

**ROAD MAINTENANCE
AGREEMENT
&
DECLARATION OF
COVENANTS, CONDITIONS
&
RESTRICTIONS
SAN DIEGO COUNTY, CALIFORNIA
FOR
VIA LOMA VIA ALICIA
ROAD ASSOCIATION**

692

79-401907

WHEN RECORDED RETURN TO:

Via Loma, Alica Road Association
3284 Via Loma
Fallbrook, CA 92028

FILE/PAGE NO. _____
BOOK 1979
RECORDED REQUEST OF
TERRA TITLE COMPANY
SEP 28 8:00 AM '79
OFFICIAL RECORDS
SAN DIEGO COUNTY, CALIF.
RECORDER

8/9.00

ROAD MAINTENANCE AGREEMENT
AND
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

SAN DIEGO COUNTY, CALIFORNIA

THIS AGREEMENT AND DECLARATION, made this 24th day of
September, 1979, by the undersigned owners, hereinafter referred
to as "Owners":

W I T N E S S E T H

WHEREAS, Owners are the owners of real property in the
County of San Diego, State of California, which uses, or has avail-
able for use for ingress and egress to said property, a certain
roadway and utility easement commonly known as VIA LOMA & VIA ALICIA
which said easement is more fully identified as set forth in Exhibit
"A" attached hereto and incorporated herein; and

Whereas, Owners deem it desirable to establish a road
maintenance agreement for the easement for the purpose of providing
access to said Parcels and protecting the value, desirability and
attractiveness thereof;

ARTICLE I
COVENANT

Owners hereby covenant, agree and declare that all of
said Parcels and properties identified herein shall be held, sold and
conveyed subject to the following covenants, conditions and
restrictions which are hereby declared to be for the benefit of all
of the properties described herein and the owners thereof, their
successors and assigns. These covenants, conditions, restrictions
and easements shall run with the real property and shall be binding
on all parties having or acquiring any right, title or interest in
the described real property or any part thereof owned by signatories
hereto, or who hereafter become signatory, and are imposed upon said
real property and every part thereof as a servitude in favor of each
and every other parcel thereof as the dominant tenement or tenements.

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ARTICLE II
DEFINITIONS

The following terms used in these covenants, conditions and restrictions shall be applicable to this declaration and are defined as follows:

Section 1. "Property" and "Parcels" shall mean and refer to all of the real property which in fact use or have available for the use Via Loma & Via Alicia for ingress and egress, and which are owned by signatories hereto or by owners who may hereafter become signatory to a document accepting this Agreement and Declaration.

Section 2. "Easement" and "Via Loma, Via Alicia, Dos Lomas" shall mean the easement identified on the attached Exhibit A.

Section 3. "Owner" shall mean and refer to one or more persons or entities who are the record owner of a fee simple title to any lot as defined in Article II, Section 1, including contract vendees, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Deed of Trust" shall mean the conveyance of any lot or other portion of the property to secure the performance of an obligation.

Section 5. "Conveyance" shall mean and refer to conveyance of a fee simple title.

Section 6. "Via Loma, Alicia Road Association" and "Association" is a non-profit Association and refers collectively to the Owners signatory hereto who are its members, and the Association may or may not be incorporated.

ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Owners, for each Parcel owned by them hereby covenant and agree to pay assessments or charges for liability insurance as Owners of the easement itself, and for the maintenance, repair and restoration of the Via Loma, Via Alicia, Dos Lomas roadway, including paving, so that the same may be kept in good useable condition, such assessments to be fixed, established and collected from time to time as hereinafter provided. Said 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 Parcel 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.

Section 2. Assessments. There shall be a minimum annual assessment per Owner of (16% of his initial assessment) per annum which becomes due and payable upon the date of recording this agreement and each subsequent anniversary thereof.

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Section 3. Rate of Assessment. Further assessments shall be made against the property of each Owner at a rate determined by the following Initial Assessments:

- a. Each parcel with a residence shall be assessed \$500.00 initially
- b. Each parcel with no residence shall be assessed \$250.00 initially.
- c. Parcels 124-20-32 & 124-20-31 Rancho De Oro owner shall be assessed \$3,000.00 initially.
- d. Parcels 124-20-47 & 124-20-48 Oliver Atkins owner shall be assessed \$4,000.00 initially.
- e. Whenever a new parcel is created that is serviced by a paved portion of the roadway described in Exhibit "A" that parcel will be assessed \$250.00 and thereafter be assessed the same as an initial parcel
- f. Whenever a new home is constructed that is serviced by a paved portion of the roadway described in Exhibit "A" that home will be assessed \$250.00 and thereafter be assessed the same as an initial parcel
- g. All future assessments shall be in the same proportion to the total as the initial assessments, except when new parcels are created as described above.

The Committee shall calculate and publish the amounts assessed for all Owners, which determination, subject to correction for mathematical error, shall be final and binding. In such publication the date of payment of assessments shall be established.

The cost of maintenance, repair and restoration of the easement shall include expenses incurred in the enforcement and administration of this Agreement and the authorized business of the Association. Assessments may include anticipated cost and expenses so as to have available a working fund.

Section 4. Annual Accounting. The Treasurer shall render an annual accounting to the Owners including a statement of income and disbursements.

ARTICLE IV

MEETINGS OF OWNERS: FUNCTION OF ASSOCIATION

Section 1. Meetings. From time to time there may be a meeting of the Association which shall be called as follows:

- a. A meeting may be called at any time upon five (5) days prior written notice to each Owner of record of a lot. Said notices shall be from the Road Maintenance Committee, or shall be signed by not less than six (6) members of the Association, and said notices shall be addressed to the Owners at the address specified for the purpose of tax bills, or at such other address as said Owners shall designate to the person named to act as secretary as hereinafter provided.

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- b. Said meeting shall be held in the area of Fallbrook, San Diego County, California, at a reasonable date and hour and the notice shall indicate generally the business to be transacted.
- c. For the purpose of voting, and for the application of any term of this Agreement and Declaration unless the context indicates otherwise, all properties under common ownership or under ownership of spouses shall be deemed to be one property and/or one Owner. The presence of one-half of the voting power in person or represented by written proxy shall constitute a quorum at any meeting. A majority voting shall determine all questions except amendment of this Agreement and Declaration.
- d. Association meetings shall have authority to appoint and remove officers and committee members and conduct any and all other business of the association.
- e. At the next meeting of Owners, Mr. _____ shall act as chairman. When it has been determined that a quorum is present, said chairman shall call for the election of a permanent chairman, vice-chairman, secretary-treasurer and a fourth person, all four (4) of whom shall constitute the Road Maintenance Committee. Upon the election of those officials, said permanent chairman shall preside over the meetings. Said officers shall continue to act as such until their resignation or removal by a majority of a quorum of Owners at a properly called meeting.
- f. The Committee shall serve without compensation. They shall be responsible only for gross neglect and not for action or inaction in good faith. The Association shall indemnify and defend them against any and all claims and shall acquire liability insurance for their protection as agents.
- g. In the event the Association is incorporated, such Committee shall become its Board of Directors and they shall be the corporation's President, Vice-President, Secretary-Treasurer and Board Member, respectively, and shall have all of the authority and status conferred herein on the Committee.

Section 2. Association Function. The Association, acting through the Committee (or a majority thereof) shall have the power to:

- a. Enforce the provisions of this Agreement and Declaration of Covenants, Conditions and Restrictions.
- b. To maintain bank accounts and invest such monies as may be existent;
- c. To employ or contract and pay for maintenance and repair of Via Loma, Via Alicia, Dos Lomas so as to maintain it in a good state of repair. Such contracts shall be made with the lowest of three fully qualified contractors who bid, or if three fail to bid, with the lowest or only bidder who bids.
- d. To bring suit to obtain enforcement of this Agreement and Declaration.

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- e. To post and maintain a sign at the easterly terminus of Via Loma advising that it is a private way and not a through street.
- f. To negotiate and settle any claims which may exist against persons or organizations improperly using the easement and/or for damage caused thereto, and to initiate lawsuits for collection of such claims,
- g. To borrow money for the purposes specified herein.
- h. To purchase and maintain liability insurance for the protection of the Association and its members.
- i. To act on behalf of Owners in the interests of their properties.
- j. To do anything reasonably necessary for the performance of duties specifically authorized.

Notwithstanding any provisions of this Road Maintenance Agreement and Declaration, the Road Maintenance Committee is to perform no function authorized by this Agreement without a majority of the Owners voting except those necessary to do the following:

- 1. Acquire liability insurance
- 2. Maintenance, repair and restoration of the easement
- 3. Determining amount of and collecting of assessments
- 4. Posting of signs concerning use of easement
- 5. File notice of and enforcement of liens
- 6. Settle, prosecute and collect sums for damage to the easement or for maintenance, repair and restoration from non-signatory and non-contributing users of the easement.

ARTICLE V

CERTIFICATE OF PAYMENT

The chairman shall upon demand furnish to any Owner liable for an assessment a certificate in writing signed by said chairman and secretary setting forth whether the assessments on a specified lot have been paid and the amount of the delinquency if any. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

ARTICLE VI

NONPAYMENT OF ASSESSMENTS

Section 1. Delinquency. Any assessment provided for in this Agreement and 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 owner shall pay a late charge equal to ten per cent (10%) per annum from the date of delinquency, but in any case not less than five dollars (\$5.00). The Association may, at its option, bring an action at law against any individual owner personally obligated to pay any assessment or upon compliance with the notice provision set forth in Section 2 hereof, to foreclose the lien (provided for in Section 1 of Article III 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 judgment is obtained, such judgment

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shall include said interest and a reasonable attorney's fee, together with the costs of action. Each owner vests in the Association as a group, acting through the Committee, the right and power to bring all actions at law or lien foreclosure 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 of notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the owner of said parcel, and a copy thereof is recorded by the Association in the office of the County Recorder in which the properties are located; said notice of claim must recite a good and sufficient legal description of any such Parcel, 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 the claimant.

Section 3. Foreclosure Sale. Any such sale provided for above is to be conducted in accordance with the provisions of Sections 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 or provided 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 \$15.00, to cover the costs of preparing and filing, or recording such release, together with the payment of such other costs, interest or fees as shall have been incurred.

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 judgment for unpaid assessments, as above provided.

Section 6. Subordination of Assessments Liens. If any Parcel subject to a monetary lien created by any provision hereof shall be subject to the lien of a deed of trust; (1) the foreclosure of any lien created by anything set forth in this Agreement and Declaration shall not operate to affect or impair the lien of such deed of trust; and (2) the foreclosure of the lien of deed of trust or the acceptance of a deed in lieu of foreclosure of the deed of trust shall not operate to affect or impair the lien hereof, except that the lien hereof for said charges as shall have accrued up to the foreclosure or the acceptance of the deed of trust, with the foreclosure-purchaser or

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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, 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 VII

GENERAL PROVISIONS

Section 1. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 2. Term. The covenants, conditions and restrictions of this Agreement and Declaration shall run with and bind the Parcels, and shall inure to the benefit of and be enforceable by the Association alone as to the assessment lien, and by the owner of any Parcel subject hereto, their respective legal representatives, heirs, successors and assigns, in perpetuity as to all other matters, provided, however, that at any time after the expiration of forty (40) years from the date this Agreement and Declaration is recorded, a majority of the then signatory owners of the Parcels, by an instrument in writing, may terminate or change said covenants, conditions and restrictions in whole or in part.

Section 3. Construction. The provisions hereof shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community or tract and for the maintenance of the easement. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 4. Amendments. Except as provided in Article VII, Section 2, this Agreement and Declaration of Covenants, Conditions and Restrictions may be amended only by the affirmative assent or vote of not less than two-thirds (2/3) of all signatory owners; except that if the event anticipated in Article VIII, Section 4, occurs then, this Agreement and Declaration may be amended by a majority of such Owners.

Section 5. Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

Section 6. Singular Includes Plural. Whenever the context of this Agreement and Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

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ARTICLE VIII

EFFECTIVE DATE: NON-SIGNING OWNERS

Section 1. Effective Date. This Agreement and Declaration shall become final and binding on all of its signatories and shall be officially recorded when it has been duly executed by owners of 60% in number of the Parcels. Owners who are not signatories as of that time shall continue to be solicited by the Road Maintenance Committee to become signatories hereto, and appropriate recordings of such further signatories shall be made with the same force and effect as if signatory to this original Agreement and Declaration.

Section 2. Non-Signing Owners. Owners of properties which benefit from the easement and who refuse after repeated solicitation by the Road Maintenance Committee to become signatory hereto or to pay their allocable portion of the maintenance cost as defined hereinabove shall be sued in the name of the Association and/or its assignee under the provision of California Civil Code Section 845, and any and all other legal authorization, to recover from said nonsigning and non-cooperating owners what would be their share of allocable cost as provided hereinabove, together with penalties and all costs.

Section 3. Distribution To Signatories of Costs Attributable To Non-Signing And Non-Cooperating Owners. The portion of the road maintenance cost which would have been borne and paid by non-signing and non-cooperating owners, if any, shall be distributed among signatory Owners by the formula set forth in Article III, Section 3, above. Upon recovery of such amounts from non-signing and non-cooperating owners, the same shall be refunded to or credited to the account of signatories to the extent they have borne such costs.

Section 4. Duration. Article I, Article III, Section 1 and Article VI of this Agreement and Declaration shall terminate when the County of San Diego or any municipality or any public agency, district or service area (in any and all such alternatives having taxing power over real estate) assumes the responsibility for the maintenance, repair and restoration of the easement. Upon any such termination the Committee shall cause to be recorded an appropriate document removing this Agreement and Declaration from record, but such event shall not affect any existing liabilities to the Association resulting from this Agreement and Declaration.

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700

ATTACHMENT TO:
ROAD MAINTENANCE AGREEMENT

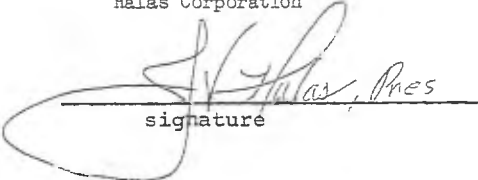
AND

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

SAN DIEGO COUNTY, CALIFORNIA

I the undersigned do hereby agree to and approve this
agreement.

Halas Corporation


signature

9/12/79
date

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

701

ATTACHMENT TO:
ROAD MAINTENANCE AGREEMENT

AND

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

SAN DIEGO COUNTY, CALIFORNIA

I the undersigned do hereby agree to and approve this
agreement.

Rancho De Oro
by Russ Higuera
signature

9/13/79
date

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

702

ATTACHMENT TO:
ROAD MAINTENANCE AGREEMENT

AND

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

SAN DIEGO COUNTY, CALIFORNIA

I the undersigned do hereby agree to and approve this
agreement.

Erik H. [Signature]
signature

April 17, 1979
date

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

703

ATTACHMENT TO:
ROAD MAINTENANCE AGREEMENT

AND

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

SAN DIEGO COUNTY, CALIFORNIA

I the undersigned do hereby agree to and approve this
agreement.

Oliver N. Atkins
signature

8-12-79
date

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704

ATTACHMENT TO:
ROAD MAINTENANCE AGREEMENT

AND

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

SAN DIEGO COUNTY, CALIFORNIA

I the undersigned do hereby agree to and approve this
agreement.

Richard C. Holman
signature

9-14-79
date

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705

ATTACHMENT TO:
ROAD MAINTENANCE AGREEMENT

AND

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

SAN DIEGO COUNTY, CALIFORNIA

I the undersigned do hereby agree to and approve this
agreement.

Russ Shugart
signature

9/13/79
date

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

IN WITNESS WHEREOF, Owners have executed this instrument
the day and year accompanying their signature

SIGNATURE OF OWNERS

ASSESSOR'S PARCEL NUMBERS

Joseph R. Hoover 15 August 1979 124-200-44

Donna Anne Hoover Aug. 17, 1979 124-200-44

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Via Loma Maint Ass. 707

IN WITNESS WHEREOF, Owners have executed this instrument
the day and year accompanying their signature

8/16/79

SIGNATURE OF OWNERS

ASSESSOR'S PARCEL NUMBERS

Oliver H. Atkins

Total

43 acres

Oliver H. Atkins

area	Book	Page	Per
57121	124	200	48
D 42125	006024	03370	
57121	124	200	47
D 42125	006024	03369	

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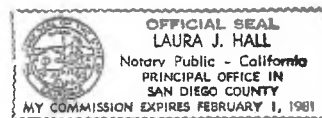
IN WITNESS WHEREOF, Owners have executed this instrument
the day and year accompanying their signature

SIGNATURE OF OWNERS

ASSESSOR'S PARCEL NUMBERS

C Warren BreedingGeorgia L. Breeding

Book - Page - Parcel
124 - 220 - 27

Frank W. CaldwellWilliam GreenbergThomas M. BradleyJohn C. WitschgerJosephine GrothRalph N. FontesArnold L. RashkinJohn C. Witschger - Witness

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

On September 25, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared John C. Witschger personally known to me to be the person whose name is subscribed to the within instrument, as a witness thereto, who being by me duly sworn, deposed and said: That he resides in Fallbrook California that he was present and saw C. Warren Breeding and Georgia L. Breeding and Frank W. Caldwell and William Greenberg and Thomas M. Bradley and Josephine Groth and Ralph N. Fontes and Arnold L. Rashkin and Erik H. Frazerr and Oliver A. Atkins and Richard C. Holmes and Russ Urquhart and Joseph R. Hoover and Doris Anne Hoover and Alice R. Atkins and Russ Urquhart known to him to be one of the Partners of Rancho De Oro that executed the within instrument and acknowledged to him that such partnership executed the same and J. V. Halas, known to him to be the President of the Corporation that executed the within instrument known to him to be the person who executed the within Instrument on behalf of the Corporation therein names and acknowledged to him that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors, ALL personally known to him to be the same persons described in and who executed the said within instrument as the parties thereto, sign, seal and deliver the same and that the above said parties duly acknowledged in the presence of said affiant that they executed the same and that he, the said affiant, thereupon at their request, subscribed his name as a witness thereto.

WITNESS MY HAND AND OFFICIAL SEAL

Laura J. Hall

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

