12. The irrigation system providing for the watering of such landscape items is provided with water from the Club which is considered to be "recycled water". This contains many small particles of vegetation and other materials. The Association has provided to have special oversized filters installed in each of the separate "recycled water supply lines" as initially installed by the Developer. Should the source of recycled water not be available in the future, the cost of connecting the irrigation system to the city water supply shall be the exclusive cost of the Owner.

13. The irrigation system does not precisely cover every square inch of landscaped area and further, even with the best of adjustment, does not cover these areas uniformly. Additionally, sunny areas and shady areas vary with time of the year or season and the system does not respond to such changes. Hand watering and supplementation of the existing irrigation system by the Owner, at his expense with city water from a hose or other source, is a requirement to maintain the viability of many of the landscape items.
14. The Association in its use of replacement landscaping items of either Class I or Class II origin would seek to utilize both replacement plants of a better pallet as well as replacement plantings which are more suitable or indigenous for and to the local climatological conditions.
15. The Association has included in its budget monies to maintain the irrigation system for normal wear and tear and this extends from the individual spray heads (pop up or stationary) up to and including the "rain shut off system box and cover". Any underground supply piping from the source to this point is the obligation of others, which others may include the CLUB, the River Ridge Community Development District or others. The Association shall not be responsible for repair or replacement of any of the irrigation systems piping, controls, pop up or stationary heads, filters and the like which may suffer damage to any item which may be set forth in Class II items or which may otherwise be construed to be a casualty loss.
16. Items which may have been provided and installed by the Owner, or under the Owner's direction, whether approved or none approved by the Association or ARC, and which add to the cost of landscaping or irrigation expense may be required to be removed, modified, or incur additional charges from the Association. These might include specialized rock gardens with plantings, fountains with or without running water, exterior fine or low voltage lighting, bird houses of free standing or hung design from Association Member's or other trees, hanging plants of any type or description, wind chimes or wind socks / flags, benches, chairs, statuary, grills, umbrellas, dog runs and similar type items. An approval is not granted for such items installation or continued use simply by the Association and/or Property Management Company being unaware of or remaining silent on their existence. The landscape contractor has a difficult time in many instances in attempting to trim or mow around such items. Golfer foraging for golf balls or lost balls will be going through these areas. Consequently, the breakage, damage or loss of any such item is and shall remain the exclusive responsibility of the Owner. The Association shall not be responsible for any damage which may be caused in the normal course of landscape or irrigation maintenance, or for any other reason which may present itself. The Owner by the installation or placement of any such item assumes the full responsibility for its condition or loss.
17. Removal of other landscaping items or materials including among others, trees, shrubs, plantings, etc. to "expand" one's back or side yard is specifically prohibited, whether these materials are contained on the Lot of the Owner, in or on property of the CLUB (golf course or walking trails including nature areas), Conservation Districts or the River Ridge Community Development District. The Association has taken photographs of the twenty-four residences constituting the Association and which set forth in large the conditions of these areas at occupancy by the Owner. Upon the occasion of learning that any such removals, additions, or modifications have taken place without the "express written consent of the Association and/or ARC", the Owner shall be directed to remove and restore in kind the affected areas to the original conditions at their own expense. Failure to so provide after receipt of written notice by the Association and/or Property Management Firm shall be a fineable offense and shall further provide that the Association may

act to restore such affected area at the expense of the Owner and charge the Owner a special assessment for such costs as may have been incurred in such restoration.